Principles of Penal Law.

The mutual dependence of mankind on each other is necessary for their mutual preservation; and the consciousness of this necessity is in the first formation of Societies, the instinctive principle of union. but reason cooperating with instinct points out the insufficiency of a ~~pastoral state~~ State merely appearing, the unlimited enjoyments of individuals are found incompatible with the existence of a collective body; rules of conduct are introduced, and the moral duties of benevolence, justice, and adherence to agreements, become as much acknowledged, as they are essential to human happiness.

Here then commences the obligation of Civil Laws; appetite ceases to be the sole motive of action, power the measure of property, and the natural herd is refined into a political government. Legislation is instituted, Magistracies are established, and Punishments are appointed by the common consent of all, for the benefit of all.

Thus Civil Liberty is formed by the ~~conjunction of~~ collecting together those portions of natural Liberty given up by the constituent members of Society; but this effect is not instantaneous, the infancy of civilization is tedious, and its progress towards maturity subjected to many difficulties. Private resentment and the pursuit of private satisfaction, are at first the sole objects of criminal process; and the offended party is his own avenger. The general dispensations of Law, and the rendering the injuries of individuals punishable as such by the Society at large were of much later date, owing to its being opposite

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to the most active propensities of human nature, though founded in reason.

How far the authority of Legislative regulations may be carried, and how far the obedience of the subject is demandable, are rather curious than useful questions, in an age when modern Governments are so temperate.

As to the more confined question, to what degree punishments may be carried; it may be sufficient to appeal to the unwritten Law of God imprinted on the heart of Man; to that natural sympathy better felt than expressed, which forbids the giving unnecessary pain to each other.

State punishments are to be considered as founded on and limited by natural Justice, and public utility, in the pursuit of which Wisdom and Mercy should go hand in hand.

The prevention of crimes ought to be the great object of the Lawgiver; the end of penal Laws is to deter not punish.

The severity of the penalty ought not to be augmented in proportion to the increase of the temptation, which is a cruel and mistaken policy.

The punishment should be proportioned to the flagitiousness of the crime, but this flagitiousness diminishes in proportion to the facility with which it may be committed; for that facility in general constitutes the degree of the temptation.

This opinion is contradictory to the most ingenious and elegant writer on the Law of England.

But it is not meant to infer that the penal sanction relative to every particular offence should be mitigated in proportion to the facility with which that offence may be committed.

Political

Political wisdom is the result of experience rather than of theory, and the emergencies of Society make it expedient in some cases to place great severities in opposition to the strongest temptations, in others to punish the offence without any research into its motives.

The safety of the Public is the supreme Law of policy; and when the Legislature from necessity deviates in any degree from the principles of justice and humanity, it is occasioned, by the imperfections of our own natures, but the principles of justice and humanity are unchangeable, to those appeal is made when controverting a position which if generally established must lead to sanguinary and cruel consequences