

EUROPE EMERGING FROM THE
MIDDLE AGES.

The disorders in the feudal system, together with the corruption of taste and manners consequent upon these, which had gone on increasing during a long course of years, seemed to have attained their utmost point of excess towards the close of the eleventh century. From that era we may date the return of government and manners in a contrary direction, and can trace a succession of causes and events which contributed, some with a nearer and more conspicuous, others with a more remote and less perceptible influence, to abolish confusion and barbarism, and to introduce order, regularity, and refinement. The crusades or expeditions in order to rescue the Holy Land out of the hands of infidels, seem to be the first event that roused Europe from the lethargy in which it had been long sunk, and that tended to introduce any considerable change in government or in manners. It is natural to the human mind to view those places which have been distinguished by being the residence of any illustrious personage, or the scene of any great transaction, with some degree of delight and veneration. To this principle must be ascribed the superstitious devotion with which Christians, from the earliest ages of the church, were accustomed to visit that country which the Almighty had selected as the inheritance of his favourite people, and in which the Son of God had accomplished the redemption of mankind. As this distant pilgrimage could not be performed without considerable expense, fatigue, and danger, it appeared more meritorious, and came to be considered as an expiation for almost every crime.—An opinion which spread with rapidly over Europe about the close of the tenth and beginning of the eleventh century, and which gained universal credit, wonderfully augmented the number of credulous pilgrims, and increased the ardour with which they undertook this useless voyage. The thousand years, mentioned by St. John in the second and third verses of the twentieth chapter of Revelations, wherein it is told that the devil was to be loosed after having been bound for that period of time, were supposed to be accomplished, and the end of the world to be at hand. A general consternation seized mankind; many relinquished their possessions, and, abandoning their friends and families, hurried with precipitation to the Holy Land, where they imagined that Christ would quickly appear to judge the world.

turies, Europe seems to have had no object but to recover, or keep possession of, the Holy Land ; and through that period the armies continued to march thither.

The first efforts of valour, animated by enthusiasm, were irresistible. Part of the Lesser Asia, all Syria and Palestine, were wrested from the infidels; the banner of the cross was displayed on Mount Sion. Constantinople, the capital of the Christian empire in the east, was afterwards seized by a body of those adventurers, who had taken arms against the Mahomedans; and an Earl of Flanders and his descendants kept possession of the imperial throne during half a century. But though the first impression of the crusaders was so unexpected that they made their conquests with great ease, they found infinite difficulty in preserving them. Establishments so distant from Europe, surrounded by warlike nations animated with fanatical zeal scarcely inferior to that of the crusaders themselves, were perpetually in danger of being overturned. Before the expiration of the thirteenth century (1294,) the Christians were driven out of all their Asiatic possessions, in acquiring of which incredible numbers of men had perished, and immense sums of money had been wasted.

But from these expeditions, extravagant as they were, beneficial consequences followed, which had neither been foreseen nor expected. In their progress towards the Holy Land, the followers of the cross marched through countries better cultivated and more civilized than their own. Their first rendezvous was commonly at Italy, in which Venice, Genoa, Pisa, and other cities, had begun to apply themselves to commerce, and had made considerable advances towards wealth as well as refinement. They embarked there, and, landing in Dalmatia, pursued their route by land to Constantinople. Though the military spirit had been long extinct in the Eastern Empire, and a despotism of the worst species had annihilated almost every public virtue, yet Constantinople, having never felt the destructive rage of the barbarous nations, was the greatest as well as the most beautiful city in Europe, and the only one in which there remained any image of the ancient elegance in manners and arts. The naval power of the Eastern Empire was considerable. Manufactures of the most curious fabric were carried on in its dominions. Constantinople was the chief mart in Europe for the commodities of the East Indies. It was not possible for the crusaders to travel through so many countries, and to behold the various customs and institutions, without acquiring information and improvement. Their views enlarged, their prejudices were off, new ideas crowded upon their minds; and they must have been sensible on many occasions of the rusticity of their own manners, when compared with those of a more polished people. These impressions were not so slight as to be effaced upon their return to their native countries. A close intercourse subsisted between the east and west during two centuries; new armies were continually marching from Europe to Asia, while former adventurers returned home, and imported many of the customs to which they had been familiarized by a long residence abroad. Accordingly we discover, soon after the commencement of the crusades, great splendour in the courts of princes, greater pomp in public ceremonies, a more refined taste in pleasures and amusements, together with a more romantic spirit of enterprise spreading gradually over Europe; and to these wild expeditions, the effect of superstition or folly, we owe the first gleams of light which tended to dissel barbarism and ignorance.

The crusades were in a particular manner beneficial to the Italian states. The Venetians made themselves masters of part of the ancient Peloponnesus in Greece, together with some of the most fertile islands in the Archipelago. Many valuable branches of commerce, which formerly centered in Constantinople, were transferred to Venice, Genoa, or Pisa. Thus a succession of events, occasioned by the Holy War, opened various sources, from which wealth flowed in such abundance into these cities, as enabled them, in concurrence with another institution, immediately to be mentioned, to secure their own liberty and independence.

The constitution here alluded to was the forming of cities into communities, corporations, or bodies politic, and granting them the privilege of municipal jurisdiction, which contributed more, perhaps, than any other cause, to introduce regular government, police, and arts, and to diffuse them over Europe. The feudal government had degenerated into a system of oppression. The usurpations of the nobles were become unbounded and intolerable; they had reduced the great body of the people into a state of actual servitude. Nor was such oppression the portion of those alone who dwelt in the country, and were employed in cultivating the estate of their master. Cities and villages found it necessary to hold of some great lord, on whom they might depend for protection, and became no less subject to his arbitrary jurisdiction. The inhabitants were deprived of those rights which, in social life, are deemed most natural and inalienable. They could not dispose of the effects which their own industry had acquired, either by a latter will; or by any deed executed during their life. Neither could they marry, or carry on law-suits, without the consent of their lord. But as soon as the cities of Italy began to turn their attention towards commerce, and to conceive some idea of the advantages which they might derive from it; they became impatient to shake off the yoke of their insolent lords, and to establish among themselves such a free

and equal government as would render property secure, and industry flourishing. Encouraged by their distance from the seat of government of the German Emperors, and other circumstances, the inhabitants of some of the Italian cities, towards the beginning of the eleventh century, began to assume new privileges, to unite more closely, and to form themselves into bodies politic under the government of laws established by common consent.—The rights which many cities acquired by bold or fortunate usurpations, others purchased from the emperors. The great increase of wealth which the crusades brought into Italy occasioned a new kind of fermentation and activity in the minds of the people, and excited such a general passion for liberty and independence, that, before the conclusion of the last crusade, all the considerable cities in that country had either purchased, or had extorted large immunities from the emperors.

This innovation was not long known in Italy before it made its way into France. Charters of community were granted, enfranchising the inhabitants of towns, abolishing all works of servitude, and forming them into corporations or bodies politic, to be governed by a council and magistrates of their own nomination. Much about the same period the great cities in Germany began to acquire like immunities and laid the foundation of their present liberty and independence. The practice spread quickly over Europe, and was adopted in Spain, England, Scotland, and all other feudal kingdoms. The first community of this description formed in Scotland is understood to have been that of Berwick-upon-Tweed, which received its charter from William the Lion. Towns, upon acquiring the right of community, became so many little republics, governed by known and equal laws. The inhabitants being trained to arms, and being surrounded by walls, they soon began to hold the neighbouring barons in contempt, and to withstand aggressions on their property and privileges. The monarchs of Europe, in general, thus found these burgh communities of great service in opposing the overgrown power of the nobility, and, consequently, continued to load them with additional immunities. But another great good, of fully more importance, was produced. These free communities were speedily admitted, by their representatives, into the great council of the nation, whether distinguished by the name of a Parliament, a Diet, the Cortes, or the States-General. This is justly esteemed the greatest event in the history of mankind in modern times. Representatives from the English boroughs were first admitted into the great national council by the barons who took up arms against Henry III. in the year 1265; being summoned in order to add to the greater popularity of their party, and to strengthen the barrier against the encroachments of royal power. I notice this circumstance merely as a matter of history, and leave my readers to draw their own conclusions from an event which ultimately had the effect of revolutionizing the whole framework of society, and of rearing that great respectable body of the people styled "the middle classes."

The enfranchising of burgal communities led to the manumission of slaves. — Hitherto the tillers of the ground, all the inferior classes of the country, were the bondmen of the barons. The monarchs of France, in order to reduce the power of the nobles, set the example, by ordering (1315-18) all serfs to be set at liberty on just and liberal conditions. The edicts were carried into immediate execution within the Royal domain. The example of their Sovereigns, together with the expectation of considerable sums which they might raise by this expedient, led many of the nobles to set their dependents at liberty; and servitude was gradually abolished in almost every province of the kingdom. This beneficial practice similarly spread over the rest of Europe; and in England, as the spirit of liberty gained ground, the very name and idea of personal servitude, without any formal interposition of the legislature to prohibit it, was totally banished.*

* The above paper is little else than an abstract of Dr. Robertson's View of the State of Europe, prefatory to his Life of Charles V.

SCOTTISH NATIONAL INSTITUTIONS.

CRIMINAL LAW.

While the civil law of Scotland possesses few points of similitude to that of England, a difference of the like nature prevails with regard to the criminal jurisprudence of the two nations. — In this branch of the Scottish law certain ancient peculiarities and usages exist which have no parallel in the sister country, or perhaps in any part of the world at the present day. The difference between the two codes may be briefly stated:—In England every possible crime which can be imagined, or which has happened, is met by a statute for its future prevention and punishment; in Scotland, on the other hand, while there are numbers of crimes similarly met by particular legislative enactments, a far greater proportion are dealt with, as they occur, on general principles—thus, the one is called the Statute Law, the other the Common Law, and both are the boast of the same nations to which they respectively belong. From what I have remarked of the observations of English writers on the criminal law of Scotland, it appears that few understand it thoroughly, and that they are generally ignorant or regardless of many local usages and moral characteristics of the people which influence its operation. Under the Statute Law, every man is well aware of his dangers, when under temptation to commit a misdemeanour, and he may approach the very verge of crime with impunity, even while

actually transgressing the moral law. With us, on the contrary, no man may leave the path of rectitude with the expectation that he is safe, and consequently he is wary in entering an enclosure in which he may in a moment be surprised. To judge fairly of the properties and value of the two opposite codes of law pointed out, it would be necessary to bring both into view collaterally with the other institutions of the country; for by doing so, it would be found that the mischief of the too scrupulous regard to statutes on the one side, and an apparent danger in the dispensation of general law on the other, were in a great measure neutralized by minute provisions, not seen until the forms are nearly examined. This is more observable in the Scotch than the English law, and a comparison of their merits would incline me to prefer the former, on the score not only of vigour, but humanity. The criminal statute law of England is allowed to be sanguinary, and, I am afraid, it is very elusory. Besides, even granting that its alleged minuteness might be beneficial to its unintelligibility, from a concourse of enactments, many hundreds of which have been rescinded, extended in their meaning, or obscured by others more recent, render the whole one of the most contradictory and useless codes of jurisprudence in the world.

In the most obvious mischief in the statute law, is the permission it gives to commit new offences, as well as an allowance to go within a hair-breadth of an actual infraction of old ones; thereby confusing ideas of right and wrong. Hume, a popular Scotch writer on criminal law, points out the superiority of the common, over the statute law, in these words:—"An incipient desire to commit crime in Scotland "is expressed in its beginning, and more effectually than it can ever be by any statute; because all statutes are liable to be partial and defective in their description of offences; and thus the transgressor finds the means of eluding the sanction, and the law itself falls into contempt. But it is also a merciful course to the offender; because the crime being censured on its first appearance, and before it has become flagrant or alarming to the community, is restrained at that season by far milder correctives than are afterwards necessary to be applied to it, when the growing evil has come to require the passing of an express law in its behalf. Thus in England, the sending of incendiary or threatening letters is punished with death, in virtue of certain statutes which passed at a time when this sort of wickedness prevailed. But our judges punished the first offender of this sort (whose trial was within these fifty years) with transportation; and it has never been found necessary to seek authority of any higher or more rigorous punishment. The same is true with regard to the corruption or alterations of bills, promissory notes, and the like, to the prejudice of the acceptor, which by certain statutes is felony without benefit of clergy in England, and is punishable with us at common law with transportation. Many other examples might be given. In short, it things are to be judged of upon the testimony of experience, and not according to the fallacious conjectures of human wisdom before the event, the inhabitants of Scotland have no reason to envy the condition, with respect to the administration of criminal justice, of any other part of Europe."

Though this eulogium on the superiority of Scottish criminal law be correct, in solar that in many cases a leniency is exercised in Scotland, which would not have taken place in England under like circumstances, it is but justice to say, that there could likewise be produced evidence where undue severity, according to the laprice of judges, has been inflicted. In the case, if we examine the conduct of judges in recent times, and bring to remembrance some particular subsidiary checks which frustrate the malignity of predatory law have not much to regret, that the criminal law is so ill defined in its provisions. It is confessed, that at one period, that too not of a distant date, the will of judges, aided by the dependent character of juries, and the trammels under which the press laboured, tended to lower the respectability of our criminal jurisprudence; but I am strongly inclined to think, that a very different line of procedure would in the present time be adopted.

Whatever may be the expression of the states in reference to particular crimes, it is a certain fact, that in almost all cases of misdemeanour or infraction of the laws, the character of the culprit sways both the public prosecutor and the minds of the judges. On many occasions, neither have it in their power to do otherwise than apply the exact punishment, or to divert the regular course of justice, leaving the mitigation of the penalty to his Majesty; but more ordinarily they have it in their power to modify the asperity of the law, according to circumstances. The chief guiding legal principle in a Scottish criminal prosecution, is the strict attention which is paid to the former good or bad character of the accused. The English statute law in some instances provides a higher degree of punishment for the commission of a crime for the second time; but in bringing an individual to trial, it does not rest any plea upon his having been simply a bad character, either supposed or established; and this acts as a slight check to the general severity of the law. In being subjected to a criminal prosecution in Scotland, the law acts very differently. When an accusation is laid for a specified crime, accompanied with the charge of being "habit and repute" an evil doer, the indictment rises prodigiously in value, and the punishment is inflicted with a rigour, which in a case without such an aggravation would be entirely unknown. To be habit and repute a thief or other felony, was at one time a most dangerous property. It could have formed the sole ground of indictment, and, if proved, might have been punished by securing, imprisonment, and even transportation from the kingdom. It has long since been disused on these unduly severe terms, and now acts only as an aggravation of the special charges.

The law of habit and repute has been denounced by various writers as ungenerous, and the mention of such a singular mode of making up a charge may perhaps excite the contempt of a stranger; but really, though apparently mischievous at first view, it seems on all occasions to be used to great advantage in clearing

society of only its worst characters. In no case is it stretched to the extent of depressing a criminal, who may have in former times been known to live a course of iniquity, and after taking himself to an honest mode of life for some years, again relapsed into crime. It is only applied to those who are caught in the midst of their career of wickedness, and have been a torment to society. It has the incalculably beneficial effect of raising a distinction between the hardened ruffian, and the unfortunate poverty-propelled infinger of the laws for the first time,* although both be charged with the commission of nominally the same crime.

English criminal statutes are often very explicit in regard to the penalty to be incurred by stealing articles of a particular value—raising the punishment in proportion as the price rises in amount. The law of Scotland makes little or no difference in the degree of punishment to be inflicted on this score. When a larceny is committed to the extent of thirty shillings, the penalty will be as severe as if it were to the amount of forty shillings, or forty pounds. On this account, that species of ridiculous straining of counsel in England, to make it appear on trial that the value of goods stolen was beneath a certain amount, is never witnessed in this country. It is the characteristic of habit and repute which here as every where else regulates the penalty; and it may often have occurred, that while one man, who has been charged with stealing forty shillings' worth of goods, has been only doomed to three months' imprisonment, another, for larceny of twopence, has been transported, or even hanged. The charge of stealing a pair of old shoes, of threepence in value, as a witty writer notices, and with being at the same time habit and repute a thief, if proved, would bring the prisoner by law to the gallows, when without this qualification a very modified degree of punishment, such as a few days' imprisonment, would be inflicted. In practice, such cruelty is avoided by the temperate and adroit management of the public prosecutor, who uses his discretion in restricting the penalty; and so happily is this generally done, that in Scotland, none but the most desperate criminals, in whom no redeeming property can be discovered, are put to death on the scaffold.

* There was once a curious merciful peculiarity in the Scottish law, by which any person in a famishing condition, or in the state of general destitution, could eat with impunity as much food as he could carry away on his back ; and which usage is noticed by institutional writers under the name of the law of burdinesack or burthynsack. It has been long completely in desuetude, but it is nevertheless remarkable, that many of the lower orders of the people have still an idea that persons dying for lack of food may help themselves from the store of others by force, without incurring a judicial penalty.

ROADS IN SCOTLAND.

Mr. Buchanan, civil engineer, has just published a very clear and ably written account of the railways of the West of Scotland, in connection with four views, by Mr. D. O. Hill, of the opening of the Garnkirk Railway. From this work we derive the following notice of former modes of communication in Scotland:—

Scotland, the progress of improvement, though rather late in beginning, has advanced with extraordinary rapidity, and is now keeping pace with her richer neighbour. It is scarcely a century since there was nothing deserving the name of a road in any of our great thoroughfares; the whole inland trade of the kingdom was carried on by means of packhorses; and persons are still alive who remember perfectly the carriers between Edinburgh and Glasgow going regularly with five or six horses in a train; and so narrow was the track, that the leading one had a bell at his head, to give warning of their approach to the party travelling in the opposite direction, that the one might have time to get out of the way while the other was passing. In this manner they jogged along, over all the inequalities of the country, through which the road passed, and fording the different rivers and streams, on which bridges were yet unknown. Carts were then only used in the metropolis or principal towns, and coaches or carriages rarely in the country, travelling being almost universally performed on horseback. In many parts, particularly in low and wet grounds, the roads or tracks were often impassable. The late Lord Hermand used to relate, that, when he was first sent to Edinburgh College from Ayrshire, about 1760, the road was in such a state that, in some places, servants were dispatched beforehand with poles to sound the depth of the mosses and bogs which lay in their way. [Mr. Buchanan might have added that, when John Earl of Loudoun was sent to Edinburgh, a boy, about 1780, he travelled with his baggage in a pair of panniers across a pony's back; himself in the one pannier, and his baggage in the other.] Wretched as internal communications seem to have been, they fully kept pace with the progress of trade and intercourse throughout the country. The mail was dispatched regularly between Edinburgh and London on horseback, and went in the course of five or six days; but so little communication was there between the two capitals, that, as I have heard related on unquestionable authority, during the time of the rebellion of 1745, when an order came down from London to open all the letters in the Post-Office, with the view of detecting treasonable correspondence, there were not, altogether, above twenty in the London bag—such was the low state of trade and business, the true cause of the backward state of the roads, and, of all the other accommodations which distinguish a rich and improving country. [It is perhaps worth mentioning also, that, at the commencement of the civil war, an interchange of diplomatic correspondence between Edinburgh and London never occupied less than a month, although it must be admitted that the news of the death of Queen Elizabeth, which was brought from London to Edinburgh between a Thursday morning and Saturday night, by Sir Robert Carey, on horseback, was a wonderful instance of what could sometimes be done even in those times. In the decade of 1750-60, a coach travelled from Edinburgh to London, occupying a fortnight except one day—that is, from Monday morning to the Saturday at the end of the succeeding week—the intervening Sunday being spent tranquilly at Boroughbridge in Yorkshire, where, we suppose, the travellers went decently to church along with their landlord. In those days the Post Office was kept in a flat in the Parliament Square, and, according to the recollection of the late Henry Johnstone Wylie, Esq. who died two years ago, there was but one letter-carrier.] About the year 1770, roads were so much amended, that carts had come into general use, particularly on farms, and in driving grain to market. With these one horse might draw five or six hundred weight to market, while the packhorses could only carry three. In the year 1790, the construction and management of the roads began to excite great public attention, and improved lines were formed in all parts of the country, and constructed of better materials;