

NATIONAL SECULAR SOCIETY
THE
PAST AND PRESENT
OF THE
HERESY LAWS.

A Lecture

DELIVERED BEFORE THE
SUNDAY LECTURE SOCIETY,

ON

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BY

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SYLLABUS.

Mr. Lecky's views on the causes of Persecution.

Dogma and Persecution arose from the struggle of the clergy for political supremacy.

I. Punishment of Heresy as a crime.

1. By the Ecclesiastical Courts.
2. By judge and law.
3. By statute.
4. Proposed article in the New Criminal Code.

II. Deprivation of Civil Rights of Heretics.

1. Nullification of contracts tainted with heresy.
2. Illegality of heretical trusts.
3. Guardianship of children.
4. The refusal of evidence. Oaths. Witnesses.

III. Heresy in morals.

IV. The Persecuting Spirit as perverting the administration of justice.

THE
HISTORY OF THE HERESY LAWS.

THE History of Persecution presents to the philosophic mind a strange problem. Why should men cruelly maltreat and murder their fellow-men, who do them no harm, because of a mere difference of opinion regarding super-terrestrial objects? The question is not easy to answer. It implies, on the part of the persecuting sects, intellectual blindness and moral callousness. For surely—from a mere intellectual standpoint—nothing can be more absurd than to punish a man for his belief. To inflict evil upon a man because his reason does not recommend a popular creed may make him a hypocrite, but by no possibility a believer. It implies not less moral obliquity. For the simplest rule of morals is that we should do unto others as we would have others do unto us. But the persecutor never admits that it is right to punish him for his opinions. His opinions, he tells us, are right opinions, and it would be highly criminal to punish a man for holding right opinions. Thus reasons the bigot with himself. Sometimes indeed he tries to evade this difficulty. He will tell us, with engaging candour, that persecution is always right in principle, however unfortunate it may sometimes be in its application. He will assure us that he persecutes because he believes it right to suppress error; and he admits that if his party is the weaker it would be right to persecute him in turn. By this ingenuous admission he hopes to shelter himself under the golden rule; but it is to be observed that such a confession is never made when there is any opportunity of testing his sincerity. If this candid gentleman were to find himself among the persecuted, he would be the first to call out most lustily against the wickedness of his persecutors. When, therefore, we take a persecutor and calmly examine him, we find his moral sense as much at fault as his intellect; both his

intelligence and his conscience are clouded ; in a word, he is both a rogue and a fool.

In putting the issue on that broad and simple basis I make an assumption. I assume that the bigot is sincere according to his light. I assume that he reverences truth ; that he wishes to see truth prevail among mankind, and that error be driven away. It is from this point of view that Mr. Lecky, the distinguished historian of Rationalism in Europe, discusses that most melancholy chapter in the history of the human race, the rise and progress of persecution. He ascribes the tremendous energy of the spirit of persecution to the doctrine of eternal punishment for religious error, and in a vigorous passage he thus denounces a cause of untold suffering to the human race :—*

“If men believe with an intense and realising faith that their own view of a disputed question is true beyond all possibility of mistake, if they further believe that those who adopt other views will be doomed by the Almighty to an eternity of misery which, with the same moral disposition but with a different belief, they would have escaped, these men will, sooner or later, persecute to the full extent of their power. If you speak to them of the physical and mental suffering which persecution produces, or of the sincerity and unselfish heroism of its victims, they will reply that such arguments rest altogether on the inadequacy of your realisation of the doctrine they believe. What suffering that man can inflict can be comparable to the eternal misery of all who embrace the doctrine of the heretic? What claim can human virtues have to our forbearance, if the Almighty punishes the mere profession of error as a crime of the deepest turpitude? If you encountered a lunatic who, in his frenzy, was inflicting on multitudes around him a death of the most prolonged and excruciating agony, would you not feel justified in arresting his career by every means in your power—by taking his life if you could not otherwise attain your object? But if you knew that this man was inflicting not temporal but eternal death, if he was not a guiltless though danger-

* “Rationalism in Europe,” Lecky, vol. ii, page 1.

ous madman, but one whose conduct you believed to involve the most heinous criminality, would you not act with still less compunction or hesitation?"

Mr. Lecky enforces his argument by a short and striking sentence from Thomas Aquinas, the great orthodox logician of mediæval catholicism. "If dealers in false money or other malefactors are forthwith justly delivered to death by secular princes, much more ought heretics, the moment they are convicted of heresy, to be at once, not merely excommunicated, but justly put to death." This sentence is worthy a moment's consideration. It has the appearance of an argument; in form it professes to be reasoning; but even a glance is sufficient to show that it possesses merely the form and not in any degree the substance of reasoning. The premiss is that dealers in false money are justly put to death; the conclusion is that heretics ought to be put to death. But, heretics are not coiners of bad money; and it would just be as logical to say—because murderers are justly executed, therefore those who eat meat on Fridays ought to be executed. The conclusion has simply no relation to the premiss whatever. Viewed as a logical proposition, which it professes in form to be, the saying of St. Thomas Aquinas is a rank and childish absurdity. But, if we are to understand it aright, we must discard the pretentious form of logic in which it is enveloped. What it really means is that the writer, and those whom he addressed, considered heresy to be a worse crime than coining false money or murder, and upon that assumption St. Thomas Aquinas is logical enough in saying it ought to be visited with the penalty of death. If it be a greater crime to doubt or deny any proposition which the Church of Rome puts forward as true—for that is the meaning of "heresy" in the mouth of St. Thomas Aquinas—if that be a greater crime than forgery or murder, then truly it is difficult to say that heretics ought not to be slain.

But, is heresy a crime worse than murder? In the days of Thomas Aquinas this was a question that admitted neither denial nor doubt. To have said a word for the heretic would have been to incur imminent risk of the fate of the heretic. At the present day, so

deep, so wide, is the revolt from the Church of Rome, that a person who should gravely maintain the thesis of the saintly doctor would incur universal ridicule. The greatest spiritual dominion which Europe has ever known has been broken up. The sceptre has departed from Rome, and the Pope has no longer the power of killing those whom he calls rebels; he can do no more than brandish the empty thunderbolts of excommunication. That is why heresy is no longer a crime. Heresy was to the spiritual jurisdiction of the Pope what treason is to the secular authority of kings. Heresy denied the right of the priesthood to lord it over the consciences of men. By denying the dogmas which the priests promulgated the heretic assailed them in their tenderest point. If their dogmas were not true, then were they downright impostors, and the very bread they ate was got by false pretences. The most cursory examination of the history of the Christian Church shows that dogma was the bond by which the priesthood reared the extraordinary fabric of the papacy, an institution which claimed to over-ride sovereigns, and to exercise the power, without incurring the responsibility, of secular government. To support dogma the crime of heresy was invented. The aggrandisement of the priesthood was the end to be accomplished; the punishment of heretics was the means. To achieve so holy an end the priests had no scruple in recommending the destruction of those who stood in the way. The end not merely justified but sanctified and glorified the means. Is it a marvel, when the clergy had preached for some hundreds of years the sacred doctrine of the murder of their enemies and illustrated it, whenever they had the chance, by practical example, that in the days of St. Thomas Aquinas every voice in Christendom acknowledged the guilt of heresy?

It seems to me, therefore, that Mr. Lecky, in tracing the practice of persecution up to the doctrine of eternal punishment for erroneous belief, misses a most important element in the problem. Without grave confusion of ideas mankind could never have fallen into the horrible crime of persecution; but, even under the narrowest doctrine of eternal punishment, men would have stopped

short of murdering heretics, but that their hatred was inflamed by the sinister ambition of an insatiable priesthood. The ghastly catalogue of crime would not have been so long had there been no dupes; but it never would have existed at all if there had not been a designing oligarchy of churchmen building up for themselves a throne higher than that of the oldest and proudest monarchies of Europe. Worldly ambition, using as its tools the fears and passions of its dupes, is the real parent of persecution. Jesus Christ said, my kingdom is not of this world; but the priests, who pretended to be His followers, resolved that their kingdom should be of this world, and that they should sit on the necks of kings, and they pursued this scheme of universal dominion with pitiless cruelty. The tortures of the inquisition will be remembered with a shudder when the blackest crimes perpetrated by individual ambition have fallen into oblivion. It is well to bear this in mind. The true source of persecution is not erroneous religious opinion, but priestcraft. Heresy, it is asserted, is disloyalty to truth. But not for that reason was it punished with death. It was disloyalty to the priests that fired their bitter indignation, and rooted out of their breasts those feelings of tenderness and humanity which we may believe they shared at their birth with the generality of mankind.

This sad story in the history of our race is well illustrated by the relation of Christianity to the Roman Empire. Books have been written to show the benign influence which Christianity is alleged to have exercised on Roman Civilization and Roman Law. It was under Constantine, and by his help, that in the year A.D. 312, Christianity was adopted as the religion of the Roman Empire. I have carefully read the jurisprudence of Rome before Christianity was introduced and afterwards. And what do I find? That a spirit of humanity and justice was breathed into the dry bones of heathen law? Nothing of the sort. Humanity and justice reached their highest development under such heathens as Antoninus Pius and Marcus Aurelius. You will search in vain through the Law of Rome for any traces of reform under Christianity; W

but, there are two things of which you will get more than enough. You will get laws intended to aggrandise the priests, to shield them from civil and criminal responsibility, and to enable them to extort money with ease and hoard it with safety. You will, also, find many statutes passed to despoil of their property, to banish, and even to kill, all those sects of Christians who did not bow the knee to Rome, but were guilty of the crime of understanding the teaching of Christ differently from the Roman Bishops. Few people are aware of the ruthless violence with which all dissent from the Church of Rome was stamped out. Before a century had passed under the Christian emperors, the catalogue of Rome's victims were to be reckoned by hundreds of thousands. In a statute passed in the year A.D. 428 against heretics we have a curious enumeration of sects, as regards some of whom even ecclesiastical antiquaries are silent. They were:—Arians and Macedonians, Pneumatomachi and Apollinariani and Novatiani or Sabbatiani, Eunomiani, Tetradiatæ, Valentiniani, Papiantistæ, Montanists or Priscillianists, Marcianists, Borboriani, Messaliani, Eutychnitæ or Enthusiastæ, Donatists, Audiani, Hydroparastatæ, Tascodrogitæ, Batrachitæ, Hermeieciani, Photiniani, Pauliani, Marcelliani, Ophitæ, Encratitæ, Apotactitæ, Saccophori, and worst of all Manichæans and Nestorians. Here is a list of about thirty sects who were broken up and destroyed by the criminal law. That is how the marvellous unity of the Catholic Church was obtained. It won its conquests by blood and iron; by the same means it maintained them; but it lasted long enough to show that truth is stronger than tyranny, and that the sword of the Spirit can cut deeper than any weapons of steel.

In the course of time the priests invented an ingenious plan for perpetuating their dominion. Owing to the profound ignorance of the population, it was easy to teach the people that the principal calamities that affected them were due to the prevalence of heresy. In one of the enactments of the Christian Emperor, Justinian, we find the philosophy of heresy, from the priestly point of view, stated with the most *naïve* absurdity. The reason for killing heretics was that famines, earthquakes, and pesti-

deprivation of civil rights in respect of contract or trusts seriously interferes with or even hampers the propaganda of heretical opinions. While, however, such a state of the law does nothing to protect orthodoxy, it does act as an encouragement to immorality, and enables a few persons, on rare occasions, to break their promise with impunity. But the portion of the law which we have now to consider does not possess this harmless character. The law, whenever it operates at all, works with the cruellest injustice.

The law as to the guardianship of children may be summed-up in a sentence—it sacrifices the mother to the father, and it sacrifices both father and mother to religious bigotry. The rule of law is almost inexorable that a child must be brought up in the religion of its father, even after he is dead, and when he has never expressed even the slightest wish that the widowed mother should be robbed of the care of her offspring. A Protestant widow will be compelled to bring up her infant daughter in the Roman Catholic faith, if the father was a Roman Catholic in profession merely, and was really indifferent as to the religion his children should be taught. I cannot use more forcible language to describe this law than that which was employed by V. C. Wickens in a case where he was obliged to give judgment against a mother:—“To direct that this ward shall be brought up in the Roman Catholic faith will be to create a barrier between a widowed mother and her only child; to annul the mother’s influence over her daughter on the most important of all subjects with the almost inevitable effect of weakening it on all others; to introduce a disturbing element into a union which ought to be as close, as warm, and as absolute, as any known to man; and lastly, to inflict severe pain on both mother and child. But it is clear that no argument which would recognize any right in the widowed mother to bring up her child in a religion different from the father’s can be allowed to weigh with me at all. According to the law of this court a mother has no such right.” (*Hawksworth v. Hawksworth*, 6 L.R. Ch.).

The recent *Agar-Ellis* case still more illustrates the strength of the father’s legal position. Even an express antenuptial promise, without which the marriage would

never have taken place, that the children should be brought up in the religion of the mother, had not, in a Court of Equity, so much as the weight of a feather to outweigh the father's claims. So strong is the father's power, that he cannot legally divest himself of it by such a contract as would suffice to settle ten million pounds. By the law as it stands, a man may induce a woman to marry him by promising her the enjoyment of what she may regard as a particular boon—the preparation of her infant children for eternity—and when the marriage takes place, he can cast his promise to the winds, and bring up the children in principles which, according to the mother's belief, will assign them to everlasting torments.

But the rights of the father, while strong as a band of iron to crush the mother, snap like a reed when they come into collision with the interests of orthodoxy. Charity, parental affection, the sweet influences of home—all must give way to the paramount object of stuffing the child with a particular set of theological opinions. Even eccentric, although not blasphemous, opinions on religion have been held sufficient to rob a father of his children. In giving judgment in *Thomas v. Roberts* (3 D.G. & S. 758), Lord Justice Knight Bruce, then Vice-Chancellor, is reported as distinguishing the degree of eccentricity which might not be absolutely fatal from that which in law disqualifies a man from having the custody of his own children.

“I doubt whether a man, who, having been ordained a minister of religion, as a Christian in a Christian community, has designedly and systematically given up attending any place of worship (whatever his private feelings and whatever hymns he may sing) ought in any condition of circumstances to be permitted in this country to have the guardianship or care of an English child, for whose maintenance and education there exist any other means of providing, though the child be his own. But that particular question I think it not, in the present instance, necessary to decide, and I wish to be understood as giving no opinion upon it.”

“However this may be, I apprehend that in England a man who holds the opinion that prayer—I mean prayer ✓ in the sense of entreaty and supplication to the Almighty

—is no part of duty ; who considers moreover that there is not any day of the week which ought to be observed as a Sabbath, as a day of peculiar rest, or as one of peculiar holiness, or in a manner distinct from other days, must be deemed to entertain opinions noxious to society, adverse to civilization, opposed to the usages of Christendom, contrary (in the case of prayer at least) to the express command of the New Testament, and, finally, pernicious necessarily in the highest degree to any young person unhappy enough to be imbued with them. I say in England.”

This passage needs no remark, for the final limitation converts the whole reasoning into absurdity ; but I may observe that the Vice-Chancellor is a good deal more straightlaced in his orthodoxy than Saint Paul. We read in Romans (xiv. 5), “ One man esteemeth one day above another ; another esteemeth every day alike. Let every man be fully persuaded in his own mind.”

4. *Refusal of the Evidence of Heretics—Oaths.*—The confusion of ideas that so long covered the question of admissibility of witnesses with deep darkness attests in a remarkable degree the weakness of the human understanding when it is swayed by strong passion. First of all, our judges and writers on law have uniformly assigned, as one of the conclusive and irresistible arguments for religious persecution, that the administration of justice rests upon oaths, and oaths rest upon religion, therefore, to weaken religion is to shake the administration of justice. With more truth it might be urged that it is only the power to punish false evidence with imprisonment that prevents oaths degenerating into an unmeaning farce ; for experience shows that men will habitually take oaths which they never mean to observe, as in the case of so many official oaths, when no temporal punishment is annexed to the perjury.

To refuse the testimony of an unbeliever involved even a more glaring solecism. If an unbeliever dissembled or denied his opinion, the English law accepted his testimony without hesitation or scruple ; but if he openly avowed his opinions, and thereby showed his conscientiousness, honesty, and courage, he was dismissed from the witness

box as unworthy of credence. At last, in the years 1869 and 1870, the grave reproach on our law was removed, and now, in England, although not in Scotland, a solemn affirmation is to be taken instead of an oath by those who were formerly disqualified from giving evidence through defect of religious belief.

III.—RESTRICTION ON FREEDOM OF DISCUSSION IN MORALS.

Recent events in Germany have attracted notice to a subject akin to religious heresy, namely, social or moral heresy. Under the influence of a disgraceful panic, the German Parliament has allowed itself to become the author of a political inquisition. It has sanctioned a law bad in principle, and still worse in respect of the authority by which it is to be carried out. Power has been given to the Executive Government to rob and maltreat all persons guilty of the heresy of Socialism, by which is understood opinions hostile to the existing social institutions, and aiming at a reconstruction of human society in respect of its deepest foundations. The teaching of experience has been ignored, for, if one thing is certain, it is that persecution of Socialist heretics will increase their power, and add to the danger of their error. It may be a gross error to say with Proudhon, for example, that property is theft, or to say, with Mr. Noyes, that the institution of the family is a relic of barbarism; but surely the proper way to deal with their errors is to exhibit the fallacy of their reasoning, and not to knock them down by brute force. Just as improvement in the art of government is impossible without free and unsparing discussion of proposed and actual legislation; just as true views regarding the constitution of the universe and the destiny of man are impossible under a *regimé* of clerical terrorism; just as a scientific knowledge of nature is only possible in a country which freely handles even the most revered names, so progress in morals, an improvement in the conduct of mankind, can only be attained by unqualified freedom in discussing every moral question. If, in a country where polygamy is sanctioned, it is a crime to condemn polygamy, or in a

country where monogamy is established, it is a crime to say anything against monogamy, how is it possible for mankind to change for the better? Whatever reasons exist in favour of political or religious liberty apply with equal force for freedom in the sphere of human conduct or morals.

Yet it is a strange fact, and one not generally known, that so far as the law is concerned, England has the unenviable distinction of anticipating the recent fanatical legislation of Germany. Until within the last year most Englishmen supposed that to preach a moral heresy in this country was even less a crime than to doubt the infallible truth of the XXXIX. Articles. Yet, at the present moment, it is undoubtedly law that any one who publishes a book on any subject that can be comprehended in the vague designation of "morality" does so with a halter round his neck, for if his opinions are unpopular, or if they should happen to differ from those of twelve men picked up by chance and put in a jury box, he is liable to two years' imprisonment with hard labour. The way in which this has come about inspires us with a profound sense of the mystery of the law. The case of blasphemy helps us partially to understand it. Blasphemy, in its popular acceptation, means language insulting to the Deity; by a process of judicial interpretation it was held that it meant any opinions contrary to the generally accepted doctrines of Christianity. The word "obscene," one should think, had a perfectly distinct, not to say a "pungent" meaning; but, inasmuch as all obscenity is contrary to morality, it has been decided by a process of logic, which the students of Aristotle will find it difficult to follow, that whatever is contrary to morality is obscenity. In this way it has now been established that any publication of opinions which a jury may be pleased to regard as contrary to their notions of morality is an indictable offence. We have all great respect for English juries in their right place; but it is hardly the right place for a jury to sit on the chair of infallibility and ape the ridiculous pretensions of the Pope of Rome. It is a subject, I think, of unqualified regret that the new Criminal Code aggravates the mischief of

recent decisions. If that code should become law, the advocates of what may be considered moral heresy may say with truth, that whereas the Common Law whipped them with cords the Criminal Code lashes them with scorpions.

IV.—PERVERTING THE ADMINISTRATION OF JUSTICE.

Heresy may be struck out of the Criminal Law, it may cease to deny to the citizen his civil rights, and there is still room for religious antipathies to cause a miscarriage of justice. I may mention, by way of illustration, the case of *Bradlaugh v. Edwards*, in the Common Pleas, in 1861. The facts were simple. Mr. Bradlaugh had hired a field to deliver a lecture in Devonport, as the public halls in the town had been forbidden to him. The superintendent of the police interfered to prevent the meeting, and finally arrested Mr. Bradlaugh and put him in prison. The next day, Mr. Bradlaugh was brought before the magistrates, and, as there was not even a pretence for the charge of assault trumped-up against him, he was discharged. He then brought an action against the superintendent of police for false imprisonment. The facts were notorious, and even the prejudiced jury who tried the case could not refuse a verdict for Mr. Bradlaugh; but they gave only a farthing of damages, and so compelled him to pay his own costs. Upon that ground Mr. Bradlaugh moved in the Court of Common Pleas for a new trial, as the damages were ridiculously insufficient. Lord Chief Justice Erle, in giving judgment, refusing a new trial, expressed the somewhat strange idea that it was a real blessing to a freethought lecturer to deprive him of his liberty without excuse. Upon the same ground a jury of farmers might think that a ducking in a horse pond was a real benefit to the misguided secretaries of the Labourers' Union. The Chief Justice said, "There are opinions which are in law a crime. . . . If the plaintiff wanted to use his liberty for the purpose of disseminating opinions which were in reality of that pernicious description, and the defendant prevented him from doing that which might be a very pernicious act to those who heard him, it might be that the jury thought

the act of imprisonment was in reality not an injury, but, on the contrary, an act which, in its real substantial result, was beneficial to the plaintiff, and so the nominal wrong would be abundantly compensated by the small sum given."

This brief sketch of the Heresy Laws brings before us one of the most melancholy aberrations of legislation. These laws have caused prodigious suffering, but they never conferred on the human race one iota of counter-vailing advantage. They represent a dead loss to the credit side of human happiness, and the passions which gave rise to them are an unmitigated and unredeemed evil. Black is the guilt of those who have abused their position as the guides and instructors of mankind to plant in the infant mind the seeds of unfounded and irrational hatred, and so have helped to pile up that great mountain of persecution of man's inhumanity to man, which has made countless thousands mourn.



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