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SIR JAMES MACKINTOSH.

[It may seem strange, and to some even inconsistent, that while we profess Tory principles in politics, we speak occasionally in terms of high commendation of men who are Whigs. We have explained our principles of action in this regard, in the foot-note to our personal sketch of Mr. Denman. The fact is, that enjoying as we do, occasional personal intercourse with the leading men of every party in the state, we could not, if we would, indulge in that mean malevolence, which makes a man's political principles an excuse for maligning his motives, or blackening his private character. The information in the following sketch may be relied on as authentic and original; it is derived from one of the highest law authorities in England.—ED.]

Few men have appeared before the world in so many different characters, as the subject of this sketch, and fewer still have engaged in pursuits so varied and so opposite, achieving in each, success so striking and triumphant. To pourtray the character of a mere lawyer, be he ever so eminent, might be an easy matter; on he moves in the beaten track, believing it to be perilous to his interests to swerve from the accustomed course, and dangerous to his black-letter reputation, to aspire to aught beyond the easy reach of mediocrity, affecting to despise that superior excellence to which he must despair of being ever able to attain. The task is different when we approach a man distinguished as an author, a senator, an orator, a philosopher, and a judge. The fame which Sir James Mackintosh has acquired in any one of these pursuits, might be enough to swell the pride, or satisfy the ambition of an ordinary man. The utmost which can be given in these pages, is a mere outline of his character; to do ample justice to his merits will be the duty of the biographer, for whose labours on a comprehensive scale, the life of this eminent person will supply abundant materials, and long may it be before he is called upon to use them.

Sir James Mackintosh was educated at Edinburgh, and brought up originally to the medical profession; it is a remarkable circumstance, that the first production of his pen which attracted notice, was a medical thesis delivered by him fifty years ago. My legal readers would doubtless be startled at the idea of devoting some years to the acquisition of medical knowledge, as an introduction to the lighter study of the law. There is little fear of the practice becoming general.—Fortunately for his fame, he abandoned the medical profession, and directed his attention to legal studies. He had a small patrimony, but no powerful friends to force his progress up the hill of fame and honor. This was, perhaps, the most lucky circumstance in his life; rank and wealth often produce the worst effects on the understanding: they remove that necessity, which is, after all, the great stimulus to severe and incessant mental labour; the education, also, which men of high rank generally receive, teaches them to rely upon the assistance of others, rather than on the vigorous exertion of their own faculties.—The pernicious effect of this, is strikingly exemplified in the writings of our fashionable authors, who, as if afraid or incapable of thinking boldly, endeavour to gratify their own vanity, and the prurient curiosity of the public, by witless satires on “men and manners,” expressed in the mawkish language of affectation: they write but little worthy remembrance, much less of being compared with the hardy productions of experience and adversity. Great occasions call forth great men;—the period of the French revolution, teeming with astonishing events, af-

forded an ample field for the exertions of genius. Edmund Burke, "clarum et venerabile nomen," stemmed the torrent of revolutionary fury, which threatened in its destructive course, to sweep away whatever was sacred and venerable upon earth;—his reflections seized at once the attention of mankind: they achieved what armies could not accomplish, for they worked a counter-revolution in the minds of men. Political adversaries branded the "Reflections" with the epithet "declamation;" but the public were more convinced by the strength of his reasoning, than dazzled by the splendour of his diction. To enter the lists against an opponent such as Burke, required courage and ability rarely to be met with. Sir J. Mackintosh, then unknown, grappled in the troubled waters of politics with the giant of literature, and escaped from the struggle, not only without defeat, but with success. The "*Vindiciæ Gallicæ*" evinced an honest and a manly purpose; the opinions of Burke were controverted with eloquence and spirit, and the cause of the revolution defended with consummate boldness. It is high praise to say, that when the "Reflections" and the Reply are perused in succession, the reader would scarcely suppose the production of an inferior man.* The successful reception of the work, raised his name, and obtained for him a character and literary reputation. About that time there existed a debating club in London, of which the present attorney-general and Mr. Perceval were members. Captivated by the *Vindiciæ Gallicæ*, Sir J. Scarlett sought the acquaintance of Mackintosh, and introduced him as a member to the society; he thus had the merit of bringing him into contact with some of the most eminent men of the day.† Mackintosh now became a public man, increasing daily in character and reputation, and of literary fame he appeared to be most covetous. His intimate acquaintance with the ponderous volumes of the continental writers on jurisprudence, and his knowledge of international law, so extensive and minute, he resolved to communicate to the world in the popular shape of lectures; and with this purpose delivered an introductory discourse on the law of nature and of nations, which for clearness of reasoning, and beauty of language, has rarely been surpassed. The characters and pretensions of the different writers on this interesting but neglected science, were discussed with calmness and ability, and the temperate philosophical

* Prior in his life of Burke, alluding to the different replies published to the Reflections, observes,—“The *Vindiciæ Gallicæ* alone, was the production of a more sober inquirer, a scholar and a gentleman, who, though he then wrote upon politics with the dim flickering light of a closet philosopher, has since learned to judge and to act in a more practical spirit, chiefly by the teaching of that very master, whom he had ventured to oppose. Even from the first, however, he exhibited the confidence in himself of one who could afford to be at once bold and liberal in his opposition to the great orator,—who could advocate what he thought freedom to others, without madly assailing the foundations of our own,—such a man was, and still is, Sir James Mackintosh, a statesman of the first class, who if not at the head of the party with whom he has so long and so vainly laboured, is certainly not justled from it, by any thing like superiority of mind among its more acknowledged leaders.”

† Of Sir J. Scarlett it may be mentioned, that he has ever cultivated with assiduity the society and friendship of the most scholarlike members of the bar, by whom his abilities could be best appreciated, and his interests most readily promoted. Through the same channel Mackintosh obtained a seat in the legislature, and undoubtedly it redounds to the honor of Sir J. Scarlett, that at a time when he could not possibly have been influenced by any sordid motive, he exerted himself on behalf of one known to him only by his integrity and genius.

spirit which it breathed, proved that truth alone could have been the object of the author. Of the elegance of his descriptive powers, some idea may be formed from the eulogium which he pronounces upon the founder of his favourite science:—"So great is the uncertainty of posthumous reputation, and so liable is the fame even of the greatest men to be obscured by those new fashions of thinking and writing, which succeed each other so rapidly among polished nations, that Grotius, who filled so large a space in the eye of his contemporaries, is now perhaps, known to some of my readers only by name. Yet, if we fairly estimate both his endowments and his virtues, we may justly consider him as one of the most memorable men who have done honour to modern times. He combined the discharge of the most important duties of active and public life, with the attainment of that exact and various learning, which is generally the portion only of the recluse student. He was distinguished as an advocate and a magistrate, and he composed the most valuable works on the law of his own country; he was almost equally celebrated as an historian, a scholar, a poet, and a divine, a disinterested statesman, a philosophical lawyer, a patriot who united moderation with firmness, and a theologian, who was taught candour by his learning. Unmerited exile did not damp his patriotism; the bitterness of controversy did not extinguish his charity. The sagacity of his numerous and fierce adversaries could not discover a blot on his character, and in the midst of all the hard trials and galling provocations of a turbulent political life, he never once deserted his friends when they were weak. In times of the most furious civil and religious faction, he preserved his name unspotted, and he knew how to reconcile fidelity to his own party, with moderation towards his opponents." That Mackintosh did not publish his series of lectures has been matter of universal regret; no man was so competent to do justice to the subject, for like Sir William Jones "regarding the law as a science, he commenced the study of it on a wide and liberal scale. He compared the systems of ancient times with those of modern adoption, and with infinite labour he examined and collated the various codes of modern Europe." Sir William Jones had formed the plan of writing a treatise on each separate subject of the law of England, filling up the sketch which Blackstone had so ably traced. His incomparable *Essay on Bailments*, may possibly be rivalled, but can never be excelled. Had these enlightened men accomplished their intentions, doubtless they would have given to the world works, almost worthy of being ranked with the *immortal productions* of Messrs. Archbold and Tidd. Scholarlike lawyers are growing into disrepute; the knowledge of cases is substituted for the knowledge of principles, learning is now an unnecessary and dangerous acquirement, and a character for oratory renders a man suspected by the attorneys. The works of science are forsaken for the books of practice, and an apprenticeship with a pleader is the surest road to ambiguous fame. The necessity, however, of a liberal education is still ably maintained by one who unites in his own person, a profound knowledge of the law, with the polite accomplishments of the scholar.*

* "The object of a lawyer's acquaintance with the abstract sciences, and the writers of antiquity, is to learn to think with propriety, and to act with magnanimity, in the circumstances of life in which his profession may place him, and to acquire the art of expressing his sentiments with precision, simplicity and good taste. It is not to excel in the legerdemain of the analyst, or to acquire a pre-eminent knowledge of tongues. . . . Constituted as the system of acedemical education at present is, the future lawyer is employed at the university during

Pitt was present at Sir James Mackintosh's celebrated introductory lecture, and is believed to have offered him the recordership of Bombay in consequence. This appointment coming from Pitt gave great distaste to Perry, (the late editor of the Morning Chronicle,) and Doctor Parr, who vented his spleen by spreading a foul calumny against the character and honour of Sir James Mackintosh. His memorable reply to Sir James, when indiscreetly vehement in his denunciations of O'Quigley, who was tried with Arthur O'Connor, and executed for high treason, shows the feeling he must have entertained towards him. "Sir," replied this unceremonious disciple of the Johnsonian school, "he was a priest, he *might* have been a lawyer; he was an Irishman, he *might* have been a Scotchman; he was a traitor, he *might* have been an apostate." When, on Sir James's return from India, he was offered a place in the ministry by Perceval, and refused it, principally on the ground of the catholic question, Parr warmly admired him for his honesty, and regretted what he had said and done against him. And thus it is with other men as well as Doctor Parr; to gratify a pique, or their own groundless prejudices, they do not hesitate to asperse the purest character, and afterwards endeavour to atone for their insolence and falsehood, by a late and unavailing repentance. The subject of this sketch, though frequently employed before committees of the house of commons, on election cases, never enjoyed extensive practice, or high reputation as a lawyer; though unacquainted with important practical details, he was, no doubt, intimately conversant with the history and principles of our law. His mind delighting in wide and expanded views, fitted him rather to discharge the nobler duties of an enlightened senator, than for the employments of a practising barrister. His reply to Burke acquired for him so much popularity and fame, as to induce Peltier, a French refugee, when prosecuted, in 1803, for a libel on Buonaparte, to select him as his counsel. This was exactly the subject suited to the development of Sir James Mackintosh's peculiar talents; he seems to have been on the look out for such an opportunity, and to have been prepared for a display whenever it might occur.

It was, upon the whole, splendid; not as a speech, but as an essay:—he showed a deeper knowledge of politics than of law; took a comprehensive survey of the conditions of the different states of Europe; describing, in animated colours, the horrors produced by the grasping ambition of the French, and the enormity of their offences against the liberties of mankind. Peltier was totally forgotten: it was not the advocate who spoke, but the statesman who delivered a lecture. Unlike the vivid appeals of Curran—who never, in the moments of his highest excitation, forgot the interests of his client; never wandered merely to embellish, and who contrived to make his illustrations more touching than his sober eloquence, and more convincing than his arguments; *he* held up the subject closely to the minds of his jurors, and, as truth and nature prompted, endeavoured to delight, to terrify, or to

the period of life usually spent there, in a manner infinitely more advantageous, than in the receptacles of an attorney's, or a special pleader's office, where the arts of litigation, and not the precepts of justice are inculcated. In the universities, the student will find leisure and encouragement to prepare himself for the exercise of his profession, by climbing up to the "vantage ground," so my lord Bacon calls it, of science, instead of grovelling all his life below, and finishing his mean though gainful career, by ultimately attaining to the character of the pettifogger, described by Cicero, 'Leguleius quidam cautus, et acutus præco actionum; cantor formularum, auceps syllabarum.'—Note to Fortescue, by professor Amos.

persuade. He was infinitely superior to Mackintosh, as a forensic orator, though inferior to him as a writer of essays; he would not have dragged the jury round the world, requiring them to examine into systems of government, and to discuss their relative merits, with metaphysical nicety; but would have bound them to their own country, and fastened their attention upon scenes near at hand, daily and hourly passing around them. The English bar are, by no means, unanimous in thinking that Sir James's celebrated oration, was judicious; they seem to think that his desire for display operated injudiciously to the interests of his client. That many of the descriptions, as, for example, his narrative of the invasion of Switzerland, are beautiful, no man of taste or feeling would venture to deny. It should likewise be remembered, that Lord Ellenborough, the presiding judge, a man of as large mind, and as correct taste, as ever did honor to the English bench, and who never indulged in false and unmeaning compliments, pronounced the highest eulogium on this speech. The concluding passage, more than any other, was calculated to rouse the feelings, and the pride of Englishmen—It was as follows:—

“ In the court where we are now met, Cromwell twice sent a satirist on his tyranny to be convicted and punished as a libeller, and in this court, almost in sight of the scaffold, streaming in the blood of his sovereign, within hearing of the clash of his bayonets, which drove out parliaments with contumely, two successive juries rescued the intrepid satirist from his fangs, and sent out with defeat and disgrace the usurper's attorney-general, from what he had the insolence to call *his court*!— Even then, gentlemen, when all law and liberty were trampled under the feet of a military banditti; when those great crimes were perpetrated on a high plan and with a high hand against those who were the objects of public veneration, which more than any thing else upon earth, overwhelm the minds of men, break their spirits, and confound the moral sentiments, obliterate the distinctions between right and wrong in the understanding, and teach the multitude to feel no longer any reverence for that justice which they thus see triumphantly dragged at the chariot wheels of a tyrant;—even then, when this unhappy country, triumphant indeed abroad, but enslaved at home, had no prospect but that of a long succession of tyrants wading through slaughter to a throne; even then, I say, when all seemed lost, the unconquerable spirit of English liberty survived in the hearts of English jurors. That spirit is, I trust in God, not extinct: and if any modern tyrant were in the drunkenness of his insolence, to hope to awe an English jury, I trust and believe that they would tell him: ‘ Our ancestors braved the bayonets of Cromwell, we bid defiance to yours. *Contempsi Catilinæ gladios, non pertimescam tuos!*’ ”

The prophetic mind of Burke, whose knowledge of history amounted to a power of predicting the future, had foretold that the government of France would be seized on by a military tyrant, and that the liberty of the world would be assailed; it might have occurred to Sir James, that when detailing, in nervous language, the rapid strides made by the French to severe and universal despotism, in contempt of the faith of nations, and the eternal principles of justice, he was pronouncing the best reply to the *Vindiciæ Gallicæ*, and coinciding in the justness of the views entertained by his mighty opponent.

His judicial situation was uncongenial to his mind, and he considers the time spent in India as lost to his literary life. Upon his return to England, he was offered the chair of moral philosophy in Edinburgh, now held by professor Wilson: this honorable employment he declined to accept; preferring rather to indulge his parliamentary ambition, and unwilling to resign the homage that was paid to him at Holland house, for the charms of his conversation. It is, however, considered by most people, and, I believe, by himself, that the chair of moral philosophy

would have been the station in which his abilities would have shone forth most conspicuously: there he might have displayed to a willing and attentive audience, the stores of his learning, the variety and exactness of his knowledge.* Probably he may fail in doctor Lardner's work, where the light and entertaining, such as the Tales of my Grandfather, are more requisite than the speculative and profound.

His parliamentary career has been alike honorable to himself, and beneficial to his country. Although he has been stigmatized as a renegade, I have been unable to discover that by any act of his political life he ever deserted the party, which, in his youth, he had espoused.

His most honest and persevering efforts to improve the criminal law, have gained for him the approbation of all impartial men. Actions are better than words; and the repeal of one obnoxious law, or the enactment of one useful measure, will more certainly ensure a lasting reputation, than whole volumes of speeches, be they ever so brilliant and imposing. He followed the course marked out by the illustrious Romilly, and has enjoyed the exquisite satisfaction of living to behold the triumph of his principles, and to reap the reward of his long and meritorious exertions. And when extravagant eulogiums are lavished on Mr. Peel, it ought, in justice, to be remembered, that by the unwearied efforts of Romilly and Mackintosh, public opinion was brought to bear upon the subject, and to demand wise reforms, which could no longer, in safety, be withheld. The minister who employs his power to satisfy the public voice, deserves high praise; but the highest praise is due to the men of superior genius, who first commenced the struggle against prejudices almost inveterate, and errors consecrated by antiquity, striking out the path to a wise and moderate reform of a vicious system, into which men of more humble pretensions, might venture, without the hazard of going far astray.†

It has been the practice to extol Sir James Mackintosh as a parliamentary orator; but if we are to judge of a speaker by the effect which he produces, he cannot be ranked amongst those of the first class. Sir James does not make that impression upon the house, which, from his talents and experience, one might be led to expect. His speeches in parliament are too philosophical; he states qualifications, and limitations, instead of taking a superficial, but direct and more intelligible view of questions. The members regard him as one who comes down to teach them, and are displeased with his declamatory style, his pompous delivery, and swelling diction. They consider that he has provided himself with a speech well conned over, and committed to memory, and which, at all hazards, he is determined to inflict upon them. Constituted as the house of commons now is, it must appear almost miraculous, that Sir James Mackintosh is not more highly prized for his senatorial eloquence—no man in the house has more various and extensive knowledge; and no man prepares more sedulously on the subject under discussion: and when it is remembered that Sir Robert Peel is said to be an orator, that Mr. Goulburn, particularly,

* Metaphysics have been his favourite study; and his preface to a volume of the Encyclopædia, after the manner of Dugald Stewart's preface, relative to the progress of moral philosophy, in this country, is considered, by competent judges, to be the best thing he has ever done. This preface is not yet published; forty copies only having been distributed.

† Every one has heard the *mot* of the witty member for our university, that Mr. Peel is "an excellent person for perceiving the necessity of repealing statutes that make it felony to associate with Hebrews."

is allowed to stammer on, and that Mr. Banks is cheered by those whose only eloquence consists in the repetition of the words "hear him, hear him," the rank of Demosthenes should be allotted to the subject of this sketch. However, in the language of the lawyers, we have *precedents* for the comparative failure of greater men than Sir James Mackintosh; *Burke was not listened to*; he had even the sobriquet of the dinner-bell, because there was a general rising to depart when he began to speak—this speaks volumes as to the capacity and judgment of the then "collective wisdom" of the nation, demonstrating a proposition that the most credulous might be disposed to doubt, namely, that towering genius, extraordinary learning, and unrivalled powers of language, are not necessary to the formation, and may be prejudicial to the fame of a parliamentary orator. The senators want facts, and have not time to investigate metaphysical subtleties: in the way of facts, they can taste the most exquisite enjoyment in listening to Mr. Hume; *he* can always inform them of the exact price of soap, leather, beer, and candles, and will not offend their ears by grammatical accuracy, by elegance of language, or any troublesome philosophical reflection. Posterity, however, does justice to the merits of men; the people who refused to listen to Burke, are all forgotten, as they ought to be, while *his* fame will be had in everlasting remembrance.

In personal appearance Sir James Mackintosh is plain; of the middle stature; neither dignified nor commanding; his voice is a little harsh, and his accent still savours of the Scotch; he speaks with emphasis and clearness; his action is graceful, and, for so old a man, surprisingly energetic. Those who heard him denouncing Don Miguel, were convinced that his advancing years have not weakened his intellect, nor deprived him of the fire and eloquence of youth; that he can still feel warmly, and speak strongly; and that his heart beats high as ever with honest indignation, in exposing the offences, committed by the great villains of the world, against the liberties of mankind. Sir James Mackintosh has adhered with fidelity to his party—no small merit in these days of political tergiversation. Had he chosen to forsake the friends of his youth, and to join the treasury bench, he would, doubtlessly, have been received with acclamation, and loaded with favours.

He enjoys, as might be expected, the most enlightened society in England; his conversation is neither declamatory nor dictatorial; he makes no parade of his learning; his temper is cheerful, and his manners mild and unassuming.

The scenes in which he has borne a part, will perpetuate his name; a name endeared to us by the recollection of those who were the friends and rivals of his youth; men who, in sober earnest, have no equals now—the strength and logic of Pitt, the energy of Fox, the brilliancy of Sheridan, and the sublimity of Burke, are no where to be found—"the age of sophists and calculators is come." Sir James Mackintosh, verging towards the age of "three score years and ten," may well be pronounced *ultimus Romanorum*, the last of the illustrious men who instructed senates, enlightened nations, and dazzled mankind by the splendour of their genius. His political opponents, considering him merely as an author and a scholar, will find enough in his character to honor and admire.