CONSIDERATIONS

ON

THE LAW OF LIBEL,

AS RELATING TO PUBLICATIONS

ON THE SUBJECT OF

RELIGION.

By JOHN SEARCH.

Did not we straitly command you, that ye should not teach in this name?

ACTS 5. 28.

LONDON:

JAMES RIDGWAY, PICCADILLY.

1833.

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PREFACE.

THE Author of the following pages would most gladly have left the important subject they relate to in the hands of others, abler and more learned than himself, had he known of any who—with the ability to do it justice, had also the leisure, and the inclination. He thinks it *ought* to be handled by *some* one,—and that, *repeatedly*; that so, at least, its merits may be estimated, not by mere indolent assent to existing usage, but by the deliberate judgment of the public mind, often invited to its consideration.—Should this be done, the leading principle which is here contended for, can hardly, he thinks, fail of gaining ground; being such as to require but little skill in its advocate, if it have only the benefit of public attention.

Should these remarks, then, be but a means of bringing the subject afresh into public notice; whe-

ther by inducing others—who are abler—to take it in hand; or merely by leading individuals, more generally, to give it serious and attentive consideration; the Author will deem himself to have effected *something* in behalf of the most sacred and precious of human Rights, and of the best interests of true Religion: and will cheerfully bow to all just animadversion, in regard to the imperfections of an attempt, which has these objects in view.

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CONSIDERATIONS

ON

THE LAW OF LIBEL,

&c.

BY the existing law of the land, so far as relates to the publication of religious opinions, any writing whatever, which shall tend to impeach the evidences of the Christian faith, or in any manner to impugn Christianity as a whole, is, I believe, indictable as a blasphemous libel, and punishable as such by fine and imprisonment, "or other infamous corporal punishment." Be the work, in all other qualities, what it may—be its tone and language temperate or insolent, serious or flippant—or its object pursued by sober argumentation, or gratuitous invective and contumely;—all this makes no other difference, I apprehend, in the eye of the law, than simply in the way of *aggravation*. The advised attempt to dispute the truth of Scripture is itself the legal crime: statute law and common law unite in declaring it such: and the writer is liable in every such case to the penalties forementioned.

It matters not that publications of this kind have occasionally escaped prosecution,—whether from

voluntary forbearance on the part of those in office, or through any silent check of public opinion: this argues nothing as to the state of the *law*, which does exist to the extent described, and may at any time be so enforced. Neither again does it much alter the case, that expressions are said to have been used by Judges, in some of the later trials of this kind, proclaiming toleration to all fair discussion, on whatever subject. For these expressions, if not sufficiently neutralized by other opposite expressions of the same judges on the same occasions, and by their manner of appealing to the older precedents of common law; seem at least to be effectually so by those older precedents themselves, as also by the language of the *Statute*, (9 and 10 W. III. c. 32.) founded, as lawyers tell us, *upon* the common law, and simply declaratory of its import. In spite therefore of any such questionable expressions from the Bench, or of such limited *sufferance* as may in some cases have been conceded, it is still, I apprehend, decidedly illegal to express any opinion fundamentally adverse to the national faith. In the department indeed of *private* opinion or inquiry (as we are sometimes told, with somewhat more emphasis than the indulgence might seem to call for,) the freedom allowed to the British subject is absolutely unlimited. Nay, he might go the further length of *publishing* his inquiries, should they even involve the closest scrutiny of the Christian evidences,—provided always their results be not unfavourable. But, should they unhappily take that turn, and tend to the impeachment of the received faith,—at that precise point, if I at all understand

the law, their publication becomes illegal: nor is there, so far as I can discover, any possible mode of expression, any possible sobriety of tone, or integrity of purpose, which could *legally* shield the inquirer disclosing those results, from the liabilities of blasphemy. And though it remain at last for a *jury* to declare on oath, libel or no libel, (a source of protection which we are sometimes told no other country can boast of[a];) yet what does this amount to at last? for since libel is essentially that and that only which the *law* declares to be such, and it *does* declare this of *all* writings which impugn the truth of Scripture; the jury, as sworn to give a *true* verdict, are bound in such case, not less by their oath, than by the customary influence of the judge, to surrender the accused party into his hands, and thereby to his free discretion as to the fine, imprisonment, and other penalties.

At the same time, it is no easy matter to get sight of this piece of law, frankly and simply propounded, whether from the Bench, or in written treatises; there being apparently, among lawyers of all grades, some extraordinary shyness of coming straight to the point in this matter. Of that which is truly the essence of religious libel, (viz. the bare act of *impugning* the truth of Christianity,) we rarely find much said; while of the said offence *mixed up* with any of its contingent *aggravations*, we hear freely enough. No lawyer scruples to expatiate on the penalties provided for blasphemy *direct*—against God, or His providence, (which would be blasphemy alike all over the globe;)—

[a] Quart. Rev. No. 70. p. 571.

or for *reviling*, or *scoffing at*, or *contumeliously reproaching*, &c., the established religion, (which is the crime of impugning, *combined* with its aggravation of *gratuitous insult*:)—but to the naked offence itself—of *impugning*—no lawyer willingly alludes; never, I believe, except under pressure of urgent need; and rarely even then, without some endeavour to mystify his doctrine while declaring it, or to divert attention from it, when uttered, by a hasty transition to the topic of aggravations. While dwelling on *them*, he is more at ease, being secure of the sympathies of every hearer; but fears apparently that these might fail him, when declaring the vengeance of the law against the simple crime of arguing on the wrong side. That the religious inquirer who—without a thought or feeling of irreverence to God or religion, as such, or a single word of intentional insult to the institutions of his country—seeks only by fair investigation to try "the certainty of the things wherein he has been instructed," should hereby be subjected to penalties thus severe,—does seem harsh, be his conclusions never so faulty: (and even of *that*, who is to be the competent *arbiter*?)—it does seem harsh to make him liable to penalties thus severe and thus infamous, for submitting to public judgment the grounds of his own distrust of certain human statements and human testimony, on subjects confessedly of the nearest import to himself and all mankind: for alleging, in the way of argument, that he has just grounds for doubt,—not of the existence, not of the goodness, the wisdom, the mercy, or the overruling providence of God, nor of the obligation of

human duties, and future responsibility of man ;— but simply of the veracity of certain human statements, respecting facts affirmed to have taken place in a distant country many ages ago. To state the nature of this offence quite plainly, and yet not to outstep the sympathies of his hearer, is not always within the skill of the lawyer: in which dilemma, as it seems to me,—whether by word or pen, from the Bench or in written commentaries, he rarely screws his courage quite to this sticking point, nor attempts it without visibly flinching.

That the law in regard to religious libel *does* reach to the extent stated, cannot, I think, admit of any reasonable question ; and, were I myself a lawyer, I might doubtless give summary proof of this, by a brief citation of a few decisive authorities. As it is, I shall subjoin, *in an Appendix*, such indications of that fact as I can remember to have met with, to which the reader can refer, or not, as he pleases, or may think necessary[b].

Assuming it meantime as a matter easy of proof, that such *is* the state of the law, it may I hope be allowable to inquire, how far such a law can be deemed either consonant with equity or reason, or called for by any sufficient necessity of the case.

And first, that it is not defensible quite to the satisfaction even of its own most zealous supporters, might seem partly confessed by the *shyness* of *speaking out* on this subject, which is observable in judges and other lawyers. That such a feeling does exist, and in a very remarkable degree, among the parties mentioned, I have before stated as my own

[b] See Appendix, No. I.

decided impression: but would not wish to have it thought to *be* so, further than the following, selected from numerous similar instances, may seem to warrant. Being however not absolutely *essential* to the present argument, though adding much to its force, I have subjoined *them* also in the *Appendix*[c], to which, as before, the reader might refer, or not, at his pleasure. And if, from the passages so cited, or from other similar indications which may have fallen under the reader's own observation, it does seem evident that such shyness of plain speech exists, to what other cause can we ascribe this, than to a consciousness of some great disadvantage to the credit of Christianity, arising from these penalties on inquiry; and of the great likelihood that they would be construed into a confession of unfitness in its evidences to endure the test of investigation?

Loaded with this heavy disadvantage *in limine*, the law in question ought to have some very urgent and pressing plea to recommend it. Let us endeavour to ascertain what it may be.

1. And first, there might be at least some *consistency* in the procedure, if its avowed principle were *this*: That our legislators and rulers, having fully satisfied *themselves* of the truth of the Christian religion, considered that this ought to suffice for the satisfaction of the nation at large; and that any *contrary* view of the question, being necessarily founded in error, ought, for the public benefit, to be coerced by the strong arm of the law: after much the same manner as the six great points of

[c] See Appendix, No. 2.

Popery were *established* in the reign of Henry VIII., having been "'determined and resolved by the most godly study, pain, and travail of his Majesty; for which his most humble and obedient subjects, the Lords spiritual and temporal, and the Commons, in parliament assembled, did not only render and give unto his Highness their most high and hearty thanks,' but did also enact and declare all oppugners of the *first* to be heretics, and to be burnt with fire; and of the five last, to be felons, and to suffer death[d]." Were it, I say, plainly declared that the truth of the Christian faith having been *thus* determined for us by our rulers, we ought to *take their word for it*, without personal investigation of the subject, (for, without liberty of *mutual consultation*, liberty of *inquiry* cannot be said to exist;) the system in question would at least stand based on some clear and definite principle.

Even then indeed it might perhaps be objected, that the civil authorities, though never so infallible in their theology, were yet stepping a little *beyond their province*; since men unite in civil society, not for the salvation of their souls, but for the protection of their persons and property from mutual aggression. Or, further again, it might be said that—granting still the theological assumption—it is yet not fully evident what harm could arise from the discussion, however free, of truths irrefragably certain. Still, it might at least be maintained that, under such assumption, there could be no *need* for such discussion; and that the legislature, *having* charged itself with the care of our spiritual interests, as well as

[d] Blackst. Comm. vol. iv. p. 47.

our civil, and being more competent than we could be to judge unerringly in such matters, might justly preclude us from a liberty which we might, in our ignorance, abuse.

But this is a plea which we never hear plainly avowed. For, though perhaps a sort of *approach* is occasionally made to it, as when, e. g. *in the course of criminal proceedings for religious libel*, the names of *Locke*, and *Newton*, and *Boyle*, &c., are paraded before us, for the purpose, apparently, of inferring that since *they* were satisfied, *we* ought to be so too[e]; still it is never declared in so many words, that we are expected to take the word of our rulers (nor even that of Newton or Locke, &c.) once for all, for the truth of our religion: but on the contrary, much pains are taken to assure us frequently, that we are freely permitted to think for ourselves on this subject: though commonly, I believe, with a proviso appended, that we do not *communicate* our thoughts, when unfavourable, to one another[f].

2. Or again, there might be some consistency in the course pursued, if the State religion had been adopted, not from conviction of its truth, but with

[e] "He (the learned Judge) thought, as far as his personal opinion could go, that men might safely trust to the truth of a religion which had endured during a period of eighteen centuries, which had been trusted and professed by such men as *a Newton, a Locke, a Boyle*, &c."—Trial of Davison, Ed. Ann. Reg. 1820. p. 240. Et sic alibi passim.

[f] "Not that the law interfered with any man's opinions, not even with the Deist's, *if he kept them within his own breast*, &c." —Att. Gen., Ed. Reg. 1819. p. 43. "The exercise of reason was allowed in the fullest manner by the law of England . . . But though, as a law of liberty, it allowed perfect freedom of *opinion*,

a view only to its political uses; on some such principle as that expressed by Cicero (de Leg. ii. 7.), and quoted by Blackstone, Comm. iv. 43: "*Utiles esse opiniones has, quis negat, cùm intelligat, quam multa firmentur jurejurando; quantæ salutis sint fœderum religiones; quam multos divini supplicii metus a scelere revocârit; quamque sancta sit societas civium inter ipsos, Diis immortalibus interpositis, tum judicibus tum testibus*": because in that case the coercive system, however discreditable, might be in some sort forced on the legislator by necessity of the case, his option being only between the disrepute of stifling inquiry, and a perhaps greater disrepute from permitting it. Even then, indeed, it might seem that the State was carrying its interference beyond its own exigencies, in so far at least as might relate to the commonly avowed objects which civil government proposes to itself in its patronage of religion. For, whereas these are commonly professed and understood to consist in the great moral tie derived from the belief of a Supreme Providence and future retribution, which controuls men's actions beyond the actual grasp of the law, and confirms the sanctity of oaths, and the claims

and interfered with no man's *private belief*, it did not allow to every man to do what seemed good in his own eyes, &c." [viz. to *express* his said "opinion" and "private belief," in certain matters.] —Lord C. Justice, Ibid. 47. So again, "Every man *in this country* [how privileged!] had a right of *private judgment* upon every subject: and however injurious those opinions might prove either to himself or others, *so long as he continued to keep those opinions to himself*, the laws of his country could take no cognizance of his offence."—Lord Tenterden's Charge on Robert Taylor's Trial. Morn. Chron. October 25th, 1827.

of mutual justice; *these* seem to be benefits not dependent on the existence of an *established* or *State* religion, being scarcely separable, even in idea, from the existence of religion at all; (as, indeed, might partly appear from the above passage of Cicero respecting the *Pagan* creeds, though quoted so oddly by Blackstone, in an argument relating to the Gospel distinctively:) and the legislator, far from needing the aid of penal laws to keep up these "utiles opiniones," would find *that much* ready provided to his hands, and might safely count on its continuance, not only *without* his interference, but even, if needful, in *despite* of it.

But the truth is, that there is always a further kind of aid which the civil government derives, not exactly from religion, but from its popular teachers or clergy. For, since civil government, in all its shapes, must rest ultimately on popular consent, how important to the civil magistrate must be the co-operation of that class, who, swaying the religious feelings of the people, are thus enabled—for so history teaches—to dispose them at pleasure either for or against any government, or any measures!

Under supposition, then, of a Government adopting a State religion, not for truth's sake, but for that of expediency alone, a consistent plea might *then*, I say, exist, not only for securing to its clergy the undisturbed possession of their emoluments, &c. (which strictly constitutes *establishment*,) but for going the further length of screening their doctrine by penal laws from any adverse and dangerous scrutiny.

But here again we have a plea which would be indignantly and justly disavowed[g].

But say it is one thing to *construct* a system for State uses, and another to obey the necessities of a system *de facto established.* Take it *so*, and we shall have, by supposition, a *third* plea, which might be urged in favour of the penalties in question. Suppose it said, e. g.

3. The Christian religion *is established* in this kingdom, and hence has become so vitally united with the Constitution, as to involve in its own stability that of the civil Government also. It must therefore be protected, not from invasion only of

[g] When these remarks were drawn up, I was not aware that the plea of bare State expediency had been so plainly avowed by divines of eminence, as I find it to have been. Mr. Beverly, in his Second Letter to the Abp. of York, quotes thus (p. 23.) from Bishops Marsh and Warburton:—From the Bishop (Marsh) of Peterborough,—"The establishment of a religion in any country, as both Bp. Warburton and Dr. Paley have clearly shown, *is not founded on the consideration of its truth*—the *immediate and direct* motive which operates in the establishment of a religion, is *its utility to the State.* (Letter to the Rev. Peter Gandolphy, &c.)"—From *Bp. Warburton*,—"I will conclude in requesting my reader to have this always in mind; that the true end for which religion is *established* is, not to provide for *the true faith*, but for *civil utility*. (Bp. Warburton's Works, vol. iv. p. 240.)"

I was not aware, I say, that this doctrine had been thus openly propounded: and am still of opinion that it would be, generally, disclaimed with much indignation. At all events, from the ground thus chosen by these acute and distinguished writers, it would seem to have been *their* opinion, that—to give *any consistent* plea for its dictation in matters of religion, the State *must* either, 1. assume to be itself the sole competent judge of truth; or, declining that pretension, must, 2. avow plainly that it seeks—not truth—but political expediency only:—*which alternative* is pretty nearly what *I* have above supposed.

its established rights, but from *censure* no less; because censure might make it disesteemed, and disesteem impair its stability, and thereby that of the Government with it.

Here again, then, we have a plea which, taken alone, is essentially a *State* plea, having no necessary reference to the truth or falsehood of the so established religion, but founded only on a specified State necessity. And observe, moreover, it is an argument derived not at all from any quality attributable to *establishments* or *established things* in common (for *they* do not commonly claim nor need exemption from *criticism*, but from actual *infringement* only): but solely from the peculiar nature of the thing *in this case* established, viz., *religion*, which, *being* established, becomes vital to the civil Government, and for that reason requires the peculiar protection specified. And in this shape only could it apply to the case in hand.

Yet so it is, from some cause or other, that wherever this plea of *de facto establishment* is resorted to, all reference to the *peculiarity* of the protection claimed, or to the *special ground* for claiming it, seems carefully avoided; by which omission the argument is, in fact, despoiled of all that might make it relevant. Thus, e. g., Lord Raymond says, on Woolston's trial,[h]—"The Christian religion is *established* in this kingdom; and THEREFORE they (the Court) would not allow any books to be written which should *tend to alter* that establishment." Now who, I ask, would suspect from this that Lord Raymond meant to claim for the

[h] Appendix, No. 1.

established *religion* any *further* protection than was commonly claimed for *all other* "established" things? Who would not rather suppose that he was expressly putting it on the common footing of other "established" matters,—of the poor laws, or the game laws, or the excise laws, &c. Yet *do* any of these "established" things claim exemption from adverse *criticism*, or the suppression of all "books that might tend to alter" *them*?

If, indeed, the State lawyer is prepared to maintain that a man might not legally question the policy of the poor laws, or game, or excise laws,—nay, even of those relating to the stiffer subjects of Catholic disabilities, the constitution of Parliament, hereditary peerage, or peerage episcopal, &c.; the general maxim *spelt for* in this dictum of Lord Raymond might be good for something. But in all these matters it seems to have been sufficiently understood that it is one thing to *resist the authority* of an established law, and another to *discuss its wisdom*; and that, while no such actual resistance is contemplated, the question of its wisdom &c. may be freely canvassed from one end of the kingdom to the other[1]. The sweeping maxim,

[1] And observe, too, in *such* cases the censure thrown on *the law* is not *incidental* only, but professedly *intended*: whereas it is plain that, in discussing, however unfavourably, the evidences of Christianity, a man does but *incidentally* and *involuntarily* imply dispraise of the existing *law*:—unless, indeed, it be seriously meant by the State lawyer (when he says that "to speak against Christianity is to speak in subversion of the law":) that the truth or falsehood of our religion is a question which can have no conceivable interest to any man, *except as a problem of jurisprudence*; and that the idea of a man's entering on such an inquiry *without* intentional reference to the Government or its views,—is a thing past all conception.

therefore—"So and so *is established; ergo*, nothing must be written which might tend to alter it,"—is mere arbitrary mis-assumption: *special cause* must be pleaded, or you prove nothing.

But special cause, in this case, could only be shown by dealing broadly with the question, How it is that *a religion*, once established, becomes thus delicately vital to the civil Constitution,—so as not to endure a breath of adverse scrutiny, without peril to the State? And to this point, it would seem, the State lawyer would not willingly invite attention, so long as the sweeping maxim concerning *all* establishments might pass muster.

How does it then become thus vital? In virtue of a divine origin and excellence? This might indeed make it *vitally beneficial*, but would not tend to give it that *delicate* and *sensitive* and *shrinking* vitality which is here the point of question. Or, grant it *would*, yet how is such origin to be assumed as a ground for penal legislation, except on the forementioned principle of—"*You must take our word for that*"? Besides, the question of *origin* stands excluded from the present plea, which is founded wholly on the fact of *existing establishment*. *How* is it then, that a religion, *quoad established*, becomes thus vital to the state? Is it from its great moral tie on human actions, derived from the fear of God, and of a future judgment? But *this* belongs to religion *simply*; to religion established or unestablished by State authority; to religion, under many different shapes in which it is, or has been, so established, and even where most overlaid with childish fable. Still, then, we have to ask, How is it that—over and above the moral controul

of religion on men's consciences and conduct, or its augmented efficacy as derived from a Divine source,—*a* religion becomes more peculiarly vital to the Government by the fact of being *established*? Plainly by its throwing into the hands of the Government the influence of that class of men who sway the religious feelings of the people, and thus strengthening the hands of Government up to the amount of that influence. On *this* ground unquestionably a plea *might* be urged in vindication of the restrictions in question: it being plain (on this ground) that if you controvert by argument the doctrines of the clergy, you do hereby, in proportion to your success, diminish their influence with the people, and thereby take so much from the strength of the civil government.

But, be this as it may, or be the special reason what it may which makes it needful for a State religion to be protected from adverse criticism,—SOME special cause, I say, *must* be pleaded in aid of the general plea of establishment: and it must be, moreover, something purely *political*, because that plea itself is purely such, and has no reference to the truth or falsehood of the religion so established. Be it therefore, I say, what it may, I think it not surprising that the State lawyer should prefer dealing with the topic in the most general terms possible, lest he should make it *too* evident that he is pushing State policy beyond its proper province. To avow quite plainly that, because Christianity is by law established, therefore the question of its Divine origin must in no case be unfavourably discussed, *for fear of such or such political inconve-*

nience; that—be it true, or be it false—it is now "*established,*" and must *therefore* be abided by, nor any question raised which might tend to its disrepute, *lest you thus impair the strength of the civil government,*—might sound somewhat harsh and unseemly. A principle like this is indeed common enough, and proper enough, in many matters *purely temporal;* as, e. g., a statesman might argue without dishonour, "The title of the reigning King may indeed—(suppose the case) be questionable, or even indefensible; but, being king *de facto,* the law must forbid all question concerning it, since an error in the succession is at last a less evil than a civil war: but to say the like in a case which involves the relation of immortal creatures to their God and their eternal destination—to say of the established RELIGION, It may be true, or it may not; but being *de facto* the *State* religion, its truth must not now be questioned—*for fear of the political inconvenience,*—would be a maxim which could only entail dishonour on him who should be *distinctly understood* to advance it.

And, accordingly, it never *is* distinctly advanced. Sometimes, indeed, to help out the argument, this plea of establishment is mixed up, after a sort, with the former one of "*Take our word, &c.*" by a shifting appeal, first to the one, and then to the other. Thus, the State lawyer will first tell you, in substance, that you must abide by the State religion (i. e. not question it), because it is "established." If you ask—"What! whether it be true or false?" he replies—"Nay, but it is indubitably *true*": which is saying in effect, "You must take our word for

that"; because, should you attempt to meet the assertion by argument, you are *again* stopped short by the penalties against impugning the "established" religion; which penalties *again* are vindicated, as before, by appeal to its divine origin, and irrefragable evidence.

The foregoing remarks will also apply, for the most part, to the great and mystic *dictum* that Christianity is "*part and parcel of the law*;" which is only the plea of "*Establishment*" in another and still obscurer shape; and labouring under the same defect,—viz. that of studiously excluding the *special* consideration which alone could make it pertinent.

The deficiency of the argument is, however, in this case better veiled by the greater ambiguity of diction. The term "part and parcel" is deceitful; it cheats us with the semblance of a meaning, having none in reality. When we are told—"The Christian religion is *established*," we have at least a proposition with a meaning, and therefore some means of judging whether or not a given inference from it be a just one. But the assertion that it is "part and parcel, &c." having no determinate sense, one inference from it is near about as good as another; nor can the puzzled hearer say with certainty of *any one* that it is not fairly deducible; but, hearing it authoritatively propounded, is led to suppose there *is* a meaning, and a connection, though *he* cannot perceive it.

The Christian religion, in common with sundry things of meaner sort, has been a *subject-matter* of legislation: and the existing LAWS *upon* that subject, whether derived from statute or precedent, form collectively a part or parcel of the general

body of our laws,—in other words, a part or parcel of *the law*. In like manner hares and pheasants have been a *subject-matter* of legislation; and the existing enactments on *that* subject are *also* part or parcel of the law of England. Whether, or under what restrictions, the evidences of Christianity may be discussed, or a hare or pheasant shot, are questions which can be solved by one test only, viz. by reference specifically to the said laws so existing on either subject: but to say summarily of the Christian religion, that its truth must not be questioned, because *it* (*the Christian religion*) is *part of the law of the land*,—is, I allege, an abuse of terms precisely similar to that of saying that hares and pheasants must not, in such and such cases, be shot at, because they (hares and pheasants) are part of the law of England. In each case alike you confound the idea of a *subject-matter* of legislation with that of the *law or laws* which may exist thereon.

That the law does actually forbid unfavourable discussion of Christianity, is not denied nor doubted: but the point of question is, whether those *anterior* provisions of the legislature which fairly constitute the idea of "*Establishment*" do necessarily include such prohibition. Now, though we cannot of course tie this term to a strict meaning, as we would a square or a triangle, yet when we shall have included in it, as relates to Christianity, a State provision for the maintenance of its (orthodox) clergy, and celebration of its ordinances—secure protection to both from all aggression or insult—and recognition of *it* exclusively in all those cases wherein the law appeals to Religion for sanctions

stronger than its own ;—we shall hardly, I think, have omitted any thing very material to the fair sense of the term *Establishment*: and the question is, Do *these* provisions of the legislature include a prohibition of questioning Christianity?

Now *how* do they so? Not *directly*, it is plain: but how in any sense? They are framed, say, on supposition, in full assurance, and with solemn recognition, of the truth of Christianity. What then? To question its truth is doubtless, therefore, highly *uncomplimentary* to the legislator,—yet not *therefore illegal*. But then, you bring that into disesteem which it was *his* undoubted object to uphold, and thus *defeat his intention*. Granted: but this much you do, without illegality, in a hundred instances. The inventor of a cheap *carriage* defeats in part the legislator's object in taxing shoe-leather; yet not illegally: and books, as before said, are written every day with the avowed purpose of censuring some or other part of the existing law. But then, urges the State lawyer, all our civil institutions are founded on Christianity. This is merely saying, that, the national faith being in point of fact Christian, our national institutions have been founded accordingly; just as, under other circumstances, they *would* have been on paganism; and as (till the Reformation,) they actually *were* on a faith and doctrines which are now denounced as "damnable." In each case it is the object of the State to found its institutions on the basis of *Religion*; and on what *other* religion should or could they be *specifically* founded, than on that which is actually believed to be the true one? Yet neither does *this*, *per se*, imply that all sub-

jects of the realm must therefore abjure for ever all searching scrutiny of the grounds of their faith, lest IT (their faith) should *cease* to assort with the national *institutions*. *They* are founded on *it*, as being the actually existing faith of the governors and the governed; but not as precluding all future generations from sifting, searching, and comparing opinions on, that greatest of subjects. I mean that this is not *ab origine* INCLUDED in the bare act of adapting institutions to existing faith.

But if, in *addition* to those anterior provisions of the legislature, there be—as there is—a *further* law which *specially forbids* all question of the truth of the religion so established; why then the raising of any such question violates *that* law, and no other; and on *this* ground, and no other, is illegal: and all that is effected by the *dictum* about "part and parcel" is, that it prevents us from seeing that ground distinctly. In short, the impugning of Christianity is illegal,—simply because it *is* so; because a specific law states it so, and makes it so; and not by virtue of any general and abstract principle,—not from any "part"-ship or "parcel"-ship ascribable to Christianity more than to other subjects of legislation, nor from the bare fact of its being, like the stamp or legacy duties, *established*.

To extract such an inference, though but in semblance, out of the given material, required much management of diction. First (as we have seen), the idea of a *subject* of legislation is confounded with that of the *law* relating to it, and *Christianity itself* is termed *a part of the law*: and then again, by a second equivocation, this "part" is suddenly transmuted into the entire mass or body of the

laws. Thus Judge Hale says[i]—"Christianity is *part of the laws* of England;" [misnomer 1,] "and *therefore* to reproach the Christian religion is to speak in subversion of *the law* [i. e. *or laws collectively*:—misnomer 2.][j]

So again Lord Raymond[k]—"They [the Court] observed too, that as the Christian religion was [by misnomer] *part of the law*, whatever derided Christianity, derided THE *law* [or laws *collectively*,] and consequently must be an offence against THE *law*: for *the laws* [collectively still] are the only means to preserve the peace and order of every government; and therefore whatever exposes ["*exposes*"] THEM strikes at the root of the peace and order of the government[l]."

We have in this procedure no bad specimen of the capabilities of the common law to be wrought by a competent artist into any required form. We have a series of learned authorities, from Hale and

[i] Appendix, No. 1.

[j] See some remarks on this subject, West. Rev. vol. v. 540.

[k] Appendix, No. 2.

[l] See a like equivocation in another phrase occasionally resorted to in working the *dictum*. Christianity, it is said, is "the law," or "part of the law," &c., and therefore "must be *protected as the law*." *So* Lord Ellenborough, in Eaton's case, refers to the doctrines of Hale, Raymond, and Kenyon (State Trials, xxxi. 950,); and in reference to that of Williams, Mr. (now Judge) Bayley cites Lord Raymond in much the same form. "Must be protected as the law:" How moderate, how reasonable does this sound! to be "protected," just as *any other* "part" or "parcel" of the law is "protected." Yet how different the demand in reality! Other laws ask only "protection" from *infringement*; *this* from *criticism*; nay more—from *constructive, undesigned, involuntary* criticism,—from criticism, not of *it*, the *law*—but of the *subject-matter* to which the law relates!

Raymond downwards, professing to extract the legality of coercing discussion on Christianity, out of the bare fact of its having been *established* as the State religion. I speak not here of the Statute, nor of the precedents, which they may, or might, have cited for this end, but of their preferring to offer as an independent and self-sufficient ground for such coercion, the single fact of Christianity being "established," or, as they more love to phrase it, a "part or parcel of the law[m]."

But, as observed by an acute writer—"Who is so ignorant of judicial proceedings, as not to know that *a little new law* is always forthcoming for any pressing occasion; sometimes raked up from old authorities or long-forgotten cases, *sometimes derived from vague and common-law principles*, sometimes boldly, and even impudently, made to suit the purposes of the hour? Who does not know that the learned judges *have a way of just grinding a little law for present use*, so that, though you may not always be able to tell beforehand *by what route* they will arrive at their conclusion, you may have a pretty good guess of the side they will decide for."—Ed. Rev. ciii. p. 11[n].

As yet, then, we have come to no plea, really pertinent to the case, which the advocates of coercion will plainly avow and abide by, as their justi-

[m] Perhaps nothing more betokens a crazy argument, than to see its propounders clinging perpetually, one and all, as if for their lives, to *some one phrase*; and especially if that be no very luminous one.

[n] An article which has been ascribed, I believe, to a *very* distinguished pen.

fication of the penalties which they uphold and eulogize. Where then will they take their abiding stand? I believe, most commonly on the plea that, *if* free discussion were permitted—if Christianity might be impeached at all—*the poor and ignorant* would of necessity be *misled*: Christianity would be impeached, not only falsely,—but sophistically, licentiously, contumeliously, abusively; with calumny and fraud, with scoffing and insult, with ribaldry and coarse invective; and so be wrongfully degraded in the minds of the simple and ignorant. —So far as any plea *is* adhered to at all, I believe it is this.

Now herein the first thing which occurs to observation is, that we have here the old demand afresh—"You must take our word for the truth of the State religion." I mean the plea cannot exist without this demand, shape it how you will: for since either side of a given question is alike capable of aid, *if needed*, from sophistry or foul play, it can only be by peremptory assumption of the truth of the one, that you can argue a peculiar likelihood of actual resort to it in behalf of the other; which is tantamount to assuming that it is indefensible by any other means.

But what then? May not—*should* not, the legislator assume the truth of the Christian religion, as a basis of legislation? I answer, *Yes*: he may justly assume this, as he *must* do many other important moral axioms, for any or every purpose, short of that of stifling inquiry into the truth or justice of such said assumptions.

Moreover, in the present case, this is assumed—

and yet not assumed—by the parties in question. The truth of Christianity *is* assumed, as a matter finally determined, in thus prohibiting all question thereof, as being necessarily sophistical and fallacious: while yet it is treated as a matter still debateable, in that a thousand pens are incessantly busied in exhibiting, enforcing, and vindicating its evidences. And since it can scarcely be doubted that the Church herself must, in the first instance, have been mainly accessory to the introduction of these penalties, and is still the stedfast advocate for their due enforcement; this incessant argumentation on the one side, and prohibition of all argument on the other, seem to come, but too inconsistently, from the same source[o].

[o] Having here stated it as my impression that the Church herself is, for the most part, unfavourable to the toleration of free discussion, I subjoin the following, which seems to express an opposite sentiment, and makes part of an address to the throne from the Archbishop, Bishops, and Clergy, of the Province of Canterbury, at the commencement of the present reign:

. . . . "And whilst, as in duty bound, we stand forward in defence of the faith, and the refutation of erroneous doctrines, we shall strive to regulate our temper and conduct by the laws of Christian charity respecting the motives of honest opponents; replying with meekness and gentleness to adversaries of a different character,—*and allowing* LIBERTY OF CONSCIENCE *to all men*."
—(Standard, November 19, 1830.)

This, I say, sounds tolerant; nor do I desire to suppose any insincere feeling on the part of those who so expressed themselves. Yet, in justice to my own argument, and to the opinion which I have expressed, I must observe respecting this phrase "liberty of *conscience*," that a more suspicious one could scarcely have been fixed on; conveying, as it does, the idea of liberal toleration, to the *hearer*, yet pledging the *speaker*, in fact, to nothing. In its *bare* sense, it is plain, *liberty of conscience*, is a thing which human

At all events, while the Church, for the most part, avowedly sanctions the restrictive law with her availing influence, and calls in most cases for the

authority can neither allow nor disallow; *for which very reason* it is always *taken* to imply something *beyond* the bare sense,—viz. liberty of *expression*: while yet the party so pledged is always free, if he likes, to keep his word of promise to the ear only.

At all events, that this phrase, with its equivalents *is* often used in express contradistinction to liberty of *expression*, and yet, as here, with a parade of liberal indulgence, is pretty evident in some instances which we have already had occasion to notice. See Note ᶠ. p. 8.

As a feeling of hostility has of late been shown towards the Church, whether on the score of her temporalities, or the part she is said to have taken in certain questions of politics, or what not; I would here take occasion to observe, that the greater part of these present remarks were drawn up, with a view to publication, *before* any such public feeling had been seriously manifested, or at least, that I was aware of. And had I the power of choice in that matter, I could have much preferred that these remarks, small as their weight may be, should have come forth at a time when no unfriendly feeling existed against the Church on any score. Still, on a question which I deem of such moment, I cannot think it necessary, for any scruple of that kind, to give up expressing my opinion, as the course of my argument may lead me. With the temporalities of the Church I have no desire whatever to meddle: and, in whatever may be done, I earnestly hope that a sacred regard will be had to every just right of herself as a body, and of her clergy as individuals. Should it so happen that their dues, preserved to them in substance, should pass, in the coming ordeal, *from* the shape of *tithe* to—almost *any* other that could be named, none, assuredly, would have better reason to rejoice in such change than the clergy themselves: and it is only amazing that they should so long have clung, and so fondly, to this mill-stone, which was dragging them down.—But with any such matters I have no desire to meddle. Compared with the liberty of freely searching after religious truth, I can feel but little interest in questions of tithe, and the like.

enforcement of its penalties,—is it not a strange inconsistency, that she should still profess incessantly to desire, invite, challenge, and defy discussion? Yet such professions are perpetually held forth, from the pulpit and from the press[p], sometimes in terms express and positive, but perpetually in the safer form of implication and assumption. The ever-repeated exhortations to the scholar to be ready armed with answers and refutations to the gainsayer, plainly imply a free field and a free opponent. The perpetual reference to the evidences of Christianity as irrefragable, irresistible, overwhelming,—deriving only new clearness from scrutiny, and augmented strength from each attempt to shake them,—sounds surely like a free challenge to a free antagonist. The triumphant appeals to the "test of ages," and to the ever baffled attacks of scepticism, suggest any idea rather than that of secular penalties for the "protection" of Christianity against its impugners. The oft-repeated complaint and protest against *insidious* warfare, would surely imply the lawfulness of an *open* one: as *e. g.* the sharp censures so commonly pronounced on the covert reasoning of *Gibbon*, are tantamount to saying that he *might* have *spoken out* if he had chosen[q]. While meantime, all modes and shapes of scornful allusion are freely resorted to in regard to the sceptic and

[p] See Appendix, No. 3.

[q] In fact I see Bp. Watson himself says plainly in his "Apology," "We invite, nay we challenge, you to a direct and liberal attack: though oblique glances and disingenuous insinuations we are willing to avoid."—*Letter* 5. And in his *first* letter, he speaks of the Church of England as "permitting every individual *et sentire quæ velit*, ET QUÆ SENTIAT DICERE."

his reasonings; he being held up, not to abhorrence only, as the perverse and malignant enemy to truth, but to scorn and derision also, as the baffled artificer of shallow sophisms, and unblushing re-asserter of oft-refuted cavils.—Can the Church fail to perceive how disadvantageously she presents herself, while, secure from attack or reply under the broad shield of the law, like Teucer under that of Ajax, she thus launches forth expressions of scorn, triumph, and defiance, against a foe who is not permitted to encounter her?

Or again, with what consistency can the Church profess that she *is* engaged in *actual* collision with her opponent, merely because she replies to such statements of his as, in spite of pains and penalties, *have* struggled into publication, but cannot, without fresh risk of prosecution, be defended by rejoinder? It is true the few straggling publications of this kind which have now and then come forth into view, stamped for the most part as outlaws by the absence of writer's name, or printer's name, have been forthwith assailed with refutation from scores of pens, and hewn into pieces again and again without end, as they lay single and prostrate, amidst hosts of foes, no man daring to bestride, shield, or up-raise them. Yet this is not collision, in any fair sense; nor can the Church, returning from such exploits, exhibit her notched sword, in token of any real conflict.

The more intrinsically futile the arguments of the sceptic, and the more irrefragable those of the Church, the greater the loss she derives from this

course, which precludes her from making either the one or the other fully evident. It is vain to say, —"Scepticism *has already* done her utmost: *there* you have her cavils, as put forth at their worst and strongest, in the writings of Bolingbroke, Collins, Gibbon, Paine, and the rest,—what would you have more?" This argues nothing: no refutations of those sceptical cavils, however multiplied, can ever put their merits fairly to the test, *while freedom of rejoinder is precluded.* A train of argument may be substantially sound, and yet require to be re-exhibited in fresh points of view, according to each particular mode in which it may be from time to time assailed: nor can the ablest pen state it once for all, with such completeness, as to provide against all the varieties of approach by which a reply, though irrelevant or inadequate, might *seem* to shake its force. It might contain the *elements* of rejoinder to a thousand replies, which yet can never be brought forward *by anticipation*, but must await the call of occasion to evolve its latent capabilities. Where then is the test of its merits, if, precluded from all re-statement or re-adjustment, it must lie subject to the accumulated comments of an endless succession of replicants, each selecting at discretion such parts as may seem, or be made to seem, most assailable, and exhibiting them in his own points of view, his own language, his own order, and with his own constructions? Is it to be presumed that *he* will set forth the deprecated argument in its full amount of strength, or with its best foot foremost to confront his own reply? or not occasionally gloss over

its stronger points while he assails its feebler,—or just extract its pith before he deals with it at all?

Truth itself might hardly suffice to stand, under the inequality of terms with which the sceptical reasoner is met in the field of argument. Practically he is considered as having already said all that he *can* say. A multitude of pens, in constant succession, are employed in sifting his arguments: the united talent, learning, and ingenuity of the whole Church is exercised in depreciating their strength, and devising fresh modes of approach by which they may be most advantageously assailed. Hence each separate portion of his argument finds, in its turn, *some* antagonist who hits on a mode of real or seeming refutation: and succeeding writers, gleaning the happiest hits from every quarter, and combining the master-strokes of a thousand colleagues, construct at last a body of real or seeming refutation of all that has been urged in objection to the Christian evidences: while the objector himself, who, if he venture on rejoinder at all, must take heed that it amount not to any *direct impeachment* of Christianity,—*i. e.* that it be not to the point in debate—is thus, to all practical purposes, bound down to silence by authority.

In saying, as I have done, that a man must not discuss this, or reply to that, I shall, I trust, be understood to have meant in all cases, that he must not *so* discuss or reply, as to impugn the truth of Christianity. Yet what less can this be, than exclusion of the sceptic from the field entirely? Were we to suppose, for argument's sake, that every

syllable advanced by divines in support of the faith, and in reply to objections, was one tissue of deceit and sophistry, I see not how the sceptical inquirer could stir one step in pointing this out, without bringing the truth of Christianity (so far) into question. To deny the validity of a given portion of its evidence, is to say that its truth is, so far, not supported: and to argue that a given objection to it has *not* been *refuted*, is to say that its truth is, so far, not likely. And how could such a course be pursued for many steps, without a manifest impeachment of its truth altogether? or what *is* impeachment of Christianity, beyond disputing its evidences, and standing to the objections?

Or say, for a moment, he *could* so shape his argument, as to obtain the benefit of this subtle distinction: yet would he be inevitably so cramped by the restrictions imposed on him, as to have no fair chance at all in the, so-called, discussion. Scarce a topic he could take in hand, but he must pause before touching on it, to consider whether he might not hereby be chargeable with attacking his opponents' *conclusions* also, as well as his *arguments*: to escape which peril, he must perhaps strike out the one half of his own argument, and state the rest but feebly.

But in fact the thing is chimerical. To keep clear of impeaching Christianity, while professedly impeaching the arguments by which it is supported, is a feat which, *if* conceivable in idea, is certainly not reducible to practice,—so as to abide the construction of a zealous judge, and facile jury.

But to revert to the plea last named in behalf of

the said system. To permit denial, in any shape, of the divine origin of Christianity, would be, it seems, to leave an opening for scoffing and invective, and all the arts of sophistry; whereby its character might be unfairly prejudiced in the eyes of the poor and ignorant.

But then, if Christianity, though true, might thus be prejudiced by unfair means, it follows *à fortiori* that, *if false*, it might be bolstered up by the like. For if it be possible that falsehood should supplant truth, when both sides have an equal hearing, still more might it so prevail when the hearing is given to *it* alone. So that, as I said, this plea essentially involves the preliminary demand,—"You must take our word for it that the religion *is* true."

Neither again does it seem maintainable, except in the very face of common sense, that a religion really founded on evidence thus complete and overwhelming, *could* be thus prejudiced in popular esteem, by being left to the issue of free discussion. For if the poor and ignorant be accessible to *false* reasoning, why so are they also to *fair*; and a *good* argument may be offered in a popular shape, no less than a *bad* one, if it have only a competent advocate.

It is perhaps conceivable, humanly speaking, that Christianity might, in spite of its truth, be put down, or seriously obstructed, by mere calumny, if it stood wholly destitute of external aids; unprovided, *e. g.* with competent advocates, or *they* precluded from access to the public ear.—But what is the fact?

The Christian faith has, first, the advantage of

pre-occupying the popular mind. The earliest affections of childhood are enlisted on its side; every nascent idea and feeling is associated with conviction of its truth; and this original impression is nursed and strengthened by an organized system of education, public, private, and domestic, whose ramifications extend to every order and every age. —(Error itself might hardly ask for better odds than this—to *begin* on.) A numerous order of men is specially provided as its advocates; men eminently fitted for this office, by education, acquirements, and perpetual exercise in the art of popular rhetoric. These men are carefully distributed all over the kingdom, which is parcelled out into subdivisions for this express purpose: they have access to the popular ear in a manner and degree that no other class of men can have—by public discourse, by domestic visitation, and private confidential converse; and are brought into contact with the middle and lower classes by a perpetual succession of occasions, connected with their private wants, interests, and duties. Thus blended as an elemental portion of every subdivision of the people, the clergy are backed in all their operations by the good-will and influence of the Government.—Then again, the press: who more competent than the clergy to wield that powerful weapon efficiently, even though it should be permitted to their opponents to wield it also? Are the literate orders to be addressed, by rigid argumentation? who so fitted for this office as the clergy? Are the middle and lower classes to be dealt with? who so competent again? who so well prepared to hit the style and topics familiar to

the peasant or mechanic, as *he* whose occupation it has been, all his life, to discourse with those very classes in public and in private? Who so fit as the parish minister to draw up popular tracts, in simple, tempting, and familiar shapes, level to the tastes of the poor, yet fit to abide the criticism of the learned? Add to this the hearty co-operation of all classes of *dissenters*, in behalf of the common faith; while the mutual rivalry between *them* and the *established* clergy augments incalculably the zeal and activity of all: as witness the myriads of rival *tracts*, wafted by this means, cost free, to the dwellings of the poor, throughout the united empire.—And with all this array of external defences—which might suffice to give stability to error itself—are we to be seriously told that *Christianity* cannot safely abide the hazard of equal discussion, because it *might* be attacked unfairly? If *this* be not a libel on the Christian faith, what will its worst enemies have to say of it, that shall be deemed such? "*If*" (says the Westm. Review, after a similar survey—and the comment seems quite inevitable,)—"*if* religion [Christianity], with all this extensive aid, all these immense advantages, in addition to its proper evidence, cannot stand its ground without prosecutions for its support, *we hesitate not to say that it ought to fall.* Were it the grossest imposture that ever existed, *here* is force enough to enable it to fight a long and hard battle with truth and common sense. *If*, with these fearful odds, there be the slightest occasion for penalty and imprisonment to secure its ascendancy, *falsehood may at once be branded on its front. Those who contend for their*

infliction are the real missionaries of infidelity."—(West. Rev. vol. ii. p. 15.)[r]

But say, for argument's sake, the Christian cause might, in some cases, be unfairly prejudiced by the use of sophistry or ill language.—And can it then be right, in bare assumption of such result—of an evil at the utmost only partial, occasional, and creative of its own remedy—to stifle free inquiry on this great question? to denounce all expression of opinion on it, except on one pre-dictated side!—a question which is at last, and ever must be, matter *of* opinion, and on which it is notorious that great difference of opinion ever *has* existed; a question, needful, beyond all power of description, for all men to determine truly; and yet determinable only by means of evidence so prodigiously multifarious and complicated, as to be quite unmanageable by any *Committee* or *Chartered Company* of investigators; nor explorable to any good purpose, except on the broad

[r] In the single article of *tracts*, just noticed above, take the following as a specimen; (Report of a Meeting of the Society for promoting Christian Knowledge, London, December 1830; wherein, in reference to an alleged increase of blasphemous and infidel publications, it is, *inter alia*,)

"Agreed unanimously—That a Committee be now appointed who shall prepare and circulate cheap and familiar tracts for the counteraction of these irreligious designs; and that *a sum not exceeding* £1000 be placed at their disposal for this purpose.

"That a copy of these Resolutions be sent to each of the District Committees of this Society, with an earnest request that they co-operate," &c. (See *Standard*, December 11, 1830.)

Here, then, is a force set in motion with scarcely an effort. By a single pulsation, as it were, of the vital organ, *a hundred thousand twopenny tracts* start forth into circulation through every corner of the empire!—And cannot *truth* keep its ground by means like these?

principle of unlimited mutual communication, mutual responsibility, and the wholesome check of mutual correction, amongst all engaged in the undertaking!

In saying that the truth of Scripture is matter of *opinion*, I conceive that I am not speaking in disparagement of the strength of its evidences, but simply stating that which arises from necessity of the case. Strictly speaking, all *matters of fact* whatever, as resting by necessity on moral evidence only, must be, to all but those personally cognizant of them, in some degree *matters of opinion*. And although in numberless cases the *degree* of such uncertainty may be infinitely small, (as when, *e. g.* we assume, on general authority, that there *is* such a city as Constantinople, or such a continent as America;) yet this is generally in the case of facts either wholly uncontradicted, or nearly so. But in the case of the Gospel facts, the solemn denial of their truth by the major half of the Jewish nation in the first instance, and by their posterity ever since, forms a body of counter-testimony which cannot, by any commonly candid reasoner, be deemed *entirely* without weight, and must at least effectually make an *opening* for honest diversity of opinion.—And hence I cannot but regard as highly injudicious, that over-strained language often adopted in regard to the Gospel evidences, which would describe them as placing its truth utterly beyond the reach of honest doubt, and would teach us to recoil in horror from the bare idea of such doubt existing for a moment, unexpelled, in our own minds. For since no man of common reflection

can take the subject in hand without being conscious to himself of *some* modification of doubt, which yet, perhaps, he might eventually—not repress, not stifle, from a factitious principle of duty—but happily surmount by diligent inquiry; *that* cannot surely be a wise policy, which teaches the man so circumstanced, that he *already* stands committed in impiety, and has *already passed the Rubicon* of hostility to the Gospel. At all events—with respect to the law of the case—if assurance in this matter can never amount strictly to *knowledge*, is it just to punish a man for professing disbelief of that, which no man can *know* to be true?[s]

And especially so, if the question be one which,

[s] In the foregoing remarks, I might be thought by some to have *confounded* the sense of the terms "matter of fact" and "matter of opinion". To such I would allege, in excuse, the very and inconveniently vague manner in which these and similar phrases are commonly used, which makes it difficult to *fix* them to a meaning, by appeal to any acknowledged standard. Vague as they are, I might perhaps be safe in assuming that, *primarily*, the term "*matter* of fact" did *not* signify *established or ascertained* fact,—though in common parlance it sometimes takes that sense; nor again—according to another and more frequent use of it—*alleged or debateable* fact,—in which sense the terms "*true*" or "*false*" might be predicated of it: but rather QUESTION of fact, (thus excluding those epithets,) as opposed to "matter of *opinion*," &c.—*i. e.* matter or question of *pure* opinion, facts being agreed on. Thus, *e. g.*, whether a man has committed a robbery, is matter (or question) of *fact*: and whether, if so, he ought to be hanged, is matter (or question) of *opinion*. Yet, forasmuch as the latter term has come, in popular use, to signify *any* sort of matter or question which is open to difference of opinion, it is plain that, in this popular sense, any matter or question of *fact* must be (*while* questionable) matter of *opinion* too:—i. e. *the validity of its evidence* is such.

affecting the eternal interests of every man, every man might seem indefeasibly privileged to inquire sharply into. And still the more, if the evidence relating to it—besides being in its nature an appeal to common sense—be of such prodigious extent, as to be utterly unmanageable, except by the united labours of a great multitude of investigators: because, in that case, without mutual confidence in the accuracy of each other's reports, no reliance could be placed in any result arrived at; nor, without unlimited liberty of mutual correction, any *ground* for such confidence.

Now the evidences which bear on the question of Christianity are eminently such; since in extent, multiplicity, and complication, they approach practically to infinitude. Testimony—original, derivative, and sub-derivative, practically without end,—all and each part requiring diligent sifting as to its purport, credibility, and bearing on the final result, —set at defiance the labours of the individual inquirer; who, were he even to devote his whole life to the undertaking, must even then abridge his labours by taking on trust, at almost every step, some important collateral statement, elaborated by other students, out of whole shelves of volumes which *he* will never see, or, seen, could have time to examine. Statements such as these—and not of *simple* fact only, where veracity alone is needed; but often of fact *constructive*—matter partly fact, and part construction, inference, or conjecture—where not veracity alone is needed, but patient investigation also, and candour, and sagacity, and discretion;—statements such as these the student of

the Christian evidences *must perpetually accept on trust*, having neither time nor opportunity to verify them by personal search. Hence, as in the dealings of some great commercial country, *credit* must be given to a prodigious extent: and hence, again, security must be sought against fraud or failure in the parties trusted: and such security, in *this* case, can only be derived from the check of mutual scrutiny and correction, freely and unreservedly permitted. And were we seeking to devise a means for ensuring the admission of error into our inquiries, I know of none we could hit on, more conducive to such end, than that of screening some one set of chartered inquirers from the general responsibility, and making it a penal offence to question the truth of their conclusions. Any set of inquirers that should be so screened, or could desire, *nay endure*, to be so screened, should be watched, one would think, with peculiar suspicion, and their conclusions peculiarly distrusted[t].

To *mankind at large* it belongs—as to its great, sole, and rightful *jury*—to try this question, and sift this evidence: "to us and to our children;" to mankind from age to age; to mankind—*ever for the time being*; none being justly requirable to delegate that sacred office to others, nor to accept the report of another for more than the actual conviction it carries to his mind. Any man is indeed *at liberty* to pin his faith on the authority of an-

[t] Respecting this multiplicity of evidence to be examined, and the great extent to which each inquirer must trust implicitly to the report of his fellow-inquirers, see some able remarks of Mr Hinds, subjoined in the Appendix, No. 4.

other: and in so doing he will often do wisely; for herein he is not delegating, but exercising, his personal right, and selecting by free choice the sort of evidence (for to him the opinion of a respected authority *is* evidence,) which he can best comprehend and appreciate. But, be the evidence what it may, that carries conviction best to each man's bosom, he and his fellow-men at large are still the rightful jury in this cause. They are such in the most essential sense of the term; not etymologically, as being *sworn* to determine justly; but *essentially*, as being in the nature of the case *incorruptible*, and free from any possible private interest or motive, except for the discovery of the truth. To them it belongs of right to bring their own free verdict, according to their best judgment and conscience: which being so, it does seem a monstrous invasion of their right—to forbid them from *consulting together* on their verdict!

But then the question arises—*Would* the existing law be actually pressed to the letter against a writer who, without any disposition to resort to invective, or insult, or indecorous language of any kind, further than is involved in the opinions he maintains, should temperately, yet fully, state his objections to the validity of the Christian evidences? Who shall say? It *might*, or it might *not*: it *would* at one period, and at another it would *not*; and this according to circumstances foreign alike to the state of the law, or to the demerits of the publication.

But to one preliminary peril the supposed writer

must *inevitably* be liable; which is, that people are rarely agreed, in any given case, what *is* fair argument, and what unfair; what *is* temperate language, and what intemperate: and, in matters which affect their feelings, are commonly a good deal determined by their liking or dislike to the *conclusions* aimed at. And since the popular feeling is for the most part very unfavourable to those of the sceptical reasoner,—(a testimony how truly honourable to Christianity, were only inquiry free!)—the chances are, that, of the two possible constructions, the *unfavourable* would in most cases be put upon his style of reasoning. His language, how guarded soever, must needs be offensive in various ways to the devout believer. He (the sceptical writer) professedly supposes a selfish and fraudulent motive in persons whose names and memory are consecrated in his reader's thoughts: the statement of this opinion, or of the grounds on which it may rest, can scarcely by any art be so worded as not to look like railing. *He* professedly makes question of the Divine origin of those Scriptures, every part of which is associated in his reader's mind with its best, and purest, and most exalted feelings: and how then shall he state, in terms which shall be deemed unexceptionable, an opinion which itself is felt by his reader as contemptuous and insulting? *He* professedly questions the Divine mission and nature of the Great Author himself of the Christian faith. Not a word can he say in statement or implication of this, which his Christian reader will not abhor as open blasphemy. *Some* indecorum of language will meet, or seem to meet, the offended

reader in every line: and dishonest sophistry will hardly fail to be imputed by him to arguments which, failing to convince himself, have yet perhaps some appearance of force. Meantime, all energy of diction, all pointed enforcement of his arguments, or exertion in any manner of his best ability to establish the truth of his conclusions, can only serve to aggravate his offence, in the eyes of him who abhors those conclusions, and regards the argument as a mere string of sophistry.—All ground of offence arising really from the manner, and not the subject, of his argument, he may avoid. All peremptory imputation of fraud and baseness; all gratuitous invective or contumely; all dishonest invasion of men's reverence for Scripture, by jeering allusions, or burlesque adaptations of its language,—it will be indeed his own fault, and grievous crime, if he avoid not: but the mass of *transferred* offence,—transferred by the feelings of his reader, from the nature of his undertaking to his mode of conducting it,—is a matter wherein he has no choice.

And here it may be observed in passing, that, were it ever so easy a thing thus to draw the line between fair and unfair argumentation, still—Would there be no compromise of the honour of Christianity, in thus tying down its opponents by rules of disputation, no one of which is imposed on its defenders? To *them* all modes of argumentation are permitted; sophistry in any shape (should they *wish* to resort to it,)—invective, contumely, personality, imputation of the worst and basest motives,—every sort of controversial weapon is freely allowed, and most kinds

occasionally resorted to, on the one side: and can the use of the like weapons, without an almost confession of inferiority, be denied *in toto* to the other?

But suppose, for argument's sake, this previous danger escaped; and that some given treatise, though professedly tending throughout to impugn the evidences of Christianity, were yet admitted at all hands to have pursued that object fairly and temperately—*Would* the legal penalties be in this case enforced to the letter?

Judging from the customary language of lawyers in their treatises and commentaries, one might suppose—*not*; since they commonly *hint* with all their might at toleration of *fair* argument, and *seem* to proscribe only gratuitous abuse and insolent scoffing. Or again we might suppose the same, were we to judge from the solemn promises of such toleration, said to have been held forth from the Bench in some of the later trials. But then, the language of lawyers is not always free from equivocation, and on some subjects—this for one—is pre-eminently deceitful. And, with regard to the tolerant promises of the Bench—besides the general tone of reserve, constraint, and subdued hostility, discernible, as I think, in the expressions then employed; besides the possible desire on the part of the Judges, to affect the praise of tolerance, so far as circumstances might permit; combined with the fact of their being secure, in those particular cases, of obtaining convictions on the score of "*invective*," &c. alone;—besides all this, those same Judges, on those same occasions, are also reported as using *other*

expressions, abundantly indicating, as I think, that no such toleration was sincerely contemplated. They seem to me to have played at "fast and loose" in this matter, in such sort as might enable the future Judge to quote the tolerant or the intolerant side of their doctrine, as might prove convenient: and while seemingly disavowing all interference with fair discussion, you might see them still keeping a wary hold of the precedents of Hale and Raymond, and of the great *arcanum* of "part and parcel":

"Semi-animesque micant digiti, ferrumque retractant."

So far as relates to the personal feeling of the Judges on these occasions, I am of opinion that it would dispose them *in all cases* to press the law to its utmost letter. There has never I think been any want of disposition in the State authorities to put down *all* sceptical writings by coercion, nor would they willingly suffer a single case to pass unpunished. They have therefore the *will*, and in one sense the *power* also, to enforce silence, having the *law* to sanction them herein. The only efficient check on both is that arising from *public opinion*. Common sense and equity speak so strongly in favour of allowing a man to sift the evidences of his own Faith, and especially if he do it soberly, that the State officer might justly fear he should outstep the public sympathies, were he to be *extreme* in this matter: to which apprehension, rather than to any other cause, I should ascribe the *occasional* impunity conceded to the free reasoner, and those doubtful glimmerings of tolerance in certain statements from the Bench.

So far, then, as respect to public opinion might shield the temperate sceptic from the full visitations of the law, he may doubtless look for toleration; —but I think, *not one step further*; the movements of the State functionary being in this instance something like those of the *spring* often attached to pieces of mechanism, which, though yielding ever to some occasional compressing force, re-acts in turn at each intermission of that pressure, so as never to lose one hair's-breadth of the range allowed to it.

That in such procedure, the Judges are actuated by a real regard to what they deem the public good, in things temporal and spiritual, I am perfectly willing to suppose: but in supposing *also* the *further* influence of a private feeling, arising from their own especial circumstances, and secretly controuling, modifying, and shaping the public motive, I conceive I am imputing to them nothing more, than simply that they are *men*, and liable, *as* men, to human infirmities, and human obliquities of motive,—in fact, that I am speaking, not strictly of *them*, but rather of the necessary influence of given circumstances on human agents.

In a cause of this kind, a Judge, as it strikes me, labours under a twofold disqualification for presiding impartially; being subject to a bias of feeling, 1. as relates to the existing *establishment*, or *system* (*under which* he holds office); and 2. as relates to the *Government* (*by whose gift* he holds it). As a State officer, he has a direct personal interest in supporting, as it stands, the *system* from which he derives his own rank, power, and income: while again, as a Go-

vernment placeman[u], he has a *further* tie, in reference to the supposed pleasure of that Government; being thus at once, himself an interested party, and *protégé* of another interested party, in the very cause whereon he sits as judge[x].

Under these circumstances, it is manifest that the personal safety of the sceptical inquirer must needs be of the most precarious kind, and the sufferance conceded to him subject to perpetual *fluctuations*. For the forbearance of the State officer, being regulated, not by *law*, (which requires none at all,) but only by the state of public feeling for the time being, will naturally vary with the variations of that fluctuating standard. The public mind, at all times *sufficiently* hostile to the free inquirer in religion, (so effectually have men been schooled into the persuasion that *believing* is, per se, a *duty*, and *doubting*, per se, a *crime*,) at all times *sufficiently* disposed to judge harshly of his character and his motives, may occasionally be more so than usual. Some casual impulse or alarm, or skilful management of interested parties, may now and then carry popular intolerance to a height above its customary level, and overbear for a time that principle of

[u] Not liable indeed to be *dis*-placed, yet subject to the "*tie*" for all that; viz. of *obligation* for *past* promotion, (a tie of *honour*,) and of *dependence* for *further* advancement, (a tie of *interest*.)

[x] "Who can pretend to doubt," (asks a writer already quoted,—p. 22,) "that almost all courts of law lean habitually towards the existing Government? Who can doubt that the Judges are in their nature well-wishers to what they term a firm or strong Government, and regard with a jealous eye all popular feeling, and popular rights?"—Edinb. Rev. ciii. p. 11.

equity which is commonly at the bottom of all popular feeling: in which case a corresponding difference, might, I think, be safely reckoned on in the dealing out of the rigours of the law. The State officer who, while public feeling was *at par* in this matter, may have found it expedient to "look like the time," by admitting somewhat of toleration into his words and actions, and may have sedulously cloked the real extent of his power, when either not needed for immediate use, or not favoured by fitting opportunity,—may yet be ready to reveal it naked, when time and opportunity shall serve; and avail himself of the earliest moment of popular consent, to let loose on his victim the pent up vengeance of the law.

If the free inquirer have nothing else to complain of, he may at least complain with justice of the utter uncertainty he is placed in, by what principle, rule, or law he is to be judged in this matter. He is at the mercy of chance entirely. A law, confessedly unjust and oppressive,—its principle, if report be true, solemnly abjured[y] *as* such from the Bench itself,—empowers a willing Judge to consign him to fine, imprisonment, and infamy, the first moment the popular feeling can by any means be cajoled into consent. How quickly that lightest of weather-vanes spins round of itself, or can be made to spin by dexterous management—more especially by due management of the sacred impulse of *religion*—needs not be shown. Give but that pure original impulse,—and God and nature

[y] Appendix, No. 2. p. 78.

have given it abundantly,—and a force exists, which, resembling in its intensity the steam-power which actuates some vast machine, resembles it not less in its ready convertibility to every sort and mode of operation, to which it may suit the purpose of the engineer to direct its tremendous energies. From the stitching of a lady's glove, to the scrunching a block of iron into ribands, "unconquered Steam" turns his hand alike to anything: and so—yet how far less beneficially—that holiest impulse, given of God himself to every human soul, as *one* sure pledge of a life hereafter, can by fit management be made available for every sort of purpose under heaven: and, at the bidding of those to whose guidance they have confided their religious feelings, how readily will the multitude condemn any man to prison or to death, and think that they have done God service!

Can it be fit that any man's liberty, property, and person should thus be left dependent on the mere contingencies of popular caprice? that a law, which scarcely the hardiest Crown lawyer plainly articulates with an unabashed countenance, should yet be kept safe in the back-ground, awaiting only some congenial season, when it may be found more in keeping with the temper of the times? and that Judges, during the unfavourable months, should appropriate to themselves the credit of mitigating its iniquity, yet carefully reserve the power of carrying it, when the wind shall serve, into full unmitigated execution!

How long it may be ere this grievance be formally redressed, as eventually it must, *by statute*,—

by a statute somewhat nearer to reason, equity, and common sense, and less disparaging to the native evidences of Christianity, than is that of 9 and 10 Will. III. c. 32.,—it may not be easy to anticipate: but of this we may safely assure ourselves, that—be the progress of opinion what it may, in regard to Christianity itself; whether it ever lose any portion of its vantage-ground, or go on, as is predicted of it, extending and confirming its triumphs to the end of time;—the day must arrive, when common sense shall so far prevail, as that men shall look back with scorn and pity on the miserable expedients which it had once been thought fit to resort to, in aid of its native evidences. If *they* be indeed what they are affirmed to be, then is this wretched outwork of pains and penalties like a buttress of straw or reeds to the firm-set tower on the rock,—betokening imbecile alarm, yet adding nought to its stability.

If, however, time must yet elapse ere the grievance be *so* redressed, still, at least, the *common* law of this matter—liable though it *must* be to *much* vacillation—should not be rendered *needlessly* inscrutable and ensnaring: and Judges, who, if not the *makers* of that branch of law, yet mould and fashion it at will, should be most scrupulously frank and plain-spoken, in declaring their constructions of it, and future intentions in administering it. None can be more plain-spoken and perspicuous than the Judge, when he likes. Often have I admired, in cases *purely* civil or criminal, the brief, clear, and luminous exposition of the Judge, touching, as with the point of a needle, the very pivot

of some puzzling question, and revealing all its hidden bearings, as with one piercing ray of light. They can also speak plainly, if they like, on the subject of religious libel; so as that the free inquirer in religion—and even *he* ought to be frankly and sincerely dealt with—might have fair notice and warning of the degree of peril he may incur by publishing his opinions. If it be true, as reported, that a toleration of all sober argument has been solemnly promised from the Bench, in some of the later trials; and that, in others, such toleration has been proclaimed by the hour together, as the law of the land, by the official prosecutor himself, without contradiction from the Bench; will such declarations be, or not, any *tie* on the decisions of future judges? If the common law be an aggregate of the decisions and expositions of former judges, what modification may it be deemed to have derived from *these* declarations? If none at all—if the pledge so given, or so said to have been, have been given precipitately or insincerely, and no real intention exists, on the part of the judges, of construing the law on this principle, further than necessity for the time being may constrain them; some means there ought to be, whereby the parties interested might know what was meant for law, and what for rhetorical flourish only. A judge should be very cautious how he gives a man encouragement at one time, to do that for which he will fine and imprison him at another. Or if he *have* done so, inconsiderately or otherwise, then he, or his brethren of the Bench, ought to make conscience of providing ample explanation, in some

shape or other. In what particular manner it might consist with professional rules or etiquette to retract or correct any false doctrine which may have unwarily escaped judicial lips, it is not for me to say or guess; but in *some* shape or other it should be done, "and well done": and assuredly, before any actual penalties be enforced, contrary to such pledge, distinct and ample notice should be given from the Bench, that the doctrine of Lord Raymond was to be again the order of the day, and that no books were henceforth to be written which might tend to alter subsisting establishments. Those who hold men's persons and liberties (and thereby perhaps *lives*) at their disposal, ought to give them every practicable means of knowing the conditions on which they stand. It is quite enough that men should be precluded from expressing their opinions on a subject whereon it most concerns all men to confer together freely, without the needless aggravation of being betrayed into the fangs of the law by fallacious promises of toleration.—If adverse discussion be illegal in every shape, let it be frankly, and manfully, and uniformly declared such.

This would be—not indeed the *best*,—nor, again, it must be owned, the *second*-best,—yet certainly the *third*-best mode of procedure; for, though a grievously intolerant one, it would still have the negative merit of not being deceitful.

The only perfectly *good* plan—fair in itself, and consistent with the true honour of revealed religion—would be to tolerate an unlimited discussion of the grounds whereon we receive it: to lay its evidences

freely open to the investigation of friends or adversaries, without reservation as to style or manner, or any further check in that matter, than such as would most effectually arise from the censorship of public judgment—from the scorn and indignation of mankind against *him* who, on *such* a subject, should dare pervert the liberty given him, to the purposes of contumely or abuse. All special reserve or stipulation on that head only compromises the honour of the religion which it seeks to guard; both because its own advocates are not tied down by similar restrictions; and also because such restrictions, being by nature indeterminate, may at any time be stretched out into an absolute prohibition, at the pleasure of the party imposing them; thus leaving always a reserve of doubt, whether the faith so defended be stronger in the secular bulwarks of the law, or in those of its native evidences.

In default, however, of such entire toleration, the *second-best* plan would be—that which is occasionally *said* to be adopted by our law—*viz.* to allow of adverse argumentation, with the *proviso* of its being soberly and temperately conducted. Such conditional toleration, if it *did* legally exist, would doubtless be entitled to praise, though—for the reasons just assigned—in a secondary degree only: but apparently it has no settled foundation in the law of the land; and if it ever exist at all, does so by sufferance only.

In the absence of toleration, even in this modified shape, the *third-best* mode of procedure (as has just been observed,) would be to *avow* distinctly and

uniformly, that the law permits no question to be made of the truth of the established religion—in any shape whatever.

But the last, and incomparably the worst of all, or of any that could be imagined, is—to *have* such prohibitory law in force, but *not* to avow it distinctly: to keep it carefully in readiness for future use, yet, meanwhile, to disown, abjure, or only recognise it in mincing half-terms, or cautious circumlocutions: to talk fluently of toleration,—to praise it,—to promise it, freely and equally, to all fair arguments, on whatever subject; having yet the scabbarded, but well-sharpened sword under the robe of office, for the propounders of all arguments on the subject of revealed religion, which are not on the privileged side.

APPENDIX.

No 1.—referred to, p. 5.

In the first place, the *Statute* (viz. the unrepealed portion of stat. 9 and 10 Will. III. c. 32.) is plain enough; as it enacts, that "if any person, educated in, or having made profession of, the Christian religion, *shall by writing, printing, teaching, or advised speaking, deny the Christian religion to be true, or the Holy Scriptures to be of Divine authority*, he shall, upon the first offence, be rendered incapable to hold any office or place of trust; and for the second, be rendered incapable of bringing any action, being guardian, executor, legatee, or purchaser, of lands, and shall suffer three years imprisonment without bail[1]." —This, I say, seems clear enough; for though the term "*deny*" was probably adopted as carrying on the face of it something of an offensive air, and as suggesting the idea of *gratuitous, peremptory*, and *insolent* denial; yet it is manifest that the term will equally *cover* ALL modes and shapes of denial, as, *e. g.*, sober argumentative denial, or impugning by fair argumentation.

And in this, we are told by lawyers, the statute does no more than merely *give utterance* to the *common law*: "The statute law (says Mr. Holt, *Law of Libel*, 65.) has likewise marked out certain offences against Christianity, in which it is *merely declaratory of the common law*, though in some cases it . . . augments the punishment of the offence." And in the trial of Carlile in 1819,

[1] Bl. Comm. vol. iv. p. 43.

(according to a copious report of it which I find in the Edinb. Ann. Register for that year[1],) the Att. General says particularly—"The act of the 9th and 10th of William created no new offence: it was *in strict affirmance of the common law,* but it imposed new penalties," &c. (p. 43.) As also in the case of Rex *v.* Eaton, (State Trials, vol. xxxi. p. 950.) Lord Ellenborough, in his charge, after referring specifically to former decisions of Lords Hale, Raymond, and Kenyon, as determining the *common law* hereon, adds; "Besides the doctrine thus laid down, there are several *statutes* on the subject, particularly one made in the reign of King William, by which the denying of the Christian religion is punishable by severe penalties: and it is the humanity of those who prosecute which has induced them not to indict under that Act, the pains and penalties attached to which are much greater than those of the common law." [Eaton's sentence, thus mitigated by the "humanity of the prosecutors," was that of eighteen months' imprisonment, "and to stand in the pillory, between the hours of twelve and two, once within a month."]

The *statute* law, then, seems plain enough; and, if

[1] Being, as I said, no lawyer, nor having means of access to a regular law library, I quote chiefly from sources merely popular, though, in this instance, not perhaps less trust-worthy than those collections of cases more strictly called "Law Reports." In matters of much public interest, the proceedings of a court of justice, as detailed each day by a dozen of independent and rival journals, cannot be very seriously misreported; each journalist being a check on each, and a host of ear-witnesses besides, a check on them all. Such reports would probably be less chargeable with *defect* of accuracy, than with that *excess* of it, which the Editor of Blackstone (Comm. i. 72.) regards as occasionally inconvenient: "Of the opinions of the Judges," (says Mr. Lee) "*too often reported at great length, and in the very words,* I speak with great respect, yet those most learned persons must sometimes feel a wish that the report had been less full."

The reports given in the Ann. Registers are probably founded on those of the daily newspapers; at least in the present instance, such passages as I have had opportunity of comparing, agree *verbatim* with those of the "Times."

declaratory of the common law, determines that also as clearly.

But the common law speaks out occasionally for itself, by the mouth of its expounders the judges; and such obscurity as may yet attach to it, arises—not so much from *utter* lack of *plain* speaking, as from the great *counterbalance* of *ambiguous* ditto, on the part of those functionaries whose word is common law.

The most commonly cited precedents on this subject are, I believe, those of the several cases of Rex *v.* Taylor—Woolston—Williams—and Eaton. The language held by Lords Chief Justice Hale and Raymond on the two first of these trials (as cited in Holt's treatise forementioned, from the reports of Ventris, Keble, Strange, &c.) might alone seem decisive of the point in question. In the case of Taylor we find—"Hale, Chief Justice, observed that such kind of wicked and blasphemous words were not only an offence to God and religion, but a crime against the laws, State, and Government. For . . . that *Christianity is part of the laws of England*, and therefore *to reproach the Christian religion is to speak in subversion of the law*. Ventris 293. Keb. Rep. 607."—*Holt* 66.

Now, according to the *principle* propounded in the latter part of this passage, all that Taylor may have uttered in the way of blasphemy *direct* against *God* or *religion generally*; or of *gratuitous insult* against the Christian faith in particular; was so much *over and above* what was needed to constitute the crime charged: the bare "reproaching of the Christian religion," by whatever means, is here pronounced a crime against the State: and since it is plain that any conceivable form of inquiry or discussion which might tend to impeachment of its evidences is—so far—a "reproaching" of the Christian religion; since it is certain a judge safely *might*, and highly probably he *would*, so construe it in charging a jury; it follows that all possible modification of argument, involving such impeachment, is here proscribed as a State crime. This saying of Lord Hale's has been highly ap-

plauded by English judges, having indeed been sounded and re-sounded forth, like the words of an oracle, from that time to this: and in particular the mystic dogma of—"Christianity being *part of the laws*,"—so remarkable for its lack of definite meaning, yet near approach to the semblance of it, has been clung to with peculiar tenacity.

But Lord Raymond, in Woolston's case,—"a leading case on this subject," says Mr. Holt,—speaks still more plainly: for, defendant having pleaded that, even if his book *were* an attack on Christianity (which he denied it to be), still this would be no offence cognizable at common law; "the Court (says Holt, p. 67.) said they would not suffer this to be argued; 'for the Christian religion *is established in this kingdom*, and therefore, *they would not allow any books to be written which should* TEND TO ALTER *that establishment.*'" [Here, assuredly, we have a sweeping proscription of all possible modes of adverse argumentation.] Again, in the same case—"The Court said that they *would not suffer it to be debated* whether to write *against Christianity in general* was not an offence punishable in the temporal courts at common law. They desired it to be taken notice of that they laid this stress on the word *general*, and did not intend to include disputes between learned men on particular controverted points. . . . 2 Stra. 834.; Fitzg. 64, &c." On repetition of which same doctrine by Lord Raymond a little afterwards, the reporter (Fitzg.) adds, "With him agreed the whole Court."—Holt, 68.

In the case of Rex *v.* Williams, (State Trials, vol. xxvi. 710.) Lord Kenyon, in pronouncing judgment, blames himself much for having suffered defendant's counsel to argue the right of free inquiry in religion; "for (says he) if I remember the conduct of the Court in causes of this nature, I should have remembered the opinion of the whole Court in the case of the King *v.* Woolston. The Court would not endure, would not suffer, anything to be said against the established religion of

the country." That this language is perfectly *clear* I do not affirm; nor that it is quite free from that air of embarrassment and distress so commonly observable in expositions of the law in this matter:—[in this instance, for one, there seems an odd jumbling of the two ideas—of impugning the truth of the established religion (out of Court),—and of *arguing for the right* of so doing (*in* Court); indeed, it seems *implied* that so to contend for the right of free inquiry, is itself to speak against the established religion:] Yet, amidst all minor confusions of *expression*, the *animus* of the Judge seems clearly to be, to pronounce all impeachment whatever of the truth of the established religion to be unlawful. And the written opinion of Mr. (now Judge) Bayley on this point, specially taken by the prosecutors on the occasion, (State Trials, vol. xxvi. p. 654.) is plainly to the same effect.

In the case of Eaton, (State Trials, vol. xxxi. p. 950.) the said decisions of Lords Hale, Raymond, and Kenyon, having been cited by counsel, Lord Ellenborough, in his charge, recognises those precedents as establishing the doctrine, "that the Christian religion was the law of the land, and must be *protected as the law*"—(*i. e.* from unfavourable discussion); citing also, in further confirmation of the same, the "severe penalties" of the statute of William, forementioned. And again, in the same charge, in reference to the alleged circulation of Paine's book in America, the Judge adds: "But their conduct is not to influence us. And in a free[1] country, where religion is fenced round by the laws, ... to deny the truth of the Book which is the foundation of our faith, *has never been permitted.*" Here again, then, is a sweeping proscription of *all* argument on the wrong side. "*Denying*," as before remarked, may be gratuitous, peremptory, and insolent; or it may be decorous, temperate, and argumentative: the term ("deny") *covers* it in *all* shapes.—The phrases of "being *the law*," or "*part of the law*,"

[1] The use of the term "*free*" in this passage is peculiarly curious.

and "*protected as the law,*" are the subject of comment elsewhere[1].

In the course of the well-known proceedings against Carlile in 1819, defendant having demanded on what law they were founded, the Lord Chief Justice is reported as replying,—"I will state it to you—the common law. The Christian religion is a part of the law of the land . . . The law of England permits every class of Christians to enjoy their religious opinions, by worshiping the Almighty according to the particular mode of their faith; but allows no man *to impugn the Christian religion generally*, and treat the Bible as a book full of lies and fables."—(Ed. Ann. Reg. 1819, p. 25.) The reader will perceive that *the part in Italics* expresses the naked offence which *constitutes* libel, (agreeably to Lord Raymond's *dictum* in the "leading case:") the *remainder* of the sentence expresses only its contingent *aggravation*—viz. insulting language.

On the trial of Davison (Ibid. 1820, p. 240.) Justice Best is reported as saying, *inter alia*,—"That which he believed to be the law of England on that point, he would state to the jury. Every man had a right to state that such or such an opinion, no matter whether a tenet of a particular sect, or of the established Church, was an erroneous opinion, and to support his assertion by any arguments which he could call to his assistance. *Further than this, however, discussion could not be carried.* . . . Persons were at liberty to put their own construction on the texts of Scripture; *but the truths* [truth?] *of Scripture could not be disputed.*"

And in the prosecution of Mary Anne Carlile, (Ibid. 1821, p. 47.) Mr. Justice Bayley is reported to say—"Every subject of Great Britain is entitled to *hold* whatever opinions he pleases: *but none can be allowed to impeach established faith,* [Mahomet himself might hardly desire better *law* than this;] *or to endeavour to unsettle the belief of others.*"

[1] Viz. in p. 17, and in p. 21, Note [1].

The language here cited as having been held by various judges on various occasions—after every fair allowance for possible inaccuracy of reporting—must still, I think, place it beyond all rational doubt that the law in this matter is as I have stated it.

In further illustration, however, of which, from sources not quite official, yet nearly so, let me here add, for one, a passage from the speech of Mr. Erskine, when counsel for the prosecution in Williams's case: "I have no objections (says he) to the most extended and free discussions on doctrinal points of the Christian religion; and, *though the law of England does not permit it*, (mark this plain assertion,) I do not dread the reasonings of Deists against Christianity itself; because, as it was said by its Divine Author, if it be of God, it will stand."

To the like effect the Quarterly Review, in an elaborate article on Holt's treatise forementioned, lays down the law as follows; "The law denounces as libellous all writings published with intent, and having a tendency, to revile, or ridicule, or degrade, the Christian religion, the Holy Scriptures, the Established Church, or any of its rites, &c." —No. 70, p. 571. [The "reviling," or the "ridicule," or *insulting* language of any kind, the sceptical inquirer might avoid; but the "tendency to *degrade*" the established faith is as inseparable from the act of questioning its truth, as the convex of a circle is from its concave.] Shortly afterwards, in reference to what he calls "the wide and multifarious field of free publication, which is left totally open from the restraints of the law," the Reviewer observes again; "On this principle, fairly and temperately to discuss and animadvert on the doctrines, the rites, the ceremonies of the national religion—to question the soundness of particular doctrines or the propriety of particular ceremonies, is entirely lawful, provided the manner be decent and the intent honest, *and provided Christianity as a whole be not attacked or impeached.*" p. 572. Here at least the law is plainly uttered: but in regard to the "wide and multifarious field" the reviewer speaks of, let

us just observe its extent. We may raise questions, it seems, as to doctrines and ceremonies, but not as to Christianity itself. That is, provided only we abstain from discussion of the *only* question from which the doctrines and ceremonies of our religion can derive one grain of interest,—provided only we abstain from investigating—to any purpose, *i. e. freely*—its own truth or falsehood; we are at full liberty,—so as soberly and temperately,—to settle and adjust its several doctrines and ceremonies all our lives long. And this permission is to be trumpeted forth, as if the very *acmé* of liberal indulgence!

Mr. Holt's own report on this matter (though, like his betters, he flinches a little, afterwards, from his own statement;) is given in the following terms; "It will be seen from the cases, and indeed may be deduced from the general reason of the law, that this libellous blasphemy is understood as affecting only the foundations of the Christian religion, the truth of the Holy Scriptures, and the acknowledged Sacraments of the Church. *To speak or write irreverently of any of these elements of our faith is libellous blasphemy at common law.*—Holt, p. 70.

No. 2.—referred to, p. 6.

Containing some specimens of the shyness of plain speaking, supposed to exist among lawyers, with respect to the law of religious libel.

I observed in the former Appendix that Mr. Holt, for one, in his *Law of Libel*, flinches from his own statement on this subject. Let us see whether justly or not.

Having engaged (p. 66.) to "submit to his reader some of the leading cases" of this kind, with a view of "ascertaining the boundary between free and forbidden discussion;" he gives his cases; and then (as we have seen) offers it as the result from them, and from the ge-

neral reason of the law, that " this libellous blasphemy is understood as affecting only *the foundations of the Christian religion, the truth of the Holy Scriptures*, and *the acknowledged Sacraments of the Church*. To speak or write (he adds) irreverently of ANY of these *elements of our faith* is libellous blasphemy at common law."

The awkward structure of this passage (wherein—" the foundations of the Christian religion,"—" the truth of the Holy Scriptures,"—and " the acknowledged Sacraments of the Church," *seem* to be named disjunctively as so many separate " *elements of our faith*" ; though perhaps the *two latter* only of those heterogeneous matters were meant to be so designated [1] ;) *itself* sufficiently betrays the embarrassment of the writer: however he *does* hereby utter, though with an abashed countenance, that the truth of Scripture must not in any manner be questioned. Having done which, he then *flinches* as follows:

" *But* the law does not prohibit reasonable controversy even upon fundamental subjects, so long as it is conducted with a tone of moderation, which shows that argument is the only purpose; the writer abstaining from language and terms which are abusive and passionate, and, therein, indecorous towards the Establishment, and offensive to the consciences of individuals.

" What is argumentative may be very properly left to be replied to by argument; what is passionate, and therein a disturbance of the proper œconomy of the State, cannot be so safely passed over to a defence by similar weapons. Such a sufferance would be the endurance of brawls."—pp. 70, 71.

Now I ask any reader, is not this meant to *insinuate* —for the writer dares not *say* so—that the law allows of controversy respecting the truth of Christianity itself? " Even upon fundamental subjects": here is a mincing phrase! What does it mean? He has just told us that it is " libellous blasphemy to speak or write irreverently

[1] Namely—" the truth of the Scriptures"; and—" the Sacraments of the Church": but in what *single* sense *these* can be termed "elements of our faith," is not very evident.

of the *foundations* of the Christian religion, *the truth of the Holy Scriptures,*" &c.: are *these* the "fundamental subjects" on which he now tells us "reasonable controversy" is permitted? Assuredly the reader is intended *so to take it*, though the writer is not quite prepared *so to affirm it*. Now, to permit *controversy* in *any* shape respecting "the truth of the Scriptures," implies permission to *argue* that the Scriptures *are not true*. So that, after telling us in one sentence that it is "libellous blasphemy" to "speak irreverently" of the truth of Scripture, he *signifies*, not utters, in the next, that it is nevertheless lawful to argue (if in "a tone of moderation") *that Holy Scripture is not true*! Having achieved which, by the requisite selection of commodious phrases, he then proceeds, with greater ease and fluency, to observe—how very right and proper it is that this *should* be so: "What is argumentative may be very properly left to be replied to *by* argument," &c. Very true: it *may*,—or *might*,—very properly be so left: but *is* it so left? *does* the law so leave it? does Mr. Holt himself so describe the law? do his own "Cases" so describe it? in particular, does that of King *v.* Woolston, which, "being a leading case, he gives at some length," and in which Lord Raymond declares that he "will not suffer it to be [so much as] *debated* whether to write against Christianity in general was not an offence at common law"?

Thus, in the face of his own assertions and his own proofs, does Holt seek to *convey* that it is not in the advised publication of certain opinions and doctrines, but in the offensive *mode of expressing* them, that religious libel consists.

The like equivocation seems to me to *pervade* the chapter from which these passages have been taken. The offence of religious libel, it is plain by his own shewing, may exist either with or without the aggravating feature of *Atheism*,—either with or without the aggravation of *abusive language*: yet one or other of these aggravations Mr. Holt rarely omits to mix up with the offence, as if inherently belonging to it.

The chapter in question (B. II. Ch. II.) is *headed* "Libels against *the Christian* religion"; though its subject-matter had *immediately before* been stated as "Libels against *religion*" (indefinitely); and is again, *just after*, described as "the speaking blasphemously *against God*, or reproachfully concerning *religion, with an intent to subvert man's faith in God, or to impair his reverence of him.*" This shuffling together of those two phrases as if synonymous and co-extensive, and of the two ideas as mutually inseparable, seems disingenuous at the outset, and to be unfairly bespeaking the antipathies of his reader.

After a few prefatory remarks, the writer describes the offence in question under three several heads; wherein of course are comprised those forms of it which relate to God and religion generally, and those which refer to *revealed* religion specifically. Yet this account of the offence under its several shapes and modifications, is carefully flanked, on both sides, with *comments* expressly ascribing to it, *as of necessity*, the character of *Atheism* with all its harrowing accompaniments.

Take first the prefatory comments.

"The first grand offence of speech and writing is speaking blasphemously against God, or reproachfully concerning religion, with an intent to subvert man's faith in God, or to impair his reverence of him.

"A reverence for God, and conscientious regard for religion, are the main supports of honesty, and therein of society and civil government; the sole curbs effectually restraining men from fraud and violence; and the strongest principles leading to the performance of those actions by which common life is adorned, and public order and peace maintained.

"The most enlightened Pagan of his time has with good reason judged, 'Haud scio an, pietate adversus deos sublatâ, fides etiam, et societas humani generis, et una excellentissima virtus, justitia, tollatur.' Cic."—Holt, p. 64.

With which preliminary impression on his reader's

mind, (not a syllable having been suffered to escape relating to anything but Atheism,) he proceeds, though cautiously, to subdivide the offence thus falsely prejudged into its three heads, comprising (as before observed, and as we shall see directly) some forms of it which are, and others which are not, Atheistical. Having done which—as if again to renew the former impression, and efface from his reader's memory all traces of the distinctions just laid down—he *finishes* by *another* sweeping comment, ascribing as before the deadly character of Atheism to the whole class indiscriminately.

"Offences of this nature, says Hawkins, Pl. Cr. cap. 5, *because they tend to subvert* ALL *religion and morality*, which are the foundations of government, are punishable by the temporal judges with fine and imprisonment. They are offences at common law, and the prime abuse of speech and writing."—Holt, p. 65.

Well, here we have *one* mode of mixing up crime and aggravation together: now for the *other*, viz. that of falsely assuming in all cases[1] *abusiveness of language*.

This is exhibited in his statement of the three heads of the offence, which he says, are:—

"1. All blasphemies against God, as denying his being or providence, [here we have the *Atheistical* form of the offence, which is deemed sufficiently revolting without the aid of exaggerations: in what follows their aid is resorted to:] and all *contumelious reproaches* of our Saviour Jesus Christ.—1 Vent. 293. &c.

"2. All profane *scoffing* of the Holy Scriptures, or exposing any part to *ridicule or contempt*.—11 Mod. 142. &c.

"3. *Seditious* words in derogation of the established religion are indictable as tending to a *breach of the peace*, which *in this sense* implies the amity, quiet, and confidence of the whole family of the State, *and the unshaken hope of future rewards*. 2 Roll. Abr. &c."—Holt, p. 65.

All contumelious reproaches—all profane scoffing—or

[1] (*i. e.* as essential to the offence.)

exposing to ridicule and contempt, &c.: not a word here of the *simple* crime of *questioning* the truth of Scripture, stript of these offensive aggravations. Yet this alone is, by Mr. Holt's own showing, as effectually an offence at common law, as when loaded with these accessories: then why thus cautiously omit to name it *here* as such, when professing to mark the limits of the law exactly?

"*Seditious* words in derogation of the established religion," &c. Here again is evident equivocation. To speak thus is manifestly, according to the customary rules of speech, to *limit the extent* of the said "words in derogation," &c.; and would imply (as indeed the reader is meant to take it—at first,) that not *all* "derogatory words," but only such as should be *moreover* "seditious," are indictable. But no such thing in reality; the real meaning here, though contrary to grammar, and to the reader's first impression, is that ALL "words in derogation," &c., are indictable *as being necessarily seditious*, not that they are so *when* seditious.

And accordingly the remainder of the passage, "as tending," &c., is in fact only a covert mode of *arguing* the required *necessary connexion* between the derogatory words and sedition; such words "tending (we are told) to a *breach of the peace*"; which "peace" (we are again told) "*in this sense*, implies" so and so, and is *therefore* endangered by such words.—And yet so little satisfied, after all, with his success is the artificer of this passage, (for *Holt* found it ready made to his hands;) that he smuggles in the word "seditious," at last, in such manner as may make it least expressive of the sense so argued for[1].

[1] By the way, is the term "*Established religion*," here meant to signify *Christianity in general*, or the rites, &c. of the Established *Church* in particular? If the *former*, how puerile the division which thus makes disparagement of *the Scriptures* one class of libel, and disparagement of *Christianity* another! If it mean the *latter*, (and otherwise that class of libel is wholly omitted;) what palpable mis-assumption to imply that such disparagement of the *Established* Church *specifically*, strikes at "*the hope of future rewards*"!

Is not all this sad juggling? and is it too much to infer that lawyers are *out of countenance* with a law which they thus assiduously mystify?

Take again a passage already quoted from the trial of Carlile, (Ann. Reg. 1819, p. 25,) wherein, defendant having asked *on what law* the proceedings were founded, the Lord Chief Justice is reported as answering—"I will state it to you: . . . . The law of England permits &c. . . . . ; but *allows no man to impugn the Christian religion generally*, and treat the Bible as a book full of lies and fables." Now, of this "statement of *the law*"—I would ask—does not *the part distinguished by Italics* express the law of the case *exactly* and *fully*? and, if so, what is the use of *the part which follows*? Does not the former—*by itself*, give a *clear* idea of the legal prohibition, —*with the appendage*, a *confused* one? Does not the *former* part express *the crime itself essentially*, the *latter* its *contingent aggravation*? and why then are they thus *mixed up* in a "statement of the law"? True, the defendant had been guilty, abundantly, of t[illegible]*ggravation*, as well as of the simple *crime*: but I repeat, why thus mix them up together, except to convey or favour the impression that, had it not been for those abusive epithets, the publication would not have been libellous?

It is plain that the same thing may be effected by *imputing* the aggravations *unfairly* to any particular libel under prosecution: for, if a writing be really libellous, and therefore fairly within grasp of the law, all overstatement of its delinquency, beyond what is true, becomes in effect just so much of *concealment* of the actual *power* of the law,—which sufficed without the exaggeration. Thus in the fore-mentioned trial of Williams, for publishing Parts I. and II. of the Age of Reason: here was a work abundantly libellous, without any aid of colouring; being not only a determined attack on all revealed religion, (itself sufficient,) but an excessively abusive one too—(*satis, superque.*) Why then needed Judge Ashurst, in pronouncing judgment, impute to it the *further* aggra-

vation of a " direct tendency to dissolve all the bonds and obligations of civil society,"—as also to "destroy the solemnity of an oath," and to " strip the law of one of its principal sanctions, the dread of future punishments" ?—(Holt, p. 70. St. Tr. vol. xxvi. 716.) This, I conceive, was hinting as hard as he could, that the book went to deny the providence of God, and responsibility of man in a future state: whereas, in fact, the writer expressly professes to deduce the being and attributes of God, the obligations of human duty, and the hope of a future state, from what he calls the Book of Creation, in preference to that of Revelation; calling this the " pure and moral religion of Deism".[1] Why then surcharge the offence with undue aggravations, when it was fairly over-weight to his hands already?

So much of their force as these " obligations" derive from *Scripture* authority, the book does indeed plainly impeach,—which suffices for the legal crime; but to say of it that it tends to dissolve those obligations *absolutely*,—is a manifest mis-statement; since the same obligations, generally, are held sacred under all systems of faith, and in all civilized communities; besides being specially recognised and asserted in the book itself.

True, the Judge had before stated (what might seem to support these imputations,) that the libel, besides its injurious reflections on the life and history of *Jesus Christ*, contained "*likewise*,"—such is his own distinction,—"certain blasphemies against *Almighty God himself*." But this assertion, again, must be taken with limitations; since it refers, I presume,—judging from the passages in the indictment,—not to anything therein said concerning the Almighty *as such*, but concerning actions and suggestions

[1] The counsel for the defence quotes him thus, (State Trials, vol. xxvi. p. 677.)—" I believe in one God, and no more; and I hope for happiness beyond this life. I believe in the equality of man; and I believe that religious duties consist in doing justice, loving mercy, and endeavouring to make our fellow-creatures happy."

scripturally ascribed to Him, which Paine, regarding as *evil*, argues to be THEREFORE *not* from Him.

But that blasphemy against God himself was not the *design* of the book, might partly appear from the following, among other passages, cited from it by counsel on the trial,[1] with special and earnest reference to many others of the like spirit and import ;—"There *is* a word of God; there *is* a revelation. The word of God is the Creation we behold ; and it is in *this*, which no human invention can counterfeit or alter, that God speaketh universally to man. Human language is local and changeable, and is therefore incapable of being used as the means of unchangeable and universal information . . . . The Creation speaketh a universal language, independently of human speech or human language, multiplied and various as they be. It is an ever-existing original, which every man can read. It cannot be forged ; it cannot be counterfeited ; it cannot be lost; it cannot be altered ; it cannot be suppressed. It does not depend upon the will of man whether it shall be published or not ; it *publishes itself* from one end of the world to the other ; it preaches to all nations, and to all worlds : and this word of God reveals to man all that is necessary for man to know of God. Do we want to contemplate his power? we see it in the immensity of the creation. Do we want to contemplate his wisdom ? we see it in the unchangeable order by which the incomprehensible whole is governed. Do we want to contemplate his munificence ? we see it in the abundance with which he fills the earth. Do we want to contemplate his mercy ? we see it in his not withholding that abundance, even from the unthankful."

So again—" The crime (said Judge Ashurst) was further aggravated by the motive in which it was conceived: there could be no temptation, no sudden impulse, &c. . . it could have proceeded only *from a cool and malignant spirit*." Assuredly so, *if* defendant, in the said libel, as-

[1] State Trials, vol. xxvi. pp. 678, 679.

sailed as false, what he knew or believed to be true: but if he believed the contrary, his offence was rather a legal than a moral one: and the term "cool and malignant spirit," expressing as it does the utmost possible excess of moral obliquity, and, in this case, the hatred of religious truth for its own sake, seems therefore an imputation founded not on evidence, but assumption only, and such as, we may presume, the learned judge would have carefully omitted in any *other* sort of case.—Do not such exaggerations seem to betray in the State officer an anxiety to find out a *further* ground of punishment, than *that* which the facts of the case have supplied, and which the law has pronounced sufficient?[1]

[1] Indeed the practice of *over-stating* the case, in regard to Deists and their opinions, has long been so prevalent, as almost to have ceased to be perceived *as* over-statement. By some it seems adopted on system; by others in the way of decent conformity to current modes of speech; and by the remaining million in pure ignorance. There are very many people who, whether in speech or writing, will never allude to the Deist or his tenets, except in terms which presuppose him an Atheist; who carefully avoid every expression which might recognise the existence, nay possibility, of scepticism as to *Scripture*, separate from the disbelief of a God and a future state; and therefore, in all allusions to the proscribed class, speak of them as persons "opposed to—*religion*," who "deny the truth of—*religion*," who "impugn—*religion*," &c.; or name them only under the *composite* appellation of "Infidels *and Atheists*." But this is far from being good policy after all. For, besides that it tends to compromise the cause in the eyes of all those who are aware of the exaggeration, it tends also to place the faith of the uninformed upon a footing needlessly precarious: since by thus *connecting* it with a notion plainly erroneous, you make it liable to be shaken by anything which may occur to dissipate that error. And since it *must* occasionally come round to the apprehension of even the most ignorant, that it *is* possible to question *the truth of a book*, or *the veracity of human witnesses*, without disputing *the existence or attributes of God;* that a man *might* have his doubts respecting certain transactions stated to have occurred many centuries ago in the province of Judæa, and yet have none at all concerning his relation or his duties to a Creator,—or might question the origin of the revelation contained in Scripture, without a particle of doubt as to the origin or import of *that* which is written in the heavens, and the earth, and the seas, and in man's own heart; the disadvantage of unfair mystification in this matter is eventually more than equal to its temporary

Even the language of Lord Raymond, in the great *leading* case, is, I think, marked with embarrassment. Decisive enough in *substance*, it is yet shuffling in *manner*; being much like that of a man, who, compelled by circumstances to *speak out* on a subject little to his mind, resorts to palliations which, without concealing the truth, betray the nervous *anxiety* to do so. He "*would not suffer it to be debated* whether to write against Christianity in general was not an offence punishable, &c." But *why* not? why this great haste to get quit of the subject without argument? Because none was needed? From the notoriety and established clearness of the law thereon? Not so either: for, *after* thus forbidding *counsel* to argue the point on one side, he proceeds *himself* to argue (not *state*, but *argue*) the point, and at some length, on the other; deducing the required law, *inferentially* and by laboured *construction*, out of general principles of common law: "For the Christian religion is *established* in this kingdom, and therefore they (the Court) would not allow any books to be written which should *tend to alter* that establishment. They observed too, that as the Christian religion was PART *of the law*, whatever derided Christianity derided THE *law*, and consequently must be an offence against *the* law; for *the laws* are the only means to preserve the peace and order of every government, and therefore whatever exposes *them* strikes at the root of

convenience. It is, in fact, an instrument which cuts two ways; augmenting the popular indignation against the deist, so long as the false impression remains; but reacting unfavourably on the popular faith, as occasions arise to dissipate that impression.

The like policy seems to have been adopted of old—and *there*, indeed, fitly enough—in support of the *Pagan* creeds: and an Athenian populace were easily prevailed on to condemn Socrates to death as an Atheist, because, acknowledging only one God, he rejected that plurality of deities with which all *their* ideas of religion were associated. And so, in after times, the early Christians themselves, as rejecting the same fabled deities, were often on that ground successfully misrepresented as Atheists, and thus subjected to an excess of popular fury which they might not otherwise have incurred.

the peace and order of the government to be kept."—Holt, p. 67.

I quote this, here, not for the badness of the argument, (though bad enough it is,) but only as *being* argument,—an arguing of the point on general principles,—and, therefore, coming but oddly after flat refusal to hear a word of argument thereon from defendant's counsel. Yet, *as* a piece of argumentation, it is curious enough. So and so "*is established*," and therefore anything "tending to alter" it, is illegal: [*ergo* a word of dispraise of the *Game* laws, *e. g.*, *they* also being "established," is illegal, since it might "tend to alter" *them*.] But it is "*part* of the law," and, therefore, it seems, is "THE *law*" (*i. e.* the *whole* law, or body of laws collectively), and, therefore, must not be derided; "*For* the laws" (collectively) "are the only means to preserve the peace and order, &c.; and, therefore, whatever exposes *them*" [which, it seems, is done by "exposing," as Lord Raymond terms it, any "*part*" of them] strikes at the root of the peace and order of the Government."—Which train of reasoning, though containing near about the like number of fallacies as of steps, was, it seems, considered by the Court as "carrying with it such clear conviction in itself, that they *refused to hear counsel give their reasons why they should be heard upon it*."—Holt, ibid.

But let this pass. Arrive at it as he might, Lord Raymond lays it down as law, that "to write against Christianity *in general*" is "a punishable offence." This, then, is his *law*; and, indeed, nothing short of this could meet the exigencies of the case he had in hand. Now then for the *qualification*: now for the *flinching*. "They [the Court] desired it to be taken notice of, that they laid this stress upon the word *general*, and did not intend to include *disputes between learned men upon particular controverted points*." So then "particular points" may be handled as you please; so, at least, these latter expressions *seem* to tell us. But no: you may handle them indeed as you please, *provided* you do not *so* handle any

of them as to involve thereby any impeachment of Christianity itself; for *that* (as was indeed the exact case with Woolston,) will be construed as "writing against Christianity in general."—So that we have here, in fact, only the old prohibition afresh, no otherwise varied than by being put into the shape of a *permission*; a statement which, being verbally untrue, *in order to look like an indulgence*, only derives explanation from its incongruity with a previous statement.

Does this seem strained or invidious? look then to the *repetition* of the same remark a few sentences after; —"It is worthy of particular attention that Lord Chief Justice Raymond, in delivering the judgment of the Court, said; 'I would have it taken notice of *that we do not meddle with any* DIFFERENCES IN OPINION,'—[here again is liberality! here is toleration!] 'and that we interfere only when the very root of Christianity is struck at.'" Again one half of the sentence does indeed correct the other; but how? by fair mutual limitation? no: by mutual incongruity and contradiction.—Meantime, how fondly does the expounder of the law seek to array his doctrine, if it be but in the merest shred that may for a moment look like toleration!

Again, I infer a shyness of producing the law unveiled, from the manner in which Juries are often appealed to, both by counsel and from the bench, in reference to the *oath* which they have taken. What can be more clear and simple than the *real* tie of the juror's oath in these cases? "You have sworn to give a *true* verdict; to be *such* it must be a *legal* one: here are the precedents and authorities which show incontestibly that this publication is, in law, a libel;—your verdict on your oath." Here is an appeal to the jury which, in all cases of the supposed kind, would be perfectly unanswerable: but no; this would be too straight-forward and perspicuous; and the jury must be invoked by their oath in a point of view wherein it does *not* bind them at all. They must be told that their oaths have been taken on the Gospels; that

they have thereby pledged themselves (for so it is said) to the truth of Christianity; and, *therefore*—in virtue of this pledge, or of their own faith so testified—are bound to find a verdict of "guilty." Can misrepresentation go further than this, or reasoning be more incoherent? How can a juryman's own faith in Scripture, or his own—however solemn—expression of that faith, determine one way or the other the legal criminality of a deistical publication? If it *be* by law a libel (which it plainly *is*), why then the jury are bound by their oath to find it such—not because it has pledged them to *a faith in Scripture*—but to *a true verdict*.—Take the following instances.

On the trial of *Eaton*, as reported in State Trials, vol. xxxi. Lord Ellenborough, in summing up, appeals to the jury as follows:—

"Gentlemen of the jury, Considering whom I am addressing,—twelve Christian men, who have lately sworn on the Holy Evangelists,—*it is scarcely necessary to make any observation on this case.* To ask you whether THAT under the sanction of which the oaths you have taken were administered, *has any validity*, would be as improper as it is uncalled for." Assuredly it would so: yet how grossly unfair the implication that to ask the jury whether defendant were guilty of the crime charged, was tantamount to asking them whether the Gospels were true!

In the prosecution of Carlile, (Ann. Reg. 1819, p. 18.) the Att. General, among other observations on this head, is reported thus: "They [the jury] lived under it, [the Christian religion,] *and by their oaths had pledged themselves to its veracity.*" What does he mean by this? Why plainly (as the context sufficiently shows) that, *in* so "pledging themselves to the 'veracity' of Christianity," they had pledged themselves to affirm the legal guilt of all who should bring its truth into question.

Again: "As to the principle of Christianity being a part of the law of the land, ... if the jury were not already satisfied upon that point, what security was there

that they would return an honest and impartial verdict? *In such a case* [which means, either—in case of the jury not being so satisfied on the above "point of law,"—or of their not bringing in the required verdict accordingly,—it is the same either way;] he might almost say they would commit perjury; FOR *by their oaths they had professed that it was on Christianity they rested their hopes, &c.*" [and, therefore, *in* so professing their own faith, had pledged themselves to bring a verdict of guilty against any man who should have impugned it.] And so, again, in his *Reply*, (p. 46.) the Attorney harps afresh on the same string, with increased force and effect: "He had reminded them [the jury] *that they were pledged to the truth of Christianity by the oaths they had taken*; [and, *therefore*, to find a verdict of guilty:] .... Were they prepared to address their children and say .... the age of reason had now dawned, &c.? [how unwarranted the alternative!] If such was the view taken [implying that it *would*, unless defendant were convicted], their oaths as jurors were a mere nullity, the obligation under which they acted had no sanction, &c."—And all this waste of sophistry, when defendant stood equally within grasp of the law, though expounded without any equivocation at all![1]

The like had long before been done by Erskine, on the trial of Williams for the same libel, (State Trials, vol. xxvi.[2]) Much sophistry of the kind alluded to may be found in the course of his opening address (pp. 661, 665, &c.), though, of course, skilfully wrought, and so as to make it—if not difficult, yet tedious, to exhibit it fully. But in a passage of his Reply, after quoting a

[1] One curious quality in all such arguments is, that, should a law be passed tomorrow, removing all penalties whatever in regard to sceptical publications, the said arguments would still remain no jot the less applicable, or the less valid, in proof of the juror's obligation to convict the publisher of them.

[2] This report being furnished to the Editor, as authentic, by Lord Erskine himself.

sentence or two of the defence, his comment is,—"He [defendant's counsel] acknowledges that you [the jury] have no qualification or jurisdiction to sit in judgment upon the defendant, but as you have read and believe in the Gospel, and as you have been sworn in the presence of Almighty God . . to administer justice according to IT; [a great perversion, by the by, of the passage in question,—but that matters not:] yet in almost the same breath *he asks you to declare it, by your verdict, to be false and wicked!*"—p. 703.—And yet none knew better than Erskine that a verdict for defendant neither would, nor could, nor was expected, to imply any such thing.

The charge of Lord Kenyon, on this same occasion, may, perhaps, help to illustrate the shy and cautious manner in which lawyers are wont to deal with the question of *law* in this matter; wherein, amidst about two columns of rambling talk, about anything rather than dry law, the judicial exposition of *that* subject is, I think, nearly comprised within the *latter* of the two following sentences;—"Gentlemen, we sit here in a Christian assembly, to administer the laws of the land; and I am to take my knowledge of what the law is, from that which has been sanctioned by a great variety of legal decisions. I am bound to state to you what my predecessors, in Mr. Woolston's case, (2 Strange 834,) stated half a century ago, in this court, of which I am an humble member; *namely, that the Christian religion is part of the law of the land*":—having uttered which words, quoad the *law* of the case, he forthwith makes escape from the topic. Not venturing, it would seem, one step from this safe and mystic form of words, wherein, as he intimates, the wisdom of his predecessors lay enshrined, he sets forth the great *dictum*, bare of all elucidation, in its native and awful obscurity, in about the middle of his speech, —its other portions standing apparently in the mere relation of flourish preliminary, and flourish supplemental, to the utterance of this single sentence.

In the charge delivered in the case of Carlile, the real power of the law is no less carefully veiled. Conviction was inevitable, on the score of scoffing and contumely alone: and the leading doctrine propounded seems to have been, that had it not been for these aggravations, the offence would not have been within reach of the law.

To my own view the charge of the Chief Justice on this occasion (as reported Ann. Reg. 1819, p. 47.) seems to betray throughout the greatest constraint and embarrassment: nor can I discover in it (as so reported) any desire to be perspicuous.

In the course of the previous proceedings the accused had been repeatedly stopped short in his defence, on plea of its impugning, or tending to impugn, the truth of Christianity; and to this procedure it was but natural the learned Judge should allude, early in his *Charge*. True, the prohibition had related, in strictness, only to what Carlile might do *then*—in *Court*: yet, extending as it did to the utterance of everything which, by assertion, implication, or inference, could tend to impeach Christianity, it is plain the interdict could rest only on the illegality of all such topics *per se*; and one might have thought it scarce *possible* for the learned Judge to make allusion to the said interruptions, without broadly stating the said point of law. Yet see how he picks his way.—"His Lordship had felt it his duty, on mature consideration—and it would hardly be supposed that he came to a trial like this without previously turning his thoughts on the subject, to inform his mind as to what course he ought to pursue in the different circumstances which might be expected to arise—He had then determined, and he did not regret the determination, that *it was not competent in a Christian court, in a court of law, to rise up and say that the Christian religion was not a religion of truth.*" This is much like the passage in Lord Kenyon's charge, before-noticed in p. 57: you scarce can say whether you have, or have not, obtained a principle which

will extend beyond the walls of the court. "It was not *competent in a Christian court*, in a *court of law*, to rise up and say" so and so. And *why* not? Because of its *inherent* illegality *anywhere*? Oh no; but because (for so the passage proceeds,) "It would be strange indeed *if such a question were to be put in issue, in order to be tried before this tribunal.* He had THEREFORE resisted every attempt to introduce such a discussion, and should have felt that he was disgracing his situation, had he acted otherwise."—This was a narrow escape of coming to the point; but still it *was* escaped. Shortly afterwards the legal doctrine *is* in some sort intimated: "The Christian religion forming part of the law of the land, it was not fit that he [defendant], or any other person, should openly deny its truth."—Here the interdict is at least not *local*, but *general*; yet still shy, very shy. "It was not *fit*": here is a phrase! Before it was not "competent," and now it is not "fit":—is it *legal*, or is it *illegal*? Illegal, of course: then why not utter it manfully?[1]

The magniloquent flourish of *toleration* which appears

[1] With respect to the disallowance itself of the said topics "in a court of law," the rule may be a good one, but it should be observed on both sides alike. "Was Christianity reduced to such a state, (the Attorney General asks on this trial,) that it was to be submitted to twelve gentlemen in that box to confirm or reject its authority? . . . The court could not so enter [into such discussion]; the law of the land forbade it."—p. 45. And the Chief Justice says, as above—"It would be strange indeed if such a question were to be put in issue &c."; and "he had therefore resisted every attempt &c." Yet this same Attorney General, and with permission of this same Chief Justice, (according to this report,) enters on the deep questions of natural and revealed religion, in a manner which looks very like "submitting" their comparative merits to the "twelve gentlemen in that box"—("How was it that our knowledge of a future state had been acquired?" &c.—p. 46.) In which line of argument he is ably seconded by the Chief Justice, (p. 48.) in a manner which I am at a loss to distinguish from that which he had just before declared "would be strange indeed." On this head the Westminster Review justly remarks; "Arguments for the truth, and panegyrics on the excellence, of a system of religion *do not read pleasantly* in a trial, during which the accused is authoritatively silenced should he attempt their refutation."—No. 3. p. 21.

in a part of this charge, makes a curious contrast enough with the actual state of the law: and the manner in which it is *afterwards rounded off*, so as to come eventually to nothing at all, is no less curious again. "Another topic of defence strenuously, and in some degree properly urged, was the danger of restraining free discussion and free inquiry. *God forbid that any such restraint should take place*! But they had to distinguish whether the present publication was an instance of that free inquiry and discussion, or a work of mere calumny and ridicule. . . . . The exercise of reason was allowed in the fullest manner by the law of England, because it was a law of public liberty and freedom, &c. . . . . BUT [now we begin to draw in:] *though* as a law of liberty, *it allowed perfect freedom of opinion*, and *interfered with no man's private belief*, [—"freedom of *opinion*"? freedom of "*private belief*"? why, a moment ago, we were allowed freedom of "*inquiry*," and freedom of "*discussion*:"—what will the *prohibition* be, when the *permission itself* is thus suddenly transmuted?] it did *not* allow [now for the *limit*] to every man "*to do what seemed good in his own eyes, if it were injurious to society*": which means *specifically*—to *express* his said "private belief" and private "opinion,"—*if* it be *adverse to the received faith*.

To make it complete, the jury are instructed towards the end of the charge, that "the question turned on the character of the work, . . . was it fair and candid inquiry?"—and again, that "this publication was [in his, the Judge's, opinion] a work of calumny and scoffing, and *therefore* an unlawful publication." Now how does this accord with either law or fair dealing, if the *scope* alone of the work, exclusive of any other qualities whatever, were incontestibly libellous and penal?

The like instructions I find again in a like case, Rex *v.* Davison (Ann. Reg. 1820. p. 241.) "If they [the jury] thought that the works in question *were fraught with scurrility, with abuse, and with vituperation*, &c., it was their duty to find the defendant *guilty*; *if they thought*

that those works were specimens of fair argument and of temperate expression, they would pronounce a verdict of acquittal." And yet this same Judge (Best) is reported just above as stating for law, that "the truths [truth?] of Scripture could not be disputed."—So again in the case of a Mrs. Wright, the Lord Chief Justice is reported to say—"The defendant was not called on to answer any reasonable or fair discussion, *on the truths of Christianity in general*, or any of its particular tenets. The law permitted that *every subject*, *however sacred*, should be freely, yet moderately and temperately discussed; but would not yield its protection to scandalous calumnies, &c." And again—"If the jury thought these passages were only parts of *a fair and temperate discussion* of the sacred topics to which they had reference, *they might acquit* the defendant; but *if* they considered them as *gross* and *indecent* attacks on religion, they *must find her guilty*."[1]

So in the trial of Robert Taylor in October 1827, (as reported at length in the daily newspapers of that date, —that before me is the Morning Chronicle;) conviction was here again attainable on the plea of contumelious language alone, without insisting on the inherent illegality of his object. But why disguise—why *deny* that illegality, at the risk of ensnaring others who might hold the like opinions? Yet this the Attorney General does—and in the strongest terms—from one end of his speech to the other. Not only in his own name and in that of religion, (most honourable thus far to both,) but in that of the *law* also, he holds out the most unlimited toleration to

[1] See Westminster Review, No. 3, p. 15. "We say nothing," adds the Reviewer, after citing this with some other of the foregoing passages, in mutual contrast, "of the legal trap in which a defendant might complain of being caught, if he acted on the one set of dicta, and were condemned by the other. We say nothing of the disingenuousness of claiming merit for tolerating argument, while there is a prospect of obtaining a conviction on the score of *calumny*, and still retaining as a *dernier resort* the illegality of every thing which tend to the disproof of Christianity."

all sorts of fair and sober argumentation; exhorting the jury,—" if they could find that the defendant had only used serious and sober argument in the support of his views of the matter, for God's sake to acquit him. In the name of religion *and law* he did not ask for a verdict against him for the sober, serious, and solemn discussion of a topic of this vast importance."

Now, supposing all this (as I think we may) to be quite unwarranted *in law*, what might we expect would be the tenor of the Judge's charge in regard to it? For either, 1. he might think it right to say plainly—"The Attorney General has greatly over-stated the toleration allowed by law to discussions on revealed religion; *it allows of none whatever which impugn its truth*": or, 2.—without such special *reference*—he might at least take care to lay down this latter doctrine with especial clearness: or again, he might possibly be content with barely stating the said doctrine, with just sufficient accuracy to keep safe *possession* of it, but without drawing attention too closely or too nicely to it, or even himself adhering too rigidly to it in all parts of his own address.

To my view, the *latter* seems to have been the mode adopted. Thus, *e. g.*, the passage A, cited below[1], does perhaps assert (or rather we might say *include*) the said doctrine of non-permission, to its full extent; but yet in terms so prolix and abstract, as would scarcely reveal to the general hearer all that is really meant by it: while again such passages as the *following* do actually *suggest*, by implication, the very doctrine of the Attorney General himself:—" He [the Judge] had before said, [viz. in said passage A,] that it was a part of the duty of the office he had the honour to hold, to uphold that religion as the

[1] (A.) " He (Lord Tenterden) should not be acting according to the duty he owed his conscience, or the duty required by the office which he then held, if he did not tell them that the Christian religion (he spoke not then of any of the many sects into which opinions had divided it) but the Christian religion, in its substance, was a part of the law of the country, as perfectly inviolable in that substance, and as fully entitled to protection in every manner and degree, as our civil constitution itself."

law of the country [*i. e.* 'in every manner and degree,' —which *includes* non-permission of argument against it;] and he now *repeated* [but *does* he?] that if any person attempted to bring its doctrines ['generally'] into question, —not by means of serious and deliberate arguments addressed to men capable of appreciating their nature and extent, [*implying that* THIS *would not be libellous*,] but by sarcasm and ridicule, calculated to bring them into contempt, and intended only to elicit approbation,—*such a person* [which implies, of course, '*but not the other*,'] was an offender against the laws of the country."

The "Chronicle," in its *comment*, hits off the character of this Charge aptly enough:—"The Charge of the Lord Chief Justice, (it says,) was moderate in tone, but dangerous in principle." Very true: so are they all—all "moderate in tone": it is a quality especially aimed at; and consists especially in a discreet reserve, as touching such "principles" of law as might seem "dangerous," if exposed too freely to general observation.

From these and other similar indications, the impression is strongly left on my mind, that the Judges and other leading lawyers are *out of countenance* with the existing law in regard to religious discussion, as if uncomfortably conscious of the violent imputation which it throws on the evidences of Christianity. It is in vain that Judges and Counsel disavow this consciousness, as on such occasions they commonly do: their protest comes too near to the "*Allegatio contra factum*," which Lord Raymond would tell them "*non est admittenda*[1]." Nor can it indeed be doubted but the like mortification is felt, very generally, among the friends of revealed religion, whenever the penalties of the law are thus resorted to, in aid, apparently, of the native evidences of their faith.

[1] Woolston's plea, that his book was not intended to "attack Christianity," but to "establish it on a true bottom, by considering certain narratives in Scripture as emblematical and prophetical," was summarily dismissed by Lord Raymond as *allegatio contra factum*, &c.

No. 3.

Referred to, p. 26.

IN a late work, of much ability, entitled "An Inquiry into the Proofs &c. of Inspiration, by the Rev. S. Hinds," it is acutely argued that, although the main conclusions in favour of Christianity, which have been arrived at by exploring its multifarious evidences, must needs be—to all *except the actual explorer* (who is about 1 out of 10,000,) simply HIS *assertions*; they are yet fully entitled to general confidence, as being "assertions (which are) set forth, bearing on their face *a challenge of refutation.*" "They are (the writer proceeds to say,) like witnesses placed in a box to be confronted. Scepticism, infidelity, and scoffing form the very groundwork of our faith. As long as these are known to exist and to assail it, so long are we sure that any untenable assertion may and will be refuted. The benefit accruing to Christianity from the occasional success of those who have found *flaws* in the several parts of evidence, is invaluable. We believe what is *not* (so) disproved, most reasonably, because we know that there are those abroad, who are doing their utmost to disprove it. We believe the witness, not because we know him and esteem him, but because he is confronted, cross-examined, suspected, and assailed, by arts fair and unfair."—p. 38.

And again—"Such testimony must be unexceptionable, so long as Protestant freedom holds out a challenge to the educated sceptics of all ages and countries to confront it, and to invalidate its statements. . . . The Church of Rome allows no sceptical declarations; . . . the Church of England, and all Protestant churches, give

liberty to the adversaries of the Gospel to cavil and object; and on this liberty is grounded a just requisition of assent to those statements which the adversary cannot disprove."—p. 46.

All this sounds very fine: yet how little does it come to, when we remember that the "cross-examination," "refutation," &c. to which you are here so freely challenged, must in no case amount to any impeachment *of Christianity itself*—of Christianity "*generally*"—of Christianity "*as a whole*"![1] You may join issue with the divine on any of the *subordinate* statements which make up his "case," but never on the *general* question of the truth of Christianity itself. You may convict him, if you can, of mis-statement in detail, but must draw no general inferences.

You may "cross-examine the witnesses": which means,—you may sift the "*statements*" of the sundry learned men who, having explored the multifarious evidences of Christianity, have severally "*reported*" to us the sum and substance of such *portions* of it as have fallen under their examination: such statements, *e. g.*, as those which announce to us—that such and such is the existing state of sundry MSS.; such and such their external history—and evidence as to their origin, date, and transmission: that such and such are the sentiments, tenets, or assertions of the "Fathers," on this point or on that; such the testimony derivable from the Jewish—such from the profane historians—such from the Talmuds or other Rabbinical writings; such the existing evidence as to the date, origin, and transmission of all and each of these; and such the criteria whereby—amidst the mass of spurious productions—such and such may be safely held to be genuine: that such is the external history of the canonical books; such the history of the Church at large; and such, more especially, of this period or of that,—and with special reference to any one of the thousand points of

[1] Lord Raymond, as we have seen, expressly declares it to be a "punishable offence" to "write against Christianity *in general*."

view in which it may be required to compile and view it: —such, in short, the drift, import, and true substance, of any particular mass of volumes which it has severally fallen to their lot to collect and explore.

These "witnesses," then, you may "cross-examine"; at least, should your term of life and of patience be unusually prolonged, you might perhaps achieve the cross-examination of some one, or two, or three of them,—and they stand by thousands in the "box." But however they *do* stand to be confronted; you may cross-examine them. To what end? *They* come forward, singly and jointly, for the declared purpose of establishing a given conclusion—*which conclusion you are not permitted to dispute.* You are tied down by authority to the barren office of a petty objector or caviller, without any declared or recognisable object. You "cross-examine the witnesses": what next? Do you then (I am supposing the case of a *sceptical* examiner,) *open your own "case,"* and bring forward your own comments, arguments, and evidence—in support of an opposite conclusion? You are not permitted to *have* a "case": you are not supposed to *have* an opposite conclusion *to* support; *i. e.* you have none which is recognisable in law, nor sustainable without a breach of the law. Your office is considered as terminating in the act of cross-examining the "witnesses in the box." You are tied down, I say, to the office of a barren objector and petty caviller,—and perhaps are afterwards taunted with being nothing more.

But still the question will be—*If* material error existed in these "statements," must it not have been long since brought to light by means of this cross-examination, to which they have ever been exposed? Under the existing restrictions, I should think *not*: *i. e.* not by any *necessity*.

For, in the first place, a statement of *constructive* fact is far from being so *tangible* a thing as a statement of *simple* fact: and those we are dealing with are chiefly constructive. Each of them, for the most part, is a sort of summary, or digest, or—as we might say—is deponent's

"*report*" of the drift, substance, or upshot of the particular mass of volumes he may have had occasion to wade through: a "report" more or less accurate, according to many various qualities of head and heart in him; and yet not easy to be *convicted* of its errors or misconstructions, unless they be very violent. Add to which, that each "statement," being perhaps, on an average, the result of half a life's labour, could scarcely be adequately *examined* without a like expense of time and toil;—while again, after all, that one statement is only as a single thread in the great web.

Suppose, then, for argument's sake, that there should be no very violent or gross perversion in any of these statements singly; but only that, for the most part, each deponent or "reporter" has gently—very gently—*warped* the truth, in his proper department, by discreet selection, omission, and construction—to adjust it to the exigencies of the desired conclusion[1]: (and who shall say this is impossible, when *favourable* "reports" have for many centuries borne so high a *premium*[2], and *unfavourable* so heavy a *duty*?) in *such* a case, where would be the security derivable from cross-examination? or who would be found to go through its interminable drudgeries? Who

[1] I have never read *Milner's* "*History of the Church,*" and cannot say, therefore, whether *Mr. Beverley* describes it truly in his second "letter": he says; "If any one should be startled at my terming 'Milner's Church History' an historical *romance,* they must understand that such is indeed its proper description. The work is deficient in truth. There are so many omissions and evasions, so much of concealment and extenuation, and such determined false colourings of very bad or very suspicious characters, as to render it utterly unworthy the name of a history. . . . When persons write histories *for an object,* they generally pervert facts to suit that object."—p. 43.

Of the correctness of this account, I say, I cannot judge, not having read the work; and, indeed, it might possibly require many years' hard reading to investigate, even imperfectly, the merits of the charge so preferred. That such cases *do* often occur in theological literature, I fully believe, from such experience as I have had: my *argument,* however, only requires that they be admitted to be *possible.*

[2] Not in the invidious sense of mere *emolument,* but rather of favour, applause, distinction, &c.

would waste a life's labour in convicting one witness, out of a thousand, of his particular *quota* of exaggeration and miscolouring?—waste a life, not in the *study* of an important *subject*,—there might be some interest in that,—but in *auditing the accounts of an individual*; not in the stimulating pursuit of right *conclusions*,—*conclusions* must not be meddled with, except according to law,—but in rectifying the petty trickeries of a single subordinate statement! Can you *reckon* on finding a man to fill this office? or, should you find *one* such, can you reckon on a *succession* of them, to audit in like manner the separate accounts of the rest? Will such men arise in competent numbers, to keep check on the ever-accumulating mass of theological "statements"? or compete—under every discouragement—with the zeal and industry of those by whom the said statements are elaborated? Curbed in every movement by the terror of the law, and daunted by the certain obloquy so industriously excited against all who impugn the statements of the Church, will *they* toil on in their dry and stinted task, with a fervour like that of the privileged party, who—besides being free to launch out, at every step, into general inferences, triumphant exclamations, and panegyrical flourishes of all kinds, in reference to the *main conclusion*,—are stimulated to exertion by applause, favour, advancement, and worldly profit, in addition to the strong incentive of religious zeal! Till we can reckon thus on zeal and patient perseverance, without motive, and contrary to motive, no safe inference can be drawn from the alleged lack of refutation to the statements of the Church. That any considerable errors exist in those statements, I do not presume to affirm: but I say, *supposing* them to exist, then, so long as this system of partial interdict and general intimidation is adhered to, it cannot but happen, that large and increasing arrears of error unrefuted will continually *lie over* for future settlement. Suffer the supposed examiner to *discuss* his SUBJECT, as well as to *cross-question* his MAN,—suffer him to declare his mind, as he goes, on the only point that can possibly interest him in his dreary labour—*on*

the main conclusion itself,—and you may *then* look to find examiners equal to the exigency; and from the collision of *them* with *the framers of the statements*, true conclusions may be fairly expected: but *till* this fair and equal hearing be given, the triumph of the privileged party must be, at best, but doubtfully warranted. Such benefit—if benefit there be—as may accrue from a system of restriction and of penalties, the Church may lawfully claim and possess: but it is quite inadmissible that she should do *so*, and claim the trophies of free discussion *too*.

No. 4.—referred to, p. 38.

Extract from the Rev. S. Hinds's "Inquiry, &c."

"IT becomes therefore a very serious question, how far these various sources of proof are accessible to the great mass of Christians, to whom they are evidence. . . . .

"To say that numerous old MSS. exist; that they admit of classification, and date; and other characteristics; to speak of evidence derived from contemporary history, from the monuments of art, from national manners and customs; to assert, that there have been persons qualified for the task, who have examined duly these several branches of evidence, and have given a satisfactory report of that research—is to make *a statement concerning* the evidence of Christianity, which is intelligible indeed, but is not *itself the evidence*, nor *itself the proof* of which you speak. So far from this being the case, we cannot but feel, that the author who is guiding us, and pointing out these pillars of our faith, as they appear engraved on his chart of evidence, can himself, whatever be his learning, be personally acquainted with but a very small portion. The most industrious and able scholar, after spending a life on some individual point of evidence, the collation of MSS., the illustrations derived from un-

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inspired authors, translations, or whatever the inquiry be, must after all (it would seem,) rest by far the greater part of his faith, immediately on the testimony of others; as thousands in turn will rest their faith on *his* testimony, to the existence of such proof as *he* has examined. There is no educated Christian who is not taught to appreciate the force of that proof in favour of the genuineness of the New Testament, which may be derived from the consent of ancient copies, and the quotations found in a long line of Fathers, and other writers; and yet not one in a thousand ever reads the works of the Fathers, or sees a MS., or is even capable of deciphering one, if presented to him. He admits the very groundwork of his faith on the assertion of those who profess to have ascertained these points; and even the most learned are no further exceptions to this case, than in the particular branch of evidence which they have studied. Nay, even in their use of this, it will be surprising, when we come to reflect on it, how great a portion must be examined, only through statements resting on the testimony of others."—pp. 33—35.

The *validity* of which evidence, so taken on trust from the report of others, Mr. Hinds infers (as already quoted and commented on, p. 82,) from the *challenge of contradiction* which the reporting parties are to be supposed to hold forth, together with their statement of the results of their several researches.

Mr. Hinds and myself refer to this feature in the evidence, with views not indeed alike, yet not entirely opposite; he, with the view of insisting that assertion may become good proof, when backed by unlimited challenge of refutation; and I, for the purpose of suggesting that it can *never* OTHERWISE be entitled to confidence. *He* seems to think that a *free field* is given *with* the supposed challenge; and *there* indeed we differ widely.

THE END.

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