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ANNUAL REPORT

OF THE

AMERICAN HISTORICAL ASSOCIATION

FOR

THE YEAR 1891.

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WASHINGTON:
GOVERNMENT PRINTING OFFICE.
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LETTER OF SUBMITTAL.

SMITHSONIAN INSTITUTION,
Washington, D. C., June 7, 1892.

To the Congress of the United States:

In accordance with the act of incorporation of the American Historical Association, approved January 4, 1889, I have the honor to submit to Congress the annual report of said association for the year 1891.

I have the honor to be, very respectfully, your obedient servant,

S. P. LANGLEY,
Secretary Smithsonian Institution.

Hon. LEVI P. MORTON,
President of the Senate.

Hon. CHARLES F. CRISP,
Speaker of the House.

ACT OF INCORPORATION

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Andrew D. White, of Ithaca, in the State of New York; George Bancroft, of Washington, in the District of Columbia; Justin Winsor, of Cambridge, in the State of Massachusetts; William F. Poole, of Chicago, in the State of Illinois; Herbert B. Adams, of Baltimore, in the State of Maryland; Clarence W. Bowen, of Brooklyn, in the State of New York; their associates and successors, are hereby created in the District of Columbia a body corporate and politic, by the name of the American Historical Association, for the promotion of historical studies, the collection and preservation of historical manuscripts, and for kindred purposes in the interest of American history and of history in America. Said association is authorized to hold real and personal estate in the District of Columbia so far only as may be necessary to its lawful ends to an amount not exceeding five hundred thousand dollars, to adopt a constitution, and to make by-laws not inconsistent with law. Said association shall have its principal office at Washington, in the District of Columbia, and may hold its annual meetings in such places as the said incorporators shall determine. Said association shall report annually to the secretary of the Smithsonian Institution concerning its proceedings and the condition of historical study in America. Said secretary shall communicate to Congress the whole of such reports, or such portions thereof as he shall see fit. The regents of the Smithsonian Institution are authorized to permit said association to deposit its collections, manuscripts, books, pamphlets, and other material for history in the Smithsonian Institution or in the National Museum at their discretion, upon such conditions and under such rules as they shall prescribe.

[Approved, January 4, 1889.]

LETTER OF TRANSMITTAL.

AMERICAN HISTORICAL ASSOCIATION,
Baltimore, Md., June 4, 1892.

SIR: In compliance with the act of incorporation of the American Historical Association, approved January 4, 1889, which requires that "said Association shall report annually to the Secretary of the Smithsonian Institution, concerning its proceedings and the condition of historical study in America," I have the honor to transmit herewith my general report of the proceedings of the American Historical Association at the eighth annual meeting, held in Washington, D. C., December 29–31, 1891. In addition to this general summary of proceedings I send also the inaugural address of President William Wirt Henry, on "The Causes which Produced the Virginia of the Revolutionary Period," together with some of the papers read by members of the Association, including one by Prof. Jameson on "The Expenditures of Foreign Governments in Behalf of History," one by Prof. Moore on "The United States and International Arbitration," and an exhaustive review of Parliamentary Government in Canada, by Dr. Bourinot; also a bibliography of published writings of members of this Association during 1891.

Very respectfully,

HERBERT B. ADAMS,
Secretary.

Prof. S. P. LANGLEY,
Secretary Smithsonian Institution, Washington, D. C.

AMERICAN HISTORICAL ASSOCIATION.

Organized at Saratoga, New York, September 10, 1884.

OFFICERS FOR 1891.

President:

HON. WILLIAM WIRT HENRY, LL. D.,
Richmond, Virginia.

Vice Presidents:

JAMES B. ANGELL, LL. D.,
President, University of Michigan.

HENRY ADAMS,
Washington, District of Columbia.

Treasurer:

CLARENCE WINTHROP BOWEN, PH. D.,
No. 251 Broadway, New York City.

Secretary:

HERBERT B. ADAMS, PH. D.,
Professor in the Johns Hopkins University, Baltimore, Maryland.

Assistant Secretary and Curator:

A. HOWARD CLARK,
Curator of the Historical Collections, National Museum, Washington, D. C.

Executive Council:

(In addition to the above-named officers.)

HON. ANDREW D. WHITE, LL. D.,
Ithaca, New York.

† HON. GEORGE BANCROFT, LL. D.,
Washington, District of Columbia.

JUSTIN WINSOR, LL. D.,
Cambridge, Massachusetts.

WILLIAM F. POOLE, LL. D.,
Librarian of the Newberry Library, Chicago.

CHARLES KENDALL ADAMS, LL. D.,
President of Cornell University, Ithaca, New York.

HON. JOHN JAY, LL. D.,
New York City.

JOHN W. BURGESS, PH. D., LL. D.,
Professor of History and Law, Columbia College.

G. BROWN GOODE, PH. D., LL. D.
Assistant Secretary Smithsonian Institution, in charge of the National Museum.

GEORGE P. FISHER, D. D.,
Professor of Ecclesiastical History, Yale Divinity School.

JOHN GEORGE BOURINOT, C. M. G., LL. D., D. C. L.,
Clerk of the Canadian House of Commons.

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WASHINGTON, D. C., DECEMBER 29–31, 1891.

REPORT OF PROCEEDINGS OF EIGHTH ANNUAL MEETING OF THE AMERICAN HISTORICAL ASSOCIATION.

By Herbert B. Adams, Secretary.

The eighth annual meeting of the American Historical Association was held in Washington, December 29 to 31, 1891. There were two morning sessions at the National Museum, and three evening sessions at the Columbian University, where also convened, in different rooms at various times, the Modern Language Association, the Folk Lore Society, and the American Society of Church History. The American Forestry Association had business meetings in the Department of Agriculture and public exercises in the National Museum, following those of the Historical Association.

The gathering of these five different scientific clans in the Federal city, on the very same days, was a significant sign of the times. It indicates that Washington is becoming more generally recognized as the intellectual and social capital of the nation. No other city in the American Union could attract, in successive years, the same scientific bodies that now annually assemble in the National Museum or at the Columbian University. Every association that comes once to Washington is certain to come again. Some of them, like the American Historical Association, have come to stay. Chartered by Congress, this society is now required by law to have its principal office in the District of Columbia. Its printing and business management will henceforth be in connection with the Smithsonian Institution. Although the Association may occasionally take an excursion to some Northern, Southern, or Western city, Washington is now its permanent home. The next meeting will be in Chicago, at the time of the World's Fair, in 1893.

In view of coming events, which cast their Columbian shadows before, the historical paper which eclipsed all others in popular interest at the Washington meeting, and in the Associated Press reports that flashed over the whole country, was

President Charles Kendall Adams's account of "Recent Discoveries Concerning Columbus." Perhaps the best and fullest report was printed in the New York Times, January 1, 1892, the morning after the original paper was read.

Besides a true view of the landfall of Columbus, President Adams gave his audience, and at the same time the country at large, the latest and most authentic information regarding the recent discovery of the burial place and remains of the discoverer himself. It seems that those patriotic body-snatchers, who in 1795 undertook to remove Columbus to Spanish Havana from Santo Domingo, which by the treaty of Bâle had just become French territory, took the wrong coffin. Not until the year 1877 was the true Columbus rediscovered in another vault on the right-hand of the altar in the cathedral at Santo Domingo. There has been much controversy between the Cubans and the Santo Domingoans upon the exact location of the holy sepulcher of the western world, but Rudolf Cronan, a German traveler and historical critic, reviewed the whole question in 1891, and has now established the fact that the remains of the great discover are still lying in the cathedral at Santo Domingo.

Another paper of interest in connection with the Columbian year was that of Prof. Edward G. Bourne, of Adelbert College, Cleveland, Ohio, upon the line of demarcation, established in 1493, by Pope Alexander VI, between the Spanish and Portuguese fields of discovery and colonization. Mr. Bourne showed that the discovery of America was the result of the commercial policy of Spain which was seeking a sea route to the Indies. The Portuguese were pushing for the same region by expeditions down the west coast of Africa, where they had a commercial monopoly by papal decree. The papal bulls of 1493 attempted a compromise between the interests of the two rival countries. By the treaty of Tordesillas, in 1494, Spain and Portugal agreed to draw a line 370 leagues west of the Cape Verde Islands, and thus to divide the field of discovery. This agreement gave Portugal her claim to Brazil; but the line was never actually drawn. If it had been drawn, it would now run about 150 miles west of Rio Janeiro. The western boundary of Brazil has never been "accommodated" to this imaginary line, as Rev. Edward Everett Hale has stated in the "Narrative and Critical History of America" (Vol. II, p. 596). Neither Spain nor Portugal attached any permanent importance

to the papal bulls of 1493. In fact, in 1750, both bulls and the treaties based upon them were declared null and void. The present boundaries of Brazil rest upon other than papal foundations.

A paper was presented by Walter B. Scaife, PH. D. (Vienna), upon the commerce and industry of Florence during the Renaissance. This Italian republic is of peculiar interest to Americans, because our country was named in honor of a Florentine citizen, and because the geographical knowledge of Florentine scholars was of very great service to Columbus in his voyages of discovery. Dr. Scaife interested his audience by showing that the Florentine people were, like the Americans, a practical body of business men. Their motto would please even our American farmers' labor unions. The Florentines were fond of saying: "Who wants his mind active must make his hands hard." Their industry was untiring until the Medici became fully installed in political power. Then luxury, laziness, and display became fashionable, as they are now beginning to be under the influence of American plutocrats.

A comparative study of the personal force in congressional politics was the well-written and well-read paper by Miss Follett, of the Harvard "Annex," upon "Henry Clay, the First Political Speaker of the House." He seems to have been much the same type of a presiding officer as was the Hon. T. B. Reed. Miss Follett showed that no other Speaker so well combined the functions of a moderator, a voting member, and a party leader as did Mr. Clay. He established the tradition that a party, in putting a leader in the Speaker's chair, does not deprive itself of his services on the floor. He exercised the right to speak in committees of the whole more freely than had any of his predecessors. He added to the previously existing body of Speaker's powers more than has been added by any of his successors. The willing acquiescence of the people in Clay's conception of the speakership is of great historic significance. He had unusual qualifications for his office. He possessed remarkable tact, great personal fascination, and an extraordinary instinct for good leadership.

Considerable prominence was given in the programme to Southern history. The president of the association, the Hon. William Wirt Henry, in his inaugural address, spoke of the influences, physical and institutional, which united to make the Virginians of the Revolutionary period. He dwelt upon their

practical training for home rule in the monthly county courts and legislative assemblies. The educational influence of William and Mary College in developing such men as Thomas Jefferson and John Marshall was also touched upon. In closing, Mr. Henry called renewed attention to George Washington's idea of a national university in the Federal Capital. The president of William and Mary College, Lyon G. Tyler, son of John Tyler, gave some entertaining extracts from the records of York County, Va.

Dr. Jeffrey R. Brackett, a graduate of Harvard and Johns Hopkins universities, presented an objective review of the Virginia secession convention of 1861. His paper was a brief résumé of one of several studies which he is now making in the political history of the border slave States for the period immediately preceding and covering the civil war. Mr. Brackett attempted to show the character of the so-called "Union men" of Virginia in the spring of 1861. He said that four-fifths of the convention were opposed to secession. They wished to preserve the union by constitutional methods rather than by an appeal to force. After Mr. Lincoln's call for troops Virginia conservatives voted for secession.

President James C. Welling, of the Columbian University, traced at some length the history of slavery in the Territories, and showed the nature of that irrepressible conflict of American ideas represented by free soil and slave labor. The civil war was as inevitable as the war of the Revolution, and the issue was no less certain. Mr. W. E. B. Du Bois, A. M., fellow of Harvard University, read a scholarly and spirited paper upon the "Enforcement of the Slave Trade Laws." From 1770 to 1789 the slave trade was prohibited by all the colonies. South Carolina reopened the traffic in 1803. Mr. Du Bois showed that the prohibitory act of 1807 was not enforced. More stringent legislation began in 1818, and the slave trade was classed with piracy. Nevertheless the infamous business was continued, for the United States would not permit the right of search. Even the treaty with England in 1842 failed to suppress the slave trade. Vessels were fitted out for this traffic in every port from Boston to New Orleans. Mr. Du Bois estimates that, from 1807 to 1862, not less than a quarter of a million of Africans were brought to the United States in defiance of law and humanity. Mr. A. R. Spofford, Librarian of Congress, gave a striking review of lotteries in American

history. He showed that they were once regarded with great favor in all the older States and colonies. The good people of Plymouth and Massachusetts, as well as the Father of his Country, took stock in lotteries. They were once everywhere organized by statutory law; but now they are everywhere illegal or discountenanced, except in Louisiana, which is still in the slimy coils of a rich gambling corporation, a monstrous anaconda called a State lottery.

In the year 1843 Wisconsin thought of annexing, for economic reasons, northern Illinois and what is soon to be the center of the world. If Wisconsin could not have Chicago with all its neighboring lands, she proposed to "be a State out of the Union." In short, though yet a Territory, she would temporarily assert independent statehood. This interesting subject of rudimentary "State Sovereignty in Wisconsin" was tersely presented by Prof. C. H. Haskins, on behalf of Mr. A. H. Sanford, a member of Prof. F. J. Turner's Seminary of American History in the university at Madison. The Wisconsin territorial legislature based its claim to Illinois land and to State independence upon provisions of the ordinance of 1787, which, as regards Western territory, was thought to be superior to the Constitution. It was held that under the ordinance Wisconsin had the right to be a State outside the Union. This legislative view was not supported by the public sentiment in Wisconsin, nor were the alleged rights of Territories under the ordinance ever upheld by the Federal courts.

The following papers on colonial history, or kindred topics, were also presented: "Earliest Texas," by Mrs. Lee C. Harby; "Governor Leete and the Absorption of New Haven Colony by Connecticut," by Dr. B. C. Steiner, a graduate of Yale and Johns Hopkins universities, now lecturing at Williams College; "Lord Lovelace," by Gen. James Grant Wilson; "Louisbourg and Memorials of the French Régime in Cape Breton," by Dr. J. G. Bourinot, C. M. G., of Ottawa, and "Characteristics of the Boston Puritans," by Prof. Barrett Wendell, of Harvard University. The paper last mentioned excited more than usual interest on account of the critical analysis of Puritan character. Mr. Wendell illustrated from the life of Cotton Mather the intense idealism of Puritan faith, and, at the same time, its anthropomorphic limitations.

An able paper of legal character was presented by Prof. Simeon E. Baldwin, of the law department of Yale Univer-

sity. He discussed historically the "Visitorial Statutes of Andover Seminary," and found their prototype in the ancient principles of visitorial jurisdiction, as laid down in the rules of English universities. The old custom of appointing visitors for educational institutions was transmitted to William and Mary College, in Virginia, as well as to New England. Prof. John Bassett Moore, formerly Assistant Secretary in the State Department and now professor in Columbia College, read a valuable paper upon the "United States and International Arbitrations." From unpublished materials, to which he has had access in Washington, Mr. Moore reviewed the experience of this country with Great Britain, France, Spain, Mexico, and South American Republics in settling our international disputes by an appeal to reason instead of to force. In view of our present disagreement with Chile, and her apparent disposition to submit to arbitration, Mr. Moore's paper is of peculiar significance. President Angell, of the University of Michigan, emphasized the importance of studying American diplomatic history, and noted the honorable part which our country has taken in the development of modern international law. One of America's greatest diplomatists, Benjamin Franklin, was made the subject of a special paper by Dr. C. W. Bowen, who exhibited a series of Franklin portraits at an evening session of the association.

Mr. William Van Zandt Cox, chief clerk of the U. S. National Museum, read an interesting paper entitled "A leaf of local history," in which he described a collection of early maps of the city of Washington, presented to the Museum by Mrs. Elizabeth J. Stone. He made special mention of a weather map, made in 1822 by Robert King, jr., who, with his brother and father, was one of the early surveyors of the city. This map, by an ingenious method, records the direction of the wind, the humidity, changes of the moon, and the temperature for the year 1821 in Washington.

Social courtesies were extended to officers and members by the Hon. A. R. Spofford, Librarian of Congress; Dr. J. L. M. Curry, secretary of the Peabody and Slater Education Funds; Mr. and Mrs. Leiter, Mr. and Mrs. Horatio King, and by the Cosmos Club, which is the favorite resort of all scientific associations that meet in Washington.

The officers chosen for the ensuing year are as follows: Dr. James B. Angell, president; Henry Adams, of Washington,

and Edward G. Mason, of Chicago, vice-presidents; Herbert B. Adams and A. Howard Clark, secretaries; Dr. C. W. Bowen, treasurer. The Hon. William Wirt Henry retires into the executive council with other ex-presidents—the Hon. A. D. White, Dr. Justin Winsor, Dr. W. F. Poole, Dr. C. K. Adams, and the Hon. John Jay. To that honorable council, comprising also Dr. G. Brown Goode, of the Smithsonian Institution, and Dr. J. G. Bourinot, clerk of the Canadian House of Commons, were added Prof. John Bach McMaster, of the University of Pennsylvania, and Prof. George B. Adams, of Yale University.

It was resolved December 30, 1891, by the executive council: (1) That hereafter all the printing of the American Historical Association be committed to the charge of the assistant secretary in Washington; (2) that the duties of the secretary's office be divided between the secretary and the assistant secretary, as they may agree; (3) that it be the sense of the executive council that the next meeting of the American Historical Association be held in 1893, in Chicago. The committee on time and place of the next meeting are President J. B. Angell, Dr. W. F. Poole, and Dr. C. W. Bowen. They have reported in favor of Chicago, and the year of the Columbian Exposition. The committee on programmes for that year are Dr. Justin Winsor, President C. K. Adams, Edward G. Mason, Dr. W. F. Poole, and Dr. H. B. Adams. The auditing committee, the Hon. John A. King, of New York, and James Alston Cabell, esq., of Richmond, found the treasurer's accounts satisfactory. The association now owns a secure investment of $5,000, and has over 640 members, including 104 life members. This national society for the promotion of historical studies was organized at Saratoga in 1884 and was chartered by Congress in 1889.

LIST OF COMMITTEES, 1892.

1. *Auditing committee.*—Hon. John A. King, James Alston Cabell, esq.
2. *Finance.*—Hon. John Jay, Robert Schell, esq., Dr. C. W. Bowen.
3. *Nominations.*—Dr. Justin Winsor, Judge Charles A. Peabody, Prof. Simeon E. Baldwin.
4. *Time and place of meeting.*—President James B. Angell, Dr. William F. Poole, Dr. C. W. Bowen.
5. *Programme.*—Dr. Justin Winsor, President C. K. Adams, Edward G. Mason, esq., Dr. Wm. F. Poole, Dr. H. B. Adams.
6. *Resolutions.*—Prof. Wm. P. Trent, Prof. Charles H. Haskins.

OFFICERS FOR 1892-'93.

President.—James B. Angell, LL. D., president of the University of Michigan.

Vice-Presidents.—Henry Adams, Washington, D. C.; Edward G. Mason, president of the Chicago Historical Society.

Treasurer.—Clarence Winthrop Bowen, PH. D., 251 Broadway, New York City.

Secretary.—Herbert B. Adams, PH. D., LL. D., professor in the Johns Hopkins University, Baltimore, Md.

Assistant Secretary and Curator.—A. Howard Clark, curator of the historical collections, National Museum, Washington, D. C.

Executive Council (in addition to the above-named officers).—Hon. Andrew D. White, LL. D., Ithaca, N. Y.; Justin Winsor, LL. D., Cambridge, Mass.; Charles Kendall Adams, LL. D., president of Cornell University, Ithaca, N. Y.; Hon. William Wirt Henry, Richmond, Va.; William F. Poole, LL.. D, librarian of the Newberry Library, Chicago; Hon. John Jay, LL. D., New York City; Dr. G. Brown Goode, assistant secretary Smithsonion Institution, in charge of the National Museum; John George Bourinot, C. M. G., LL. D., D. C. L., clerk of the Canadian House of Commons; J. B. McMaster, professor of history in the University of Pennsylvania; George B. Adams, professor of history in Yale University.

RESOLUTION BY THE ASSOCIATION, DECEMBER 31, 1891.

The American Historical Association during its eighth annual session has received from the citizens and institutions of Washington many courtesies that have added greatly to its enjoyment and for which it desires to return its thanks. It is therefore

Resolved, That the American Historical Association extends its hearty thanks to the Regents of the Smithsonian Institution, the Curators of the National Museum, the president of the Columbian University, the managers of the Cosmos Club, as well as to Mr. and Mrs. Horatio King and Mr. and Mrs. Leiter for their courtesy in assisting the work of the association, and their kindness in adding to its social pleasures.

REPORT OF COMMITTEE ON TIME AND PLACE OF THE NEXT MEETING.

The committee to which was referred the question of the place and time of the next regular meeting of the association reported as follows: It is understood to be the policy of the association to hold most of its meetings in Washington in the winter, but we believe that it has been thought by our members that it may be expedient for us to meet from time to time in some other place.

We have been cordially invited by our friends in Chicago to hold our next meeting in that city at some time in 1893, when the Columbian Exposition is to be held there. It is well known that many of our national, scientific, educational, and religious associations are expecting to hold meetings there at that time. After careful consideration of the invitation from Chicago your committee have decided to recommend that, instead of holding our meeting here next December, we meet in Chicago in 1893, at a time to be

hereafter fixed, after the conference of the proper officers of the association with our friends in that city. Your committee are of the opinion that such action will suit the convenience of most of our members and will conduce to the best interests of the association.

RESOLUTIONS BY THE EXECUTIVE COUNCIL, DECEMBER 30, 1891.

(1) *Resolved,* That hereafter all the printing of the American Historical Association be committed to the charge of the assistant secretary in Washington.

(2) *Resolved,* That the duties of the secretary's office be divided between the secretary and the assistant secretary as they may agree.

(3) *Resolved,* That it be the sense of the executive council that the next meeting of the American Historical Association be held in 1893 in Chicago.

II.—THE CAUSES WHICH PRODUCED THE VIRGINIA OF THE REVOLUTIONARY PERIOD.

INAUGURAL ADDRESS OF HON. WILLIAM WIRT HENRY, PRESIDENT OF THE AMERICAN HISTORICAL ASSOCIATION.

READ AT THE ANNUAL MEETING, DECEMBER 29, 1891.

INAUGURAL ADDRESS OF WILLIAM WIRT HENRY, LL. D., DECEMBER 29, 1891.

THE CAUSES WHICH PRODUCED THE VIRGINIA OF THE REVOLUTIONARY PERIOD.

Members of the American Historical Association,

Ladies and Gentlemen:

It is with the highest appreciation of the honor conferred on me at your last meeting in electing me as your presiding officer for the year 1891 that I now enter upon one of the duties imposed upon me, and bespeak your attention, for a short time, while I read the annual address.

And first, I heartily congratulate you on the flourishing condition of our association. Its constantly increasing membership, and the appreciation of its work both by the Government and the public, prove incontestably the wisdom and the practical ability with which its affairs have been conducted. A great work lies before us, and we each should feel honored in being permitted to take part in its accomplishment.

But while we have abundant cause for thankfulness for the past, we can not look back over the year just closing without a painful feeling of loss in the death of some of our most distinguished and useful members. Within three weeks after the adjournment of our last annual meeting intelligence came of the death of our distinguished ex-president, Hon. George Bancroft. His valuable life had been prolonged till it was entering on the last decade of a century, in the first year of which he was born; and although exhausted nature had for some time been giving plain evidences of the approaching end, yet such was the loving regard in which he was held by his countrymen that they were not prepared for his death, and the feeling was universal that America had met with a grievous loss in the death of one of her greatest citizens.

He was the great American historian, whose work will live, however excellent the coming historians of our country may

be. To him we are indebted for the lifting up of American history from the subordinate place it had theretofore held, and fixing it among the highest niches in the temple of Clio. No one could have been better equipped for his great work. Learned, industrious, striving for accuracy, with ample means, and opportunities for gathering materials, he was filled with that which gave soul to his work, an ardent attachment to American institutions. He succeeded in touching the public heart and in popularizing our history to a degree seldom attained by historians of any age or country. His living connection with our association will ever be regarded as one of our highest honors.

During the month of January the Hon. James Phelan also departed this life. He had not lived to old age, but he had made his mark by his most valuable history of Tennessee, which will ever entitle his name to an honorable place on the roll of American historians. We will ever bear in mind, too, that it was his exertions on the floor of Congress which obtained for us our charter.

During the fall our losses have been more numerous. Among them several names occur to me. The Hon. John H. B. Latrobe, of Baltimore, who died in the eighty-eighth year of his age, after having distinguished himself in various walks of life, in all of which he displayed remarkable versatility and strength.

Dr. George B. Loring, of Massachusetts, whose commanding figure and genial face we shall miss from our meeting. He too had walked in various paths of life, and always with distinction; but perhaps his greatest work was in stimulating the agricultural interests of New England.

Prof. John Larkin Lincoln, for more than half a century a distinguished instructor in Brown University, whose memory will ever be green, not only in that institution, but in the breasts of all who were so fortunate as to be taught by him.

Gordon L. Ford, esq., of Brooklyn, whose devotion to learning was not only shown in his own acquirements, but in the magnificent library he accumulated. Happily he trained and left to us two most learned and accomplished sons, whose lives are devoted to historical work.

Useful and distinguished lives have also been ended in the death of P. W. Sheafer, esq., of Pottsville, Pa., author of an historical work on Pennsylvania; of Prof. Charles W. Bennett, of Garrett Biblical Institute, Evanston, Ill., who obtained the

Ranke library for Syracuse University; of Hon. Rufus King, of Cincinnati, and of Thos. B. Akins, D. C. L., commissioner of public records of Nova Scotia.

But I must hasten to the subject of this address.

Every effect is the resultant of antecedent forces, and our study of any people will not be complete until we learn the various causes which have united to produce the condition of the people we study. Such a tracing of antecedents is history in its largest sense.

Taking the American colonies during the Revolution period, nothing could be more interesting or instructive to an American, nor indeed to any student of history, than a full account of the influences which conspired to produce the remarkable people who thus were found in their bodies. Each colony had an individuality of its own, resulting from its development in a state of almost perfect isolation from the rest of the world. Each contained a large number of men of great capacity, of pure morals, and of unsurpassed patriotism. The Continental Congress of 1774 was a representative body which distinctly reflected the purity of character, the great intelligence, and the high state of Christian civilization to which the colonists had attained. That celebrated body of men were the admiration of Europe. The splendid tribute of Lord Chatham is familiar to every one, in which he declares as the result of his study of history "That for solidity of reasoning, force of sagacity, and wisdom of conclusion under such a complication of difficult circumstances, no nation or body of men can stand in preference to the General Congress at Philadelphia."

Not so familiar is the saying of Lord Camden concerning it. Said he, "I would have given half my fortune to have been a member of that which I believe to be the most virtuous body of men which ever had met or ever will meet together in this world."

It is true these were picked men, but the communities from which they were selected and which selected them must have been high in the scale of intelligence and purity to have had such men in their midst. It is true that men of great genius and force of character are from time to time met with in history who seem to direct, if not shape, the destinies of their countries; but we must remember that these great characters, so gifted by nature, were themselves shaped by their environments, and to these we must look for an explanation of their work.

Following the ideas I have suggested, I propose in this paper to touch hurriedly upon the causes which conspired to produce the Virginia of the revolutionary period.

The English of the seventeenth century were the outcome of an evolution during three centuries, of a people who were an amalgamation of three branches of the great Teutonic family, with each other, and with the aboriginal Britons. They were a people superior to any existing in the world. Developing in their sea-girt island, without the disturbing influences of outside nations, they formed a distinctive people in their habits, customs, and civil institutions. In these last they had attained a degree of freedom not known to the rest of the world. The great rights of person and of property were enjoyed under a protection that was fundamental to their system of jurisprudence, and in the arts and sciences, in philosophy and literature, they were in the front rank of Christendom. In religion they were Protestants, and had all the advantage of that great unshackling of the human mind which was accomplished by the reformation.

These were the people that colonized Virginia in the early part of the seventeenth century. They came to a fertile land, lying in a temperate climate between 36° and 40° northern latitude, and one which was peculiarly fitted for agricultural pursuits from the sea on the east to the mountains, the western border of their settlements. Every variety of vegetable production which is found in the temperate zones, was raised in this area in profusion. And such as bore transportation to the mother country were easily shipped from convenient landings on the banks of the Chesapeake, or on the noble rivers which emptied into the great bay. Speaking of the favored region of Virginia and the Carolinas, and the mountains which constitute its western border, Prof. Shaler in his late valuable work styled "Nature and Man in America," says:

> This region of southern uplands has in its soil, its forests, and its mineral resources, a combination of advantages perhaps greater than those of any other equal area in the world. In addition to these favorable conditions, the region possesses an admirable climate. In winter the temperature falls low enough to insure the preservation of bodily vigor; in summer the heat is less ardent than in the lower lying regions of the New England and New York group of States. In the Virginia section we find a climate resembling in range of temperatures those which characterize the most favored regions of the Old World; and it is there perhaps we may look for the preservation of our race's best characteristics.

After the English had planted Virginia, there was a small emigration of Germans, and a larger one of French Huguenots, but they did not sensibly affect the characteristics of the colony, and soon became intermixed with the English. A much larger addition to the colony was the stream of Scotch-Irish from the North of Ireland, that poured into the valley between the Blue Ridge and Alleghany Mountains during the first half of the eighteenth century, overflowing sometimes the mountain barriers. In the valley they retained their national characteristics in a remarkable degree. They were strict Presbyterians, and the church and schoolhouse were always found among the first houses they built. Tenacious of their rights in church and state, they were foremost in opposing tyranny in every form; their constant warfare with the Indians made them a race of warriors, and they have added to the glory of Virginia in every war in which she was ever engaged. It has been said that the Virginians were an agricultural people, they were preëminently so; and the geography of the colony, as well as the climate, gave direction to their employment. Between the mountains and the sea many streams water the land, affording fertile bottoms. The accessibility of deep water to nearly every part of the colony prevented the growth of large cities. In fact, as late as the Revolution Norfolk was the largest town in the colony, and it only contained 6,000 inhabitants. The very wealth of Virginia in harbors contributed to her poverty in cities.

The profusion of productions afforded by the soil and climate stimulated the hospitality of the inhabitants, of whom generous living became a characteristic. But while soil and climate thus united to give ease to Virginia life, they rendered the colonists too well satisfied with what they enjoyed to engage in arduous or speculative enterprises in pursuit of wealth. They were content to work their lands, and leave to others merchandise, mining, and manufacturing.

Undoubtedly the production of the soil which had most influence on the development of Virginia's character was tobacco. It is said that John Rolfe, the husband of Pocahontas, first cultivated it in a systematic and intelligent manner. Certain it is that from an early period of Virginia's history it was considered its most valuable product. It was easily transported across the Atlantic, and found a ready market in Europe. It became and continued until the Revolution the money crop

of the planters, and from it was derived the wealth which characterized them as a class. Its value was a strong preventative of the growth of towns, as the planters lived in great comfort, and often in elegance, on their plantations, and felt no desire to exchange plantation for city life. It was by the cultivation of this plant, too, that slavery became fixed on the colony, an institution which was most potent in shaping its history. The slaves were cheap labor in the cultivation of the soil, and were brought to the colony in such numbers that, with their natural increase, they became nearly half of the population in the eighteenth century. Their use in different kinds of manual labor induced the whites to hold themselves aloof from it, and as it came to pass that nearly every white man owned one or more slaves, the whites devoted themselves to superintending their own slaves or those of the larger planters.

The custom of entailing estates kept up the large plantations, and their owners soon developed into representatives of the ancient barons of England. To a large degree they lived independent of the world around them, producing on their plantations whatever they needed. The following picture of William Cabell, of Union Hill, in Nelson County, from the accomplished pen of the late Hugh Blair Grigsby, is a fair representation of the class to which he belonged:

> He was a planter in the large acceptation of the word as it was understood rather in the interior than on the seaboard, which included not only the cultivation of a staple, in its ordinary agricultural aspect, but the construction of the instruments and the preparation and manufacture of articles, which the eastern planters of that day, like many of their successors, were content to find ready-made to their hands. He fashioned his iron on his own smithy; he built his houses with his own workmen; he wove into cloth the wool from his own sheep, and cotton from his own patch; he made his shoes out of his own leather. He managed his various estates with that masterly skill with which a general superintends his army, or a statesman the interests of a community intrusted to his charge.

The institution of slavery had its evils, which may be traced in the history of the whites, and which have been much discussed and often exaggerated, into which, however, I do not propose to enter. But as regards the African race, there is little to lament in comparison with the great benefits slavery conferred on the slaves. From a state of barbarism it raised the race into a state of civilization, to which no other barbarous people have ever attained in so short a time. The late

African slave is now rated by our Government as superior to the American Indian and to the natives of the celestial Empire of China, and is intrusted with the highest privileges of an American citizen.

The effect upon the whites was in some respects ennobling, as it greatly stimulated that independence of character and love of freedom which characterize rulers, whether in kingdoms or on plantations. That profoundly philosophical statesman, Edmund Burke, in his speech on conciliations with America, delivered March 22, 1775, remarked upon the spirit of liberty developed in the masters of slaves in these words:

> In Virginia and the Carolinas they have a vast multitude of slaves. When this is the case in any part of the world, those who are free are by far the most proud and jealous of their freedom. Freedom is to them not only an enjoyment, but a kind of rank and privilege. Not seeing there that freedom, as in countries where it is a common blessing, and as broad and general as the air, may be united with much abject toil, with great misery, with all the exterior of servitude, liberty looks, among them, like something that is more noble and liberal. I do not mean to commend the superior morality of this sentiment, which has at least as much pride as virtue in it, but I can not alter the nature of man. The fact is so; and those people of the Southern colonies are much more strongly, and with a higher and more stubborn spirit, attached to liberty than those northward. Such were all the ancient commonwealths; such our Gothic ancestors; such in our days were the Poles; and such will be all masters of slaves who are not slaves themselves. In such a people the haughtiness of domination combines with the spirit of freedom, fortifies it, and renders it invincible.

The institution of slavery had a marked effect on the women of Virginia. By it they were exempt from the menial duties of life; and in their country homes they devoted themselves to the management of their households and the cultivation of their minds and manners. By reason of this the name, Virginia matron, became a synonym of all that was refined in manners and pure and lovely in character. It is a great mistake to suppose that the Virginia matron led an idle or useless life. While her duties were not menial, they were nevertheless ample to occupy her whole time. As a mistress on the plantation she had the care of much that only a woman can attend to. To feed, to clothe, to teach, to guide, to comfort, to nurse, to provide for, and to watch over a great household, and keep its complex machinery in noiseless order; these were the duties which devolved on her, and which she performed to the admiration of all who came in contact with Virginia life. The mild

climate in which they lived developed in the Virginia women a beauty of person commensurate with their loveliness of character, and these two conspired to stimulate the chivalrous regard in which they were held by the men. This regard was indicated in the courteous bearing of the men towards them. The Virginian indeed became courteous to all, and his bearing in life came to be described in the two words, "Virginia gentleman."

The English people who came to Virginia, with few exceptions, did not leave England because of oppression in church or state. They brought with them the literature, the manners and customs, and the civil and religious institutions of the mother country, to all of which they were profoundly attached. It was simply the planting of the English acorn in the rich Virginia soil of America, from which sprang an American British oak, which under the genial sky of the new world was destined to outstrip its English original.

The form of government allowed by the early charters was potent in the development of Virginia character, and this form, with admirable flexibility, adapted itself to the individuality assumed by the colony in its progress. The executive was a governor appointed by the crown, or was his authorized deputy. He was advised by a council selected from the colony and similarly appointed. They were considered as representatives of royal authority and constituted a mimic court. Their style of living was in accordance with their high rank, and was more or less imitated by the rich men of the colony according to their proximity to the capital. Their influence was great, as they dispensed the patronage of the colony. In addition to their executive functions, the governor and council sat as a court, and for years was the only court in the colony. After the institution of county courts the governor and council retained much original jurisdiction and became also a court of appeals. This important body also acted as a branch of the assembly and thus took the place of the House of Lords in the colonial system. Its members were the representatives of the aristocracy of the colony.

As a legislative body it was merged into an assembly in 1619, when a house of burgesses was summoned, composed of members chosen by the people. This, the first representative body which ever sat in America, had a controlling influence in the development of Virginia character. The elective franchise,

which was for years exercised by all adult males, gave, as nothing else could, a dignity to citizenship. Each man felt himself a part of the State in the fullest sense and became interested in knowing and directing its affairs. The house of burgesses was the Cerberus that guarded, with ever-watchful eye, the political rights of the colonists. Thus as early as 1624 we find it declaring that "The governor shall not lay any taxes or ympositions upon the colony, their lands or commodities, otherway than by authority of the general assembly, to be levyed and ymployed as the said assembly shall appoynt."

This claim of the representatives of the people to the sole right to lay taxes, the great principle which is the corner stone of British freedom, was never abandoned by the Virginians.

The acts of assembly were subject to royal supervision and were sometimes disallowed. But enough were approved to allow the development of the colony, according to the law of evolution to which it was subjected. This separate assembly for the colony of necessity led to the straining and final snapping of the cords which bound it to England, and impeded its progress towards a great State. Men who became accustomed to a distinct legislative body, their own immediate representatives, ceased to regard a Parliament, sitting beyond the ocean, in which they were not represented, as authorized to legislate for them; and with this right claimed by Parliament, the question of separation became a mere question of time.

The county organization of the colony was based upon, and followed very closely the shire system of England. It was a microcosm of the State. The county lieutenant, its chief officer, was vested with executive powers, and had command of the militia. He was selected from the upper class, known as "gentlemen." The county court exercised judicial functions, and was composed of justices of the peace, who were selected from the men of the highest character and intelligence in the county, and held office for life. It was a self-perpetuating body, vacancies being filled by appointment of the governor upon the recommendation of the court. No pay was attached to the office of justice, except the possibility that the incumbent might become the sheriff of the county for a limited time, which last office was filled from the bench of justices in the order of their commissions. The office of justice thus being a highly honorable one, and filled by the best men in the county, the influence of the incumbents was very great. These resided

in different parts of the county, and thus each neighborhood was supplied with an officer. They were the advisers of the people, the composers of their difficulties, as well as the judges in their petty litigations. Naturally they came to be regarded with the greatest respect, and to be looked up to as examples of purity and intelligence, to be imitated by their fellow-citizens. Thus their influence was most elevating in its tendency. To this class Virginia was chiefly indebted for the high character of her people. Indeed, most of the Virginians who were distinguished in the Revolutionary era were, or had been, justices of the peace.

While the sheriffalty was in their hands defaults in the payment of revenue collected were almost unknown.

The courts in which they sat had their jurisdiction enlarged from time to time till it became very extensive. They also laid the county levy and passed on the claims to be paid out of it. These courts, unlike their English originals, were held at the several county seats, and during most of their history were monthly. These monthly county courts were important factors in Virginia life. At them there was always a large gathering from different parts of the county, and much business was transacted, while county men, living at a distance from each other, met and formed acquaintances, and entered into business relations. Candidates for office, elective by the people, attended, and they were required to set forth their claims in public speeches and debate with their opponents. This contributed to the cultivation of public speaking, and by these public debates the ordinary citizen was instructed in the questions of the day. In these tribunals the lawyers of Virginia were trained, and this training equipped for the higher walks of professional life the great lawyers and judges that Virginia furnished before, during, and after the Revolution. Such men as Edmund Pendleton, Peter Lyons, St. George Tucker, Spencer Roane, and John Marshall.

When in the convention of 1829 it was sought to change the system, there was a united protest from a number of the ablest men in the body. The accomplished P. P. Barbour, who afterwards sat in the Supreme Court of the United States, said:

> After a twenty-five-year acquaintance with the county courts of Virginia, it is my conscientious opinion that there is not, and never has been, a tribunal under the sun where more substantial, practical justice is administered. * * * The idea was suggested to me fifteen years ago by one of the most distinguished men we had among us, who declared it to me as

his belief, that the county courts of Virginia exerted an important political influence on her population; the monthly meeting of neighbors and of professional men caused the people to mingle and associate more than they otherwise would do, and produced a discussion of topics of public interest in regard to the administration of government and the politics of the community. These meetings perpetually recurring in all the counties of the State constitute so many points from which political information was thus diffused among the people, and their interest increased in public affairs.

The distinguished lawyer and statesman Benjamin Watkins Leigh followed Mr. Barbour, and said: "The eulogium pronounced by the learned gentleman from Orange is perfectly just, in declaring that these tribunals are not merely good, but the best on earth." He further declared that only two charges of corruption had been brought against Virginia justices during the existence of the office, for 200 years. Judge John Marshall joined in the praises of this venerable body of public servants, and added:

I am not in the habit of bestowing extravagant eulogies upon my countrymen. I would rather hear them pronounced by others; but it is a truth that no State in the Union has hitherto enjoyed more complete internal quiet than this Commonwealth, and I believe most firmly that this state of things is mainly to be ascribed to the practical operation of our county courts. The magistrates who compose those courts consist in general of the best men in their respective counties. They act in the spirit of peacemakers, and allay rather than excite the small disputes and differences which will sometimes arise among neighbors. It is certainly much owing to this that so much harmony prevails amongst us. These courts must be preserved.

In front of the court, when in session, sat the clerk, always an accomplished officer. He held his office by appointment by the court and during good behavior. The interests of the community at large were closely connected with the responsibilities of his office. He was the keeper of the records of the court, and of the muniments of title to the lands in the county. His fellow-countymen sought him for information on many subjects, and he became the legal adviser of the ordinary citizen. The office was often retained in families for generations, and the incumbents were, as a class, as admirable as any country ever possessed. Besides these officers there were sheriffs, coroners, constables, and surveyors, of whom I need but make mention.

The colony was laid off into parishes, in order to accommodate the affairs of the established church. Those were man-

aged through vestries, which laid levies for the purchase of glebes, the building and repairing of churches, the support of the ministers and of the poor. The members of the vestries were also men selected from the best class in the community, by the parishes, and were generally prominent members of the church.

This county organization was a practical training of the people in local self-government, and this principle, so important in our form of government, was one to which the Virginians have been ever ardently attached.

In a new country, with a sparse population, the advantages of education were of necessity very limited. The children were taught by their parents or not at all. But as the country filled up and the people became prosperous they became more anxious to educate their children, and schools were multiplied. The historian Beverly, in describing the state of the colony in 1720, says:

> There are large tracts of land, houses, and other things granted to form schools for the education of children in many parts of the country, and some of these are so large that of themselves they are a handsome maintenance to a master; but the additional allowance which gentlemen give with their sons render them a comfortable subsistence. These schools have been founded by legacies of well-inclined gentlemen, and the management of them hath commonly been left to the discretion of the county court or to the vestry of the respective parishes. In all other places, when such endowments have not been already made, the people join and build schools for their children, where they learn upon easy terms.

Those last being often situated in worn-out fields acquired the name of "old-field schools." They furnished the education of the average Virginian, male and female, in colonial days. That education was what has been facetiously styled the three R's, "reading, writing, and arithmetic," and was very general. This is proved by the ancient records preserved in some of the counties. These show that of those who came for marriage licenses, the number who could not write their names was small.

As early as 1660 the assembly moved for a college in which the higher branches of education were to be taught. But the scheme only took practical shape when, in 1692, the English sovereigns, William and Mary, endowed the college which has ever since borne their names. The influence of this institution for good upon the colony and the State of Virginia has been

incalcuable. When its halls were opened the necessity of sending Virginia youths to England to acquire the higher education no longer existed, and the leaders of thought in the colony thereafter had the advantage of early training in their own capital. This intensified the peculiar characteristics of Virginia society. The college trained and gave to the world during the Revolutionary period a host of statesmen whose names are indelibly impressed on the page of American history. Had it numbered among its alumni only Thomas Jefferson and John Marshall, it would have laid America under lasting obligation. But besides these towering figures we recognize on her roll Benjamin Harrison, Carter Braxton, Thomas Nelson, and George Wythe, all signers of the Declaration of Independence; Peyton Randolph, president of the first Continental Congress; James Monroe, President of the United States, and a host of others, whose names are interwoven in the history of their country.

Nor must it be forgotten that by charging the college with the examination and commission of land surveyors it was made a part of governmental machinery, and that in giving his first commission to George Washington it was instrumental in training the Father of his Country to the great part he bore in the affairs of America.

I have thus hurriedly indicated some of the elements which united in the making of colonial Virginia. On the nobility of her people at the Revolutionary period and their great services in that memorable struggle which secured free institutions to America and to the world I need not dwell, as these are too well known to all. There is one thing, however, that may be mentioned, for which the continent can not be too grateful to her. It is her efficient services in forming and securing our Federal Union. Indeed, the Virginia leaders of the Revolutionary period were most conspicuous for their broad and national views. These views extended not only to a National Union, but to the cultivation of a distinctive American character. Of these leaders none showed more interest in this subject than Washington. In concluding this paper I would call the attention of the association and of the country to one of his earnest recommendations having this end in view. It was the establishment of a grand national university at the Federal Capital. His views upon this important subject will

be best shown by the following extract from his will, by which he dedicated to this object fifty shares in the Potomac Company put at his disposal by the State of Virginia. Said he:

> It has always been a source of serious regret with me to see the youths of these United States sent to foreign countries for the purposes of education, often before their minds were formed, or they had imbibed any but inadequate ideas of the happiness of their own, contracting too frequently not only habits of dissipation and extravagance, but principles unfriendly to republican government and to the true and genuine liberties of mankind which thereafter are rarely overcome. For these reasons it has been my ardent wish to see a plan devised, on a liberal scale, which would have a tendency to spread systematic ideas through all parts of this rising empire, thereby to do away with local attachments and State prejudices as far as the nature of things would or ought to admit from our national councils. Looking forward to the accomplishment of so desirable an object as this is in my estimation, my mind has not been able to contemplate any plan more likely to effect the measure than the establishment of a university in a central part of the United States, to which youths of fortune and talents from all parts thereof might be sent for the completion of their education in all branches of noble literature, in the arts and sciences, in acquiring knowledge in the principles of politics and good government; and as a matter of infinite importance in my judgment, by associating with each other and forming friendships in juvenile years, be enabled to free themselves in a proper degree from those local prejudices and habitual jealousies which have just been mentioned, and which, carried to excess, are never-failing sources of evil to the public mind and fraught with mischievous consequences to this country.

The establishment of such an university he urged in his speech to Congress on December 7, 1796, at the same time that he advised the establishment of a national military school. Had his well-matured views been then acted upon in establishing such a liberal national school, the result might have been a check to that passionate sectionalism which made inevitable the great civil strife of 1861–'65. But it is not now too late to act upon the dying request of the Father of his Country. Indeed the lapse of a century seems to bring with it the fullness of time for the realization of Washington's great conception. The subject has been ably discussed by our accomplished secretary, Dr. Herbert B. Adams, in his most valuable monograph upon William and Mary College, issued in 1887 by the Bureau of Education. Among other most important results which might be accomplished by such an institution, he points out the education of youth from all parts of the Union in the special branches required to be learned for the proper conduct of our civil service, and he most justly remarks that "there is in these

times a great need of special knowledge in civil service as in military or naval science. A civil academy for the training of representative American youth would be as great boon to the American people as the military and naval academies have already proved."

Such a national university should not excite the jealousy of our many admirable institutions of higher learning, but should be made the capstone of the American educational system.

It is a hopeful sign of the interest which is awakening on this subject to find that among the committees of the United States Senate one is appointed to consider the subject of a national university.

Let us hope that the day is not far distant when an additional memorial will be erected to Washington in the establishment of a grand national school of universal learning, into which not only American youth may proudly enter, but to which will be attracted the youth of other lands, eagerly seeking to imbibe American ideas with which to infuse new life into the older governments of the world.

But I have detained you long enough and will now give way to the rich feast our programme promises.

III.—THE EXPENDITURES OF FOREIGN GOVERNMENTS IN BEHALF OF HISTORY.

By Prof. J. FRANKLIN JAMESON, of Brown University.

THE EXPENDITURES OF FOREIGN GOVERNMENTS IN BEHALF OF HISTORY.

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The paper which I have the honor to present to the Association has a directly practical purpose. Most foreign countries have had a much longer history than ours. In most, historical scholarship has reached a more advanced stage of development. If, therefore, as is generally believed, the American Government may properly be expected to do more in behalf of history than it has hitherto done; and if, as is much to be desired, a prominent share in the suggestion of such labors is to belong to this Association, it is important that we should inform ourselves thoroughly as to the policy and the experience of foreign, and especially of European, Governments in respect to these expenditures. The attempt herewith made to present such information is not complete. From Spain, and from the new States of southeastern Europe, no returns have been received; and in the case of all there are some difficulties in the comparison of figures, when the statements from which they are derived are made in accordance with different financial and administrative systems. In the figures given, no expenditures for purely archæological or ethnographical purposes have been intentionally included, nor any expenditures for the construction and maintenance of buildings, nor any for the maintenance of libraries or for education. The inquiries made were as to the sums annually expended by each government, or expended by it in the last fiscal year yet reported: 1. In printing and issuing historical works or materials; 2. In payments to editors and copyists employed in preparing such volumes, and to investigators engaged in collecting historical materials; 3. In salaries and expenses of offices, such as national archives, of which the officials are mainly occupied in historical work or in assisting historical investigators; 4. In subventions granted for historical purposes to academies or other learned bodies, and not

included under the preceding heads. Some of the information presented has been derived from printed sources, but much the greater portion has been secured by correspondence. A part of it has been obtained, through the courtesy of our diplomatic and consular representatives, from the ministers of foreign affairs or of public instruction in the respective countries; a part directly from archivists and other governmental officials; a part from European historical scholars; a part from friends abroad. The whole shows a really munificent patronage of historical scholarship. Almost all the governments reported upon expend in such patronage sums greater, in proportion to their total annual expenditures, than those so employed by the Government of the United States until last year; and, (what is of more importance) in almost all, those expenditures seem to be administered with more regard to economy and more wisely apportioned among different lines of work.

The chief historical publications of the British Government are, as is well known, those embraced in the two great series known as the Calendars of State Papers, Foreign and Domestic, and the Rolls Series, or Chronicles and Memorials of Great Britain and Ireland during the Middle Ages. In recent years about six volumes of the former and nine of the latter have annually been published. The Calendars of State papers are issued in imperial octavo volumes of about 750 pages each. The payments to editors and to persons employed under editors had averaged more than £800 pounds per volume at the date of the last detailed return,* the expenses for research and arrangement, especially in the case of the transcripts from Simancas and Venice, being naturally large. The printing and publication of these volumes has cost, upon the average, £280. The volumes of the Rolls Series not only are smaller, being royal octavo volumes of about 560 pages, but require less labor in the editing. Their cost under the latter head has been, upon the average, about £345 each; their printing and publication have cost about £230 for each volume, a sum by no means extravagant in view of the fact that their text is mostly in Latin. The edition of the Calendars is 400, of the Chronicles, usually, 750. It is not the practice of the British Government, as of ours, to distribute such publications

* "Return of all the Record Publications since 1866," Sessional Papers, 430 (1877), for a copy of which I am indebted to W. Noel Sainsbury, esq., of the Public Record Office.

free of cost to all who desire them, and to many who do not. About 125 sets are given away. The remainder are sold at 15*s.* a volume in the case of the Calendars, and at 10*s.* in the case of the Rolls Series. From these sales the treasury recovers each year about £1,000 of its expenditure.

Most or all of the above-mentioned expenditures for editing comes from the vote (appropriation) for the Public Record Office. The expenditure for that great institution is set, for the present year, at £21,636. The Record and Historical Departments of the Scottish Register House cost this year, apparently, £3,496; the Irish Record Office, £5,635. The Royal Commission on Historical Manuscripts in private possession receives, in support of its exceedingly valuable labors, a grant of £1,800. The cost of printing its reports is probably equal each year to that of one volume of the Rolls Series. In addition, about £450 are paid for editing the new edition of the State Trials; the Royal Irish Academy receives £457 for researches into and publication of the Annals of Ulster; £200 are spent for the editing of the Brehon Laws; and the ancient office of historiographer-royal for Scotland still has attached to it a salary of £184. Printing and publication of historical material cost altogether about £5,000, and the total expenditure of the British Government in behalf of history appears to be about £43,000 per annum, a large sum, equal to one-tenth of one per cent of the total annual expenditure of that great and burdened Government. An outlay not included in the above statement, but which it is interesting to note, is that of more than £2,300 in allowances to superannuated officials of the Public Record Office.

As to administration, the Public Record Office is, under the Master of the Rolls, conducted by the Deputy Keeper of the Records, assisted by a secretary, six assistant keepers, and a considerable force of experienced clerks (33 at present) and transcribers. The Historical Manuscripts Commission consists of 13 noblemen and gentlemen eminent in scholarly pursuits, serving without remuneration. They are nominated by the crown. The Master of the Rolls is the chairman of the commission, and he and the Deputy Keeper of the Records are the only members *ex officio*. The staff of the commission consists of a secretary, who is also secretary of the Public Record Office, and a number (at present about nine) of temporary inspectors of manuscripts, who are engaged in the work of the commis-

sion, examination of historical manuscripts in private hands, but a limited part of the year.*

It is not possible to make equally precise statements in the case of the French Government. On the one hand there are many expenditures which, if strictly speaking educational, may at the same time with propriety be regarded as devoted to the promotion of research. For instance, there are the expenditures for the École des Chartes (71,000 francs) and for the historical section of the École des Hautes Études (75,000). On the other hand much historical work is done which does not figure separately in the budget at all. For instance, at the Foreign Office there is a Commission of Archives which patronizes various important publications of historical documents, and the Chambers sustain the publication of the early parliamentary debates, but the expenses of these do not receive separate enumeration. Certain items, however, are well determined. The sum of 145,000 francs is annually devoted to the editing and publication of the Documents Inédits de l' Histoire de France, 100,000 going to the printing and 45,000 to the editors, who receive for each volume a sum not exceeding 4,000 francs. The volumes of that famous collection are printed under the supervision of the Comité des Travaux Historiques. The national archives of the republic receive an annual grant of 210,000 francs. This sum is exclusive of the moneys spent for local archives. In England these are maintained by the local bodies. In France, characteristically, it is the national Government which sustains the archives of the departments; it expends for them considerably more than half a million francs. Two of the divisions of the Institute, the Academy of Inscriptions and the Academy of the Moral and Political Sciences, are largely engaged in historical work; one may fairly estimate that a third of their annual budget, or about 75,000 francs, is devoted to such interests. Of the 98,000

* The principal sources of the above account have been the "Estimates for the Civil Service" for 1890–'91, the return mentioned in the preceding footnote, a privately printed official statement concerning the work of the Historical Manuscripts Commission, kindly sent me by J. J. Cartwright, esq., secretary of the commission, and a memorandum from Her Majesty's treasury, kindly presented by the Rt. Hon. G. J. Goschen, M. P., Chancellor of the Exchequer, in response to a request which the Hon. Robert T. Lincoln, minister of the United States, was so good as to make in my behalf. The various sources exhibit some discrepancies of detail, but agree in general.

francs granted to learned societies in Paris and the departments, a large part goes to the benefit of history, together with some part of the still greater sum granted for scientific voyages and missions. Then, too, a good amount of money is spent in subscriptions to learned historical books which would hardly find publishers without some help from the State. Sometimes governmental editions themselves are issued in this way. For instance, the calendars of state papers (Inventaire Analytique) of the archives of the Foreign Office are not printed at the national printing office, but are issued from a publisher's, who receives a subscription of 200 copies for each volume. Most probably the total sum expended by the French government for history amounts to as much as 600,000 francs ($120,000), or to twice that if the expenditures on behalf of the departments be included.*

The historical publications of the Belgian Government are under the management of the Commission Royale d' Histoire, the members of which are nominated by the Government. With a modest subsidy of 20,000 francs, this commission issues various series of texts, chronicles, collected documents, and periodical bulletins. The payments to editors are of merely nominal sums. Special additional sums of 6,000 and 8,000 francs are devoted to the publication of the correspondence of Cardinal Granvelle and of the Biographie Nationale. Often the State gives small subsidies to individuals for the publication of historical works. As in France, the State defrays the expense, not only of the central, but also of the provincial, though not of the communal, archives. In 1889 the archives of the kingdom, at Brussels, cost 65,900 francs, the secondary or provincial archives of the State a nearly equal sum.†

In the kingdom of the Netherlands, where much attention has during the past fourteen years been given to the national archives, a similar system prevails. All documents of earlier

*For France, my sources of information have been, beside printed financial statistics, official and unofficial, a letter from Mr. André Lebon, *chef du cabinet* of the President of the Senate, an official communication from M. Le Page, secretary to the Ministry of Public Instruction, obtained by the kindness of Mr. Henry Vignaud, secretary of our legation in Paris, and especially a long and interesting letter which M. Paul Meyer, member of the Institute, director of the École Nationale des Chartes, kindly found time to write. This letter, in English, is printed in the appendix to this paper as No. 1.

†A letter of Prof. Paul Fredericq, professor in the University of Ghent.

date than November, 1813, are kept in separate depositories under the charge of officials of the national Government. Besides the central office at The Hague, there are eleven of these provincial archives. The total expense is 70,000 florins or $28,000. During recent years scholars and antiquaries have visited at Government expense such archives in Germany, Austria, France, and Russia, as seemed of importance to Dutch history; each journey has cost upon the average the moderate sum of $200. The Dutch Government does not subsidize historical societies, though some few thousands of florins of the grant to the Royal Academy must be reckoned to the account of history. Nor does it subsidize historical works of private individuals, except that two documentary series respecting the early history of the Dutch power in the East Indies receive grants from the Ministry of the Colonies. The Government's own publications are limited to the reports and inventories of its archives, whether of those in the mother country or of the Government archives at Batavia.*

Historical work at governmental expense is in Germany supported by both the imperial Government and the governments of the individual states. The government of the Empire expends 49,500 marks annually in the support of the famous documentary collection called the Monumenta Germaniæ Historica. This sum is almost entirely expended in the preparation of the successive volumes, not in printing. The imperial Government also expends nearly 120,000 marks in the support of the Archæological Institute and its works at Rome and Athens. It sustains the Germanic Museum at Nuremberg, and the Roman-German Museum at Mainz, at a considerable expense, and annually appropriates other sums for expenses of an occasional nature. The chief historical expenditure of the Prussian Government is naturally that for the Prussian archives, an expenditure which in the year 1889–90 amounted to 340,695 marks. Next in importance to this expenditure were those for the Historical-Philosophical Class of the Prussian Academy of Sciences. This body has a budget of 24,000 marks a year, distributed in the support of various historical publications or en-

* My information respecting the Netherlands comes from a letter kindly written by the Royal Archivist, Dr. Th. H. F. van Riemsdijk, from an official communication obtained for me by Hon. Samuel R. Thayer, minister resident of the United States at The Hague and from a letter of Dr. W. N. du Rieu, librarian of the University of Leyden.

terprises, such as the Corpus Inscriptionum Latinarum, Corpus Inscriptionum Atticarum et Græcarum, the edition of the Greek Commentators of Aristotle, that of the Political Correspondence of Frederick the Great, etc. The Historical Institute in Rome and the Monumenta Borussica receive grants of 13,500 and 18,000 marks respectively, apparently out of the fund placed at the disposal of the Ministry of Ecclesiastical Affairs and Education for expenditure toward scientific purposes.*

The Bavarian Government spends little in publications. The central archives of the state and those of the eight governmental districts are sustained by an expenditure of 176,000 marks according to the most recent available budget. The Bavarian budget, however, it should be remarked, is made up for a period of two years instead of according to the usual annual plan. The Bavarian Academy of Sciences receives a small sum from the Government toward the publication of the Monumenta Boica, and the local historical societies receive grants out of local revenues.† The Government of Wurtemberg spends upon its archives 28,800 marks, say $7,000; a nearly equal sum is assigned by the grand ducal Government of Baden to the support of its new historical commission, and nearly 35,000 marks to its archives.‡

In the historical expenditures of the Swiss Government, which, like other departments of its finance, are managed with great economy, a large place belongs to the payments for the extensive transcripts now being made for Switzerland in various archives at Paris. The Swiss federal expenditure for their own archives is small. But among the documents of the Confederation it is only those of date subsequent to 1798 that are in the care of the federal archivist; the earlier pieces are at

* Through the kindness of Hon. W. W. Phelps, esq., American minister in Berlin, and Herr A. von Mumm, secretary of the Imperial German legation in Washington, I have received official statements from the Prussian ministry of ecclesiastical affairs and education and from the Imperial Government, the most important of which are printed in the appendix, Nos. 2 and 3. I am also indebted to Prof. Ernst Curtius for a letter regarding the expenditures of the Prussian Academy, printed in the appendix, No. 4, to Dr. E. Dümmler, director of the Monumenta Germaniae Historica, for the letter printed as No. 5, and to my friend and colleague, Prof. Henry B. Gardner.

† Letter of the Bavarian Ministry of Foreign Affairs to F. W. Catlin, esq., U. S. consul at Munich, kindly, transmitted by him; appendix, No. 6.

‡ Letter of Dr. Fr. von Weech, secretary of the historical commission of

Zürich, at Lucerne, and elsewhere, in the care of the cantonal governments, several of which spend respectable sums for historical purposes.* The sum so spent by the Swedish Government is relatively a large one, 52,800 kroner, of which three-fourths go to the national archives, while the remainder is devoted to the publication of documents from the archives and of "Sveriges Traktater," to the payment of expenses of historical missions, and to the encouragement of learned works.† The Danish Government spends for the purposes included in these inquiries about 110,000 kroner, of which 47,323 kroner constitute the expenses of the public archives.‡ The Italian Government, except for sustaining its archives, confines its historical efforts mainly to subsidizing the Instituto Storico Italiano and the various local historical societies.§

The Portuguese Government expends small sums in payments to the authors of historical publications. Certain of the ministries publish works, sometimes at considerable expense. The Royal Academy of Sciences receives from the state an annual subvention of about $4,000 and the Ministry of Public Instruction and Fine Arts has an annual grant of about $14,000 for publications and for scientific commissions and journeys, some of which are historical in their nature.‖

The Austrian Government works mainly through the archives, through the Institut für Oesterreichische Geschichts-forsch-

* My information regarding Switzerland is derived from the Eidgenössische Staatsrechnung für das Jahr, 1885, and the Bericht des schweizerischen Bundesraths über 1888; from a letter from Dr. K. Schenk, Federal Minister of the Interior; from a letter of W. Henry Robertson, esq., our consul at St. Gall, transmitting facts obtained through the Bureau of Education of the Canton of St. Gall, and a letter of George L. Catlin, esq., consul at Zürich, respecting the expenditures of that canton. A translation of Dr. Schenk's letter is given in the appendix, No. 8.

† The Hon. W. W. Thomas, jr., esq., minister of the United States at Stockholm, kindly procured for me, from the minister of foreign affairs for Sweden and Norway, a memorial, upon which the above is based, and of which a translation is presented in Appendix 9.

‡ From a memorial of J. F. Scavenius, Danish minister of ecclesiastical affairs and education, to the ministry of foreign affairs, kindly transmitted to me by Hon. Clark E. Carr, esq., minister of the United States at Copenhagen. A translation of this memorial is given in Appendix 10.

§ Letter of the Hon. Augustus O. Bourn, esq., consul-general of the United States at Rome. Printed in appendix, No. 11.

‖ Letter of Senhor Antonio Maria de Amorim, secretary to the Ministry of Public Instruction and Fine Arts, of which a translation is printed in the appendix, as No. 12.

ung, a special department of the University of Vienna, and through the Vienna Academy. It also sustains at Rome the Instituto Austriaco di Studi Storici. It spends a considerable sum in paying the expenses of persons engaged in researches. The Imperial-Royal Archives were to cost in the year 1891 about 44,000 florins; but the entire amount of its historical expenditures is difficult to disengage from the other details of its budget.* The Turkish Government spends yearly over a thousand pounds Turkish in continuing the publication of the History of the Turkish Empire written by the imperial historiographer.† A brief summary of the interesting historical work of the Russian Empire would include a mention of the active central archives at Moscow and St. Petersburg, of the Historical Museum at Moscow, of the Historical Manuscripts Commission, of the Imperial Russian Historical Society, and other subsidized organizations, and of work carried on by the ministries of marine, the interior and justice, and the imperial chancellor. The total of these expenditures amounts to 170,364 rubles.‡

If too many figures have not already been given it may be added that the Dominion of Canada spends $6,000 a year on its archives and archive publications, and $6,000 or $7,000 on other historical objects. The Province of Quebec spends even more upon publications, though less upon archives.§ In the oldest of the Australasian colonies, New South Wales, over £2,800 were spent in the three years 1888, 1889, and 1890 upon the "Official History of New South Wales," and about £1,400

* For information regarding the historical expenditures of the Austrian Government, I am indebted to Hon. Frederick D. Grant, esq., minister of the United States at Vienna, for detailed memorials kindly obtained by him from the Austrian minister of foreign affairs, and for private information to my friend, Dr. Walter B. Scaife. Translations of the official memorials are printed in the appendix, Nos. 13, 14.

† Letter of Pangiris Bey, aide-de-camp of the Sultan and member of the press bureau, to Mr. Hirsch, minister of the United States at Constantinople, kindly transmitted to me by F. Mac Nutt, esq., secretary of legation, and printed in the appendix, as No. 15.

‡ The minister of the United States at St. Petersburg, Hon. Charles Emory Smith, esq , kindly obtained for me a full memorial upon the historical expenditures of the Russian Government, through the good offices of Gen. Vlangali, Adjunct to the minister of foreign affairs. This memorial is printed in the appendix, as No. 16.

§ Information obtained from Douglas Brymner, esq., archivist of the Dominion of Canada, and from J. C. Langelin, Deputy Provincial Registrar of the Province of Quebec. See appendix, Nos. 17, 18.

upon the preparation of a "School History of Australia," and a "History of the Post-Office."*

A careful consideration of the many detached facts which have been obtained through the kindness of my informants, of which the most important have now been summarized, forces upon the mind some criticisms of the historical expenditures of the Government of the United States. At present these criticisms can not justly be directed against the smallness of these expenditures, as they could up to the year 1889. Before that our annual expenditures for historical purposes consisted simply of the support of the historical functions of the rolls bureau of the Department of State, costing a little over $7,000, the payment of $27,380 for the preparation of the official records of the war, and of $36,000 for their printing and publication. But the sundry civil appropriation act of 1889 ran the latter item up to $100,000, and that of this last session raised it to the enormous sum of $235,000. Before that the portion of our total annual expenditure which went to the support of history was relatively less than that of any European country, with a few exceptions. At present it is relatively greater than any, including, besides that of the above, an appropriation of $16,680 toward the naval records of the Rebellion, $6,000 toward the restoration, mounting and binding of certain letters and papers of Washington, Jefferson, Madison, Hamilton, Monroe, and others, and an appropriation toward the supplement to Wharton's Digest. But this large expenditure is not likely to continue. Its cause is to be found in that provision of the act of 1889 which declares that the publication of the official records of the war shall be concluded within five years. Before that term has expired, Congress may grow more economical. The present liberality appears casual.

But in any case, while we are glad to have that publication and its naval companion pushed forward, do we desire that, as at present, 96 per cent of the total money expended for history shall go to the production and issue of (virtually) one work? Do we desire this while all but a fragment of Force's Archives remains unprinted, while none but an incomplete edition of Jefferson's writings exist, while Monroe's papers remain in manu-

*Letters of the Hon. Geoffrey Eagar, Under Secretary for Finance and Trade in the government of New South Wales (see appendix, No. 19), and of Hon. S. Johnson, esq., Under Secretary in the Department of Public Instruction in that government.

script, while other bodies of political correspondence possessed by the Government have to be issued by private publishers in limited and costly editions? Do we desire that, while $283,000 are spent in the preparation and publication of one work, the historical work of the Government archives in the Department of State shall receive about $7,000, and command the services of only two officials? Except Switzerland, whose case is peculiar, for reasons already mentioned, I have found no instance of a civilized European country, not even Bavaria, Württemberg, or Baden, which does not spend more absolutely upon its archives than we do. It is true that our history is shorter than theirs, but it is also true that our purse is much longer. It would be a great boon to all our historical scholars, if our national archives could receive generous, or even adequate support; and it could be done without crippling enterprises of publication.

But further, European practice in these last-mentioned enterprises shows us many instructive examples of more refined methods of administration than those which we have been content to employ. We desire a comprehensive and well arranged scheme of government publication. We should perceive that we can not have it save by means of some permanent institution through which expert opinion can be brought to bear, not simply at the beginning, or by occasional advice, but all the time. A commission consisting simply of government officials can never meet the requirements, and this has already been shown by the result of the abortive act of March 3, 1887, which attempted to call such a commission into activity.* A suitable mode of making up and empowering a good working commission would not be difficult to devise. When the Government is ready to do this, European experience should be much consulted. In any case such a commission should have power to edit and publish not only materials in the possession of the Government, but also those which are in private hands. May it soon come into existence.

* The sundry civil appropriation act of March 3, 1887, contained the following provision: "That the Secretary of State, the Librarian of Congress, and the secretary of the Smithsonian Institution, and their successors in office, are hereby constituted a commission, whose duty it shall be to report to Congress the character and value of the historical and other manuscripts belonging to the Government of the United States, and what method and policy should be pursued in regard to editing and publishing the same, or any of them." But no report has been made by this commission up to the present time.

APPENDIX.

No. 1.

Letter from M. Paul Meyer, member of the Institute, director of the École Nationale des Chartes.

NOVEMBER 29, 1890.

SIR: I am hardly qualified to answer the queries in your printed circular of September 26, 1890. I have not at hand such official documents as I should need, and even if I had it is doubtful whether, at this time of the year, in the beginning of the term, I should find time to abstract them and to put my extracts in decent order. Moreover, even official blue books do not give the sort of information you want, especially as far as the payments to the editors are concerned. It is not very difficult to make a list of the historical publications made at governmental expense, but it is hardly possible to make out how much has been paid to each editor, (1) because in many cases there is no strict rule, and a great variety prevails; (2) because such payments are not mentioned in the official papers.

For historical publications at Government expense the main part is done by the ministry of public instruction, as is obvious. If you glance at any of our budgets (you will easily find these blue books in New York or Washington) you will see, at chapter 41 of the Ministère de l'Instruction Publique, a sum of 100,000 francs for the printing of the Collection de Documents Inédits, and of 45,000 for fees to the editors. But I do not believe that in reality they spend so much as that. The Documents Inédits (I have no doubt you are fairly acquainted with that quarto collection, begun more than fifty years ago under M. Guizot as minister,) are printed under the supervision of the Comité des Travaux Historiques, of which I have been a member since 1865. But the members of that committee have nothing to do with the allowances to the editors. I believe they are allowed for each volume a sum not exceeding 4,000 francs. But there must be a great variety, for all volumes are not equal in bulk, and two volumes may have the same number of pages, and still represent a widely different effort; one may be a mere copy of one manuscript, another may be a critical edition with various readings from several MSS., etc. Then I believe various expenses are paid out of this chapter which have no direct connection with the documents themselves—*e. g.*, the *jetons de présence* allowed to members of the comité, the printing of the Bulletin du Comité, etc.

Besides this, the ministry of public instruction help historical researches indirectly. You will see at chapter 25 that there is a rather high subvention to the Institute of France (the Institute, moreover, have much money of their own, as bequests, etc.), and in fact two of the academies of the

Institute, the Académie des Inscriptions et Belles Lettres, and the Académie des Sciences Morales et Politiques, edit historical works or documents. Chapter 35 is headed "Subventions aux Sociétés Savantes." These societies, either in Paris or in the departments, spend a great part of their income in historical researches or publications. There is chapter 37, "Souscriptions, fr. 100,000." Much of this fund goes to historical works. Some of them would hardly find publishers without some help from the State. This is not all. The small Facultés des Lettres and some high schools spend a part of the Government's money in historical publications more or less periodical. I will not enter into more details, but you understand that a not inconsiderable sum of money is spent yearly for the benefit of history.

Some other public offices spend money in the same way, even when this is not registered in the blue books. For example, our foreign office has in course of publication an "Inventaire Analytique des Archives du Ministères des Affaires Étrangères," which, in many cases, as far as I can judge from the volumes I possess, amounts to a full publication of documents (official dispatches, reports, etc.). It is not printed at the national printing office, like the Documents Inédits, but published at a publisher's (Félix Alcan) who receives, I believe, a subscription of 200 copies for each volume. Now I can not discover in the budget from what fund the subscription comes, as there is no item, as far as I see, for it in the blue book. Evidently it is concealed under some vague heading.

The same may be said of the publications of the "Archives de la Marine." No provision for it appears in the Budget du Ministère de la Marine, and still the publications exist and are certainly paid for from the special budget of the navy or admiralty office.

But, apart from the publications paid for either entirely or partly (in case of subscriptions) by the Government, you must take into account the historical publications made at the expense of some towns or of each department. The city of Paris has a beautiful and very expensive great quarto collection of its own (Histoire Générale de Paris, collection des documents). They have a special bureau at the Hotel de Ville (Mansion House) with *chefs de bureau*, clerks, etc., to attend to it. Then each department edits an *inventaire sommaire* (sometimes very detailed) of the archives. A sum is provided every year by the *conseil général* of each department.

Taking the whole much is done officially for history, but you must be satisfied with giving a sort of bibliography without entering into details about fees, etc., or you will easily get entangled in insuperable difficulties.

Now, my opinion is that what is done in France ought to be done, because we have a long history, because we have ancient archives—in most departmental archives from the tenth or eleventh century. The Government, either central or local, ought to provide for the safe-keeping of them, which involves the necessity of printing extracts, inventories, indexes, etc. But the States are still a young republic whose history does not go farther back than the seventeenth or, at the outside, the sixteenth century, and therefore it does not seem to me that there is in America the same necessity for historical publications that there is in France.

Again, official publications are always and everywhere (in France as in England and elsewhere) very costly. A Government always spends more

for a given result than a private man or a respectable firm would do. This proves true as well for editing books as for constructing railways or monuments of any kind. Take for example the Société de l'Histoire de France, of which I was last year the president and to which I have belonged for many years, so that I am pretty well informed of their circumstances. With about 15,000 francs a year we edit four volumes and a bulletin. The Government could not do it for double the price. The Government would feel obliged to give the volumes gratuitously to many official people, who would not care for them and would at once get rid of them, bringing forcibly a great lowering in prices.

Consequently my opinion is that the States (I mean each State in particular, as your republic is not centralized as ours is,) ought to encourage by liberal subscriptions or grants of money the local historical societies, instead of taking the role of publishing firms. Only, whereas officials of doubtful competence and perhaps honesty are not to be intrusted with giving these grants, a respectable and learned commission ought to be formed, with a view of issuing instructions or directions and of remitting subscriptions or grants to the best editors or editing societies.

I am, sir, very faithfully yours,

PAUL MEYER,
Membre de l'Institut.

No. 2.

Herr Rothenhan to Mr. Phelps.

[Translation.]

FOREIGN OFFICE,
Berlin, December 30, 1890.

The undersigned has the honor to inform the envoy extraordinary and minister plenipotentiary of the United States of America, Mr. William Walter Phelps, with reference to the latter's communication of the 25th of this month, that the Royal Prussian minister of ecclesiastical affairs, in view of the shortness of the time and the situation of the budget and accounts, is not in a position to state with the desired details the expenditures of Prussia for historical investigations and publications. The minister believes, however, that the following data will be of value toward the purpose indicated.

For the completed fiscal year, April 1, 1889–'90, the expenditures of Prussia have been for:

	Marks.
Payment of ordinary and extraordinary professors of history at the universities	218,050
Current subventions of the historical seminaries	7,750
Archives of state:	
For personnel	265,978
For expenditures upon material	74,717

To the latter is to be added, for the continuance of the rebuilding of the State archives at Hanover, the sum of 200,000 marks.

The total to be 576,000 marks.

To these expenditures, individually reckoned in the budget, are to be added for the fiscal year mentioned the following grants for historical purposes, out of the general funds of the state:

	Marks.
From the general dispositions fonds	5,295
From the Academy of Sciences	40,796
Out of the dispositions fonds of the minister of ecclesiastical affairs, for scientific purposes, in round numbers	57,000

In this latter are, however, included expenditures annually recurring, as, for instance, for the Historical Institute at Rome, 13,500 marks; for the Corpus Inscriptionum Latinarum, 7,200 marks; for the Monumenta Borussica, 18,000 marks; for the publication of the political correspondence of Frederick II, 6,000 marks; for the Corpus Inscriptionum Atticarum et Græcarum, 4,500 marks. Already in previous years very considerable expenditures had been made toward these ends.

The expenditures mentioned in your letter for printing and editing of historical materials, for payments to authors and copyists, are included in these figures. The preceding data make no claim to completeness, since, for instance, the salaries of teachers of history in other upper schools than the universities and the numerous stipends paid for purposes of scientific history have been left out of account. The undersigned would remark, in addition, that Minister von Gossler will gladly, if desired, afford further statistical data, after making inquiries of the subordinate officials concerned, and also takes this opportunity to express anew to your excellency the assurance of his distinguished consideration.

ROTHENHAN.

No. 3.

[Translation.]

For the advancement of historical studies the German Empire spends:

(A) Annually 49,500 marks as a contribution toward the further preparation and publication of the Monumenta Germaniæ Historica;

(A) A subvention of 48,000 marks per annum to the Germanisches Museum at Nuremberg, and one of 15,000 marks to the Romisch-Germanishes Museum at Mainz;

(C) An annual grant of 119,505 marks to the Archæological Institute and the secretaries connected therewith at Rome and at Athens;

(D) Finally, grants have been made out of the revenues of the Empire for the following expenditures of this single year:

(*a*) A contribution of 8,100 marks toward the expenses of the edition of the early registers of the University of Bologna, undertaken by the Royal Academy of Sciences at Berlin.

(*b*) Four hundred thousand marks for [*sic*] the purchase of a large vellum manuscript of the fourteenth century known as the Manesse Collection of Songs;

(*c*) A grant of 10,000 marks for the purchase of the Fürst von Sulkowski's collection for the German National Museum at Nuremberg.

No. 4.

Prof. E. Curtius to Mr. Jameson.

[Translation.]

ROYAL ACADEMY OF SCIENCES,
Berlin, July 27, 1891.

DEAR SIR: The philosophical-historical class of the Royal Academy of Sciences has a yearly budget of 24,000 marks. Out of this are paid the expenses of—

(1) Its permanent undertakings:

	Marks.
(*a*) Corpus Inscriptionum Græcerum, annually	3,000
(*b*) Corpus Inscriptionum Latinarum (supplements)	3,000
(Both undertakings have some revenue from sales. The publisher takes charge of printing and the business of publication and turns over a portion of the proceeds.)	
(*c*) Commentatores Græci Aristotelis	5,000
(*d*) Political Correspondence of Frederick the Great	6,000
(*e*) For numismatics	3,000
(*f*) Prosopographia Romana	1,000
The editors are members of the Academy and receive no payment. The editor of the Greek inscriptions has a special salary of 1,500 marks.	

(2) Occasional undertakings, for which the support of the Academy is granted by the class.

I hope that these data meet your wishes.

Very respectfully, yours,

ERNST CURTIUS.

No. 5.

Dr. E. Dümmler to Mr. Jameson.

[Translation.]

MONUMENTA GERMANIÆ,
BERLIN W., KÖNIGIN-AUGUSTA-STR., 53,
July 26, 1891.

DEAR SIR: If you desire information respecting the organization and arrangements of the Gesellschaft für Aeltere Deutsche Geschichtskunde, which edits the Monumenta Germaniæ Historica, I must refer you to the organ of that society, the journal called "Neues Archiv der Gesellschaft für Aeltere Deutsche Geschichtskunde," of which, since 1876, sixteen octavo volumes have been published at Hanover. This journal, which in its first volume contains the statutes and in subsequent ones all the later reports respecting our labors and likewise many scientific dissertations, is almost as important as the Monumenta Germaniæ itself, and should not be absent from any large library in which special attention is paid to Ger-

man history. (Sybel's Historische Zeitschrift has, on the contrary, only occasionally printed reports concerning us.)

After thus referring you to the Neues Archiv, I remark that the Monumenta Germaniæ have nothing to do with individual German states, Prussia, Bavaria, etc., but are an affair of the German Empire, and that the means for their support are granted by the Reichstag alone. To be included herewith is a contribution of 6,000 marks, which Austria grants us, partly because before 1866 the undertaking was under the authority of the German Confederation, partly because in the middle ages Austria and Germany were inseparably connected.

The entire sum of the annual expenditures is 49,500 marks, of which 1,500 are appropriated to the rent of rooms suitable for the sessions and the library. Of the remaining sum, 16,500 marks go to the providing of salary and residence for the president of the Central Directorate, which has charge of the undertaking, and of the assistant director. Both are expected to devote their time exclusively to the Monumenta Germaniæ, and hold no other office. The 31,500 marks remaining after these two deductions, are expended upon the scientific labors of preparation. The individual divisions of the great collection of materials are, unless they are conducted by the editor himself, in the charge of special directors, who are at the same time members of the Central Directorate. They have besides their regular and their occasional collaborators.

The former, who also devote their entire time to the matter, receive as long as they are in the service of the Monumenta Germaniæ a fixed salary, which, beginning with 1,500 marks, may be increased up to 6,000. At present we have eight such collaborators, mostly young men. The occasional collaborators, who assist in definite individual tasks only, receive no salary, but payments for the work which they have actually performed, and in fact 30 marks for each "signature." A considerable part of the work consists in the scientific journeys which must be undertaken in order to use for our puposes the manuscripts in the different libraries of Europe, and in the preparation of copies. These journeys are undertaken mostly, but not exclusively, by our collaborators. We pay them their expenses of travel, and also during the time of their stay in foreign towns allowances of varying amount, which are supposed to pay their expenses in a suitable manner.

The printing of the individual volumes usually causes us no expense, for an agreement has been made with the two publishers, Hahn in Hanover, and Weidman in Berlin, that they shall pay all the cost of paper and printing, and in return the sale of the work is given over to them at a price agreed upon beforehand. The only expenses we sustain are for certain plates (facsimiles of manuscripts.)

The Central Directorate, though in a certain degree connected with the Royal Academy of Sciences at Berlin, maintains an entirely independent position, and is placed under the Imperial Department of the Interior. Its expenses are audited in the annual meeting, and those for the following year are then determined upon, but of this you can learn much more completely from the Neues Archiv.

There would be no use in enumerating our expenses in more detail, for

they vary considerably; we have also a messenger, pay some money for books, for copies, for photographs of manuscripts, etc.

Hoping that I have thus answered the essential parts of your inquiries, and declaring my readiness to make further explanations upon individual points, I remain, with great respect,

Your obedient servant,

Dr. E. DÜMMLER,

President of the Central Directorate of the Monumenta Germaniæ.

No. 6.

Mr. von Pfistermeister to Mr. Catlin.

[Translation.]

ROYAL BAVARIAN MINISTRY OF THE ROYAL HOUSEHOLD AND OF FOREIGN AFFAIRS,
Munich, November 18, 1890.

SIR: In reply to your esteemed letter of the 20th of last month, I have the honor to transmit the following information, based upon communications of the ministries concerned, respecting expenditures in Bavaria for historical investigations:

(1) *As to numbers I and II.*—The royal general archives here have a so-called Registenfonds, with an income of about 13,000 marks, which is devoted to the publication of archive and historical work. The publication of historical works under the direct care of the Royal Government is not at present carried on. There are no special officials designated for that purpose, and consequently there are neither material nor personal expenditures from the treasury with reference to this purpose.

(2) *As to number III.*—For the purposes of the archives the following sums are to be expended in the years 1890 and 1891:

	Marks.
In connection with the ministry of the royal household, and of foreign affairs for the royal house and state archives:	
(*a*) Expenditures for personnel	16,735
(*b*) Office expenses, expenses of administration, and for the purchase for documents	2,000
(*c*) Expenditures for building	500
Total	19,235
In connection with the royal ministry of the interior:	
(A) At the general archives of the Kingdom:	
(1) For fixed salaries and allowances for residences to permanent officials	38,080
(2) For payments and allowances to temporary employés as substitutes and assistants, etc	16,385
(3) For material expenditures (office expenses, expenses of administration, and the purchase of archival matter)	6,200

	Marks.
In connection with the royal ministry of the interior—Continued.	
(B) At the eight local archives of the individual government districts:	
(1) For fixed salaries and allowances for residences to permanent officials	62,800
(2) For payments and allowances to temporary employes	22,260
(3) For material expenses (office expenses, expenses of administration, etc)	11,070
Total	156,795

For permanent bureau expenses, as well as for the cost of maintenance and repairs of archive buildings, 8,300 marks are appropriated, so that the total expenditure is 166,095 marks.

(3) *As to number IV.*—The Academy of Sciences receives from the public treasury for historical purposes, and especially for the publication of the Monumenta Boica (documents relating to Bavarian history) a yearly grant of 1,500 marks, which is expended in payments to editors and copyists. The printing expenses, amounting to about 700 marks a year, the Academy meets out of moneys of its own. The eight local historical societies receive from the treasuries of their respective districts (Kreisen) grants which amount to from 300 to 1,000 marks, and which sum up to a total of 4,800 marks a year. The Historical Commission connected with the Royal Academy of Sciences administers a regular budget of 27,000 marks, which, however, does not come from the treasury of the state, but from funds of its own. Of these 27,000 marks about 7,000 go to general expenses of administration and 20,000 to the immediate purpose of the commission for the publication of historical works.

I am, sir, with assurances of the highest respect, etc.

VON PFISTERMEISTER.

No. 7.

Dr. von Weech to Mr. Jameson.

[Translation.]

HISTORICAL COMMISSION OF BADEN,
Karlsruhe, November 19, 1890.

SIR: Prof. von Holst has handed me your letter of September 26, with the request that I should give you the information which you desire. If I am not completely in a position to answer your inquiries in the exact form in which they are stated, yet the following statements may in general correspond to your wishes.

In Baden in the year 1890 the following sums were spent, or rather appropriated:

	Marks.
(*a*) For the Historical Commission	27,000
(*b*) Publications from the united collections of the state, from the court and provincial library, and the observatory	3,250

	Marks.
(*c*) Preparation of the inventory of artistic monuments, and publication of same	5,000
(*d*) For the archives	34,630

The payments for the preparation of historical works are very different. They vary from 30 to 80 marks for each "signature." If you have any further inquiries to answer I should be glad to reply.

Respectfully,

DR. FR. VON WEECH,
Director of the General Archives, Secretary of the Historical Commission of Baden.

No. 8.

Dr. Schenk to Mr. Jameson.

[Translation.]

SWISS CONFEDERACY, DEPARTMENT OF THE INTERIOR,
Bern, December 11, 1890.

SIR: In reply to your esteemed circular of November last regarding expenditures for the support of historical investigations, we have the honor to reply that the Federal Government annually makes the following regular expenditures for the purpose named:

	Francs.
(1) Expenditures for the Federal Archives	36,400
(2) Subvention to the Swiss General Historical Society	2,200
Besides these there is a regular annual vote for the preservation and purchase of Swiss antiquities, amounting to	50,000

What the cantons annually expend from public resources for the purposes of historical investigation is not within our knowledge.

Accept, sir, the assurances of our respect.

SCHENK,
Federal Department of the Interior.

[Inclosure.]

Details of the vote for the Federal Archives.

	Francs.
(1) Archivist of the state	5,000
(2) Deputy archivist	4,500
(3) Assistant	3,200
(4) Continuation of the Collection of the Early Resolutions of the Confederacy (Gesammt-Repertorium der ältern Eidgenössischen Abschiede)	3,000
(5) Collection of documents from the period of the Helvetian Republic (Aktensammlung aus der Zeit der Helvetik), 1798–1803.	9,200
(6) Copies from the archives of Paris	8,000
(7) Labors in the archives of Venice	1,500
(8) Collection of coins and medals	600
(9) Extraordinary assistance	1,400
Total	36,400

No. 9.

Memorial of the Swedish Foreign Office.

[Translation.]

In Sweden is ordinarily made a yearly appropriation of 24,000 kronor for the publication of learned works and for journeys undertaken for scientific purposes. The sum is distributed by the ministry of ecclesiastical affairs. For scientific journeys 10,500 kronor are expended, and 13,500 for the publication of learned works. Upon the average, one-fourth of the whole appropriation is expended for historical labors. The royal archives, which have a budget of 39,300 kronor, have also a yearly appropriation of 3,000 kronor for the publication of historical works. Beyond these sums the state has not made any payments toward the purposes designated, except that it has occasionally made grants to one or another historical author. There are also in existence various donations by certain persons for the support of historical studies or labors, such as the Berger donation in the charge of the Royal Academy of Science, History, and Antiquity, and the Posse donation in the charge of the Royal Archivist. An extra appropriation of 4,500 kronor has since 1877 been given for the publication of "Sveriges Traktater."

STOCKHOLM, *November 8, 1890.*

No. 10.

Extract from the memorial of the Danish ministry of ecclesiastical affairs and education to the ministry of foreign affairs, dated December 11, 1890.

[Translation.]

	Kronor.
I. For the printing and publication of historical works and collections of materials and for payments to editors, as well as for subventions toward the preparation or publication of private works	23,253
II. Yearly subventions to historical investigators as to other scientific men, bestowed as a rule for life and with an annual average amount of about 1,000 kroner. At present there are spent for this purpose	10,100
III. The ordinary annual grant for the public archives amounts at present to	47,323
Next year it will be higher on account of the erection required by law of several local archive buildings.	
For the salary of university teachers of history there are at present expended	13,200
IV. To learned societies occupied with historical investigations are granted	9,600

In addition to the sums mentioned, amounting in all to about 103,475 kroner, it may be mentioned that this science also participates in the advantages derived from various sums granted for special purposes, among which are traveling allowances to historical scholars, amounting upon the average to 20,000 kroner a year. It is also to be mentioned that

historical science is in several ways furthered by occasional amounts from various private foundations, the Carlsberg Fund, the Hjelmstjerne-Rosencrone Foundation, etc.

J. F. SCAVENIUS.

No. 11.

Mr. Bourn to Mr. Jameson.

CONSULATE-GENERAL OF THE UNITED STATES OF AMERICA,
Rome, December 4, 1890.

DEAR SIR: I have to-day an answer from the minister of public instruction relative to the questions asked in the circular.

As a rule the department of public instruction does not concern itself directly in the publication of historical works, but limits its scope to encouraging with subsidies and gifts the principal historical institutes, which are as follows. I append the amount given yearly to each.

	Liras.
1. Istituto Storico Italiano, in Rome	15,000
2. Istituto Storico Romano di Storia Patria	2,000
3. Deputazione di Storia Patria in Bologna	2,300
4. Società Storica in Como	
5. Deputazione di Storia Patria in Parma	1,700
6. Deputazione di Storia Patria in Turin	9,400
7. Deputazione di Storia Patria in Florence	6,800
8. Deputazione di Storia Patria in Modena	1,700
9. Società di Storia Patria in Palermo	2,000
10. Società di Storia Patria in Naples	2,000
11. Società di Storia Patria in Venice	2,000
12. Società di Storia Patria in Genoa	2,000
13. Società Storica Lombardica	2,000
14. Commissione di Storia Patria in Mirandola	300
15. For continuing publication of the works of De Rossi, entitled Inscriptiones Christianæ	12,000

Trusting that this information may prove to be what you desire and that it will reach you in due season, I remain,

Yours truly,

AUGUSTUS O. BOURN.

No. 12.

Mr. de Amorim to Mr. Jameson.

[Translation.]

SECRETARIATE OF THE DEPARTMENT OF
PUBLIC INSTRUCTION AND FINE ARTS,
Lisbon, December 16, 1890.

In reply to your request dated November 19 and received at this ministry on the 2d of the current month of December, I hasten to communicate the following information, confining myself to the principal points

of your inquiries, since the short space of time which remains * * * does not permit me to engage in more detailed inquiries.

Before entering upon this task, however, and for better understanding of the explanations referred to, we must start from the fact that the State proposes a printing office of its own, the "Imprensa Nacional," organized after the manner of the best establishments of the sort, in which the Government causes to be printed its official documents and the scientific, historical, and literary works, whose utility is recognized after examination by the Royal Academy of Sciences or other appropriate body, according to the terms of the decree of November 27, 1879.

This establishment comprises a fixed personnel having charge of the administration, and a technical and variable personnel composed of printers, compositors, lithographers, chromolithographers, type-founders, bookbinders, etc.

Literary, historical, and scientific work can, with the approval of the Government and when their authors desire it, be printed in the national printing office, either by the author's presenting the manuscript to be published at the expense of the Government, or after the making of a contract between the latter and the author, in which are stipulated the conditions to be observed by the two parties; all in conformity to the provisions of the aforesaid decree of November 27, 1879.

Reply has thus been made to the first two inquiries. With reference to the third and fourth, the state establishments in which writers undertake investigations of the sort mentioned are: The National Library of Lisbon, that of the Royal Academy of Sciences, that of the University of Coimbra, that of Braga, and that of Evora; and the Royal Archives of the Torre do Tombo, a rich repository of important manuscripts, in which are to be found many which date from the foundation of the monarchy. All of these establishments have their administrative personnel paid by the state.

In the present fiscal year four works are in the course of publication; one upon archæological monuments, of which four volumes have already been printed; another upon the history of national legislation from the Cortes of 1820; another upon the political history of the country from 1841 to 1851, and two upon literature. Of one of these the author is a lady. To each of the three is paid as a subvention the monthly sum of 60 milreis during the time agreed upon for the completion of his work.

It is not possible to determine the sum which is spent upon these works, since it varies according to the greater or less number of copies printed, the greater or less care and elegance of the printing, quality of the paper, number of workmen which it requires, whose daily pay varies from 1,000 to 1,200 reis. All of these elements enter into the calculation of this sum and contribute to fix the price of each copy of the respective editions.

It is not solely through this ministry, the ministry of public instruction and fine arts, that works of this nature are published, when considered to be of great utility; the ministries of war, marine, and colonies, and of public works, have also caused to be printed at the national printing office many similar works. Recently the ministry of marine published a work concerning a Portuguese expedition to our African possessions, and which bears an intimate relation to our earlier history and discoveries in that continent, a work adorned with numerous cuts and lithographs relative not only to geographical and topographical points, but also to the ethno-

logical types of the various regions of that continent. This work consists of three volumes, of which 5,000 copies are published. The Government expects to spend upon the edition 21,615 milreis.

The Royal Academy of Sciences, an institution which includes the scientific and literary notables of our country, joins in the publication of works of great scientific, historical, and literary bearing. Among others may be cited, "Portugalliae Monumenta Historica," "Documentos da Historia das Conquistas dos Portugueses na Africa Asia e America," "Historia dos Descobrimentos dos Portugueses," etc.

The academy has its own revenues and its own printing office, but since these revenues are insufficient for all its expenses, the Government makes it an annual grant of 3,747 milreis. The sum voted in the general budget of the state for the preparation and publication of works and for scientific commissions and voyages under charge of the ministry of public instruction and fine arts is one of 12,000 milreis.

ANTONIO MARIA DE AMORIM,
Councilor and General Secretary of the Ministry.

No. 13.

Mr. Pasetti to Mr. Grant.

[Translation.—Extracts.]

VIENNA, *December 10, 1890.*

The sum required for the Royal Academy of Sciences in Vienna, as stated in the estimates of the ministry for religion and education for the year 1891, includes:

1. Ordinary expenditures:

	Florins.
(*a*) Fixed grant	42,000
(*b*) Payments for right to print works	20,000
(*c*) Payments for office expenses	1,000
(*d*) Repairs of building	1,000
	64,000

2. Extraordinary expenditures:

Contribution toward the expenses of the scientific mathematical class	7,000
	71,000
For the "Institut für Oesterreichische Geschichtforschung" there is an ordinary grant of 1,000 florins with an addition of 1,500 florins	2,500

The addition is for the publication of the "Mittheilungen" of the Institute.

There also belongs to the expenditures of the Institute a contribution of 2,400 florins for the salaries of the ordinary members of the Institute, the sum of 1,000 florins for minor traveling allowances, the sum of 400 florins for the conductor of the Institute (at present Hofrath Sickel), and finally

a sum of 1,200 florins for the care of the office and payment of servants of the same. The professors charged with the duty of instruction at the Institute all belong to the teaching body of the University of Vienna and receive no special payment for their services at the Institute.

As for the "Istituto Austriaco di Studi Storici" at Rome * * * 5,600 florins have hitherto figured in the estimates as ordinary expenditures and specially as stipends for the support of scientific studies in Rome. That sum is this year raised by 8,000 florins in view of the permanent establishment of the institute at Rome, so that an expenditure of 13,600 florins is included in the estimates of the year 1891. Of this 4,000 are devoted to providing an official residence for the present conductor, 4,000 to the providing of local accommodations, 5,600 to stipends.

* * * * * * *

For the support of archaelogical and philological studies in Rome and Athens stipends amounting in the total to 4,000 or 5,000 florins are annually given to young scholars. These are not specially enumerated in advance, but come from a credit specially left open for that purpose.

* * * * * * *

For the Minister of Foreign Affairs.

M. PASETTI

[Inclosure I.]

Estimate for the Haus-, Hof- und Staatsarchiv for 1891.

	Florins.
One director	7,000
One vice-director	4,800
Three archivists	9,900
Nine archivist clerks	16,500
Four servants	3,000
One temporary assistant	454
Emoluments of servants	666
Office supplies	1,500
Total	43,820

No. 14.

Mr. Pasetti to Mr. Grant.

[Translation.—Extracts.]

II. Subventions for the publication of historical works granted in the years 1886 to 1890:

(1) Annual contribution toward the publication of the Monumenta Germaniæ Historica (since 1876) ..... marks .. 6,000
(2) Subvention toward the publication of the Critical History of the German People in Hungary (for 1890) ..... florins .. 400
(3) Annual subvention to the Historical Society of Carinthia (Kärntner Geschichtsverein) ..... florins .. 300
(4) Grant toward the publication of a handbook of the topography of Styria in the Middle Ages ..... florins .. 300

(5) Grant toward the publication of a work upon the relations of Turkey with Austria and of Turkey with Venice during the time of Wallenstein (1886) ..... florins.. 150

(6) Grant to the work: History of the Reformation and Counter-Reformation in Lower Austria (Geschichte der Reformation und Gegenreformation im Lande unter der Enns) (1886)..florins.. 300

No. 15.

Pangiris Bey to Mr. Hirsch.

NOVEMBER 9, 1890.

DEAR MR. HIRSCH: In answer to your note I hasten to inform you that the Turkish Government has often given its attention to historical studies and translated and published several important works on history. The Imperial treasury spends yearly over 1,000 pounds Turkish for the continuation and publication of the History of the Turkish Empire, which is written presently by Lutfy Effendi, historiographer of the Empire. The salary of this high official, who is also *conseiller d'état*, is included in the above-mentioned amount. The office of historiographer is very old, and has been held by some of the most prominent men of Turkey, Djevdet Pasha being one of the best known.

Yours, very sincerely,

C. PANGIRIS.

No. 16.

Memorial from the Foreign Office of the Russian Empire.

[Translation.]

The aid which the Imperial Government lends to the development of the historical sciences in Russia consists principally in the support of several scientific institutions, whose principal or exclusive object is that of historical study and researches, in the subventions which it grants annually to learned historical and archæological societies, and in the extraordinary subsidies which it grants for the encouragement of various scientific enterprises in the domain of history, such as archæological congresses, excavations, expeditions, publications of remarkable works upon antiquities, purchases of collections, etc.

The sums expended for these purposes by the Imperial Government are distributed as follows among the different ministries (that of war excepted, respecting which a communication will be made later):

Ministry of Public Instruction.—The ministry grants each year the following sums for the support of scientific institutions having as their object the study of history:

	Roubles.
The Archæographical Commission	12,805
For that of the central archives of Kiev and Vilna	6,422
The public museum and of the Roumiantseff Museum at Moscow	30,563

	Roubles.
The Museum of the Caucasus and the public library at Tiflis	12,955
The Historical Museum at Moscow	44,988
The commission for the study of ancient documents at Kiev and at Vilna	14,707
Total	122,440

Besides the institutions mentioned one may name the public library, of which an important section is devoted to historical labors and the historico-philological section of the Academy of Sciences.

Several learned societies, also falling within the sphere of the ministry of public instruction, receive from the Government annual grants of which the details are as follows:

	Roubles.
Society of History and Antiquity at Moscow	5,000
Imperial Russian Archæological Society	5,000
Society of History and Antiquities at Odessa	1,429
Archæological commission and Museum of Antiquities at Vilna	1,000
Imperial Royal Historical Society	8,000
Imperial Archæological Society of Moscow	5,000
Archæological Institute	6,000
Historical Society of Nestor the Annalist	800
Total	32,229

To these permanent expenses, the total of which is 154,669 roubles, must be added the extraordinary grants made toward different scientific enterprises having as their object archæological congresses, excavations, expeditions, etc. The sum which the ministry of public instruction grants each year toward scientific studies and researches in the domain of history may, then, be estimated at 180,000 or 200,000 roubles.

The following sums are inserted in the budgets of the different ministers of the Empire for the same purpose:

Ministry of Foreign Affairs.—Upon the budget of this ministry stands the sum of 13,650 roubles for the maintenance of the archives of the Empire and of the principal archives of St. Petersburg, and that of 10,700 roubles, for the maintenance of the principal archives of Moscow; total, 24,350 roubles.

Ministry of Marine.—Upon its budget stands the sum of 5,000 roubles for the composition of the history of the Russian fleet and that of 4,800 roubles for the support of a commission which is cataloguing the archives of this ministry; total, 9,800 roubles.

Ministry of the Interior.—Upon its budget stands the sum of 2,825 roubles granted to the central archives of Vitebsk, that of 429 roubles for antiquarian researches at Kief and that of 300 roubles for the preservation of the ruins of the old town of Bulgar upon the Volga. An annual grant of 15,000 roubles is made to the Imperial Geographical Society, which includes a special section for studies of historical geography occupied with publications having to do with the ancient geography of Russia; total, 3,554 roubles.

Ministry of Justice.—Upon its budget stands, for the maintenance of the archives of the Senate, the sum of 11,832 roubles, and for that of the archives of the ministry at Moscow, the sum of 29,182; total, 41,014.

Privy Chancery of His Majesty the Emperor.—Upon the annual budget of this chancery stands the sum of 600 roubles, granted toward defraying the expense of publication of the "Collection of Historical Materials" preserved in the archives of the Chancery.

Total for all the ministries mentioned, 279,318 roubles per annum.

No. 17.

Mr. Brymner to Mr. Jameson.

OTTAWA, *November 3, 1890.*

MY DEAR MR. JAMESON: Altogether about $50,000 annually are expended in what may be called literary work by the Dominion government. But from this should fairly be deducted about $27,000 voted to the Parliamentary Library. The other amount includes $5,000 for printing the proceedings of the Royal Society, which are partly of a historical, partly of a general nature; $6,000 for the archives, purely historical; $3,000 to different departments for classifying their records; $2,000 for the publication of the Genealogical Dictionary of Abbé Tanguay, purely historical, and other smaller sums. Exclusive of the library, the salaries for historical objects are probably about $4,000 annually, but this is a doubtful sum, as other salaries may be charged also to this head of expenditure, running up probably to $6,000.

Yours, sincerely,

DOUGLAS BRYMNER.

No. 18.

Expenditures of the Province of Quebec in support of historical research and publication.

	1889.	1890.
I. In printing and issuing historical works	$2,000	$2,000
II. In payment to copyists and printers	5,000	6,000
III. In salaries and expenses of office	2,000	2,000
Total	9,000	10,000

No. 19.

Mr. Eagar to Mr. Jameson.

THE TREASURY, NEW SOUTH WALES,
Sydney, January 24, 1891.

SIR: I have the honor, by direction of the colonial treasurer, to acknowledge the receipt of your letter of the 21st September last, and to inform you, in reply, that the only works of an historical nature undertaken by the government of New South Wales during the period referred to by you are "The Official History," "A History of the Post-Office and Passage Stamp Issues," and "The School History."

The cost of "The School History" was £253 for 1,000 copies, exclusive of the amount paid to the author. The cost of the other works above mentioned was: "The Official History," Volume I, 5,000 copies, £2,529; "The History of the Post-Office," 500 copies, £419; inclusive in each case of the amounts paid to the author.

I have the honor to be, sir, your obedient servant,

G. EAGAR,
Under Secretary for Finance and Trade.

IV.—THE UNITED STATES AND INTERNATIONAL ARBITRATION.

By Prof. JOHN BASSETT MOORE, of Columbia College, New York City.

THE UNITED STATES AND INTERNATIONAL ARBITRATION.

BY PROF. JOHN BASSETT MOORE.

I.—ARBITRATIONS OF THE UNITED STATES.

In the conduct of its foreign relations, the Government of the United States has exerted a potent influence upon the development of international law. In the early dawn of its existence, when the rights of neutrals were little respected, Mr. Jefferson, as Secretary of State under Washington, announced for its guidance certain rules of neutral duty so broad and progressive that succeeding generations have not outgrown them. By persistent effort it has secured a wide recognition of the right of expatriation. It has also contributed to the establishment of the system of extradition. But it is not the least of its achievements that it has so constantly lent the weight of its influence and example to the substitution of reason for force in the adjustment of disputes among nations that international arbitration may be said to have been a prominent feature of its policy.

The main purpose of this paper is to present, as briefly as possible, a general view of the arbitrations of the United States, and of their subjects, forms of constitution, and results. This the writer has been enabled to do by a study of their history and proceedings, for the most part unpublished, which he hopes hereafter to make available.

The first trial by the United States of the method of arbitration was made under the treaty with Great Britain of 1794, commonly called the Jay Treaty, which, by its fifth, sixth, and seventh articles, respectively, provided for three mixed commissions. That under the fifth article was organized to settle a dispute as to what river was intended under the name of the

River St. Croix, which was specified in the Treaty of Peace of 1783 as forming part of our Northeastern boundary. This Commission was composed of three members, each Government appointing one, and these two choosing a third. The first meeting was held at Halifax, August 30, 1796, and in order to attend it the American commissioner was forced to hire a vessel specially to transport him from Boston to Halifax, since no commercial intercourse was at the time allowed between the United States and British North America in American bottoms, and there was risk of interruption by hostile cruisers if he sailed in a British vessel, Great Britain being then at war with France. The Commissioners rendered an award at Providence, R. I., October 25, 1798, holding that the Schoodiac was the river intended under the name of the St. Croix.

The commission under the sixth article of the Jay Treaty was organized to determine the compensation due to British subjects in consequence of impediments which certain of the United States had, in violation of the provisions of the Treaty of Peace, interposed to the collection of bona fide debts by British creditors. This commission, which was composed of five members, two appointed by each Government, and the fifth designated by lot, met in Philadelphia in May, 1797. The last meeting was held July 31, 1798, when the American commissioners withdrew. Besides diversities of opinion on questions of law, the discussions at the board developed personal feeling, which was constantly inflamed by Mr. Macdonald, one of the British commissioners, who made it a point of duty freely to express all his opinions. The final rupture was caused by his submitting an unnecessary resolution which declared that from the beginning of the Revolution down to the Treaty of Peace the United States, whatever may have been their relation to other powers, stood to Great Britain in an attitude of rebellion. As it has always been held by the United States to be unquestionable that the Treaty of Peace did not grant their independence, but merely recognized it as a condition existing from the 4th of July, 1776, the date of its declaration, the American commissioners regarded the resolution as gratuitously offensive. Nevertheless, when, a few days after their withdrawal, they sent a statement of their motives to their former British colleagues, the latter began their reply by saying: "We had yesterday the honor of receiving your letter of fifty-five pages."

And a further response, evidently designed to be still more sarcastic, began: "Your suspension of our official business having left us at leisure for inferior occupations, we have again perused your long letter of the 2d instant." Both these communications were doubtless drawn by Mr. Macdonald, since they bear the impress of his style and are chiefly devoted to a vindication of his conduct. The claims which the commission failed to adjust were settled by a treaty concluded January 8, 1802, under which the British Government accepted the sum of £600,000 in satisfaction of its demands.

But the most important as well as the most interesting of the commissions under the Jay Treaty was that which sat at London under the seventh article. The American commissioners were Christopher Gore and William Pinkney; the British commissioners, John Nicholl, an eminent civilian, afterward succeeded by Maurice Swabey, and John Anstey; the fifth commissioner, chosen by lot, was Jonathan Trumbull, who had accompanied Mr. Jay to England when he negotiated the treaty. In order to avoid the misfortune of having a partisan as fifth commissioner, the four appointive members of the board adopted a happy expedient. In accordance with the requirements of the treaty, they first endeavored to select a fifth commissioner by agreement, and for that purpose each side presented a list of four persons; but as neither side would yield, it became necessary to resort to the alternative of casting lots. The next step, according to common practice, would have been for each side to place in the urn a name of its own independent selection, with the chances in favor of his being a partisan. But at London each side selected its name from the list of four made out by the other with a view to a mutual agreement, and the result was that a well-disposed man became the fifth commissioner.

One of the first questions raised before the commission was that of its power to determine its own jurisdiction in respect to the several claims presented for its decision. The British commissioners denied the existence of the power, and absented themselves from the board, till Lord Chancellor Loughborough, to whom the question was submitted, declared "that the doubt respecting the authority of the commissioners to settle their own jurisdiction was absurd, and that they must necessarily decide upon cases being within or without their competency."

Important questions of law arose before the board in relation

to contraband, the rights of neutrals, and the finality of the decisions of prize courts. These were all discussed with masterly ability, especially by Mr. Pinkney. His opinions as a member of the board Mr. Wheaton pronounced to be "finished models of judicial eloquence, uniting powerful and comprehensive argument with a copious, pure, and energetic diction." And they are almost all we possess, in a complete and authentic form, of the legal reasoning of the only advocate to whom, so far as we are informed, Chief Justice Marshall ever paid the tribute of an enthusiastic encomium in a formal opinion of the Supreme Court. The sessions of the board were brought to a close February 24, 1804, all the business before it having been completed. It was, however, in actual session only part of the period its existence nominally covers. Besides other interruptions, there was an entire suspension of its proceedings from July 30, 1799, to February 15, 1802, pending the diplomatic adjustment of the difficulty caused by the breaking up of the commission at Philadelphia.

Beginning with the arbitrations under the Jay treaty, every vexatious question between the United States and Great Britain that has since arisen, excepting the extraordinary train of circumstances that preceded the war of 1812, has yielded to methods of peace, arbitration being adopted where direct negotiation failed.

Like the Jay Treaty, the Treaty of Ghent, of December 24, 1814, which restored amity between the two countries, provided for three arbitrations. The first, under article 4, related to certain islands in Passamaquoddy Bay, the title to which, it was stipulated, should be determined by two persons, one appointed by each Government; and it was provided that, if they should disagree, the points of difference should be referred to a friendly sovereign or state. The commissioners held their first meeting at St. Andrews, New Brunswick, September 23, 1816, and at their last, in the city of New York. November 24, 1817, they rendered a final award.

By the fifth article of the Treaty of Ghent, an arbitration similar in constitution to that under article 4 was provided for the ascertainment of the Northeastern boundary of the United States from the source of the river St. Croix, along a certain described course, to the river St. Lawrence. The commission under this article held its first meeting at St. Andrews September 23, 1816, and its last in the city of New York April 13,

1822. Failing to agree, the commissioners made separate reports to their Governments, and, by a convention concluded September 29, 1827, the points of difference were referred to the King of the Netherlands. His award, dated January 10, 1831, the two Governments agreed to waive, since it assumed to make a new line in place of that described in the treaties.

The third commission under the Treaty of Ghent was organized under articles 6 and 7. Under the sixth article, its duty was to determine the Northern boundary of the United States along the middle of the Great Lakes and of their communications by water to the water communication between Lakes Huron and Superior; and under the seventh article, to determine the line from that point to the most northwestern point of the Lake of the Woods. This commission was composed of two members, one appointed by each Government. On June 18, 1822, they reached an agreement under article 6; but on the line described in article 7 they failed to concur, and it was finally determined, as was the unsettled boundary under article 5, by the treaty of August 9, 1842, generally known as the Webster–Ashburton Treaty.

In this relation it may be stated that the boundary from the northwest angle of the Lake of the Woods to the Rocky Mountains, on the forty-ninth parallel of latitude, under the treaty of 1846, was determined by a joint commission, of which the American member was appointed under an act of Congress of March 19, 1872.

By the first article of the Treaty of Ghent it was agreed that all territory, places, and possessions taken by either party from the other during the war, or after the signing of the peace, should, with the exception of the disputed islands in Passamaquoddy Bay, the title to which was to be determined by arbitration, be restored without delay, and without the destruction or carrying away of any public property, or of any slaves or other private property. Differences having arisen as to Great Britain's performance of the obligation touching slaves, it was agreed by the fifth article of the treaty of October 20, 1818, to refer the dispute to the Emperor of Russia. On April 22, 1822, the Emperor decided that Great Britain had failed to keep her obligation and must make indemnity, and on the 12th of the ensuing July a convention was concluded under his mediation for the appointment of a commission to determine the amount to be paid. This commission was composed of a

commissioner and an "arbitrator" appointed by each Government—four persons in all; but the two commissioners were first to examine the claims and endeavor to reach a decision, and, if they failed to agree, then to draw by lot, in each case of divergence, the name of one of the "arbitrators" to decide between them. This repetitious choice of an umpire by lot was not likely to promote consistency of decision; but the two commissioners, having met on August 25, 1823, succeeded by September 11, 1824, in agreeing on an average value for slaves taken from each State or district, and they subsequently concurred on other points. They held their last session March 26, 1827, their functions having been terminated by the ratification of a convention concluded at London, November 13, 1826, under which Great Britain paid $1,204,960 in full settlement of all the claims.

As we have already mentioned the reference of the Northeastern boundary dispute to the King of the Netherlands, under the convention of 1827, we come now to the convention concluded at London, February 8, 1853, for a general settlement of claims pending between the United States and Great Britain. Under this convention each Government appointed a commissioner, and the two commissioners chose an umpire. This responsible post was first offered to ex-President Van Buren, who declined it, and then to Joshua Bates, an American, but a member of the house of the Barings, who accepted the trust and faithfully discharged it. Many important decisions were pronounced by this commission, some of which touched our rights in the fisheries adjacent to the northeast coasts of British North America. It also rendered awards in the famous cases of McLeod and the brig *Creole*. Its first session was held in London, September 15, 1853; its last, January 15, 1855.

By the treaty between the United States and Great Britain of June 5, 1854, in relation to Canadian fisheries and commerce, provision was made for the adjustment of any disputes as to the exclusive right of British fishermen under the treaty, by a commission to be composed of a person appointed by each Government, and an umpire. The contracting parties, however, did not find themselves under the necessity of resorting to this stipulation.

Ten years, lacking a week, after the adjournment of the commission under the convention of 1853, a British-American commission, similar in constitution, met in Washington, under

a convention concluded July 1, 1863, to determine the compensation due to the Hudson's Bay and the Puget's Sound Agricultural Company, two British organizations, on certain claims for damages, as well as for the transfer to the United States of all their property and rights in territory acknowledged by the treaty of 1846, in regard to limits west of the Rocky Mountains, to be under the sovereignty of that Government. The commissioners, who met January 7, 1865, chose as umpire one of America's greatest judges and jurists, Benjamin Robbins Curtis; but his services were not required, since the commissioners on September 10, 1869, concurred in an award.

While this commission was sitting, the relations between the United States and Great Britain were seriously disturbed by controversies growing out of the civil war, the northeastern fisheries, and the disputed San Juan water boundary. All these menacing differences were composed by the treaty of Washington, of May 8, 1871, signed on the part of the United States by Hamilton Fish, Robert C. Schenck, Samuel Nelson, Ebenezer Rockwood Hoar, and George H. Williams; on the part of Great Britain, by the Earl de Grey and Ripon, Sir Stafford H. Northcote, Sir Edward Thornton, Sir John A. Macdonald, and Montague Bernard. The right of this treaty to be regarded as the greatest treaty of arbitration the world had yet seen was only emphasized by the fact that it provided for four distinct arbitrations, the largest number ever established under a single convention. Of the four arbitrations under the treaty of Washington, first in order and importance was that at Geneva, the noblest spectacle of modern times, in which two great and powerful nations, gaining in wisdom and self-control, and losing nothing in patriotism or self-respect, taught the world that the magnitude of a controversy need not be a bar to its peaceful solution. On the part of the United States, the arbitrator was Charles Francis Adams; on the part of Great Britain, Sir Alexander Cockburn. There were three other arbitrators, Count Frederic Sclopis, Jacques Staempfli, afterward President of Switzerland, and the Viscount D'Itajuba, respectively designated by the King of Italy, the President of the Swiss Confederation, and the Emperor of Brazil. The American agent was J. C. Bancroft Davis, the British agent, Lord Tenterden. Caleb Cushing, William M. Evarts, and Morrison R. Waite appeared as counsel for the United States. Sir Roundell Palmer, afterward Lord Selborne, ap-

peared for Great Britain, assisted by Montague Bernard and Mr. Cohen. How celebrated the names both of those who negotiated and of those who executed the treaty! The demands presented by the United States to the tribunal, arising out of the acts of Confederate cruisers of British origin, and generically known as the Alabama claims, were as follows:

1. Direct losses growing out of the destruction of vessels and their cargoes.
2. The national expenditures in pursuit of those cruisers.
3. The loss for the transfer of the American commercial marine to the British flag.
4. The enhanced payments of insurance.
5. The prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the rebellion.

As to classes 3, 4, and 5, Great Britain denied the jurisdiction of the tribunal, and also its power to decide as to its own competency, a question, as we have seen, raised by the same Government and determined against it under article 7 of the Jay Treaty. Without deciding this question, the Geneva tribunal disposed of these three classes by expressing an opinion that they did not, upon the principles of international law, constitute a good foundation for an award of compensation, and that they should be excluded from consideration, even if there were no difference between the two Governments as to the board's competency. In regard to the second class of claims, the tribunal held that they were not properly distinguishable from the general expenses of the war carried on by the United States; and further, by a majority of three to two, that no compensation should be awarded to the United States on that head. On claims of the first class, the tribunal awarded the sum of $15,500,000. Its first session was held December 15, 1871; its last, September 14, 1872.

The dispute as to the San Juan water boundary was referred to the Emperor of Germany, who rendered, October 21, 1872, an award in favor of the United States. Claims of British subjects against the United States, and of citizens of the United States against Great Britain (excepting the Alabama claims), arising out of injuries to persons or property during the civil war in the United States, from April 17, 1861, to April 9, 1865, were referred to a mixed commission, composed of three persons respectively appointed by the United States, Great Britain, and Spain, which sat in the United States. The fourth arbitration under the Treaty of Washington, to de-

termine the compensation, if any, due to Great Britain for privileges accorded by that treaty to the United States in the northeastern fisheries, was conducted by a commission of three persons—a citizen of the United States, a British subject, and a Belgian—which met at Halifax, June 15, 1877, and on the 23d of the following November (the American commissioner dissenting) awarded Great Britain the sum of $5,500,000. This is the last of the arbitrations between the United States and Great Britain, but it is announced in the President's annual message of the present year that all that remains to be completed of an agreement for the arbitration of the controversy as to the rights of the United States touching the seal fisheries in Behring Sea is the selection of arbitrators.

From France we have several times obtained gross sums in settlement of our claims by direct negotiation. The single exception to this practice is the commission, composed of an American, a Frenchman, and a citizen of a third power, which sat in Washington from November 5, 1880, to March 31, 1884, and determined the claims of citizens of France for injuries to their persons and property during our civil war, and claims of citizens of the United States against France for like injuries during the war between that country and Germany.

With Spain, our experience in respect to the settlement of claims has been similar to that with France; but in the case of Spain we have had two arbitrations. The first, under a diplomatic agreement of February 12, 1871, touching claims growing out of the insurrection in Cuba, was effected by means of a mixed commission, composed of two arbitrators, an American and a Spaniard, and an umpire, a citizen of a third power, which met in Washington, May 31, 1871. The arbitrators concluded their labors December 27, 1882; the last decision of the umpire bears date February 22, 1883. The second arbitration was the reference on February 28, 1885, to Baron Blanc, Italian minister at Madrid, of the question of the amount of damages to be paid by Spain for the admittedly wrongful seizure and detention of the American bark *Masonic*.

With our neighbor Mexico we have had two arbitrations, by means of mixed commissions, for the adjustment of miscellaneous claims, some of which were of great magnitude and importance. The first commission, under the treaty of April 11, 1839, was composed of two American and two Mexican commissioners, and an umpire, a citizen of Prussia. One of the

American commissioners was William L. Marcy, a remarkable man, in regard to whom the forgetfulness of the present generation is to be lamented. The second commission, under the treaty of July 4, 1868, consisted of a board of two commissioners and an umpire, and lasted from July 31, 1869, to November 20, 1876, but some of the umpire's decisions were rendered after the labors of the commissioners were completed. Francis Lieber at one time, and Sir Edward Thornton at another, served in the capacity of umpire. A thousand and seventeen claims were presented by the United States, and 998 by Mexico, and their aggregate amount exceeded half a billion dollars. The aggregate amount allowed was about four millions and a quarter; but it has been charged that two of the principal awards in favor of the United States were procured by fraudulent evidence, and, pending efforts to secure a competent investigation of this charge, the United States has suspended the distribution of the money paid by Mexico upon them.

Besides adjusting miscellaneous claims by arbitration, the United States and Mexico have adopted a notable arbitral measure in the convention of March 1, 1889, by which a permanent board, denominated an International Boundary Commission is established for the determination of questions growing out of changes in the course of the Rio Grande and the Colorado rivers, where they form the boundary. This provision, however, is but the consummation of arbitral stipulations for determining the boundary which are found in the treaties between the two countries of January 12, 1828; February 2, 1848; December 30, 1853; and July 29, 1882.

The most remarkable, however, of all the arbitral agreements between the United States and Mexico is that found in the twenty-first article of the treaty of February 2, 1848, commonly called the treaty of Guadalupe Hidalgo, to which, as a general obligation to arbitrate, all subsequent arbitral arrangements between the two countries may in a measure be referrible. This article reads as follows:

> If unhappily any disagreement should hereafter arise between the Governments of the two Republics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using,

for this end, mutual representations and pacific negotiations. And if, by these means, they should not be enabled to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case.

Let us hope that in committing themselves, as peculiarly befits neighboring and friendly states, to arbitration as a principle, the people of the United States and Mexico have adopted a policy which they will liberally extend to other nations.

The United States and Haiti have had three arbitrations. By a protocol signed May 24, 1884, they referred to the Hon. William Strong, formerly one of the justices of the Supreme Court of the United States, two claims against Haiti, known as those of Pelletier and Lazare, involving questions of administrative and judicial procedure. His awards, dated June 13, 1885, were adverse to Haiti. But the United States has thus far declined to enforce them on the ground that in the case of Lazare the award was shown by alleged after discovered evidence, which the arbitrator himself declared to be material, to have been unjust; and that, in the case of Pelletier, the arbitrator erroneously conceived and declared himself to be compelled by the terms of the protocol to award, on a single question of strict law, compensation upon a claim which he obviously regarded as immoral and unjust.

On March 7, 1885, the American minister at Port au Prince and the Haitien minister of foreign affairs agreed upon a mixed commission of two Americans and two Haitiens to adjust the claims of citizens of the United States growing out of civil disturbances in the island. The labors of the commission were completed on the 24th of the following month.

While these claims were pending, the imprisonment of C. A. Van Bokkelen, a citizen of the United States, at Port au Prince for debt, and the decision by the Haitien courts that because he was an alien he could not obtain his liberty by an assignment for the benefit of his creditors, occasioned a dispute both as to the treaty guaranty of full legal rights to citizens of the one country in the jurisdiction of the other, and as to the finality of the denial by the Haitien tribunals of a claim of right

made in virtue of an international obligation. Under a protocol signed May 22, 1888, Mr. Alexander Porter Morse, of the city of Washington, who was named as arbitrator, rendered December 4, 1888, an award adverse to Haiti and allowed the claimant suitable damages.

Only once have members of our arbitral boards been charged with fraud. But the conduct of the claims commission at Caracas, under the convention of April 25, 1866, was so seriously impeached that the United States and Venezuela, by a treaty concluded December 5, 1885, agreed to have the claims reheard by a new commission. This commission, composed of an American, a Venezuelan, and a third commissioner chosen by the other two, who was also an American, sat at Washington from September 3, 1889, to September 2, 1890. Its proceedings were characterized by a conscientious and impartial disharge of duty.

With Colombia there have been three mixed commissions, each composed of two commissioners and an umpire. The first and second were organized under conventions concluded September 10, 1857, and February 10, 1864, and before both of them came important cases touching our rights on the Isthmus of Panama under the treaty with New Granada of 1846. The third commission, appointed under a diplomatic agreement of August 17, 1874, awarded the sum of $33,401 for the capture of the American steamer *Montijo* by insurgents in the State of Panama. For the adjustment of miscellaneous claims, we have also had two similarly constituted commissions with Peru, under conventions of January 12, 1863, and December 4, 1868; one with Costa Rica, under the treaty of July 2, 1860, and one with Ecuador, under the treaty of November 25, 1862. Besides joining with Peru in mixed commissions, the United States by a convention concluded December 20, 1862, agreed to refer two claims against that Government for the seizure and confiscation of the vessels *Georgiana* and *Lizzie Thompson* to the King of the Belgians. His Majesty, however, declined the trust, and on July 9, 1864, Mr. Seward, then Secretary of State, informed the Peruvian minister in Washington that the United States would not pursue the subject further.

After first making a naval demonstration, the United States by a convention signed February 4, 1859, agreed to arbitrate the claim made against Paraguay by the United States and Paraguay Navigation Company. A commission composed of a representative of each Government decided August 13, 1860,

that the claim was not well founded. On the ground that the convention admitted liability and that the commissioners, by going into the merits of the case, had exceeded their competency, the United States repudiated the award, and has since endeavored to settle the claim by negotiation.

Another arbitration not permitted to end agitation was the submission to Louis Napoleon, under a treaty signed February 26, 1851, of the claim made by the United States against Portugal for the latter's nonfulfillment of neutral duty, in suffering the destruction on September 27, 1814, in the port of Fayal, in the Azores, of the American privateer General Armstrong by a British fleet. The arbitrator held that the privateer was the aggressor, and made an award adverse to the claim. On various grounds, among which was the charge that the case of the United States was incompletely submitted, the claimants sought to have the award set aside. This course the United States very properly declined to take, but it subsequently paid the claimants from its own treasury. Another arbitration between the United States and Portugal, under a protocol signed in the present year, to which Great Britain is also a party, respecting the seizure by the Portuguese Government of the Delagoa Bay Railway and the annulment of its charter, is now pending before three Swiss jurists at Berne.

Under a convention concluded November 10, 1858, the United States and Chile referred to the King of the Belgians a claim growing out of the seizure of the proceeds of the cargo of the American brig *Macedonian* by the famous Lord Cochrane, founder of the Chilean navy. An award was made May 15, 1863, in favor of the United States.

As submissions of claims to foreign ministers, we may class that of the claim against Brazil for the loss of the whale ship *Canada*, to Sir Edward Thornton, British minister at Washington, under a protocol of March 14, 1870; and that of the claim of Carlos Butterfield against Denmark, for the firing on one vessel and the detaining of another in the Danish West Indies, to Sir Edmund Monson, British minister at Athens, under a treaty signed December 6, 1888. In the case of the *Canada*, the award was favorable to the United States; in the case of Butterfield, adverse.

II.—THE UNITED STATES AS ARBITRATOR OR MEDIATOR.

Besides submitting its own controversies to arbitration, the United States or its representatives have not infrequently discharged an arbitral or mediatorial function. On three occasions the arbitrator has been the President: (1) Under a protocol between Great Britain and Portugal of January 7, 1869, touching claims to the island of Bulama; (2) under a treaty between the Argentine Republic and Paraguay of February 3, 1876, to settle a boundary dispute; (3) under a treaty between Costa Rica and Nicaragua of December 24, 1886, to settle boundary and other questions.

On four occasions a minister of the United States has acted as arbitrator: (1) In 1873 the envoys of the United States and Italy at Rio de Janeiro rendered a decision upon the claim of the Earl of Dundonald, a British subject, against Brazil; (2) in the same year the minister of the United States at Santiago was appointed as arbitrator between Chile and Bolivia in respect to some disputed accounts; (3) in 1874 the minister of the United States at Rome determined a boundary dispute between Italy and Switzerland; (4) in 1875 the minister of the United States at Bogota rendered an award on certain claims of Great Britain against Colombia.

The mediatorial services of the United States have been numerous. One of the most important is that performed by the Secretary of State in effecting, on April 11, 1871, between Spain on the one hand and Chile, Peru, Ecuador, and Bolivia on the other, an armistice which can not, according to its terms, be broken by any of the belligerents except after notification through the Government of the United States of its intention to renew hostilities. Another important mediatorial service was that rendered in 1881 to Chile and the Argentine Republic by the ministers of the United States at Santiago and Buenos Ayres, in effecting by the exercise of their good offices an adjustment of a long-standing boundary dispute.

III.—DOMESTIC TRIBUNALS FOR THE DETERMINATION OF INTERNATIONAL CLAIMS.

Besides being concerned in arbitrations, either as a party or as referee, the Government of the United States has often created tribunals under its own statutes, to execute conventional obligations and determine questions of law mainly interna-

tional. In many instances claims of considerable number and magnitude have been settled for a gross sum, which this Government has undertaken to distribute; or else, for a particular consideration, such as the cession of territory, it has undertaken to pay to a certain amount claims of its citizens against the government making the concession. In either case claims against the fund are valid only so far as they formed just demands against the foreign government under the principles of international law.

Tribunals of the type in question, created pursuant to treaty stipulations, have been as follows: Two under the treaty with Spain of February 22, 1819, ceding the Floridas, and one under the Spanish indemnity convention of February 17, 1834. There have been two under treaties with France, the first under the treaty of April 30, 1803, to ascertain claims against that Government which the United States had undertaken to pay; the second, under the treaty of July 4, 1831, to distribute an indemnity paid by France for spoliations. There have also been two under treaties with Great Britain, the first, under the treaty of November 13, 1826, to distribute an indemnity paid for slaves carried away in derogation of Article 1 of the Treaty of Ghent; the second, under the treaty of May 8, 1871, to distribute the Alabama award. The rest have been created to ascertain the beneficiaries of indemnities paid under the following treaties: Brazil, January 27, 1849; China, November 8, 1858; Denmark, March 28, 1830; Mexico, February 2, 1848; Peru, March 17, 1841; Two Sicilies, October 14, 1832.

IV.—SUMMARY.

Summarizing the results of our investigations, we find that the Government of the United States has entered into forty-eight agreements for international arbitration; that it, or one of its representatives, has seven times acted as arbitrator, and that it has erected thirteen tribunals under its own laws to determine the validity of international claims; the total, therefore, of the arbitrations or quasi-arbitrations to which it has been a party is sixty-eight, to say nothing of agreements now pending, but as yet incomplete. Only two cases have been adduced in which it has acted as mediator, for the reason that instances of that character are so numerous and so diverse that it would be impossible within the limits of the present paper to describe them.

The arbitrations of the United States have embraced many types of international controversy, and many highly important questions of law, both public and private. Not infrequently the questions in whose solution they have resulted were hotly discussed as just and almost necessary causes of war, involving national rights and national honor. If the contracting parties had resorted to force, they would perhaps never have realized how easily and honorably their differences might have been adjusted by reasonable methods. If the United States and Great Britain, instead of making the Treaty of Washington, had gone to war about the Alabama claims, which involved the rights and honor of both countries, and even the public legislation and the conduct of the public authorities of one of them, it is probable that many patriotic writers in both countries would now be engaged in showing how impossible it was to submit such questions to arbitration.

V.—GROWTH OF SENTIMENT IN FAVOR OF ARBITRATION.

The frequent adoption by the United States of the method of arbitration is in itself conclusive evidence of a very general sentiment, both in this country and abroad, in favor of the amicable settlement of international disputes. But, besides finding practical acceptance, this sentiment has disclosed itself in various impressive forms. It is probable that the many petitions and memorials which have during the last half century been presented to the executive and legislative branches of the Government by respectable and influential bodies have had great weight in determining the course of negotiations. As early as February, 1832, the senate of Massachusetts adopted by a vote of 19 to 5 resolutions expressive of the opinion that "some mode should be established for the amicable and final adjustment of all international disputes, instead of resort to war." In 1837 a resolution of similar purport was passed by the house of representatives of Massachusetts unanimously, and by the senate by a vote of 35 to 5. In 1844 the legislature of the same State adopted a resolution urging that a congress of nations be convoked to devise measures for putting an end to war. In 1852 the legislature of Vermont placed itself in line with that of its neighbor, in the advocacy of reasonable practices. In February, 1851, Mr. Foot, from the Committee on Foreign Relations, reported to the Senate of the United States the following resolution:

Whereas appeals to the sword for the determination of national contro-

versies are always productive of immense evils; and whereas the spirit and enterprises of the age, but more especially the genius of our own Government, the habits of our people, and the highest permanent prosperity of our Republic, as well as the claims of humanity, the dictates of enlightened reason, and the precepts of our holy religion, all require the adoption of every feasible measure consistent with the national honor and the security of our rights, to prevent, as far as possible, the recurrence of war hereafter: Therefore,

Resolved, That in the judgment of this body it would be proper and desirable for the Government of these United States, whenever practicable, to secure in its treaties with other nations a provision for referring to the decision of umpires all future misunderstandings that can not be satisfactorily adjusted by amicable negotiation, in the first instance, before a resort to hostilities shall be had.

Two years later Senator Underwood, from the same committee, reported a resolution of advice to the President—

To secure, whenever it may be practicable, a stipulation in all treaties hereafter entered into with other nations, providing for the adjustment of any misunderstanding or controversy which may arise between the contracting parties, by referring the same to the decision of disinterested and impartial arbitrators, to be mutually chosen.

On June 13, 1888, Mr. Sherman, also from the Committee on Foreign Relations, reported to the Senate a joint resolution requesting the President—

To invite, from time to time, as fit occasions may arise, negotiations with any Government with which the United States has or may have diplomatic relations, to the end that any differences or disputes arising between the two Governments which can not be adjusted by diplomatic agency, may be referred to arbitration, and be peaceably adjusted by such means.

In 1874 a resolution in favor of general arbitration was passed by the House of Representatives.

Of all the memorials and petitions presented to Congress on the subject of international arbitration, the most remarkable were those submitted in 1888, in connection with the communication made to the President and the Congress of the United States in that year by 233 members of the British Parliament urging the conclusion of a treaty between the United States and Great Britain, which should stipulate "that any differences or disputes arising between the two Governments, which can not be adjusted by diplomatic agency, shall be referred to arbitration." This communication was reenforced by petitions and memorials from a great number of associations and private individuals, from Maine to California. In the city of New York a public meeting was held to welcome a deputation of

Englishmen who had come hither to present the communication; and a resolution was adopted, pursuant to which the mayor appointed a committee of five citizens, at the head of whom was the eminent publicist and law reformer, David Dudley Field, to urge upon the President and Congress the making of such a treaty as that described. This committee presented to Congress a memorial amply demonstrative of the beneficence of arbitration, both in theory and in practice.

In 1883 the Government of Switzerland proposed to the United States the conclusion of a convention for thirty years, binding the contracting parties to submit any differences between them to arbitration. Touching this proposal the President, in his message to Congress, said:

> The Helvetian Confederation has proposed the inauguration of a class of international treaties for the referment to arbitration of grave questions between nations. This Government has assented to the proposed negotiation of such a treaty with Switzerland.

Nor should we omit to notice that the annual message of the President, transmitted to Congress at the opening of the present session, contains four distinct passages recommendatory of the arbitral settlement of international disputes. The first relates to the Bering Sea controvery, to which we have already adverted; the second, to the determination of certain unmarked boundary lines between the United States and Canada; the third, to the adjustment of the boundary dispute between Great Britain and Venezuela; the fourth, to the arbitration treaty formulated by the International American Conference.

This treaty, both in its declaration of principles and in the precise and positive character of its stipulations, constitutes such a conspicuous and comprehensive acceptance of arbitration, that its essential provisions should be quoted. They are as follows:

> Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;
>
> Recognizing that the growth of moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences;
>
> Animated by the conviction of the great moral and material benefits that peace offers mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;
>
> Convinced by reason of their friendly and cordial meeting in the present conference, that the American Republics, controlled alike by the prin-

ciples, duties, and responsibilities of popular government, and bound together by vast and increasing mutual interests, can, within the sphere of their own action, maintain the peace of the continent and the good will of all its inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves.

* * * * * * *

ARTICLE I.

The Republics of North, Central, and South America hereby adopt arbitration as a principle of American international law for the settlement of the differences, disputes, or controversies that may arise between two or more of them.

ARTICLE II.

Arbitration shall be obligatory in all controversies concerning diplomatic and consular privileges, boundaries, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties.

ARTICLE III.

Arbitration shall be equally obligatory in all cases other than those mentioned in the foregoing article, whatever may be their origin, nature, or object, with the single exception mentioned in the next following article.

ARTICLE IV.

The sole questions excepted from the provisions of the preceding articles are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case, for such nation arbitration shall be optional; but it shall be obligatory upon the adversary power.

Besides adopting this treaty, the conference made reports recommending arbitration to the nations of Europe and denouncing the principle of conquest. In transmitting these various documents to Congress the President very appropriately observed that the ratification of the measures proposed would "constitute one of the happiest and most hopeful incidents in the history of the Western Hemisphere." It is, therefore, to be regretted that this remarkable arbitration treaty, which admits the defense of national independence as the only justification of war, and in that case makes arbitration obligatory on the adversary power, has lapsed by reason of the failure of the contracting parties to exchange their ratifications within the period prescribed for that purpose. But the President informs us that several of the governments concerned

have expressed their desire to save it; and he very pertinently declares that it is incumbent upon the United States "to conserve the influential initiative it has taken in this measure by ratifying the instrument and by advocating the proposed extension of the time for exchange." It is to be hoped that the Government of the United States, which, in the statute authorizing the convocation of the conference, specified arbitration as one of the great objects to be promoted, will give effect to this recommendation.

Whatever the advocates of international arbitration may wish for, there are doubtless few, if any, even of the most ardent, who expect to bring about by that means the immediate and final abolition of war between independent peoples. Changes in the dispositions and conduct of men are wrought slowly and painfully, and those who labor in the cause of progress and of humanity must often suffer disappointment. Nevertheless, while it may at times be necessary to be superior to discouragement, it is gratifying to know that the principle we espouse is so beneficent and so efficacious that it commands the support of those who have been foremost as men of affairs.

It would be tedious to enumerate the statesmen of America who have expressed their faith by words or by acts in the principle of arbitration, and if we look abroad we find in the present generation such eminent names as those of John Bright, Gladstone, the Earl of Derby, Lord Lawrence, and the Marquis of Ripon. Nor should we forget that profound jurist and wise statesman of Italy, the late Mr. Mancini, who not only carried in the parliament of his country a resolution in favor of arbitration, but who also, as minister for foreign affairs, himself negotiated many treaties containing an arbitral stipulation.

It is the fashion of those who cavil at arbitration to argue that the variety of questions to which it may be applied is small. While we might refute this objection by recurring to the arbitrations of the United States, it is interesting to quote the words of President Grant, who said:

> Though I have been trained as a soldier, and have participated in many battles, there never was a time when, in my opinion, some way could not have been found of preventing the drawing of the sword. I look forward to an epoch when a court, recognized by all nations, will settle international differences, instead of keeping large standing armies as they do in Europe.

Testing these words of a great soldier by the history of wars,

we may appreciate the force of the following declaration of Lord Hobhouse:

> The more I have studied history, the stronger has my conviction become that many wars are caused by the stupidity or ambition of a few persons, many by a false sense of honor, many by misunderstanding of fact.

Is the method of arbitration efficacious? The best answer we can make to that inquiry is to ask the objector to point to a single instance in which two nations, after having agreed to arbitrate a difference, have gone to war about it. Arbitration has brought peace, and "peace with honor." It is a rude and savage notion that nations, when they feel themselves aggrieved, must, instead of discussing and reasoning about their differences in a spirit of patience and forbearance, seek to avenge their wrongs by summary and violent measures. Among an enlightened and Christian people the spirit of revenge, discarded, as it is, in laws for the government of men in their private relations, can still less be adopted as a principle of public conduct. For, just in proportion as the responsibilities of nations are greater and more solemn than those of private individuals, in that proportion are nations bound to exceed the measure of private virtue in their efforts to hasten the era of peace.

V.—SOME RECENT DISCOVERIES CONCERNING COLUMBUS.

By President CHARLES KENDALL ADAMS.

SOME RECENT DISCOVERIES CONCERNING COLUMBUS.

By President CHARLES KENDALL ADAMS, of Cornell University.

The question as to where in the Bahama Islands Columbus first landed has been the subject of even more controversy than the question where the Northmen first landed in New England. The investigations of Humboldt, Washington Irving, Becher, Varnhagen, Major, Navarrete, Muñoz, Harrisse, Fox, and Markham, still left the question in much doubt. Few readers of any or all of these books could feel that the question was really settled. All that Mr. Winsor has felt justified in saying in his recent book on Columbus is that the opinion of scholars has been drifting toward a belief that the landfall was on Watling Island.

Since Mr. Winsor completed the writing of his work the Bahamas have been visited and very carefully explored by an enterprising German traveler, Rudolf Cronau; and the results of his studies have been embodied in the seventh "Lieferung" of his "Amerika: die Geschichte seiner Entdeckung von der Altesten bis auf die neueste Zeit." It is my purpose, in the briefest possible space, and without much comment, to indicate Mr. Cronau's conclusions and the reasoning by which he reaches them. In relation to the matter of the landfall, his positions may be said to be two in number: First, that Columbus landed on Watling Island; and, secondly, that the landing took place on the west side, instead of, as has generally been supposed, on the east side.

His reasons for reaching the first conclusion may be briefly stated as follows:

1. Watling Island is the only one which answers to all the distinctive characteristics that were described by the original authorities. These were: (*a*) A pleasant harbor; (*b*) a large body of water in the interior; (*c*) a large roadstead lying north-north-

east of the harbor; (*d*) the size of the island; (*e*) the form of the island. Las Casas, whose father was with Columbus at the landfall, and who himself knew Columbus well and passed many years on the islands, says that the island was oblong or bean-shaped. Columbus himself describes the geographical peculiarities lying in the vicinity of the place of landing, which answer to one of the points on this island; and at a point north by northeast of the landing place he describes a harbor, which he says is "large enough to accommodate all the fleets of Christendom." This description will apply with considerable exactness to Watling Island, and to no other. Watling is not the only one of the Bahamas that has a large interior lake, but with the exception of New Providence, which is out of the question, is the only one that answers to Las Casas's description of being the shape of a bean.

2. In going from Watling Island and following the course marked out in the journal of Columbus, there is no difficulty in identifying all the islands at which the fleet of Columbus stopped between Walting and Cuba.

3. It is impossible to establish such an identification if we suppose that the landfall was on another island.

This process of reasoning, though not essentially different from those of Becher and others, is carried on in a more perfectly independent spirit and is the result of personal explorations. There is no evidence that Becher ever made a study of the question on the spot.

It is, however, in regard to the second question—namely, that relating to the exact point at which the landfall took place—that Cronau's observations and reasoning are most original and most important. The basis of his conclusion is twofold: First, a very careful study of the text of Columbus' journal, as preserved for us by Las Casas, for the most part in the very language of Columbus himself; and, secondly, his own personal explorations and observations on the island.

His reasoning may be summarized as follows:

1. The best landing place on the island is at Graham Harbor, a little north of the middle of the west side.

2. The state of the weather was such as to make a landing on the west side the most natural one.

3. A landing on the east side, at any time extremely difficult, would have been, on account of the prevailing winds and waves at the time of the discovery, quite impossible.

4. The details given by Columbus show that the approach to the island from the west was both easy and natural.

5. The direction taken by Columbus in going from the first landing place indicates that he landed on the west side and could not have landed on the east.

6. And finally, having landed on the west side, the difficulties in the narrative, which on any other theory seem insuperable, almost or entirely disappear.

Now let us, in the briefest possible manner, see how this theory comports with the facts of the narrative.

1. Columbus says in his journal that on Thursday, October 11, they encountered a "heavier sea than they had met with before on the whole voyage." In the same connection he adds that "after sunset they sailed 12 miles an hour. until two hours after midnight, going 90 miles."

2. Cronau reasons that the very heavy sea and the rate of sailing at 12 miles an hour could not be reconciled, except in case of a very strong wind from an easterly direction. This turbulence of the sea, rolling in as it must from the east, would make a landing on the east side of the island impossible. Even in fair weather this would have been extremely hazardous, because the whole of the eastern coast is fortified and protected by a continuous and dangerous line of precipitous rocks.

3. Columbus reports that at 10 o'clock, that is, when they were sailing at the rate of 12 miles an hour, he believed he saw a light. Four hours later, that is to say, after they had passed over 48 miles, and at 2 o'clock in the morning, land was first seen by Rodrigo de Triana from the *Pinta*. We are not told the direction of this land from the ship, but it was regarded as about 2 leagues distant. They then, Columbus says, "took in sail and remained under square sail, lying to till day." Cronau is of the opinion that the fleet, which under full sail was going at the rate of 12 miles an hour, when reduced to a single square sail, would necessarily have gone several miles, probably as many as 15 or 20, during the four hours between 2 o'clock and daylight.

4. This rate of nearly or quite half speed would have carried them some miles beyond the island, which is only 6 miles broad; and in the morning, whether they passed the island on the north or on the south, the only natural course was to turn about and approach the island from the west.

5. The abridgement of Columbus by Las Casas says that,

"arrived on shore, they saw trees very green, many streams of water, and divers sorts of fruits."

Columbus himself, in an unabridged passage, says:

This is a tolerably large and level island, with trees extremely flourishing, and streams of water. There is a large lake in the middle of the island, but no mountains. The whole is completely covered with verdure delightful to behold.

This description, especially that of Las Casas, as an abridgement of the statement given by Columbus, answers at the present time to the appearance of the island as seen from off Graham Harbor; but it answers to the appearance of the island from no other point.

6. Under date of Sunday, the 14th of October, Columbus says:

At daybreak I ordered the boat of my vessel, as well as the boats of the other caravels to be put in readiness, and I skirted along the coast toward the north-northeast, in order to explore the other part of the island, namely, that which lies to the east.

This is the real meaning of the Spanish passage, although Kettell in his English translation has very blunderingly given it the very opposite meaning. Kettell's rendering is the following:

In the morning, I ordered the boats to be got ready, and coasted along the island toward the NNE., to examine that part of it, we having landed first at the eastern part.

The Spanish, as given by Navarrete, I, p. 24, is as follows:

En amaneciendo mandé aderezar el batel de la nao y las barcas de las carabelas, y fue al luengo de la isla, en el camino del Nordordeste, para ver la otra parte, que era de la otra parte del Leste.

This passage points clearly to the landing on the west side. Columbus then states that in their north-northeast movement in the boats they discovered two or three villages, the people of whom beckoned them to come ashore. Columbus says, however:

I was apprehensive on account of the reef of rocks which surrounds the island, although there is a depth of water and room for all the ships of Christendom, with a very narrow entrance. There are some shoals within; but the water is as smooth as a pond.

He then proceeds to describe what he calls "a tongue of land, which appeared like an island, though it was not; but might be cut through, and made so in two days," and also a place that would be peculiarly advantageous for the erection of a fortress.

Watling Island is about 12 English miles in length, and between 4 and 6 miles in breadth. Graham Harbor, as already intimated, lies a little north of the middle of the west side. On the 21st of November, 1890, Cronau started from this harbor to coast along the northeast, following as nearly as possible the course indicated by the journal of Columbus. He says he had no difficulty in identifying the spot in every essential particular. The rocky shoals, which prevented Columbus from landing, impose the same barrier to navigation at the present day that they did at the end of the fifteenth century. Cronau found the entrance to the harbor, and described it with considerable minuteness as well as with pardonable enthusiasm. He even landed on the point which Columbus designated as "a tongue of land which appeared to be an island," and describes by means of original drawings the site which, in his opinion, Columbus had in mind when he recommended it as an admirable place for a fortification. Going into somewhat minute details, he says that there is even evidence that during the last century the site was used for purposes of defense, for among other evidences of occupation he found an old rusty cannon that had been abandoned at some time apparently during the period of the French Revolution.

This same explorer not only made personal investigations into the question of the landfall, but, what is of perhaps even greater interest, spent a full month in San Domingo, for the purpose, if possible, of settling the vexed question as to the present location of the remains of Columbus.

In order to understand the full significance of what follows it is necessary to bear in mind the history of the various removals. Columbus, just before his death, expressed the wish that his remains might be interred on the island of Hispaniola. It was not practicable that this wish should be complied with at once, and, accordingly, it is probable that the body of the admiral remained at Valladolid from 1506 to 1513 or 1514, when it was transferred to Seville. About 1541, though the date is not precisely known, the remains were taken to San Domingo and deposited in the cathedral that had recently been completed. Although there is no record of that early date indicating where the remains were placed, there was a tradition that they rested at the right of the altar; and one hundred and thirty-five years later, namely, in 1676, this tradition took the form of an entry in the records of the cathedral.

At a somewhat later period than that of the transfer of the admiral's remains, though the exact date can not now be fixed, the remains of Diego Columbus, together with those of his son Luis, were carried from Spain to San Domingo and buried in the same cathedral. It is probable that these reinterments took place at about the beginning of the seventeenth century, for there are records in Spain which apparently refer to the matter. There was no inscription to indicate the locality of either vault.

When, by the treaty of Basle of the 20th of December, 1795, San Domingo was ceded to France, the Spaniards had a laudable desire that the remains of the discoverer should be transferred to one of the islands still to remain in Spanish possession. Accordingly, the floor at the right of the altar was explored and a vault supposed to be that of the admiral was found. Its contents, believed to be the remains of the admiral, were transferred to Cuba with great ceremony, and were deposited in the cathedral at Havana, where they have since remained. No doubt seems to have been raised in regard to the genuineness of the remains thus removed until on the 10th of September, 1877, some laborers in repairing a part of the floor of the cathedral, discovered another vault on the right of the altar, lying between that from which the supposed remains of Columbus had been taken and the outer wall of the chancel. These two vaults were separated by a thin wall. One of them, the smaller of the two, was empty, while the other, the one that had apparently first been constructed, was found to contain a small leaden box 44 cm. long, 23 cm. high, and 21½ cm. in breadth. A nearer inspection of the box and of its inscriptions satisfied the authorities of the cathedral that the remains transferred in 1795 were those of Diego or of his son Luis, and that the remains of the admiral were still in the possession of the cathedral.

A long controversy on the subject, however, at once took place. The archbishop of San Domingo maintained, quietly but stoutly, that the larger vault next the wall was the one first constructed; that the smaller one was subsequently added for the remains of the son: that the inscriptions were genuine, and that, beyond all question, the remains transferred to Havana were those of one of the descendants, while the remains contained in the newly opened vault were unmistakably those of the discoverer.

The Spanish authorities would not admit that a mistake had been made. A war of pamphlets ensued. Cronau has given the titles of as many as thirteen volumes and elaborate papers devoted to the subject between 1877 and 1880. A copy of the inscriptions was roughly made, but the matter seems not to have been investigated with impartial and scrupulous care. Two agents of the Spanish Government came over to look into the question; but they made no study of the inscriptions themselves, the casket having been previously removed to a side chapel and put under the seals of the archbishop and of the Government.

They reported, however, that the remains removed to Havana were genuine, and that the claim of the authorities at San Domingo were fraudulent. As to who perpetrated the fraud they never undertook to determine; but notwithstanding the assertions of the archbishop, whose character was above all reproach, they maintained, or rather asserted, that all the inscriptions were modern forgeries simply for the purpose of making it appear that the remains of Columbus were still at San Domingo.

It was to investigate this interesting question of fact that Herr Croneau, just about a year ago, spent a month in San Domingo. The account of what took place is of so much importance that I give a translation of the author's own words. Unfortunately his illustrations can not be here reproduced.

He says:

When I started in the autumn of 1890 on my journey through the West Indies and Central America, in order to collect material for illustrations, I decided that the investigation of this question should be a part of my programme. Owing to letters of introduction from the German Government I succeeded in getting access to the remains for the purpose of examining them most carefully. This investigation took place on Sunday, January 11, 1891, in the morning in the cathedral of San Domingo. There were present the church dignitaries, the Secretary of the Interior of the Republic of San Domingo, and his officials, and all the consuls of the Governments which were represented in San Domingo; furthermore, the author of several of the above-mentioned pamphlets, Emilio Tejira.

The following are the results of my investigation: The two little sepulchral chambers, the position of which can be seen from the plan, and the illustrations referring to the sanctuary, occupy the entire space between the staircase C and the wall and are separated from one another only by a thin wall 16 centimeters thick. Both vaults are covered with a cement like mortar. Their interior can easily be seen from above, for they were purposely left in a way to be examined with ease. Both rather small rooms are empty; the contents of vault 2 are in Havana, and the leaden

coffin found in vault 1 is kept under lock and key in a room behind the first side chapel on the left, in the cathedral. The door leading to this room can be opened only by means of three keys, of which the first is in the hands of the archbishop and the other two in those of the Government. The regulations require that the room should be opened only in the presence of one official connected with the church, and two of the officers of the Government. Admission is granted very rarely and a record is kept of all visitors.

In the center of the room stands a rather large chest (which also can be opened only by the use of several keys), containing the disputed lead coffin. The coffin itself is inclosed in a glass case, held together by strong strips of wood and ornamented with silver handles. This glass case can, in its turn, be opened by means of several keys. In order, however, to prevent its being opened, a broad white silk ribbon had in 1877 been wound several times about the glass case, immediately after the body was placed here, and the seals of the Governments of San Domingo, the Church, and of the Consulates of Spain, Italy, Germany, England, France, Holland, and the United States were put upon the case.

No one had opened the case since, and consequently the coffin and the remains were in exactly the condition in which they had been left in 1877. After the door of the room and the chest had been opened on the above-mentioned date (the 11th of January, 1891), in the presence of the witnesses enumerated above, the glass case and its contents were lifted out and were put on a table covered with brocade in the side nave of the church, and we were allowed to examine them. It turned out that the lead coffin was open; its cover was turned back and fastened to the cover of the glass case, so that the bones lying inside were plainly visible. A considerable number of the vertebra of the neck and back, and parts of the arm and leg bones proved very well preserved. A vessel of glass contained the dust which had been found in the bottom of the coffin. Furthermore, one could see a little silver plate covered with inscriptions, and a round leaden bullet; the latter lay outside of the lead coffin.

On the suggestion of the Secretary of the Interior of the Republic, the consuls of the foreign governments declared unanimously that not only the silk ribbon wound about the glass case, but also all the seals which had been put on in 1877, were absolutely intact. After this the seals were broken, the ribbon loosened, the glass case opened by means of three keys, and the lead coffin lifted out and put upon a table, so that an examination could now be carried on in the most careful way. The coffin itself proved badly oxidized and showed the effects of being dented in some places, but in other respects was rather well preserved. A few fragments of the lead which had fallen off were found carefully wrapped in a piece of paper.

The first thing to be done was, of course, to investigate the inscriptions on the lead coffin and the little plate of silver. The result was the discovery that the reproductions from these which have so far been published are in part very incorrect. This may be due to the fact that in the absence of good instruments an attempt was made, as Mr. Tejira assured us, to copy the inscriptions on wood by means of penknives. I made a special effort to make the correctest possible copies of all inscriptions. These I had photographed on zinc and then etched, and they may be compared with older representations of the inscriptions.

The appearance of these inscriptions, which were engraved on the lead and the silver by means of a sharp instrument, shows them to be unmistakably old. On the outside of the left wall of the coffin was found the letter C, on the front wall a letter C, on the right side wall a letter A. These letters have been explained as the initials of the words, "Cristoval Colon, Almirante."

The cover bears the inscription (the first of our reproductions) which has been interpreted as standing for "Descubridor de la America, primero Almirante," *i. e.*, "The discoverer of America, the first Admiral."

The words standing on the inside, written in Gothic script, and partly abbreviated, have been translated as follows: "The famous and excellent man, Don Cristoval Colon."

It has been believed by some people that the fourth letter of the word Cristoval ought to be regarded as an f. This would in no way impair the correctness of the inscription, as the spelling "Criftoval" is found.

As to the silver plate (which in our illustration is reproduced in its real size), it must be mentioned that it was found with the leaden bullet under the ashes which covered the bottom of the coffin. Two small screws which were also found there, and which corresponded to two holes in the plate, and to two other holes in the back wall of the coffin, show that the little plate was originally screwed fast on the inside of the coffin, but that in course of time the oxidizing of the lead had caused the screws to become loose and to fall down together with the plate.

Both sides of the plates are written upon and both inscriptions are evidently meant to state the same thing. It would seem, however, as if their author had not been satisfied with the first inscription, perhaps because it did not seem intelligible enough on account of its too great brevity, and had then tried to express the same thing on the other side more in detail. For it would otherwise seem senseless to write on both sides of a plate, one side of which was always invisible, because turned towards the side of the coffin. The more complete inscription, which was doubtless turned towards the beholder, has been interpreted as follows: "Ultima parte de los restos del primera Almirante Cristoval Colon Descubridor," *i. e.*, "The last parts of the remains of the first Admiral, Cristoval Colon, the discoverer."

It is to be noticed that the first abbreviated word might also be resolved into "una" or "unica." Then the first part of the sentence would be "a part" or "the only parts."

We now must mention the leaden bullet found in the dust on the bottom of the coffin. The theory has been advanced that it was lodged in the body of Columbus during the first years of his career as a seaman and dropped from its place in the course of the decomposition. No special importance has been so far attributed to its presence. We, on the contrary, are inclined to consider it as a proof of the identity of these remnants and those of Columbus, for the reason that he says in a letter written to the Spanish monarchs during his fourth voyage, and mentioned above by us, "My wound has opened again."

We do not know whether or not Columbus received a wound during his stay in Portugal and Spain, or during any of his journeys in the service of the Spanish monarchs. Consequently it may be correct to suppose

that he got the bullet during his early life, which seems to have been very turbulent and adventurous. We suppose that when (in 1541) the remains were taken from the original large coffin (which had perhaps begun to decay) and were put into the small leaden coffin, the leaden bullet was found among the bones and left there.

In case fraud was intended with the remains found in 1877 (as Prieto, Colmeiro, and others would have us believe), what could have induced those who committed the fraud to add such a leaden bullet? This bullet has, to our knowledge, not yet been considered as a proof of the genuineness of these remains, and has never been brought into connection with the passage cited above.

Further than that, we ask what special interest could the people of San Domingo have had in perpetrating such a fraud, from which they have so far derived no profit whatever? And where in San Domingo are the artisans and the engravers who could have carried out the fraud, even under the guidance of superior intelligence?

We would mention as another proof of the genuineness of this coffin and its contents that the leaden coffin which had been secretly brought away by the Spaniards apparently had no inscription, at least we nowhere find mention of one. Now, first of all, it is difficult to believe that the coffin of so distinguished a man as the rediscoverer of America should have been left without any outward sign, and, secondly, the fact that the coffin found in 1877 occupied the place of honor on the right of the altar seems of importance for our argument, as does the other fact that the smaller vault next to it, which was emptied of its contents in 1795, gives one the impression of having been added later, as if they wanted to bury the less distinguished son next to the more distinguished father.

The counter arguments of the other side can not stand against these weighty considerations. The hypothesis that the coffin in question might possibly contain the remains of Christopher, the grandson of the discoverer, has no value, for if that were the case the inscriptions would read "fourth admiral" instead of "first admiral" and the title "Descubridor" would be out of place, because the grandson of the discoverer never went on a discovering expedition. The other objection, that the name "America" for which the letter "A" on the cover of the coffin is generally believed to stand was not used in Spain at that time, is equally weak, as the name America was proposed by the German Waltzemuller as early as 1507 and, as is shown on many maps, had been generally adopted by 1541 (that is the year in which the lead coffin was probably made).

It has further been urged that the appearance of the letters on the coffin does not point to so remote a time and is "too modern." The reproductions of these letters which have been published would, indeed, lead one to such a belief, as especially the engraved work on the silver plate is too much modernized. The copy which we made with the most scrupulous care shows the great difference. Our readers will have an opportunity to convince themselves that the inscriptions of the silver plate might easily belong to the time, about 1540, as far as their appearance is concerned, by comparing them with autographs from the third and fourth decade of the sixteenth century.

We should like to mention, furthermore, that Senor Lopez Pietro, the

author of the pamphlets, doubting the genuineness of these remains, who had been sent over by the Spanish Government to investigate these tombs, never took the trouble to examine the coffin and the remains, but had finished his pamphlet before landing in San Domingo. So several highly respected and trustworthy persons in San Domingo have assured us on their word of honor.

We were unfortunately unable to find out whether his colleague Manuel Colmeiro had adopted similar methods. During my stay of a month I made it a business to question a considerable number of persons who had been present at the discovery of the coffin, singly and without each other's knowledge, and found complete agreement in the statements of all of them.

After I had finished my investigation of the coffin and the remains (this took me about three hours) the ashes in the glass vessel were put into a silver casket ornamented with gold, and this casket was also put into the coffin. After the leaden coffin had been put back into the glass case the latter was again carefully closed, a ribbon with the three colors of the Republic San Domingo, red, white, and blue, was tied about it, and it was locked as it had been before; that is, by the governments, the church, and different consulates putting their seals upon it. Notaries who had been called read the report they had made, the coffin was put back into its old place, and those present at this memorable act took their departure. The author, and certainly all those who were there with him, went away with the conviction that the venerable remains of the great discoverer were lying and are still lying in the cathedral of San Domingo.

VI.—THE HISTORY AND DETERMINATION OF THE LINE OF DEMARCATION ESTABLISHED BY POPE ALEXANDER VI, BETWEEN THE SPANISH AND PORTUGUESE FIELDS OF DISCOVERY AND COLONIZATION.

By Prof. EDWARD G. BOURNE, of Adelbert College, Cleveland, Ohio.

THE HISTORY AND DETERMINATION OF THE LINE OF DEMARCATION ESTABLISHED BY POPE ALEXANDER VI., BETWEEN THE SPANISH AND PORTUGUESE FIELDS OF DISCOVERY AND COLONIZATION.

By Prof. EDWARD G. BOURNE, of Adelbert College, Cleveland, Ohio.

The history of the line of demarcation established by Pope Alexander VI separating the Spanish and Portuguese fields f discovery and colonization has received comparatively little ttention from English writers. So far as I have been able to earn no satisfactory or reasonably complete single account of he subject from beginning to end exists in the language. In view of the approaching period of Columbian anniversaries and the reawakened interest in all things pertaining to the discovery of the New World a brief history of this curious yet momentous transaction will be appropriate.

Columbus upon his return from his first voyage landed near Palos, March 15, 1493. He promptly dispatched a letter to Ferdinand and Isabella giving an account of his discoveries. They replied March 30, and by the middle of April Columbus was in Barcelona in the presence of the Catholic sovereigns.

On the 3d of May Pope Alexander VI, in response to their request, issued his first bull granting the sovereigns exclusive rights over the newly-discovered lands.

As it required several days to go from Barcelona to Rome it is evident that no time was lost.* Why this appeal to the

*Gomara states that a messenger was immediately dispatched to Rome with an account of the discoveries. (Hist. General de las Indies, Vol. I, leafs 29 and 30. Antwerp ed. of 1554.)

Pope, and why such haste, are questions which at once suggest themselves.

The pretensions of the later Popes of the Middle Ages to the sovereignty of the world are well known to historical students. It became not uncommon for the Popes to grant all territory wrested from the infidels to the victorious Christian prince. Among the many examples of the exercise of this divine sovereign right the papal grants to Portugal in the latter half of the fifteenth century form important links in the chain of events under discussion. Nicolas V,* June 18, 1452, authorized Alphonso V, of Portugal, to attack and subdue any or all Saracen, Pagan, and other infidel communities whatsoever, to reduce their inhabitants to perpetual servitude, and to take possession of all their property. Anyone who attempted to infringe or defeat this grant would incur the wrath of Almighty God and of the blessed Peter and Paul, Apostles.

After a short interval January 8, 1454, Nicolas issued a bull in which, after reviewing with praise the zeal of Prince Henry in making discoveries and his desire to find a route to southern and eastern shores, even to the Indians,† he

*I find references to a bull of Martin V (*e. g.*, Muñoz; Hist. del Nuevo-Mundo, 159), and the statement of Barros leads the reader to expect one. He says that Prince Henry asked Martin V for a grant of all the land he should discover from Cape Bojador to the Indies: "Que * * * lhe aprouvesse conceder perpetua doação a Coroa destes Reynos de toda a terra que se descubrisse per este nosso Mar Oceano do Cabo Bojador té as Indias *inclusive*." (Da Asia de João de Barros, Dec. I, Lib. I, Cap. VII.) I have not succeeded, however, in finding either a text of or citations from any bull of Martin V. Mr. John Fiske, Discovery of America, I, 325, cites a passage from Las Casas which refers to a bull of Martin V, but as the date refers to the Pontificate of Eugene IV, he concludes that Eugene IV is meant, for it was he "who made this memorable grant to Portugal." At this writing Raynaldus is not accessible, but I am kindly informed by Prof. F. B. Dexter that the bull of Eugene IV, January 4, 1443, does not confer territories upon Portugal, but indulgences to promote their work of conquest in "Africa," and that he finds no reference in Raynaldus to a bull of Eugene IV in 1438 (referred to by Robertson, History of America, I, 67) nor to any other such grant. Juan and Ulloa in their Dissertacion, p. 11, and the Portuguese author of the "Contestacion del Portugal," drawn up in 1681 and dealing with the title to the colony of Sacramento, apparently knows nothing of any papal grant prior to that of Nicolas V in 1452. (See Calvo, Recueil Complet., I, pp. 193 and 262.) The earliest citations of grants to Portugal that I have found are those from the bulls of Nicolas V.

†Credens [*i. e.*, Henricus] se maximum in hoc Deo præstare obsequium, si ejus opera et industria mare ipsum usque ad Indos qui Christi nomen colere dicuntur navigabile fieret. (Bullarum collectio, p. 18.) Nicolas the

granted to King Alfonso all that had been or should be discovered south of Cape Bojador and Cape Non, toward Guinea, and "ultra versus illam meridionalem flagam" as a perpetual possession. Intruders would be visited with excommunication.

These rights were confirmed by Sixtus IV in a bull issued June 21, 1481, which granted to the Portuguese Order of Jesus Christ spiritual jurisdiction in all lands acquired from Cape Bojador "ad Indos." This bull also contained and sanctioned the treaty of Alcaçora, 1479, between Spain and Portugal, by which the exclusive right of navigating and of making discoveries along the coast of Africa, with the possession of all the known islands of the Atlantic except the Canaries, was solemnly conceded to Portugal.* Enough has been cited to show that the appeal to the Pope was natural. I have ventured to conjecture that in these papal grants to Portugal we may find a clew to the real cause why Columbus failed to enlist the support of the Portuguese King John II for his project to reach the Indies by sailing westward. Our scanty sources give us two or three different reasons, such as that Columbus made excessive demands upon the King, and that the King hesitated by reason of the great efforts and heavy expense already incurred in the conquest of Guinea.†

The Portuguese had come to consider it only a question of time when they should reach the Indies by sailing around

next day issued a bull in reference to the extension of Christianity in these regions (Raynaldus, 18, 423): "Illorumque personas in perpetuam servitutem redigendi * * * consedimus facultatem." It will be a surprise to many to learn that the revival of human slavery thus received full papal sanction. The first African slaves were brought to Portugal in 1442. The system was in its infancy. What might not the world have been saved if the vicar of God had forbidden instead of authorizing it. The church is credited with promoting the abolition of slavery in the Middle Ages. It is difficult to see how she can be cleared of having powerfully contributed to renew it.

This bull of Nicolas V was sanctioned, word for word, by Leo X November 3, 1514. These bulls to the Kings of Portugal are cited from the bull of Leo X of April 29, 1514, which is in the Bullarum Collectio quibus Serenissimis Lusitaniæ, Algarbiorumque Regibus Terrarum Omnium * * * jus Patronatus a sumius Pontificibus liberaliter conceditur * * * omnes ex legali Archivo deductæ, et in hoc volumen redactæ * * * jussu Serenissimi Petri Secundi Lusitaniæ Regis.

Ulyssipone, Anno 1707. This bull of Leo X is not in Mainard's Bullarium, Rome, 1741.

* Bullarum Collectio, p. 45; Innocent VIII added his confirmation September 12, 1484. Raynaldus, 19, 349.

† Historie del Signor Don Fernando Colon, Ch. XI.

Africa, and the exclusive use of that route was secured to them by papal bulls and a treaty with their only rivals. Is it not likely, then, that the real reason why they had no encouragement for Columbus was that they thought it not worth while? They had something tangible in the African route, and they needed only time to develop it. Why then waste time and money on a mere possibility?*

Spain, on the other hand, could claim no route to the Indies, unless they could be reached, as Columbus proposed, by sailing westward.

Further, the instructions given the Spanish ambassador to the Pope, as Herrera reports them, are quite explicit in stating that the discoveries had been made without the slightest encroachment on the possessions of Portugal.† It was also stated that some learned men were of opinion that by reason of the admiral having taken possession of the new countries there was no need of the Pope's confirmation or donation, yet as obedient children to the Holy See and Pious Princes their Catholic majesties desired his Holiness to grant them the lands already discovered or that should be discovered. The bull was issued with the consent of the whole Sacred College.‡

Traces of this contention between Portugal and the Spanish

* Two criticisms were passed on this conjecture when first offered. One, that the Portuguese could not then have been confident of reaching India. On this point it is decisive to refer to the Fra Mauro map of 1459 (see Ruge, Gesch. des Zeitaltus der Entdeckungen, p. 80, and Winsor, Nar. and Crit. Hist., 2, 41), to the bull of January 8, 1454 (see p. 105), and to the citation from Barros (see p. 104), and to Muñoz, Hist. del Nuevo Mundo, Lib. II, cap. 19. The second criticism was: What, then, of the story that King John, of Portugal, secretly tried to avail himself of Columbus' ideas by sending a caravel westward? (Historie, Cap. XI.) This presents a difficulty, but I can not see that it shuts out the conjecture. Ruge (p. 232) declares this statement of the Historie destitute of historical credibility.

† Herrera, Historia General, Decade I, Lib. II, Ch. IV, cited from John Stevens's translation.

‡ Herrera, *ibid.*

Harrise found in the archives of the Frari at Venice the letter which Alexander VI sent with the bulls, on the 17th of May, 1493, to Francis de Spratz, the nuncio at the court of Spain. It refers to several documents, but all it says of the demarcation bull is the following: "Præterea alind breve super concessione dominii et bonarum illarum insularum nuper ab hominibus Regiis inventarum per nos facta prefatis Regibus." (Bibliotheca Vetusta Americana Additions, p, 2.)

Raynaldus, XIX, 421, §19, prints the letter of the Pope to Ferdinand and Isabella accompanying the bulls. It is dated May 3, and calls attention to the existing rights of Portugal. These, of course, were specified in the bull of May 4.

sovereigns are to be found in the bull of May 3, 1493, of which the following are the essential points:

After briefly reciting the zeal of the Catholic sovereigns in extending the Gospel, which was signally shown by their promotion of the voyage of Columbus,* and enjoining upon them perseverance in the work, the Pope grants them full possession of all lands discovered and to be discovered, which are not under the dominion of Christian princes. "Further, because some of the Kings of Portugal have acquired rights in parts of Africa through the Apostolic See, we grant you and your successors exactly the same rights just as fully as if here expressed in detail."† It is clear from this passage that King John's attitude and, back of that, the earlier papal bulls to Portugal were the occasion of this appeal to the Pope.

In this first bull there is no reference to any dividing line. The Spaniards can discover and hold any lands hitherto unknown and not in the possession of a Christian prince.

But evidently King John acted with equal promptitude, for no sooner was this bull promulgated than it was superseded by another, in which the unlimited grants and the whole passage of some twenty lines referring to the previous grants to Portugal and bestowing the same rights on Spain in the newly discovered lands were omitted. Humboldt remarked that only the Papal Archives could reveal the secret of that change in twenty-four hours. ‡ There is little reason now to expect light from that quarter. §

Is it not almost certain that King John also sent an envoy to Rome, and that when the bull of May 3 appeared the envoy

* "Dilectum filium Christophorum Columbum, virum utique dignum et plurimum commendaudum, ac tanto negotio aptum."

† A condensed paraphrase. The original is extended and emphatic. The bull is printed in Navarrete, Coleccion de los Viajes y Descubrimientos, Vol. II, pp. 23-27. The passage cited occurs on p. 26. (See Appendix for citation of the passage in full.)

‡ Kritische Untersuchuugen, Vol. 2, p. 37. This is the German version of the "Examen Critique de l'Histoire de la Géographie du Nouveau Continent."

§ Harrisse, Bibliotheca Americana Vetusta, Additions, p. 2, says: "Whilst in Rome we vainly endeavored to discover diplomatic documents relating to the difficulties which arose between Spain and Portugal at the time of the discovery of America. Father Augustin Theiner wrote afterwards to us: 'Je n'ai pas manqué de parcourir dans les archives secrètes du Vatican les registres originaux d'Alexander VI, pour voir s'il y avait d'autres pièces relatives qui auraient pu échapper à l'attention de Raynaldi, mais je n'ai rien trouvé.'"

protested, and declared that the rights of the King of Portugal were based on decrees, and that they must be respected and not obscured or diminished.* The statement of Raynaldus lends an indirect support to this conjecture.†

By this new bull of May 4‡ a line was to be drawn from the north to the south pole 100 leagues west and south of any one of the islands known as the Azores and Cape Verde Islands.§

* It will be remembered that as the Portuguese rights extended east "ad Indos" and embraced lands not yet found, and as the new lands were supposed to be the Indies, the grant of May 3 was in downright conflict with the earlier ones to Portugal.

Gomara asserts that King John had asked for a bull. "Hizo gran sentimiento el Rey don Juan segundo de tal nombre en Portugal quando leyo la bula y donacion del Papa, aunque sus embaxadores lo avian suplicado assi a su santidad." (Gomara, I, leaf 142, obverse.) Further, according to Gomara, Ferdinand and Isabella dispatched a courier to Rome, but that the negotiations were carried on by their ambassadors at Rome, "y sus embaxadores que pocas meses antes avian ydo a dar el para bien y obediencia al Papa Alexandro sexto segun usança de todos los Principes Christianos, le hablaron y dieron las cartas del rey y reyna con la relacion de Colon." (Gomara, Vol. I, leafs 29 and 30.) Now, John II of Portugal, in 1482, had sent the Commendador Mór d' Aviz D. Pedro da Silva as an ambassador on the death of Innocent VIII and to present his obedience to Alexander VI. (Santarem, Relações Diplomaticas, Vol. III, p. 162.) If the Spanish special ambassadors remained until May, 1493, it is not unlikely that the Portuguese representative did likewise. In that case he might protest on general grounds without special instructions to that effect.

† Tertio diplomate Alexander ad controversias, quæ inter Castellanos ac Lusitanos oboriri possent dum classibus oceanum sulcabant, dirimendas Indias orientales occidentalesque discrevit." (Tomus 19, p. 421.) The possibility of disputes might have suggested itself to the Pope. On the other hand, it might have been urged by a Portuguese ambassador, which, perhaps, is more likely, in view of the sudden changes in the bull.

‡ Printed in full in Fiske's Discovery of America, Vol. II, pp. 580–593, with Richard Eden's translation. It is also in Navarrete, II, pp., 28–35; Calov's Recueli, I, 4–14, and Poole's Constitutions and Charters.

§ "Quæ linea dislet a qualibet insularum, quæ vulgariter nuncupantur de los Azores y Cabo Verde, centum leucis versus occidentem et meridiem." The Azores and the Cape Verde Islands were supposed to be in the same longitude. What is meant by "versus occidentem et meridiem" has puzzled everybody. How a meridian line could be southwest from any given point has baffled explanation. May it not have been simply a confusion of thought resulting from the fact that the lands discovered by Columbus lay to the south of west from Europe or the Azores, and that the Pope evidently thought of the discoveries as to be prosecuted west and south. With this thought in mind he had used the terms "versus occidentem et meridiem" appropriately a few lines before. The tendency of such documents to formal repetition, combined with inadvertence, and this idea of the southwesterly direction of the new lands may account for the apparently meaningless repetition.

All lands discovered and to be discovered to the west and south of this line, whether toward India or any other direction, not in the possession of any Christian prince at Christmas 1492, should belong exclusively to Spain. No one else could frequent them either for trade or any other reason without special permission of the Spanish sovereigns.*

This bull apparently met the instructions of the Spanish and Portuguese envoys, but it did not satisfy the home governments.†

To reach the Indies was the prime object of both Spain and Portugal. The bull of Sixtus IV to Portugal had mentioned the Indies by name, and unless Spain received a grant to all parts of the Indies reached by sailing west, not yet occupied by a Christian prince, her efforts might prove in vain. Probably the Pope was asked to remedy this defect, for on September 25, 1493, he issued a new bull, which made the full rights before granted apply in detail to all lands already found, or that shall be found, sailing west or south, which are in the western or southern or eastern regions, or India.‡

The Spaniards now had free scope for their western expeditions. There is no hint as yet of a demarcation line on the other side of the globe. That King John was dissatisfied with the bulls of May 3 and 4 appears from the letter of Ferdinand and Isabella to Columbus, of September 5, 1493.§ He protested at Rome that their Catholic Majesties broke in upon his limits, but the Pope replied that he had drawn a boundary line.‖ After the bull of September 25 he was even more displeased. Rumors came to Spain that he had dispatched an expedition to the New World.** Envoys were sent back and forth and it was learned that he objected to the Spaniards sailing south of the Canaries, and proposed an east and west demarcation line on that parallel.††

King John would not submit the matter to arbitration, and brought heavy pressure to bear upon the Pope to make a change,

* Here we find the corner stone of the Colonial system.

† The news of the bull reached Spain before May 28, for the line of demarcation is mentioned on that day in the royal confirmation of Columbus's appointment as admiral. (Navarrete, II, 60.)

‡ A Spanish version is printed in Navarrete, II, 404–406.

§ Navarrete, II, 108.

‖ Herrera, Dec. I, lib. II.

** Navarrete, II, 109.

†† Herrera, Dec. I, lib. 2, ch. 8.

but in vain; apparently the trouble would have ended in war, just what the establishment of the boundary was designed to avoid, had not the flourishing condition of Spain restrained him. He particularly protested against being confined to so narrow a space in the great ocean as would be bounded by a line only 100 leagues west of his own islands.* This was a real grievance. Experience had shown the Portuguese pilots that a direct southerly course down the African coast was subject to delays by calms, adverse currents, and unfavorable winds. Vasco de Gama recommended that Cabral, on his voyage to India in 1500, should sail southwest until he reached the latitude of the Cape of Good Hope, when he should sail due east, availing himself of the trade winds. This course would be safer and quicker.†

Returning now to our second query, why so prompt an appeal to the Pope? Columbus recorded in his journal March 9, 1493, that in their interview King John of Portugal had affirmed that by the treaty of 1479 this new conquest would belong to

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*Muñoz, Historia del Nuevo-Mundo, lib. 4, cap. 28.

†These instructions, entitled "Esta hé a mancira que parece à Vasco da Gama que deue teer Pedro Alvarez em sua yda, prazendo nosso Senhor," preserved in the Portuguese Archives, were first published by Varnhagen. The following essential passage is given on p. 422 of the first volume of his Historia Geral do Brazil: "E se ouverem de gynar, seja sobre a banda do sudueste, e tanto que neles deer o vento escasso deuem hyr na volta do mar até meterem o cabo de Boõa Esperança em leste franco, e dy em diante navegarem segundo lhe servyro tempo, e mais ganharem, porque como forem nadyta parajem nam lhe myngoará tempo, com ajuda de nosso Senhor com que cobrem o dito cabo" (quoted from D'Avezac, Considérations Géographiques sur l'Histoire du Brésil, note D, Bulletin de la Soc. de Géog., août et sept. 1857, p. 246). Mr. Fiske, Discovery of America, vol. 2, 96, not aware of these instructions, ascribes Cabral's course to "some reason not clearly known." The existence of these directions based on the experience of Da Gama and his predecessors shows that the discovery of America would certainly have been made without Columbus. A glance at a modern map delineating the ocean currents of the Atlantic will show also that independent of any such instructions accident would probably have led to the discovery of South America through the western movement of the equatorial current. In view of Da Gama's directions it is interesting to note the south-flowing Brazil current and the east-flowing Atlantic current. The true glory of Columbus lies in his persistence and resolution in acting upon his intellectual convictions. It is true he was misled by miscalculations of the size of the earth. Everyone else, however, had the same supposed facts, but Columbus was ready to act on them and, had they been true, how much simpler to sail due west 3,000 miles than around Africa 12,000 to 15,000 miles.

him. Columbus promptly replied that he had not been in the direction of Guinea. We can feel almost certain that this remark of King John's was reported by Columbus to Ferdinand and Isabella,* and that they felt prompt action to be necessary. Apparently King John took some definite action to formulate and maintain his claim, for Raynaldus states that a contention arose between the sovereigns of Castile and Portugal over the new realm.†

The Spanish sovereigns felt it safe to concede something, for Columbus had estimated the distance from the Canaries to the new lands as something over 900 leagues. Three plenipotentiaries from each Kingdom met at Tordesillas, and June 7, 1794, signed the treaty of that name. The new dividing line was drawn 370 leagues‡ west of the Cape Verde Islands, a point according to their information almost exactly half way between the Cape Verde Islands and the new discoveries.

Within ten months each party must dispatch one or two caravels which should meet at the Grand Canary; along with them should be sent pilots, astrologers,§ and mariners; thence all should proceed to the Cape Verde Islands and measure off by leagues or degrees 370 leagues. If the line ran through any island, a tower was to be erected to mark it.‖ This treaty was

* In the Historie Columbus is credited with having suggested the appeal to the Pope. "Per più chiaro e giusto titolo delle quali di subito i re cattolici per consiglio dell' ammiraglio procacciarono di auer dal sommo pontefice l'approbazione e donazione della conquista di tutte le dette Indie." (Historie, etc., ch. 43.)

† The statement introduces the text of the bull of May 3, 1493, and may have been based on documents in the Papal archives.

Exorta vero mox post Christophori Columbi reditum lis est inter Castellanum et Lusitanum Reges de oceani novique orbis imperio: Nam Lusitanus inuentas à Columbo insulas ad se spectare condendit, negabat vero Castellanus, etc.—RAYNALDUS. Annales Eccles, tom. 19, p. 420.

‡ John II had asked for 300 leagues more. "Quexose de los Reyes catolicas que le atajavan el curso de sus descubrimientos, y riquezas, Reclamo de la bula, pidiendo las otras trezientas leguas mas al poniente. (Gomara, I, Cafe 142, obv.) Gomara adds that Ferdinand and Isabella, out of generosity, and because King John was a relative, with the approval of the Pope, gave him 270 more leagues at Tordesillas. Whether "con acuerdo del Papa" refers to an official approval of Alexander's, that I have not found, or merely to a private consent, or to the bull of Julius II, it is difficult to say.

§ "Astrologos."

‖ The first proposition to establish "a meridian in a permanent manner by marks graven on rocks, or by the erection of towers" (Humboldt, Cosmos, Vol. II, p. 277, note).

to be perpetual and the sanction of the Pope was to be asked for it.* But Alexander VI apparently had wearied of trying to satisfy both sides, for the new arrangement did not receive Papal sanction until the bull of Julius II, obtained at the instance of King Emmanuel, of Portugal, was granted January 24, 1506.†

The last bull on these matters is that of Leo X on November 3, 1514. During the year he had received a glowing account of Portugal's eastern discoveries and a splendid embassy from the King Emmanuel with presents of eastern products.‡ In response he issued a bull filling forty-five printed pages which included and confirmed all the previous bulls giving Portugal rights in the East. More than that it grants to Portugal all past and future conquests and discoveries not only from Cape Bojador to the Indians but everywhere else, even in parts then unknown.§

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* The treaty is printed in Navarrete, II, 130-143, and in Calvo, Recueil complet de Traités de l'Amérique Latine, pp. 19-36. The preamble to the copy in Navarette begins "Don Juan," and is apparently a copy of the text drawn up for the Portuguese side. Calvo's text begins, "Don Fernando y doña Isabel," and varies slightly in the preamble in other respects. The text proper of the treaty is identical in both reprints, save that Calvo has modernized the spelling in part. The treaty went into full operation June 20, 1494. Up to June 20, any lands found between 250 and 370 leagues west of the Cape Verde Islands should belong to Spain.

† Dissertacion Historica y Geographica sobre el Meridiano de Demarcacion entre los Dominios de España y Portugal, etc., por Don Jorge Juan y Don Antonio de Ulloa, etc., Madrid, 1749, p. 24. Calvo includes a text of this rare work in his Recueil Complet des Traités, etc., de l'Amérique Latine, Vol. I, pp. 190–263. Calvo's text is inaccurate. It was set up from a MS. copy (see p. 242). In one place eight lines have fallen out, and he can only conjecture "es probable que aqui se omitió por inadvertencia una clausula ó algunas palabras" (Calvo, p. 197).

‡ See Roscoe's Leo X, I, 428–432, and for the original correspondence, pp. 521–526. The reference is to Bohn's large ed., 1846.

The bulls of Julius II and Leo X were secured by Portugal and given in return for homage to the Pope. Mr. Fiske quotes from a small volume entitled "Obedientia potentissimi Lusitaniæ regis ad Juliū Pont. Max," Rome, 1505. The newly found lands were laid at the Pope's feet. "Accipe tanbem orbem ipsum terrarum Deus enim noster es" (Discovery of America, I, 458).

§ Bullarum collectio, p. 50, "tam a capitibus de Bojador et de naon usque ad Indos, quam etiam ubicumque et in quibuscumque partibus, etiam nostris temporibus forsan ignotis." This bull really supersedes the demarcation bull and practically simply establishes the validity of the rights of discovery and conquest. It is not rereferred to by any Spanish authorities so far as I have noted.

Curiously enough no reference is made to Alexander's demarcation bulls.

The second part of my subject, the determination of the line, was beset with difficulties. The primary difficulty lay in the fact that if the line ever should be taken to determine disputed boundaries it would have to be located with exactness, and to measure longitude with accuracy was entirely beyond the science of the time.*

There were no chronometers; the modern chronometer dates from 1748. Their astronomical tables were very defective, and the very first step, agreement as to length of a degree on a great circle, could not be reached, as the first accurate measurement was not made until 1669.

Now, it is interesting to notice that probably these difficulties did not exist for Pope Alexander. Humboldt suggests that the demarcation line was placed 100 leagues west of the Azores in order that it might coincide with the meridian of magnetic no-variation, whose existence Columbus had discovered in his first voyage. Columbus noted other physical changes 100 leagues west of the Azores.† On this hypothesis it would always have been possible for the mariner to know when he crossed the demarcation line. Here would have been a genuine "scientific frontier." But the line was moved, and thus a dispute opened which Contarini, in 1525, believed would never be settled.‡

* Peschel's Die Theilung der Erde unter Papst Alexander VI und Julius II, Leipsic, 1871, discusses in an interesting manner the scientific difficulties and the progress of geodesy.

† Humboldt, Untersuchungen, II, 37.

‡ "Della quale controversia non credo mai sia per vedersi la fine e la verificazione." (Relazione di Gasparo Contarini. Albèri, 1st ser., vol. 2, p. 48.)

Humboldt's hypothesis is too plausible to be lightly questioned. Yet if the distance of 100 leagues from the Azores was chosen for such scientific reasons, why do we hear of no objection to the removal of the line to 370 leagues west of the Cape de Verde Islands, which would sacrifice these scientific advantages? Again, may not the distance, 100 leagues, have been simply the adoption by the Pope of the distance suggested by Ferdinand and Isabella? Herrera tells us that the ambassador sent to the Pope in the first instance received the following instructions: "The ambassador was directed to let him know that the said discovery had been made without encroaching upon the Crown of Portugal, the admiral having been positively commanded by their highnesses not to come within 100 leagues of the mine, nor of Guinea, or any other port belonging to the Portugueses, which he had done accordingly" (Dec. I, Lib. II, Ch. IV, John Stevens' version).

Ferdinand and Isabella took up the matter promptly. The eminent cosmographer, Jayme Ferrer, was asked in August, 1493, to bring his charts and instruments to Barcelona. In February, 1495, he sent on a rude method of determination.*

In April of that year the convention of pilots, astrologers, and mariners, provided for in the treaty of Tordesillas, was appointed for July. After agreeing upon a method of calculation each party was to proceed to the determination of the line. If either party found land where the line ought to fall word was to be dispatched to the other who within ten months after receiving word should send to mark it.† All maps made thereafter must contain the line.‡

The first appearance of the demarcation line on a map that is preserved is in the so-called Cantino map of 1502, where it cuts off the portion of the newly discovered Brazil, east of the mouth of the Orinoco, as belonging to Portugal.§

The demarcation line next plays a part of controlling importance in the history of the first voyage around the world.

The most telling argument that Magellan advanced in favor of his expedition, and it seems to me beyond doubt the decisive one with Charles V, was that the Moluccas or Spice Islands, the pearl of the precious Indies, lay within the Spanish half of the world. This appears clearly in the account of Maximilianus Transylvanus, a source of the highest value on this point as he was son-in-law to a brother of Christopher Haro.‖ He tells us that Magellan and Christopher Haro, an India merchant, having been unjustly treated by the King of Portugal came to

* Navarrete, II, 98. Ferrer decided that the 370 leagues were equivalent to 23 degrees on the equator.

† Nothing came of this convention so far as I have learned. Herrera says of the agreement of April: "It does not appear to have been performed." "Los cuidados de los principes que ocuparon las dos monarquias suspendieron la ejecucion de este negocio 30 años (Contestacion del Portugal (1681) Calvo). Recueil Complet des Traités, p. 270.

‡ Navarrete, II, 170–173.

§ Harrisse calculated the longitude of the line on this map where it is labelled "este he omarco dantre Castella y Portuguall," as 62° 30′ west of Paris (Winsor, Narrative and Critical Hist., II, p. 108). Mr. Winsor gives a sketch of this map.

‖ Max. Transylvanus was the natural son of the archbishop of Salzburg for whom the account was prepared. Through his relationship to Haro and the fact that he heard the reports of the survivors of Magellan's Expedition he had every facility for getting at the facts. See Guillmard's Magellan, p. 140.

Spain, "and they both showed Cæsar* that though it was not yet quite sure whether Malacca was within the confines of the Spaniards or the Portuguese, because, as yet, nothing of the longitude had been clearly proved, yet it was quite plain that the Great Gulf and the people of Sinae lay within the Spanish boundary. This, too, was held to be most certain that the islands which they call the Moluccas, in which all spices are produced, and are thence exported to Malacca, lay within the Spanish western division, and that it was possible to sail there; and that spices could be brought thence to Spain more easily, and at less expense and cheaper, as they come direct from their native place."† According to Correa Magellan told the officials of the House of Commerce in Seville, that Malacca and Malucco, "the islands in which cloves grow, belonged to the Emperor on account of the demarcation line," and that he could prove it. They replied that they knew he was speaking the truth but it could not be helped because the Emperor "could not navigate through the sea within the demarcation of the King of Portugal. Magellan said to them: 'If you would give me ships and men, I would show you navigation to those parts without touching any sea or land of the King of Portugal.'" ‡

As has been already remarked, to get at the land of spices was the prime object of all the age of discovery. As the papal grants to Portugal of the exclusive use of the eastern route to the Indies made it an object for Ferdinand and Isabella to promote the project of Columbus to reach the land of spices and thus led to the discovery of America, so the establish-

* Charles V.

† Letter of Max. Transylvanus to the Archbishop of Salzburg, quoted from the version given by Lord Stanley in his "First Voyage Around the World," p. 187. This statement quite likely came from Haro himself. A Spanish version of M. T's letter is in Navarrete, IV, 249–284.

‡ Quoted from the translation of the passages of the Lendas da India, Vol. II, Ch. XIV (Hakluyt Soc. ed.), given by Lord Stanley, First Voyage, pp. 244–246.

Compare also the "Contract and agreement made by the King of Castile with Fernan Magellan," which is given in abridgment in Lord Stanley's "First Voyage" p. XXIX. "Since you, Fernando de Magellan, * * * wish to render us a great service in the limits which belong to us in the ocean within the bounds of our demarcation. * * * Firstly, that you are to go with good luck to discover the part of the ocean within our limits and demarcation. * * * Also, you may discover in any of those parts what has not yet been discovered, so that you do not discover nor do any-

ment of the demarcation line, coupled with the same unfailing attraction exerted by the land of spices, after the New World was found not to be the Indies, led Charles V to welcome Magellan's plan to find an all-Spanish route to these precious islands and to prove that they belonged to Spain, and thus opened the way for another of the greatest exploits in the history of the race.* The value of the spice trade and the consequent strength of this inducement may be gathered from these facts. Navarrete prints a document of the year 1536 which estimated that an annual income of 600,000 ducats could be derived from the Moluccas if a regular factory were established there for the development of the spice trade.† The value of the gold and silver that Spain derived yearly from America is variously estimated, but the contemporary estimates fall short of this estimated value of the spice trade.‡

The *Victoria*, the surviving ship of Magellan's expedition, reached Seville September 8, 1522, having justified all the

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thing in the demarcation and limits of the most serene King of Portugal, my very dear and well-beloved uncle, and brother, nor to his prejudice, but only within the limits of our demarcation." The original document is in Navarrete, IV, pp. 116–121.

*The only practical way to test the Spanish claim to the Moluccas was to reach them from the west for, "they considered it a very doubtful and dangerous enterprise to go through the limits of the Portuguese, and so to the east. (Max. Transylvanus, in Lord Stanley's First Voyage, p. 188.)

†Gomara, Historia general de las Indias, Antwerp, ed. 1554, Vol. 1, leaf 300, states that in the sixty years 1492–1552, the Spaniards got over 60,000,000 of gold and silver from America.

Contarini, in 1525, estimated the annual income of Spain from the mines of gold and silver at 500,000 ducats. He says of the king: "Ha poi il re dell' oro, che si cava dell' Indie venti per cento, che può montare circa a cento mila ducati all' anno." (Relazioni degli Ambasciatori Veneti, Abbèri, vol. 2, p. 42.)

Contarini estimated Charles's revenues from his low country provinces at 140,000 ducats a year. (*Ibid.*, p. 25).

The value of a ducat was about $2.34.

Humboldt estimated the average annual supply of the precious metals from America was, 1492–1500, $250,000; 1500–1545, $3,000,000. (Essai sur la Nouvelle Espagne, III, 428, 2nd ed., from McCulloch's commercial dict. art precious metals, ed. 1869.)

According to Soetbeer's researches the annual production from 1493–1520 was silver, $2,115,000; gold, $4,045,500. From 1521–1544; silver, $4,059,000; gold, $4,994,000. (Nasse in Schoenberg, Handbuch der polit. Oekonomie, I, 361).

‡Navarrete, 5, 165.

heroic leader's assertions to the satisfaction of the Spanish authorities.*

The question of the proprietorship of the Moluccas now became a pressing one, for Portugal had no intention of allowing Spain to steal in at the back door of her treasure house.

February 4, 1523, Charles V. sent two ambassadors to the King of Portugal to propose an expedition to determine the line of demarcation, and meanwhile to observe a closed season at the Moluccas.†

They asserted the Spanish ownership of the Moluccas.‡

The King of Portugal refused the terms proposed.

January 25, 1524, plenipotentiaries were appointed, and by Feberuary 19 it was agreed that each side should appoint three astrologers and three pilots as scientific experts, and three lawyers as judges of documentary, proofs to meet in convention in March on the boundary of Spain and Portugal, between Badajos and Yelves. Meanwhile neither side should send vessels to the Moluccas until the end of May.§

At this famous assemblage, known as the Badajos Junta, we find among the Spanish experts Ferdinand Columbus and Sebastian del Cano, who had accompanied Magellan, and as advisers Sebastian Cabot and Juan Vespucci, the nephew of Amerigo.

The first session opened April 11, on the bridge over the Caya, the boundary line, and thereafter the meetings were held alternately in Badajos and Yelves, dragging along till

* This cargo consisted of 533 quintales of cloves, which cost 213 ducats. According to Crawford the quintale was worth at that time in London 336 ducats, making the value of the cargo over 100,000 ducats. The cost of the expedition was only 22,000 ducats. Thus Peschel, Zeitalter der Entdeckungen, p. 644, note 4. Guillemard, Life of Magellan, p. 310, estimates the value of the cargo at about one-quarter of Peschel's estimate. In either case the value of the spice trade is vividly illustrated. Apparently Guillemard takes too low a value for the maravedi. In the sale of the Moluccas it was stipulated that the ducats be equivalent to 375 maravedis (Navarrete, IV, 393).

† Navarrete, IV, 302–305.

‡ On what has been called Schöner's Globe, of 1523, more exactly the Rosenthal gores, the line is drawn about the middle of the Peninsula of Malacca. Nordenskiöld dates these gores from 1540. (Winsor, Christopher Columbus 589.) The gores are reproduced on p. 590. The demarcation line is drawn as the Spaniards drew it after the Badajos Junta, a valid argument that these gores were made later than May, 1524.

§ Navarrete IV. 320–326.

May 31. Even the street urchins followed with curious eyes the men who were dividing the world.*

The lawyers could not agree as to priority of possession,† while the scientific experts could not agree upon the longitude of the Moluccas within 46 degrees, one-eighth of the earth's surface. The Spanish judges reported the Moluccas inside their line by thirty degrees.‡ Apart from the insuperable difficulties of calculating the longitude exactly, no agreement could be reached as to the starting point. The Spaniards asserted that the measurement ought to begin at San Antonio, the most westerly of the Cape Verde Islands, for as the line had been moved at the King of Portugal's request, and not so far west by thirty degrees as he had desired, it was only reasonable to take the westernmost island. The Portuguese quibbled; as the treaty said "islands," and that the expedition to fix the line should sail from the Canaries to the Cape Verde Islands, the only starting point that fulfilled the conditions was the meridian passing through the two islands Sal and Buena Vista, which were first encountered in coming from the Canaries; in other words, the most easterly of the group. In fact the Portuguese were in a strait; if the line were pushed westward they might lose the Moluccas; if eastward, they might lose Brazil.§ Their policy was obstruction and delay, so they rejected all Spanish maps and proposed four astronomical methods of determining the longitude. This would take time.

May 31 Ferdinand Columbus read the decision of the Spanish judges, that the line be drawn 370 leagues west of San Antonio

* "Acontecio que passeando se un diapor la ribera de Guadiana Francisco de Melo, Diego Lopes de Sequiera, y otros de aquellos Portugueses, les pregunto un niño que guardava los trapos, que su madre lavava, si eran ellos los que repartian el mundo con el emperador, y como le respondieron que si, alço la camisa. Mostro las nalguillas, y dixo, pues echad la raya por aqui en medio. Cosa fue publica, y muy reida en Badajos, y en la congregacion de los mesmos repartidores."—*Gomara*, Vol. I, leaf 141, reverse.

† As the Pope's bull provided for lands "to be found" as well as for those already discovered ("inventas et inveniendas, detectas, et detegendas"), it gave a solid foundation for establishing a right of possession by discovery.

‡ Navarette, IV, 367.

§ Gomara says the Portuguese realized the mistake of the removal of the line westward by the treaty of Tordesillas. (1, leaf 139, *seq.*)

and be represented on all maps made thereafter.* As the Spaniards calculated the longitude, they thus secured not only the Moluccas, but also Sumatra, while Portugal was acknowledged to have rightful possession of Brazil for two hundred leagues west of the eastern extremity.†

In 1526 another vain attempt was made at a settlement, and in the meantime war between the representatives of the two nations had broken out in the Moluccas.‡ By 1529 the two royal houses had become united by a double marriage, and a second Spanish expedition had been unfortunate, so to settle the difficulties Charles V, by the treaty of Saragossa, gave up his claim to the Moluccas to Portugal for 350,000 ducats, but retaining the right of redemption. On the other hand, if the line should ever be accurately fixed, and the Moluccas be found within Portugal's division, Spain was to repay the 350,000 ducats. Meanwhile a new demarcation line, more accurately described, was to be drawn 17 degrees, or 297 leagues east of the Moluccas. The Pope was to be asked to sanction this treaty.§ The question of the Antipodes being thus disposed of, that of Brazil remains to be followed out.

After the Badajos Junta the Spaniards drew the line about as it is marked on the maps of 1527 and 1529, roughly speaking,

* The line according to this decision is traced on the map of 1527, once attributed to Ferd. Columbus, and also on the map of 1529. (See Kohl's Die Beiden Aeltesten General Karten von Amerika.) In Guillemard's Magellan there is a good reduction of the map of 1529.

† Conforme á esta declaracion se marcan y devan marcar todos los globos y mapas, que hazen los buenos cosmografos y maestros, y á de passar poco mas ó menos la raya de la reparticion del nuevo mundo de Indias por las puntas de Humos, y de buẽ Abrigo como ya en otra parte dixe, y assi parecera muy clara que las y las de las especias y aun la de Zamotra caen, y pertenecen a Castilla. Pero cupo le á el la tierra, que llaman del Brasil, donde esta el Cabo de Sant Augustin. La qual es de hunta de Humos a punta de buen Abrigo, y tien de costa ocho cientas leguas norte sur y dozientas por algunas partes este oeste. (Gomara, I, leaf 141, reverse.)

‡ Argensola, Conquista de las Islas Molucas Lib I, cited from L'Art de Vérifier les Dates, 3d Ser., Vol. XIII, p. 5.

§ Navarrete, 4, 393. I find in my notes a reference to an approval of a treaty by Clement VII which probably refers to this: "Accordados os Reis desta maneira derão conta ao Papa Clemente VII que além de o approuvar o louvou muito." Colleção de Noticias para a Hist. e Geog. das Nações Ultramarinas, Lisboa, 1825, Vol. III, Parte I. Noticea do Brazil, p. 7. Vol. VII of this collection is wholly given up to a "Tratado Sobre a Demarcação dos Limites na America meridional," 1752. It is a report of extensive surveys to fix the boundaries of Brazil.

from near Para to a point about 100 miles east of Montevideo, while the Portugese drew it from the same point, so that it ran parallel for a part of its course with the river Parana. Thus the region now occupied by the most of Uraguay and the Argentine States of Entre Rios and Corrientes was disputed territory.

Both estimates gave Portugal far more than she was entitled to according to a modern scientific determination,* which makes it fall about 150 miles west of Rio de Janeiro.†

But as Spain was busy in Peru there was no immediate collision, and the union of the two countries from 1580 to 1640 still further postponed the conflict.

In 1680 Lobo, the Portuguese governor of Rio de Janeiro, founded the settlement of Sacramento, on the north bank of the River Plate, in the disputed territory; the governor of La Plata prepared to expel the intruders, but before hostilities had gone far the home governments entered into negotiations. It was agreed to appoint a commission of experts, like that of 1524, to meet, as then, alternately in Badajos and Yelves, to determine the exact location of the line of demarcation. In case no settlement could be reached they were to submit the matter to the Pope. At this convention, which set from November 4, 1681, till January 22, 1682, Spain and Portugal took positions exactly the reverse of what they maintained in 1524. Now that the Moluccas were no longer at stake, the Portuguese insisted on taking the westernmost of the Cape Verde islands as the starting point, while the Spaniards thought it equitable to take the center island of the group. They could not agree upon maps. The Spaniards chose the Dutch maps as a standard, because of their high reputation for accuracy and their impartiality touching this question. The Portuguese adhered to the map of Juan Texeira.‡ Juan and Ulloa,

* Where the line really should have been drawn is mainly a question of curiosity, as it ceased to have political importance before its location was so determined. In the appendix the correct location of the line is briefly discussed.

† As calculated by D'Avezac, Bulletin de la Société de la Géog., août et sept., 1857, map at the end. In the number of mars et avril, 1858, Varnhagen contests this calculation. For an explanation of their disagreement, see Appendix.

‡ The Spanish commissioners charged that this map was a counterfeit made by another Texeira. (L'Art de Vérifier les Dates, ed. of Marquis of Portia, 3d ser., Vol. XIII, p. 7.) This volume and the following are made up of the "Histoire de l'Empire du Brésil depuis sa découverte jusqu'à

in their review of this congress, blame both parties for trying to settle the question by maps and data from ships' logs and and not from carefully conducted observations. At this time no accurate observations of the longitude of Brazil had been made.

According to some the distance between San Antonio, the westernmost of the Cape Verde islands, and Cape St. Augustine, the eastern extremity of Brazil, was 8°, while others maintained they were in the same longitude. The Spanish commissioners, relying on the Dutch maps, split the difference and called it 4°, and figured out their conclusions on that basis.*

Since agreement was impossible as to the starting point, the Spanish commissioners made a calculation from both points. According to D'Avezac the Spanish calculations were very nearly correct.† A disinterested judge, however, would pronounce in favor of beginning the measurement from the western extremity of the Cape Verde group. According to the Portuguese map, the new colony was on their side of the line by 13 leagues if San Antonio were the starting point, but if the measurement began from San Nicolas, as the Spanish proposed, the Portuguese would lose the colony by 19 leagues.‡ The Spaniards proposed to submit the matter to the Pope and cardinals in full consistory, or to the Academies of London and Paris. But Portugal refused.§ The disputed territory was held chiefly by the Portuguese till 1705; then seized by Spain and held for ten years. In 1715, by the peace of Utrecht, it was given back to Portugal.‖ It remained the field of collision for the Spaniards and Portuguese until 1750, when the marriage of Ferdinand with the Portuguese Infanta led to a peaceful settlement.

It is in this year that our story closes, but not with a scien-

nos jours par David Bailie Warden," which was also published separately. Warden based his discussion of the demarcation line on an unpublished memoir by Lastarria, which is preserved in the National Library in Paris. The full title of it is given in L'Art de Vérifier les Dates, 3d ser., Vol. XI, p. 380, note 3. See Appendix.

* Juan Y Ulloa, Dissertacion, 55, 56; Calvo, Recueil, 212, 213.

† They drew the line about two-thirds of a degree east of where D'Avezac would draw it. See his map.

‡ Juan y Ulloa, Dissertacion, 59; Calvo Recueil, 217.

§ Lastarria, l'Art de Vérifier les Dates, xiii, 7.

‖ L'Art de Vérifier les Dates, XIV, 92, 94, 109, 146.

tific determination in which both parties acquiesced. That seemed hopeless, so the two sovereigns agreed in consigning to oblivion the rival claims growing out of the demarcation line and began all over again, declaring Alexander's bull and the treaty of Tordesillas and others based thereon as null and void.* Spain secured unquestioned possession of the Philippine Islands, and of the disputed La Plata territory, while the boundaries of Brazil were drawn for the most part as they exist to-day, partly on the basis of possession and partly on that of the physical configuration of the country.†

This sketch may be concluded with a brief glance at some of the more important results of Pope Alexander's attempt to divide the undiscovered heathen parts of the world between Spain and Portugal. The most striking result was entirely unexpected and contrary to the design of the bull. (1.) Designed to exclude Portugal from the New World for the benefit of Spain, it secured Portugal Brazil by a title which her only formidable rival could not impeach. (2.) Another result of great importance, but also undesigned, was the promotion of geographical knowledge. How the demarcation line led to Magellan's voyage has already been explained, but it also gave a powerful impulse to the progress of geodesy.‡ (3.) The bulls in granting a title to lands "to be discovered" not belonging to a Christian prince, or in other words occupied by barbarous people, laid the foundation of the modern right of discovery.§ (4.) The bulls, the earlier ones to Portugal, and Alex-

* Dr. E. E. Hale is sadly in error when he says (Narr. and Crit. Hist. of Am., Vol. II, p. 596) "in point of fact the western boundary of Brazil has been accommodated quite nearly to the imaginary line of the Pope."

† Summary of treaty of 1750 in L'Art de Vérifier les Dates, Vol. XIV, pp. 148–154.

‡ Humboldt, Cosmos (Harper ed.), Vol. II, p. 277, says: "The papal lines of demarcation * * * exercised great influence on the endeavors to improve nautical astronomy, and especially on the methods attempted for the determination of longitude." For various attempts of scientific men to calculate the longitude of parts of South America, so as to determine the demarcation line, see Juan y Ulloa, Dissertacion, pp. 68–94; Calvo, Recueil, I, 217–229; L'Art de Vérifier les Dates, 3d ser., XIII, 8.

§ Dr. B. A. Hinsdale, in the Ohio Archæological and Historical Quarterly, December, 1888, sketches the development of the right of discovery; but although he discusses Alexander's bull, he fails to bring out the relationship noted above. The bulls made valid the right of discovery for the two peoples who were making discoveries. Later the right of discovery was appealed to against any title derived from the bulls not supported by discovery.

ander's, form the corner stone of the old colonial system, with its rigorous monopoly of commerce for the mother country, from the evils of which the civilized world is not yet free.*

Men now smile when they read or hear of the attempt of Alexander VI to divide the undiscovered world between Spain and Portugal, but what single act of any Pope in the history of the Church has exercised directly and indirectly a more momentous influence on human affairs than this last reminder† of the by-gone world-sovereignty of the Holy See?

APPENDIX.

I.

THE BULLS OF MAY 3 AND 4.

As the bull of May 4 is printed in full in so accessible a work as Fiske's Discovery of America (Vol. II, pp. 580–393) it is not thought necessary to append a text of it, but as the bull of May 3 is much more difficult of access citations are given illustrating the changes made for the bull of May 4. The bulls are identical until the word *plenitudine* (Fiske, Vol. II, 586; Navarrete, pages 2, 32).

BULL OF MAY 3.	BULL OF MAY 4.
* * * Sed de nostra mera liberalitate, et ex certa scientia ac de apostolicæ potestatis plenitudine, omnes et singulas terras et insulas prædictas, sic incognitas, et hactenus per nuntios vestros repertas et reperiendas in posterum, quæ sub dominio actuali temporali aliquorum dominorum Christianorum Constitutæ non sint, auctoritate omnipo-	* * * Sed de nostra mera liberalitate, et ex certa scientia ac de apostolicæ potestatis plenitudine, omnes insulas et terras firmas inventas et inveniendas, delectas et detegendas versus occidentem et meridiem, fabricando et construendo unam lineam a polo arctico, scilicet septentrione, ad polum antarcticum, scilicet meridiem, sive terræ firmæ

* "Ac quibuscumque personis cujuscumque dignitatis * * * districtius inhebemus ne ad insulas et terras firmas inventas et inveniendas * * * pro mercibus habendis, vel quavis alia de causa, accedere præsumant absque vestra ac hæredum et successorum vestrorum prædictorum licentia speciali" (Alexander's Bull, of May 4, 1493).

† "Dieser Federstreich war die letste Erinnerung am die kosmische Autorität des römischen Papstthums" (Gregorovius, Gesch. der Stadt Rom, 7, 326).

tentis Dei Nobis in beato Petro concessa, ac vicariatus Jesu Christi, qua fungimus in terris, * * * donamus.

et insulæ inventæ et inveniendæ sint versus Indiam, aut versus aliam quamque partem, quæ linea distet a qualibet insularum, quæ vulgariter nuncupantur *de los Azores y Cabo Verde* centum leucis versus occidentem et meridiem, ita quod omnes insulæ et terræ firmæ repertæ et reperiendæ detectæ et detegendæ, a præfata linea versus occidentem et meridiem per alium Regem aut Principem Christianum non fuerint actualiter possessæ usque ad diem Nativitatis Domini nostri Jesu Christi proxime præteritum a quo incipit annus præsens millesimnes quadringentesimus nonagesimus tertius, quando fuerunt per nuntios et capitaneos vestros inventæ aliquæ prædictarum insularum, auctoritate omnipotentis Dei," etc.

The only other divergence between the bulls, but a very important one, is the passage beginning "Ac quibuscumque personis cujuscumque dignitatis (Fiske, II, 590), which read as follows in the two documents beginning with 'dignitatis'":

BULL OF MAY 3.

* * * Etiam imperialis et regalis. Status, gradus ordinis vel conditionis, sub excommunicationis latæ sententiæ pœna, quam eo ipso si contrafecerint, incurrant districtius inhebemus ne ad insulas et terras prædictas postquam per vestros nuntios seu ad id missos inventæ et receptæ fuerint, pro mercibus habendis, etc.

BULL OF MAY 4.

(The text is identical down to "insulas et.")

* * * inhibemus ne ad insulas et terras firmas, inventas et inveinendas, detectas et detegendas versus occidentem et meridiem, fabricando et construendo lineam a polo arctico ad polum antarcticum sive terræ firmæ et insulæ inventæ et inveniendæ sint versus aliam quamcumque partem, quæ linea distet a qualibet insularum, quæ vulgariter nuncupantur *de los Azores y Cabo Verde,* centum leucis versus Occidentem et Meridiem, ut præfatur pro mercibus habendis, etc.

COMMON READING.

"* * * habendis vel quavis alia causa, accedere præsumant absque vestra ac hæredum et successorum vestrorum prædictorum licentia speciali." At this point the bull of May 3 inserts a passage not represented by any part of the bull of May 4. It reads as follows:

* * * Speciali et quia etiam nunnulli. Portugalliæ Reges in partibus Africæ, Guineæ et Mineræ Auri alias insulas similiter etiam exconcessione Apostolica eis facta repererunt et acquisiverunt et per sedem apostolicam eis diuersa privilegia, gratiæ, libertates, immunitates, Exentiones et indulta concessa fuerunt. Nos vobis ac hæredibus et subcesoribus vestris prædictis ut insulis et terris per vos repertis, et reperiendis hujus modi omnibus et singulis gratiis, privilegiis, exentionibus, libertatibus, facultatibus, immunitatibus, et indultis hujusmodi, quorum omnium tenores, ac si de verbo ad verbum præsentibus insererentur haberi volumus pro sufficienter expressis et insertis, uti potiri et gaudere libere et licite possitis ac debeatis, in omnibus et per omnia, perinde ac si vobis ac hæredibus et subcesoribus prædictis specialiter concessa fuissent, motu, auctoritate scientia, et Apostolica Potestatis plenitudine similibus de specialis dono gratiæ indulgemus, illaque in omnibus et per omnia ad vos, hæredes ac subcesores vestros prædictos extendimus pariter et ampliamus non obstantibus constitutionibus et ordinationibus apostolicis cæterisque contrariis quibuscumque, etc.

From "non obstantibus" on, the texts coincide.

II.

THE UNPRINTED MEMOIR OF LASTARRIA ON THE DEMARCATION LINE.

Warden in his history of the "République Argentine" (L'Art de Vérifier les Dates, 3d ser., Vol. XI, 163–525), in a note to p. 380, makes the following remarks about this memoir:

La bibliothèque royale de France possède un ouvrage man. par M. Lastarria, intitulé: "Reorganizacion y plan de seguridad exterior de las muy interesantes colonias orientales del Rio-Paraguay ó de la Plata, etc., 2 vol. in-4°, Madrid, 1804." Cet ouvrage contient un mémoire curieux sur ladite ligne de démarcation: "Memoria sobre la controvertida línea divisoria de los dominios españoles y portugueses en América que manifiesta cronologicamente la naturaleza de esta célebre causa segun sus faces precisas hasta el tradado preliminar de 1777, le discierne la especie de esta escritura diplomática y se consideran las reglas para su interpretacion aplicandolas á las disputas con las quales los Portugueses han embarazado su ejecucion sobre las fronteras del territorio de qua trata la presente obra." L'auteur y a annexé une grande carte, "Mapa de América meridional, parte de Africa y de Asia; y nueva carta corográphica del virreynato de Buenos Ayres con las particularidades que explican sus respectivas notas."

It is to be wished that this memoir might be printed. Some French historical or diplomatic periodical might by so doing add considerably to the available stock of knowledge on this subject, for Lastarria probably had access to the Spanish archives and collections of colonial documents.

In regard to Warden's painstaking and serviceable annals of America, published in ten volumes, in the third series of the "Art de Vérifier les Dates," it is surprising to find little or no notice taken of it in the "Narrative and Critical History of America," or by writers generally. The volumes form about the most convenient collection of facts in the history of Spanish and Portuguese America to be had. The history of each country is followed by a list of authorities chronologically arranged, which taken together form a very extensive bibliography of Latin-American history.

III.

THE ATTITUDE OF OTHER NATIONS TOWARD THE PAPAL BULLS.

Hakluyt states, on the authority of Garcia de Resende, that some English merchants, in the time of Edward IV thought to open trade with the Guinea coast. King John II of Portugal thereupon sent ambassadors to Edward IV, laying before him the rights acquired by Portugal through Pope's bull (probably that of Nicolas V), and asking him to prohibit his subjects from such trade. Edward IV did so (Hakluyt, Navigations, Voyages, and Traffics of the English, Vol. II, Part II, p. 2, from Robertson's History of America, Vol. I, 345).

France promised in the first half of the sixteenth century to prove a formidable rival to Portugal and Spain in South America and Africa. The conflicting claims led to a pretty steady resort to reprisals on both sides. Francis I was too absorbed in continental politics to take a resolute stand in defense of the rights of his subjects to make discoveries and to occupy territory. Pigeonneau, in his excellent Histoire du Commerce de la France, attributes the French failures in Brazil and Florida and elsewhere to the apathy of the French Crown.*

* Hist. du Commerce de la France, Tome II, p. 171: "La France n'avait eu il est vrai, au XVI^e^ siècle, ni un Christophe Colomb, ni un Vasco de Gama; mais qu'aurait été Vasco da Gama sans Jean II, et Christophe Colomb sans Isabelle de Castille?"

In 1531 Francis I prohibited the Norman vessels from voyages to Brazil or Guinea, where the King of Portugal claimed to be sovereign.* The municipal council of Rouen protested in vain. This royal decision was secured by the Portuguese ambassador by bribing Admiral Chabot.

In 1537 and 1538 the Portuguese secured new ordinances prohibiting voyages to Brazil and Malaguette under pain of confiscation and bodily punishment.† Baron Saint Blancard vigorously protested, maintaining the freedom of the seas, and that trade with the peoples of the New World could not be monopolized by one nation any more than trade with the peoples of the Old World.‡

The same contention is made even more clearly by the French author of one of the relations in Ramusio's Navigationi: "The Portuguese have no more right to prevent the French resorting to these lands, where they have not themselves planted the Christian faith, where they are neither obeyed nor loved, than we should have to prevent them from going to Scotland, Denmark, or Norway because we had been there before them."§ If this doctrine could have prevailed it would have changed the history of the New World. That it did not prevail was owing in a large part to the Papal bulls.

The Portuguese rights in the Indian Seas, then represented by Spain, were contested by Grotius in 1609, in a tract entitled "Mare Liberum seu de Jure quod Batavis Competit ad Indica Commercia," which maintained the doctrine of the freedom of

* Francis I is said to have remarked, in reference to the demarcation line: "Je voudrais bien qu'on me montrât l'article du testament d'Adam qui partage le Nouveau-Monde entre mes frères, l'Empereur Charles V et le Roi de Portugal, en m'excluant de la succession."

† Pigeonneau, Hist., II, pp. 150–154. In 1539 Chabot was disgraced and Francis I withdrew his prohibitions, but he was never active on the side of the voyagers. (See Pigeonneau, pp. 134–170.)

‡ "Dictus Rex Serenissimus [Portugaliæ] nullum habet dominium nec jurisdictionem in dictis insulis; imo gentes eas incolentes plurimos habent regulos quibus more tamen et ritu silvestri reguntur, et ita ponitur in facto. Etiam ponitur in facto probabili quod dictus serenissimus Rex Portugaliæ nullam majorem habeat potestatem in dictis insulis quam habet Rex Christianissimus, imo enim mare sit commune, et insulæ præfatæ omnibus apertæ, permissum est nedum Gallis sed omnibus aliis nationibus eas frequentare et cum accolis commercium habere." (Cited from D'Avesac, from Varuhagen, Historia geral do Brazil, p. 443, or French ed., Vol. I, p. 441.)

§ Pigeonneau, Hist., Vol. II, p. 153, from Ramusio, Vol. IV, p. 426. The author is supposed to have been Pierre Crignon.

the seas asserted by these French writers. As the reputation of Grotius grew and his great work "De Jure Belli et Pacis" (1625) established him as an authority, the "learned" Selden undertook to confute his doctrine in a work designed to uphold England's sovereignty of the narrow seas. But time and progress were with Grotius, and liberty and the range of territorial waters has since narrowed with the growth of commerce and the march of civilization.

IV.

THE TRUE LOCATION OF THE DEMARCATION LINE.

As has been stated, the difficulty of locating the demarcation line arose from imperfect means of reckoning longitude. Maps in the sixteenth century, owing to this, are greatly distorted. The Mediterranean, familiar to men for more than twenty centuries, was represented as stretching over from Gibraltar to Alexandretta, sixty-two degrees instead of forty-two. In 1669 Cassini brought forward the method of reckoning longitude from the motions of Jupiter's satellites, and correct longitudes of Europe date from the use of this method and are first found on Delisle's maps at the beginning of the eighteenth century.* In South America accurate longitudes were not calculated until La Condamine's scientific expedition, which extended from 1734 to 1745. It is on his results that Juan and Ulloa base their calculation of the demarcation line.† Their essay was published in 1749 and the next year the demarcation line was set aside.

Varnhagen, in his History of Brazil,‡ calculated the true location of the line at 23° 14′ 51″ west of the Point of Tarrafal in the island of San Antonio,§ or about 3½ leagues west of Para.‖ This calculation was criticised by D'Avezac, and Varnhagen rejoined, maintaining his position.¶ The main point at issue be-

* Peschel, Die Theilung der Erde, p. 11.

† Juan y Ulloa, Dissertacion, 75–94. The longitude of the Cape Verde Islands was found in 1682, (*ibid.*, 76).

‡ Historia Geral do Brazil, etc., Madrid, 1854. Also in French.

§ The longitude of this point is about 27° 45′ west of Paris.

‖ See quotations from his Historia in D'Avezac, Bulletin de la Soc. de la Géog. août, sept. 1857, pp. 180–1. Also separately as "Considérations Géographiques sur l'Histoire du Brésil.

¶ Examen de Quelques Points de l'Histoire Géographique du Brésil, Paris, 1858. Also, in Bull. de la Soc.de Géog., mars et avril 1858.

tween them is upon the proper length of a league. Varnhagen made his calculations on the basis of $16\frac{2}{3}$ leagues to a degree on the equator. His reasons for so doing were the authority of the geographers, Enciso and Falero,* who were almost contemporary with the establishment of the line, and the fact that such leagues correspond exactly to those of 3,000 standard fathoms,† introduced into Brazil in early colonial times and still used for land measurements.‡ D'Avezac affirmed that instead of this value for leagues they should be reckoned at $17\frac{1}{2}$ to a degree, which was the common understanding among sailors at the time, was used by Magellan, recommended by the Spanish experts at the Badajos junta of 1524,§ and agreed upon by both parties in 1681. On this basis the line would fall 49° 53′ west of Paris (22° 8′ west of San Antonio), or about $18\frac{1}{3}$ leagues east of Para. But D'Avezac rejected all traditional estimates of a league and proposed to find out exactly what a league should be. He affirms that it has always been agreed that a league equaled 4 miles of 8 stades each, but a mile both by the Roman milestones and by the length of the stade is shown to be equivalent to 1,481 meters, whence we find a true league, $18\frac{3}{4}$ of which make a degree on the equator. On the latitude of San Antonio 370 of these leagues would be 20° 36′. Consequently the demarcation line falls 48° 21′ west of Paris, or 50 leagues east of Para, between the Gurupy and Turyuaçu on the north coast and between Ubatuba and Santos on the south coast.‖

Varnhagen replied that a league of $17\frac{1}{2}$ to a degree was an innovation introduced by the Portuguese about 1520, and so should be ruled out in discussing the treaty of 1494.** He declined to admit that in 1494 there was any agreement as to

*Enciso was a Spanish geographer and his work was published in 1519. Talero was a Portuguese and his work was published in 1535.

†"Brasses *de Craveira*."

‡Examen, p. 32-3.

§This value was also specified in the treaty of Zaragoza, 1529.

‖Considerations in Bull. de la Soc. de la Géog., pp. 185–187. D'Avezac adds a map marking the various positions of the line. D'Avezac prints a map with his "Examen" which marks the line according to his view. In his "Vespuce et son premier voyage" there is "a mappe-monde, indiquant la vraie démarcation du Traité de Tordesillas," Paris, 1858.

**He quoted from Peter Martyr of Anghiera: "Ipsi (*i. e.*, Magellan and his companions) vero contra omnium opinionem aiunt gradum continere leucas septemdecim cum dimidia" (Dec. v, Cap. vii).

the length of a mile, and further declared that a very plausible case could be made out for a league, $14\frac{1}{6}$ to a degree, based on the Arabian calculations. Columbus himself had taken that valuation; 370 leagues of this value would carry the demarcation line to Oyapoc.*

These are the essential points in the disagreement between these two eminent geographers. As the Moluccas are grouped around the 125th meridian east of Paris it is evident that Spain had no claim on them at any time by reason of the demarcation line. Spain, it will be remembered, retained the Philippine Islands by the treaty of 1750, and this led to a curious confusion. According to their interpretation of the demarcation line the Philippines belonged to their own or the western hemisphere, consequently they lived by the Spanish calendar 15 hours slow. Hongkong and Macao were naturally reckoned by the English and Portuguese as in the eastern hemisphere, and they lived by the same calendar about 9 hours fast; consequently the same day was called Monday in Macao that was Sunday in Manila. This confusion was avoided in 1844 by dropping from the Manilan calendar the 31st of December. Before the name Philippines was bestowed the Portuguese called them the Eastern Islands and the Spaniards the Western Islands.†

NOTE.—The theoretical location of the Demarcation Line is elaborately discussed by Dr. Baum in his Die Demarkationslinie Papst Alexanders VI und ihre Folgungen, Cologne, 1890, which came to hand only after the present essay was in print.

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* Examen, p. 38.

† Guillemard, Magellan, p. 227.

VII.—SLAVERY IN THE TERRITORIES.

By President JAMES C. WELLING, of Columbían University, Washington, D. C.

SLAVERY IN THE TERRITORIES.*

By President JAMES C. WELLING.

In every conflict of opposing and enduring forces in the sphere of politics, we must distinguish between the forces themselves and the point of their impact. Yet it is only as we take the forces at the point where they impinge that we can ascertain either their nature or their momentum, either the modes of their composition or the resultant direction in which they are tending at any given moment. The discovery of the New World brought into the sphere of European politics a vast complex of international forces which found their first collisions in the conquest, partition, and settlement of the North and South American continents, that is, in the seizure and occupation of waste and derelict lands in the domain of savagery, to be exploited under a higher civilization as new sources of economical advantage, as new fields of religious propagandism, and as new seats of political aggrandizement.

The independence of the United States, followed as it soon was by the independence of the Spanish-American States, put the free play of these European forces in circumscription and confine, so far as they had previously moved in schemes of colonization or in projects of the Holy Alliance proposing to make these continents an appendix to the European equilibrium. "The Monroe doctrine," under the first of its heads, was a notice served on European States by the Government of the United States that "the North and South American conti-

*This paper is in part the fruit of studies which began more than thirty years ago, when, on the brink of our civil war, the writer was called, as one of the editors of the National Intelligencer, to review in that journal the successive phases of "the Territorial Controversy." The point of view is of course entirely changed, for what was then discussed as a lesson in politics is here discussed as a lesson in history, with the difference of perspective that is implied in the well-known saying of Freeman.

nents, by the free and independent condition which they had assumed and maintained (in the year 1823) were henceforth not to be considered as subjects for future colonization by any European power." From that day to this no European power has planted any new colony on any part of the American continents. "The Monroe doctrine," under the second of its heads, declared it "impossible that the allied powers should extend their political system to any portion of either continent without endangering our peace and happiness." From that day to this the independent States of North and South America have been free to work out their own destiny apart from the dynastic schemes of Europe.

With the Declaration of Independence by the United States there arose, however, a new order of economical and political forces, and these new forces could but generate a new order of problems when they came to find new points of impact in the unoccupied territory comprised within the bounds of the Federal Union. The most difficult of all these problems, and therefore the point at which the conflict of opposing forces has always been hottest, must still be sought by the historian in questions relating to the occupation and government of land considered as the seat and symbol of economical precedence or political supremacy. Everybody knows that the first great dissidence among the States of the American Union—a dissidence which parted States during the Revolutionary period as the distinction between Whig and Tory parted individuals—was that which arose concerning the ownership and political disposition of the so-called "back lands." How this question delayed the ratification of the Articles of Confederation until the Revolutionary war was approaching its end is matter of familiar history.

But it is not so generally known, I think, that this same question interposed an almost insuperable barrier to the conclusion of peace with England in 1783, and well nigh lighted up the flames of a civil war between the "landed" and the "landless" States at the moment of their free and independent autonomy. This same unsettled problem so perplexed the deliberations of the Federal Convention of 1787 that it was the one question which the patriots and sages of that body could neither solve nor abate. Hence it was that, as I have shown in a paper previously read before the American Historical Association, they agreed to confess and avoid the then existing antithesis between the "landed" and the "landless"

States by leaving it behind them in the limbo of indefinite abeyance. It was because of an irreconcilable feud between these two classes of States that the adherents of each in the convention could agree on no form of words that should ascertain the relative rights of each class and of the United States in the matter of the new States that were to be erected on what was then the unoccupied territory formerly known as "the Crown lands."

On the 18th of August, 1787, and on motion of Mr. Madison, the committee of detail on the digest of the Constitution was instructed to consider the expediency of adding to the prerogatives of the Federal Legislature an express grant of power to institute temporary governments for new States arising on the lands not yet occupied. A discussion of the clause providing for the admission of new States into the Union brought the pending discord between the two classes of States to a violent rupture. Those members who believed that the United States had established a rightful claim to the "back lands" previously vested in the Crown, but now wrested from the Crown by the joint efforts of all the States, were vehement in demanding an express recognition of this claim in the terms of the Constitution, and when they could not extort such a concession from members representing States which had not yet ceded their unoccupied land, they were compelled to satisfy themselves with a simple plea that the Constitution should at least be silent on the subject.

Even Daniel Carroll, of Maryland, representing a State strenuous above all others in asserting the claims of the Union to a proprietary and political interest in the "back lands," was brought to such a mood of despondency by the conflict of opinion on this whole subject that, instead of pressing his motion that "nothing in the Constitution should be construed to affect the claims of the United States to vacant lands ceded to them by the Treaty of Peace," he was fain to withdraw that motion, and to propose that nothing in the Constitution should be so construed as to alter under this head "the claims of the United States *or of the individual States*, but that all such claims should be examined into, and decided upon by the Supreme Court of the United States."

It was immediately on the heel of this "irrepressible conflict of opposing and enduring forces" in the matter of new States to be carved out of public lands, that Gouverneur Morris

moved to transfer the whole conflict from the question of admitting new States to the question of governing the territory considered as property of the United States. He proposed that the Convention should agree to disagree as to the application of the territorial clause to so much of the public lands as was still in dispute between two classes of States and the United States. Hence, the origin of the territorial clause as it stands to-day in the Constitution: "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States, *and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.*" That is, this grant of power was made absolute for the purposes of Congressional legislation respecting the territory, and was left as colorless, indefinite, and nugatory as possible in respect of its application to any conflicting claims which should be put forward by either the United States or any of the particular States at variance on this subject. And this was avowedly done in order to blink and leave *in statu quo* a feud which could not be adjusted, and in order to remit to the Federal judiciary the settlement of a question which the framers of the Constitution felt themselves unable to solve. We thus see that the same territorial quarrels which had dragged their slow length along through the Revolutionary period were the hissing serpents which came to the cradle of our infant Hercules before he was yet wrapped in the swaddling bands of the Constitution; and he had not strength to throttle them. We see, too, that before our present Government had been framed the expedient of referring to the Supreme Court any Gordian knot which the politicians found themselves unable to untie was accepted by our fathers as the salutary makeshift of an incompetent statesmanship.

It is because the "territorial clause," in respect of its application to disputed territory covered by it, represented a drawn battle between two classes of States that it paved the way for any number of drawn battles between any other two classes of States which should subsequently find themselves at variance as regards the public territory. *Hoc fonte derivata clades.* The Congress of the United States, after passing through an Odyssey of wanderings and an Iliad of woes in this same matter of the public territory and its government, was compelled, in the year 1854, to face the same deadlock with which the

framers of the Constitution had been confronted in 1787, and for the same reason—the presence of two opposing and equipollent forces pulling in opposite directions. We shall see, too, that the politicians of the later period were equally doomed to seek a rescue from the Caudine Forks of an insolvable political dilemma by invoking the succor of the Supreme Court to determine for them the meaning of their own statute when, in the case of the Kansas and Nebraska bill, a disputed question had arisen under it, not only between two classes of States in the bosom of the Republic, but between two factions in the bosom of the same political party.

In the discussion before us it is proposed to deal with the government of the public territory only so far as that government has been affected by the presence of divergent views concerning slavery in our Federal councils. The subject of slavery appears for the first time in this relation under cover of a bill submitted by Mr. Jefferson in the Continental Congress on the 1st of March, 1784, for the temporary government of the western territory, "ceded or to be ceded by individual States to the United States." This bill provided for the prohibition of slavery, after the year 1800, in the ten States proposed to be carved out of the territory in question. This first attempt to secure the restriction of slavery fell through, because New Jersey had only one delegate present in Congress at that date, and therefore her vote could not be counted to make the requisite majority of all the States in favor of the measure. The State which voted in the negative were Maryland, Virginia, North Carolina, and South Carolina. Georgia was unrepresented. The bill was passed without the antislavery restriction on the 23d of April, 1784.

On the 16th of March, 1785, Rufus King, of Massachusetts, moved for the immediate prohibition of slavery in all the States "described in the resolve of Congress of April 23, 1784," and the motion was committed for discussion by the vote of eight States—Virginia, North Carolina, and South Carolina voting in the negative, the vote of Georgia not being counted, because she had but one delegate present, and Delaware not being represented at all at that moment. The territorial question was thus brought before Congress for renewed debate, and this debate resulted at length in the passage of the famous "Ordinance of 1787" on the 13th of July in that year. That ordinance provided for the prohibition of slavery in the States to be formed

in the northwestern territory, but provided at the same time for the rendition of fugitive slaves escaping from their owners to any part of said territory.

We do not know at the present day all the procuring causes of the bargain that was made between the delegates of the trading and of the planting States who (with the exception of Peter W. Yates of New York) gave their unanimous assent to this great measure—the matrix and norm of all our earlier legislation concerning the Territories. But we do know, on the testimony of William Grayson of Virginia, that the Southern delegates had "political reasons" as well as economical reasons in voting as they did at that juncture. It is obvious enough that the Eastern States voted for the ordinance from economical motives combined with their moral and political repugnance to the spread of slavery. *Their* gain was immediate and patent. The Southern States, on their part, gained new guards for the stability of slavery in the States where it already existed, by the stipulation for the recovery of their runaway slaves; they gained a reduction, from ten to five, in the number of "free States" that were to be carved out of the territory in the Northwest; and they established a precedent which could be pleaded, and which three years later *was* pleaded, for the parallel and lateral extension of slaveholding States toward the West on the territory afteward ceded.

The Ordinance of 1787, two days after its passage, was communicated by Richard Henry Lee to Gen. Washington, then presiding over the Federal Convention. It was published at length in a Philadelphia newspaper, and was formally cited in the debates of the Convention. It doubtless furnished the germ from which the fugitive-slave clause was planted in the Constitution. The Ordinance of 1787 had converted the slave into a *villein regardant* as respects the Northwest Territory. The Constitution now proposed to make him a *villein regardant* as respects the territory comprised in the Union of the States. In virtue of these two provisions Gen. Charles Cotesworth Pinckney could say in the South Carolina Convention of 1788 that the slaveholding States had thereby "obtained a right to recover their slaves in whatever part of America they may take refuge, which was a right they had not before." (*Elliott's Debates*, Vol. IV, p. 286.)

It was held alike by James Madison and Alexander Hamilton that the Ordinance of 1787 had been passed without the

least color of authority under the Articles of Confederation. But the Sixth Article of the Constitution provided that "all engagements entered into before the adoption of the Constitution should be as valid against the United States under this Constitution as under the Confederation." This clause was held to have brought the engagements of the Ordinance of 1787 under the sanctions of the new charter. The first Congress which met under the Constitution passed an act to adapt certain provisions of the ordinance to the Constitution; and the State of Virginia on the 30th of December, 1788, and therefore after the ratification of the Constitution, assented to the Fifth Article of the ordinance—being the only one of the articles which required the assent of that particular State.

In the debates had on the Constitution while it was pending before the Conventions of the several States, I do not find that "the territorial clause" was formally cited by more than a single individual, James Wilson of Pennsylvania, and his reference to it, in its relation to slavery, was perhaps more optimistic than critical. He expressed the opinion that the new States which were to be formed out of the territory ceded or to be ceded "would be under the control of Congress in this particular, and slaves will never be introduced among them." (*Elliot's Debates*, Vol. IV, p. 452.)

Less than a month after the passage of the Ordinance of 1787 the legislature of South Carolina ceded to the United States all her "right, title, and claim, as well of soil as jurisdiction," to the territory lying between her western boundary and the Mississippi River. This cession was made on the 9th of August, 1787, in full view of the legislation of the Continental Congress prohibiting slavery in the Northwest. Yet no reservation was made by South Carolina in favor of the right of her citizens to migrate to the ceded territory with their slave property.

But when North Carolina came in the year 1790 to make the cession of her "back lands," which bordered more or less closely on the Northwest Territory, she was careful to premise that the territory so ceded should be laid out and formed into a State or States, and that the inhabitants of such State or States "should enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late [Continental] Congress for the government of the Western Territory of the United States, *Provided, always*, that no regulations made or to be

made by Congress should tend to emancipate slaves." Congress accepted the deed of cession with the condition annexed, and organized the "Territory south of the Ohio" in the same year. This Territory was admitted into the Union as the State of Tennessee on the 1st of June, 1796. In the interim no "regulation" was made by Congress respecting slavery.

It is plain that the stipulation made by North Carolina that no "regulations" should be made by Congress "tending to emancipate slaves" in her ceded territory, had been inspired by the terms of the Constitution empowering Congress to "dispose of and make all needful rules and *regulations* respecting the territory belonging to the United States." As showing the continuity of public thought in this matter, it may be interesting to state that the language of the Constitution under this head was doubtless inspired by the terms of the Resolution under which the Continental Congress, on the 10th of October, 1780, had requested the States to cede their vacant lands to the United States. In that resolution it had been promised that the said lands should be settled "at such times and under such *regulations* as shall hereafter be agreed on by the United States in Congress assembled." The power of Congress to prescribe "regulations" for the territory was therefore rooted not only in the text of the Constitution but in the past territorial policy of the Government under the Confederation. And for this reason it was that North Carolina insisted in her deed of cession that Congress should make no "regulations tending to emancipate slaves." Congress in accepting the cession with the condition annexed by this particular State had trammeled its plenary power over the territory in question. To this extent the idea of a partition of the public territory between the planting and the trading States had begun to imbed itself in our polity and politics.

This idea was soon reënforced by the formal and deliberate initiative of Congress itself. In the year 1798 Congress solicited from Georgia "any proposals for the relinquishment or cession of the whole or any part" of her unsettled territory, with a proviso that any such ceded district should be erected into a temporary government under the name of the "Mississippi Territory;" and with a further proviso that this temporary government should be "in all respects similar to that existing in the Territory northwest of the river Ohio, *excepting and excluding* the last article made for the government thereof by the late

[Continental] Congress on the 13th day of July, 1787," that is excepting and excluding the article which prohibited slavery. This is the first case in the history of the country under the present Constitution in which Congress was left perfectly free to regulate slavery in a Territory according to its own will and pleasure. It had inherited the "regulations" of the Northwest Territory under this head from the Continental Congress. Its hands had been tied as to this subject by North Carolina's deed of cession. But as regards the territory carved from Georgia, Congress volunteered of its own mere motion to make an exception in favor of slavery. The issue was distinctly brought to public notice while the Georgia cession bill was under consideration in the House of Representatives.

Mr. George Thacher, of Massachusetts, moved to strike out the clause which saved and excepted slavery from the inhibition prescribed by the Ordinance of 1787. An animated debate ensued. On the part of "the South" it was argued, to cite the exact words of Robert Goodloe Harper, of South Carolina, that "in the Northwestern Territory the regulation forbidding slavery was a very proper one, as the people inhabiting that part of the country were from parts where slavery did not prevail, and they had of course no slaves amongst them; but in the Mississippi Territory it would be very improper to make such a regulation, as that species of property already exists, and persons emigrating there would carry with them property of this kind. To agree to such a proposition would, therefore, be a decree of banishment to all the persons settled there, and of exclusion to all those intending to go there. He believed it could not therefore be carried into effect, as it struck at the habits and customs of the people." On the part of "the North" it was held by Albert Gallatin, of Pennsylvania, that the prohibition of slavery in the Mississippi Territory could not produce "a worse effect than the same regulation in the Northwestern Territory;" that the jurisdiction of the United States was as complete in the one case as in the other; that to legalize slavery under the temporary government of a Territory would be to fasten it on the same country "for all the time it is a State;" and that, it having been "determined that slavery was bad policy for the Northwestern Territory, he saw no reason for a contrary determination with respect to this Territory." The sectional antithesis on this subject being thus distinctly presented, the House of Representatives rejected the amend-

ment of Mr. Thacher by an almost unanimous vote, only 12 members voting in its favor. The Legislature of Georgia formally closed with the bargain offered by Congress, and on the 24th of April, 1802, passed an act of cession which expressly stipulated that the Sixth Article of the Ordinance of 1787, so far as it prohibited slavery, "should *not* extend to the territory contained in the present act of cession." The idea of a partition of public territory between the slaveholding and the non-slaveholding States had now obtained a formal recognition.

Yet the Congress of that day, in the very act of making this concession to the spread of slavery in the Southwest, was careful to accentuate its discretionary power to regulate slavery in the Territories. It was ordained in the very bill which organized the territorial government of Mississippi that "no slave should be imported or brought into it from any port or place *outside of the United States*." To understand the purport of this "regulation" we must remember that while Congress at that date, and until the year 1808, could not, in legislating for the States, prohibit the slave trade, it did not rest under any such disability in legislating for the Territories. That is, the National Legislature, in the plenitude of its power over slavery in the Mississippi Territory, conceded to the citizen of any slaveholding State a right to migrate into that Territory with his slave property, but *not* the right to import slaves from abroad, and this, too, although that right inured to him so long as he retained his domicile in a State which still tolerated the slave trade. The slaveholding citizens, therefore, of States which still tolerated the slave trade were shorn of a measure of their "State rights" by the mere act of migrating into the Mississippi Territory, where they came under the exclusive jurisdiction of Congress. The plenary and discretionary power of Congress over slavery in the Territories was emphasized alike by what it permitted and what it prohibited in the premises.

So prevalent at this date, and for many years later, was the popular impression as to the power of Congress to regulate slavery in the Territories that we find individual citizens and organized communities in the Northwest Territory petitioning Congress to rescind or at least to suspend in their favor so much of the Ordinance of 1787 as placed an interdict on slavery. Not to cite all these instances, it may suffice to say that on the 25th of April, 1796, four settlers of the "Illinois country," speaking in behalf of the inhabitants of St. Clair and Ran-

dolph counties, in the Northwest Territory, presented a memorial to Congress representing that they were possessed of a number of slaves, "the right of property in which the Sixth Article of the Ordinance of 1787 seemed to deny without reason, and without their [the owners'] consent." Accordingly they prayed for the repeal of that restriction and for the passage of an act affirming their right to hold slaves "under such *regulations* as may be thought necessary." Contemplating nothing more than a provisional toleration of slavery, they further asked Congress to declare "how far or for what period of time masters of servants [slaves] are to be entitled [in the Northwest Territory] to the services of the children of parents born during such servitude, as an indemnity for the expense of bringing them up in their infancy." The committee of the House of Representatives to whom the memorial was referred made a report adverse to the petition on the 12th of May, 1796, and the matter was dropped.

At a subsequent day a similar petition, proceeding from a convention of the inhabitants of Indiana Territory, held at Vincennes, William Henry Harrison, the governor of the Territory, presiding, was submitted to Congress. The committee of the House of Representatives, to whom the memorial was referred, reported adversely to the petition on the 2d of March, 1803, John Randolph, of Roanoke, being the author of the Report. The committee deemed it "highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier." The committee based their decision entirely on considerations of prudence and expediency, not at all on any question as to the power of Congress over the subject. The whole matter was again dropped. (*House Journal*, Vol. IV, p. 381, second session Seventh Congress.)

At a still later day, the Legislative Council and House of Representatives of the Territory of Indiana adopted a series of resolutions which Governor William Henry Harrison approved, praying a suspension of the Sixth Article of the Ordinance of 1787. As this document emanated from the Territorial legislature it came before Congress with the force and effect of an official proceeding. It was referred to a special committee of the House of Representatives on the 6th of November, 1807; this committee made an adverse report in the

premises, and the House concurred in their denial of "popular sovereignty in the Territories." The landmark of freedom set up by the Ordinance of 1787 for the benefit of the Northwest Territory was left undisturbed.*

Meanwhile a new and larger territorial question had come to vex the councils of the nation. The status of the Louisiana country, under the stipulations of the treaty by which France ceded it to the United States, could but give rise to questions which were entirely novel as to the constitutional power of Congress to regulate slavery in newly acquired territory, and therefore in territory outside of the Constitution at the date of its adoption. It is known that the treaty of cession contained a stipulation to this effect: "The inhabitants of the ceded territory shall be incorporated into the Union of the United States, and admitted, as soon as possible, according to the principles of the Federal Constitution, to all the rights, advantages, and immunities of citizens of the United States; and in the meantime shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

A question was early raised as to the quality and extent of the recognition implied by the word "property," as used in this clause. By the opponents of slavery it was contended that the term "property," as here employed, could import only such property as was universally recognized "according to the principles of the Federal Constitution," and therefore could not extend to "property in slaves," which was purely the creature of municipal law. But Congress soon came to the resolution of such questions by erecting the Louisiana country into two municipal communities, one of which, the Southern, was called the "Territory of Orleans," and the other of which, the Northern, was called the "District of Louisiana." In the southern territory the institution of slavery was left undisturbed, but the importation of slaves from abroad was prohibited. The northern district was summarily annexed to the jurisdiction of Indiana Territory, and so became subject to the principles of the ordinance of 1787, including the Sixth Article, which prohibited slavery. Again the discretionary power of Congress over slavery in the Territories was exemplified, and again did the policy of an equitable partition of territory

*Annals of Congress. Tenth Congress, first session, p. 919.

between "the North" and "the South" receive a fresh affirmation.

Under a new charter of temporary government given by Congress to the Territory of Orleans on the 2d of March, 1805, and under the terms of which any implied restrictions on slavery had been expressly repealed, it was held by many persons that even the interdict previously laid on the slave trade from abroad had been also repealed. It is probable that this construction was not forseen or intended by Congress, but in fact the foreign slave trade was revived for a season at the port of New Orleans under color of such an interpretation, and its prosecution was winked at by the Federal authorities. It should be recalled that South Carolina, after having interdicted the foreign slave trade for a time, had revived it in 1804, in prospect of its speedy termination by Federal enactment after 1808, and a new activity was thereby given to the nefarious traffic by vessels clearing from the port of Charleston to the port of New Orleans.*

The attention of Congress having been called to this subject by a member of the House of Representatives from South Carolina, Mr. David R. Williams, and a committee having been raised on his motion to consider "what additional provisions were necessary to prevent an importation of slaves into the Territories of the United States;" this committee, of which Mr. Williams was chairman, reported a resolution condemnatory of the foreign slave trade as to "any of the Territories of the United States." The resolution was adopted, and a committee was appointed to bring in a bill pursuant to its terms, but the measure failed to be acted on, notwithstanding the energy with which it was pressed by Mr. Williams.

The foreign complications of the United States with England and France, which, extending from the beginning of our Government, had resulted at last in a war with the former power, came in 1812 to transfer the stress of the sectional feud between "the North" and "the South," from questions concerning the power of Congress to regulate slavery in the Territories to questions concerning the power of Congress to regulate commerce, to pass embargo laws, and thus to impair the rights of shipping property in the trading States. The discontents of the Eastern States came to a head in the Hartford

*Annals of Congress. Sixteenth Congress, first session, vol. 1, pp. 263, 266.

Convention, and when these discontents had been appeased by the repeal of the embargo act and the return of peace, the sectional feud again swayed back to the question of the Territories, and in the years 1819 and 1820 vented itself in a fierce struggle over the admission of Missouri as a slave-holding State, and over the organization of Arkansas as a slave-holding Territory.

We have seen that an impassable chasm had been opened in the Federal convention of 1787, between two classes of States differently interested in the disposition that should be made of the vacant lands, and that this chasm was opened in the forum of the convention so soon as the question arose in that body as to the constitutional provision that should be made for the admission of new States into the Union. In the year 1820, in this same matter of the public territory, an irrepressible conflict arose between two classes of States differing in their social systems, in their economic pursuits, and in their political predilections. The impassable chasm between the States was here opened in the forum of Congress on a question then and there raised as to the terms and conditions on which Missouri should be admitted into the Union of States. The chasm had been temporarily closed in 1819 by the allowance of slavery in the bill organizing the Territory of Arkansas.

Missouri after having been temporarily included in the District annexed to the Territory of Indiana, and after passing through other stages of Territorial subordination, had been erected into a separate Territory by act of Congress, approved June 4, 1812. In this act no restriction of any kind was laid upon slavery, and greater legislative power was vested by Congress in the General Assembly created under the act than had been previously conceded to the legislature of any Territory.

What is called "the Missouri question" arose in the first stage of its emergence, from an attempt made in the House of Representatives to insist on the prohibition of slavery in Missouri as the condition of her admission into the Union. It was proposed to put this condition in the act of Congress authorizing the Territory to frame a State constitution. The opponents of this restriction, while generally admitting the sovereignty of Congress over the Territories in the matter of slavery, were unanimous in denying this prerogative to Congress in the hour and article of admitting *a State* into the Federal Union for the obvious reason that such a re-

striction, in the absence of any constitutional power to impose it, would be the exercise of arbitrary authority; would impair the autonomy of a "sovereign State;" and would destroy the equality of the States in a matter left free to each under the Constitution. Southern statesmen like McLane, of Delaware, and Lowndes, of South Carolina, frankly admitted the discretionary power of Congress to regulate slavery in the Territories. So far as I can discover, John Tyler, of Virginia, then a member of the House of Representatives from that State and afterwards President of the United States, was the only person on the floor of either House of Congress who openly questioned it at that juncture.

Everybody knows that the scission between the slaveholding and the nonslaveholding States in this great crisis of our political history was closed by what was called "the Missouri compromise." That celebrated compromise was brought forward in the shape of an amendment to the bill which provided for the immediate admission of Missouri as a slaveholding State, and provided further that slavery should be forever prohibited "in all the territory ceded by France to the United States, under the name of Louisiana, lying north of thirty-six degrees and thirty minutes north latitude, excepting only such part thereof as is included within the State of Missouri." The compromise was adopted in the Senate on the 17th of February, 1820, by a vote of thirty-four yeas to ten nays. In the House of Representatives it was passed by a vote of one hundred and thirty-four yeas to forty-two nays. A partition of the territory of the United States between the two classes of States at variance was now enacted into the statute law of the land.

Florida was purchased from Spain in 1821, and was erected into a Territory in 1822, with the toleration of slavery, but not without the intervention of Congress at a later day to revise certain "regulations" of the Territory which moved in the matter of slavery and its relations. The Legislative Assembly of Florida undertook to impose discriminating taxes on the slave property of nonresidents. All such discriminating taxes were formally disallowed by Congress, which thus asserted its just supremacy over each of the Territories during the period of their territorial vassalage.

The passage of "the Missouri compromise" marks the close of an old order and the beginning of a new in the secular controversy over the disposition and regulation of slavery in the

public territory. Mr. Jefferson confessed at the time that this Missouri question, "like a fire bell in the night, awakened and filled him with terror," as being "the knell of the Union." He predicted again and again that the geographical line fixed by that compromise, because it "coincided with a marked principle, moral and political," and because it thereby created a clean and clear line of cleavage between the slaveholding and the nonslaveholding States, would never be obliterated, but would be marked deeper and deeper by every new irritation in our Federal politics. He saw with the eye of a political philosopher that the controversy between our two classes of States differently related to the subject of slavery had passed from the sphere of *economics* into the sphere of *politics*, and that, too, into the sphere of politics made blood-warm by conflicting interests, and touched into a fine frenzy by conflicting views as to the ethics of slavery. From the first there had been a *tacit* attempt to effect the partition of public territory between the planting and the trading States, and to the end that the pending equilibrium between the two classes of States might be maintained as far as practicable, it had not been uncommon to provide for the twin admission of a "slave State" and of a "free State" into the Federal Union. But now the antithesis between the "slave States" and the "free States" was distinctly articulated in the polity and politics of the country. Henceforth the feud between them would be as internecine, so Jefferson said, as the feud between Athens and Sparta. He descried from afar the advent of a new "Peloponnesian war."

His vision was true, but his analysis was insufficient. For in truth it was no fault of "the geographical line" fixed by the Missouri compromise that that line was so portentous, and that forty years afterwards, as Jefferson feared in 1820, it bristled with the bayonets of "States dissevered, discordant, belligerent." The fault was in the opposing and enduring forces which eagerly confronted each other across the line—forces of thought and passion so persistent and immitigable, that even when the party leaders of each seemed to be singing truce with their bugles, they were really marshaling their clans for new civic feuds of ever-widening sweep and ever-deepening intensity.

In the year 1845 the Republic of Texas was admitted into the Union by joint resolution of both Houses of Congress, and with a provision, *inter alia*, that "the Missouri compromise

line," as a recognized compact between the sections, should be applied to the territory in case of its partition into States. The idea of a Territorial "partition" was again embodied in our polity and politics.

The annexation of Texas had for its natural, if not its inevitable, sequel, the war with Mexico, which resulted in the Treaty of Peace concluded at Guadalupe Hidalgo, and the ratifications of which were exchanged between the two countries at Queretaro on the 30th of May, 1848. By this treaty a vast accession was made to the Territorial possessions of the United States. The annexation of Texas had been avowedly prosecuted in the interest of slavery, considered as a political institution. It was so interpreted by Mr. Calhoun, as Secretary of State, in a letter written by him to Mr. Pakenham, the British Minister, under the date of April 18, 1844. The Mexican war, though declared by our Congress to have been begun "by the act of Mexico," was held by many at the South as well as at the North to have been precipitated by the act of the Administration of President Polk in ordering an advance of United States troops on the territory in dispute between Texas and Mexico. Supporters of the war at the South had not hesitated to call it "a Southern war," because it portended the aggrandizement of slavery considered as a political institution. Such sectional irritations could but excite a counter irritation among the representatives of "the North" in Congress. As early as the 9th of August, 1846, on the introduction of a bill in the House of Representatives appropriating $2,000,000 to aid in the adjustment of our difficulties with Mexico, Mr. David Wilmot, of Pennsylvania, brought forward his celebrated proviso, drawn, *mutatis mutandis*, from the Ordinance of 1787, but denuded of the clauses enjoining the rendition of fugitive slaves. It was expressed in the following terms:

"Provided, that as an express and fundamental condition to the acquisition of any territory from the Republic of Mexico by the United States, by virtue of any treaty which may be negotiated between them, and to the use by the Executive of the moneys herein appropriated, neither slavery nor involuntary servitude shall ever exist in any part of said territory, except for crime whereof the party shall be duly convicted."

The bill with this proviso annexed was passed in the House of Representatives by a vote of eighty-five yeas to seventy-nine nays. The bill as thus amended went to the Senate,

where, by parliamentary strategy (that is, by "talking it to death"), the opponents of the bill caused it to fall through for want of time to act upon it before the hour fixed for the adjournment of Congress at that session. At the next session a similiar bill was passed, with a similar proviso, declared to be applicable "to all territory on the continent of America which shall hereafter be acquired by or annexed to the United States." The sweeping proviso, after being adopted in committee of the whole, was finally rejected in the House of Representatives on the 3d of March, 1847, by a majority of only five votes.

The treaty of Guadalupe Hidalgo was, therefore, concluded and ratified in full sight of the sectional exasperations it was designed to foment. Henceforth the "Territorial Question" assumed vaster proportions, commensurate not only with the extent of the newly-acquired domain secured from Mexico, but also with the growing rivalry of the two antagonistic sections. The Constitutional relations of the question were complicated, besides, with recondite questions of public law as to the force and effect of the local municipal law of Mexico in the matter of slavery. On the one hand it was contended that the slaveholder had no right to migrate to the new territory with his slave property, because, by the Constitution of Mexico, the institution of slavery, always the creature of positive municipal law, could have no recognized existence on the soil in question. On the other hand it was argued that the territory of the United States, as the common possession of the several States, was held in trust by the Federal Government for the common enjoyment and equal benefit of all the people of the United States, with all the rights, privileges, and immunities severally secured by law to the inhabitants of the several States. It was further argued on this side that, at the moment the new acquisition was consummated, the antecedent municipal law of Mexico was superseded by the Constitution of the United States, which, *proprio vigore*, extended its sway over the annexed domain, and placed the rights of the slave-owner under its shield.

In this attitude of the question a proffer was made by Southern members of Congress to effect a truce between the sections by extending "the Missouri compromise line" to the Pacific Ocean. The proposition was rejected by the Northern members, who, in the stage which the controversy had now reached,

steadfastly resisted any further "partition" of territory for the extension of slavery. Many were the parleys held in hopes of effecting a political armistice. By what is known as "the Clayton compromise," so named from the Delaware Senator, Mr. John M. Clayton, whose name it bears, it was proposed that "the whole territorial question," as then pending, in relation to Oregon, California, and New Mexico should be referred to a special committee of eight Senators, four from "the North," and four from "the South," who should also be equally divided in a party sense between Democrats and Whigs. In this committee it was proposed by a Southern member to reaffirm "the Missouri compromise line" as a basis of settlement. The proposition was rejected by the Northern members. This deadlock caused, as Mr. Calhoun afterwards said, "a solemn pause in the committee." When all prospect of an agreement on "the Missouri compromise line" had vanished in this committee, it was proposed by the Southern members to "rest all hope of settlement on the Supreme Court as the ark of safety." The refuge sought by the fathers in the Federal Convention of 1787 now seemed the only asylum open to their children in the Congress of 1848. The fathers had eaten sour grapes and the children's teeth were set on edge. A bill was matured in the committee, providing for an appeal to the Supreme Court of the United States from all decisions of a Territorial judge in cases of writs of *habeas corpus*, or other cases where the issue of personal freedom should be involved; the bill was reported from the committee with the approval of three-fourths of their number, but, after passing through the Senate, was defeated in the House of Representatives by a vote of one hundred and twelve nays to ninety-seven yeas. Five-sixths of the negative votes came from the Northern States.

After the failure of "the Clayton compromise," a bill organizing the Territory of Oregon was passed as a separate measure, with a proviso annexed prohibiting slavery in the terms of the Sixth Article of the Ordinance of 1787. President Polk in an elaborate message to Congress justified his approval of the bill by reasons drawn from the precedent set in the Missouri compromise act of 1820, as reaffirmed at the annexation of Texas. If William Grayson avowed that the Southern delegates in the Continental Congress of 1787 had "political reasons" in voting for the prohibition of slavery in the Northwest Territory, President Polk made no secret of the fact that he had

"political reasons" in accepting the prohibition of slavery in Oregon—because it laid the basis of an argument for the parallel and lateral spread of slavery to the Pacific Ocean, on the old theory of an equitable "partition" of territory between the two sections. So persistent, we see, was the stress of political motives in this struggle for a "partition of the Territories."

Rendered impotent by its dissensions, the Federal Legislature, though clothed with plenary power over the territory of the Union, had virtually abdicated its functions with respect to the new domain acquired from Mexico. We had "conquered a peace" from Mexico, but had lost it among ourselves. In prudent forecast of such disaster, Mr. Calhoun, with a patriotism which does him honor, had introduced a resolution in the Senate on the 15th of December, 1847, shortly after the opening of the Thirtieth Congress, declarative of the opinion that "to conquer Mexico and to hold it either as a province, or to incorporate it into the Union, would be inconsistent with the avowed object for which the war had been prosecuted [the redress of grievances]; a departure from the settled policy of the Government, in conflict with its character and genius, and, in the end, subversive of all our free and popular institutions." Mr. Webster was equally earnest in reprobating the dismemberment of Mexico, but these counsels of the two great opposing leaders passed unheeded by the zealots who at that time swayed the counsels of the administration.

On the 4th of March, 1849, the Administration of Gen. Zachary Taylor was called to inherit the fateful legacy bequeathed to it by his predecessor. He favored the early admission of California and New Mexico as States, under Constitutions which had been prepared at their own initiative, in the absence of enabling acts from Congress. Henry Clay, who had returned to the Senate at this crisis to lend his great abilities to the work of conciliation, proposed on the 29th of January, 1850, that the pending Territorial Questions should be settled as part and parcel of the wide agitations springing up from slavery in all its relations under the Constitution. The five measures which he advocated, to "staunch the five bleeding wounds of the country," were: (1) The immediate admission of California as a State; (2) the adjustment of the boundaries of Texas; (3) a more effective bill for the recovery of fugitive slaves; (4) the abolition of the slave traffic in the District of Columbia; and (5) the passage of organic acts for the territorial government

of Utah and New Mexico. These propositions, with all others pending on the same subject, were on the 19th of April, 1850, referred to a select committee of thirteen members, consisting of Messrs. Clay (chairman), Cass, Dickinson, Bright, Webster, Phelphs, Coöper, King, Mason, Downs, Mangum, Bell, and Berrien. This committee submitted a Report covering all the points above enumerated, and accompanied the Report with a bill which, from the comprehensiveness of its scope, was called at the time "the Omnibus Bill." This bill, in its relation to the Territories, provided for their organization by acts of Congress, but declared that the legislative power under them should not extend to the passage of "any law in respect to African slavery." Pending the consideration of this bill, Jefferson Davis, of Mississippi, moved on the 15th of May to amend the bill by substituting for the words, "in respect to African slavery," the following clause: "No law shall be passed interfering with those rights of property growing out of the institution of African slavery as it exists in any of the States of the Union." At a later day a counter amendment was proposed by Salmon P. Chase, of Ohio, in the following terms: "*Provided, further*, That nothing herein contained shall be construed as authorizing or permitting the introduction of slavery or the holding of slaves as property within said Territory." These two amendments expressed the proslavery and the antislavery antithesis. After an animated debate they were both rejected in the Senate by a vote of 25 yeas to 30 nays. Various other amendments having then been offered and defeated, Stephen A. Douglas, of Illinois, moved to strike out the words relating to "African slavery," and to provide that "the legislative power of the Territory should extend to all rightful subjects of legislation, consistent with the Constitution of the United States." This amendment, after being at first treated with almost unanimous contempt, receiving only two votes, was finally adopted, and on the 31st of July, 1850, was incorporated in the Utah territorial bill, which was passed by a vote of 32 yeas to 18 nays. The lassitude of exhausted disputants rather than the cohesion of clear-thoughted opinion was represented in this majority vote.

It was sought by this amendment to remit the whole slavery discussion to the Territorial legislatures, "subject only to the Constitution of the United States," as interpreted by the Supreme Court. The expedient was unhappily open to a

double construction at the moment of its invention. Some who favored it at the North supposed that the inhabitants of a Territory would be left "perfectly free" to prohibit as well as to establish slavery during their period of Territorial dependence. Others who favored it at the South repelled this assumption as extra-constitutional so far as the prohibition of slavery was concerned, and held that all legislation of a Territory inimical to slavery would be null and void, because inconsistent with the Constitution of the United States. The bill as finally passed provided at first for the organization of Utah alone, but a few days later the Senate passed a similar bill for the Territorial government of New Mexico, and the House of Representatives having concurred in both, they were both signed by President Fillmore on the 9th of September, 1850.

In order to measure by a few criteria the magnitude and intensity of the opposing forces which had now come to their impact on the public territory, it is only necessary to recall the fact that, as early as the winter of 1844–'45, the Legislature of Massachusetts, borrowing a leaf from the Nullification history of South Carolina, had declared by a solemn act, on the eve of the annexation of Texas, that such an act of admission "would have no binding force whatever on the people of Massachusetts." On the other side the Legislature of Virginia declared on the 8th of March, 1847, that in the event of a refusal by Congress to extend "the Missouri compromise line" to the Pacific Ocean, or in the event of the passage of the "Wilmot Proviso," the people of that State "would have no difficulty in choosing between the only alternative that would then remain, of abject submission to aggression and outrage on the one hand, or determined resistance on the other, at all hazards and to the last extremity." A similar Resolution was reaffirmed by the Virginia Legislature onthe 20th of January, 1849, accompanied with a request that the governor of the State, on the passage of the "Wilmot Proviso," or of any law abolishing slavery or the slave trade in the District of Columbia, should immediately convene the Legislature in extraordinary session "to consider the mode and measure of redress." Even after the so-called "compromise measures of 1850" had been enacted by Congress, declarations still more emphatic and proceedings still more positive were promulgated by the Legislatures of Mississippi and South Carolina.

"The great pacification" of 1850 had failed to pacificate. How fond was the illusion wrought by it may be read in the fact that though the two great political parties of the country, the Whig and the Democratic, had accepted "the Compromise Measures of 1850" in their respective "platforms" for the Presidential election of 1852, as putting "a finality" to the slavery agitation and as the supreme test of political orthodoxy; and though the candidates of the latter had prevailed over those of the former because they were supposed to stand "more fairly and squarely" on the basis of that adjustment, yet it was reserved for the leaders of the Democratic party, in this very matter of the Territories and their government, to reopen the whole slavery agitation with a breadth and violence never before known in our annals. Because the surface of our political sea was at that moment no longer swept by storm and tempest, men flattered themselves with the hope that the winds of sectional passion were dead, whereas they were only tied for a season in the bag of Æolus. Their roar might still be heard by those who had ears to hear.

Congress in 1853 and 1854 was called to organize the Territory of Nebraska, carved out of that portion of the Louisiana purchase which, lying north of 36° 30′ north latitude, was covered by the Missouri compromise of 1820 prohibiting slavery. At first the Committee on Territories in the Senate, Stephen A. Douglas being chairman, did not propose to disturb the terms of that compromise; but the Territorial Bill for Nebraska, in respect of the legislative power it conferred, was couched in the same terms as had been prescribed in the bills for the government of Utah and New Mexico. As those bills were meant to leave these Territories *tabulæ rasæ* in the matter of slavery and its relations, it was indeed hinted by the committee that the "principles" on which those bills proceeded were inconsistent with the retention of a "compromise" which had placed an invidious limitation on popular sovereignty in the Territories, under the guise of placing an invidious interdict on slavery. After hesitating for a time on the brink of the chasm which he saw to be yawning before him, Mr. Douglas, on the 23d of January, 1854, in the act of reporting a bill for the organization of two Territories, one to be called Nebraska and the other Kansas, boldly proclaimed the doctrine that the Constitution and all laws of the land extended to these Territories "*except* the Eighth Section of the

Act preparatory to the admission of Missouri into the Union, approved March 3, 1820, which was superseded by the principles of the legislation of 1850, commonly called 'the Compromise Measures,' and is declared inoperative and void"—that is, the terms of "the Missouri compromise," which the committee of the Senate were "not prepared to depart from" when they made their first report, were now declared to have been already repealed by the later compromises of 1850.

As two rays of light, when they impinge in the physical realm, may so neutralize each other as to produce darkness, so it would seem that two "compromises" when they impinge in the political sphere, may so neutralize each other as to produce an explosion. Certain it is that the repeal of "the Missouri compromise," while having for its avowed object to effect the sempiternal banishment of "the slavery agitation" from the Halls of Congress, and its localization in the distant domain of the Territories, had for its consequences to set the whole nation by the ears. It threw the apple of sectional discord into Congress, into the Supreme Court, into every home in the whole land.

How far our Federal politics in this recoil from a recorded precedent and an established landmark had swung from the moorings of the Constitution in the matter of the Territories and the power of Congress over them may be gauged by a single remark which Mr. Calhoun dropped in the last speech he ever delivered in the Senate (it was on the 4th of March, 1850), when he referred to the fact that as recently as during the debate on the organization of Oregon Territory, everybody in the Senate, if he mistook not, "had taken the ground that Congress has the sole and absolute power of legislating for the new Territories." Congress in 1855, smitten with paralysis by the shock of "an irrepressible conflict" between the "free States" and the "slave States," was compelled to declare its *déchéance* as to a power so singly vested in it that its power was "sole," and so fully vested in it that its power was "absolute." In fact, it was not the quality or extent of the power, *but the incidence of the power*, which led the politicians to shuffle it out of sight.

The first effect of the effort to "localize" the "slavery agitation," by relegating it to the Territories, was to precipitate a political and military crusade alike from "the North" and from "the South" for the speediest possible seizure and occupation

of the two strategic points of Kansas and Nebraska, which had been so rashly uncovered by the tactical blunders of politicians maneuvering for a position. A second effect of the new policy was to convert the form of the Supreme Court into the *champ-clos* of a judicial tourney which, by its decision, served only the more to embroil the fray it was sought to compose. The *Dred Scott decision* is commonly supposed to have placed its ægis over the rights of slave property in the Territories during the interim of their subordination to the power of Congress, but when the opinion of Chief Justice Taney, which was read as the opinion of the Supreme Court in that famous case, is collated and compounded with the separate opinions of the Justices who, it is supposed, "concurred" in that decision, this conclusion is by no means clear or certain. Among the "concurring" Justices there is surely no one who, whether for his learning or his character, is entitled to greater weight than Mr. Justice Campbell. But that great jurist, in passing on the merits of the case, expressly stated that he did not "feel called upon to decide the jurisdiction of Congress," and that "courts of justice could not decide how much municipal power may be exercised by the people of a Territory before their admission into the Union." Indeed the *Dred Scott decision* did but render the confusion worse confounded. It was discovered at last that "the ark of safety," to which our statesmen, from the origin of the Government, had looked for refuge from the turbulence of the "Territorial Question," could not outride the storm.

It remains, then, to say that the dogma of "popular sovereignty in the Territories," never a principle of the Constitution, and never striking any root in the history of the country before the date of our Mexican acquisitions, was a mere expedient and makeshift, invented for the evasion of a duty which Congress had become incompetent to perform because of the schism in our body politic—a schism created by the wrench and strain of two distinct social systems contending for supremacy in the same national organism.

I have ventured on this long review not only for the historic interest of its separate stages, but also for the light it sheds on the difference between the opposing forces which at different epochs met and impinged at the same point of impact—the public territory. At the epoch of the ratification of the Articles of Confederation, at the conclusion of peace with Great

Britain in 1783, at the formation of the Constitution in 1787, the great differentiation between two classes of States had turned on the question of the ownership, partition, and government of the unoccupied lands wrested from the British Crown. The condition of unstable equilibrium was here produced by the presence and antagonism of two classes of States differently endowed with territorial possessions. Under the Constitution, from 1789 to 1860, this condition of unstable equilibrium resulted in the first stadium of our history from the presence and antagonism of two classes of States with different economic systems, determined by the waning profit of slave labor in the Northern States, and by the increasing profit of slave labor in the Southern States. From an unstable equilibrium swaying primarily in economics, this sectional counterpoise passed, in its second stadium, to an unstable equilibrium swaying in party politics; and this second stadium was reached at the advent of "the Missouri compromise," with its geographical line of discrimination between "the two great repulsive masses," pitted against each other in the same parallelogram of forces—the Federal Union. From the year 1820 to the year 1860, the jar and jostle of these great repulsive masses continued to increase in vehemence of momentum and in amplitude of vibration, until at last they shook the Union to pieces for a season, in the secession of the Confederate States.

It was natural and inevitable that this great oscillation of opposing and enduring forces should have always come to its highest ascensions in the partition and government of the common territory, because it was there that the two contending sections could find the freest field for political rivalry and hope for the largest trophies of political conquest. After the bargain had been struck in the Federal Convention between the trading States of New England and the planting States of South Carolina and Georgia, in virtue of which the former secured the Congressional regulation of commerce, and the latter secured the Constitutional allowance of the slave trade till the year 1808, it was foreseen at the time that two great objects of sectional interest would still survive in the Union —the Fisheries for the benefit of New England, and the Mississippi Valley for the benefit of the Southern States. This fact was not only foreseen, but openly stated on the floor of the Federal Convention.* It does not need to be said that

* Elliot's Debates, vol. v, p. 526.

the question of the Mississippi Valley opened an immensely wider field for the play of economical and political forces within the Union than the question of the Fisheries. The former, in its newly emerging issues, was destined to supply recurring questions of purely sectional and domestic politics. The latter, in its newly emerging issues, could but supply such questions in the second degree, for in the first degree they are always questions of international politics.

All this was clearly perceived, I say, in 1787 and in 1788, when Patrick Henry and William Grayson "thundered and lightened" in the Virginia Convention against the ratification of the Constitution. The struggle for the Territories under our present Constitution has always been, down to 1860, as Grayson phrased it in 1788, "a contest for dominion—for empire" in the Federal Government. It has been a contest on the one side for the protection and extension of slave labor, with the order of economics and politics which such a social system implies; and a contest on the other side, for the protection and extension of free labor, with the order of economics and politics subtended by a diversified system of industry. The distinction between the opposing forces and the point of their impact was revealed at once when the shock of battle came in 1860; for, with the first shock of that battle, the Question of the Territories, as a watchword and challenge between the two sections, sank beneath the horizon of the national consciousness in the twinkling of an eye. The "Territorial Question" never had any significance, except as the earnest and pledge of political ascendency in the Federal Union; and when the civil war came, that significance was buried out of sight by the new form which the impact had taken in passing from words to blows. The antagonistic forces now stood face to face in battle array. The house so long divided against itself had come at last to realize that, if it was not to fall, it "must become all one thing or all the other;" and so it came to pass, rather by the logic of events than by the logic of human wisdom, that the war for the political Union of the States passed into a war for the social and economical unification of the American people. It is sorrow and shame that this beneficent result could not have been reached without the rage and pain of a great civil war; but now that it has been reached, the sorrow and shame of the old epoch, with the rage and pain of the transition period,

are slowly but surely melting away into a new and deeper sense of national unity, with its vaster problems of duty and opportunity. The problems before us are indeed of increased complexity and difficulty, but they move no longer in the political dynamics of two distinct civilizations, each boasting its superiority to the other, and each wasting its energy by working at perpetual cross purposes with the other. The energies formerly expended in the "irrepressible conflict of opposing and enduring forces" can now be conserved in the political dynamics of a unified civilization, and can be correlated into new forms of social and economical evolution, without detriment to our "indestructible Union of indestructible States."

VIII.—ENFORCEMENT OF THE SLAVE-TRADE LAWS.

By W. E. B. DU BOIS.

THE ENFORCEMENT OF THE SLAVE-TRADE LAWS.

By W. E. B. Du Bois.

This paper is a partial presentation of the results of an investigation * carried on in the Seminary of American History at Harvard University. It has not been possible as yet thoroughly to digest the mass of material collected, and hence the conclusions here stated may be somewhat modified on maturer study.

The efforts at suppressing the slave trade in the United States fall naturally into four main periods: First, Colonial legislation; second, National legislation from 1789 to 1818; third, International efforts and national legislation to 1840; fourth, the period from 1840 to 1862.

When President Jefferson, in his sixth annual message congratulated his fellow-citizens on the near approach of the period when they constitutionally could suppress the trade, it seemed as though the time had come to crown the efforts of a century and a half by a careful statute, and thus to annihilate the slave trade at a blow.

These efforts began early in colonial times, and may roughly be divided into three successive phases. From 1638 to 1695 there was a period of prohibition, in which the Swedes on the Delaware, the colonists of Connecticut and Massachusetts, and the home Government by the Duke of York's laws, prohibited the traffic, though the prohibitions were rather indefinite and theoretical. From 1695 to 1770 there were from seventy-five to one hundred acts which were aimed at the suppression or limitation of the trade. They were for the most part prohibitive

* Among my authorities have been U. S. Statutes; Colonial and State statutes; Congressional journals, debates, Globe, and Record; executive documents, reports, etc.; reports of abolition and colonization; contemporary accounts, biographies, newspapers, etc.

duty acts, ranging as high as £150. In the final colonial period, from 1770 to 1798, the trade was prohibited by all the colonies, although afterward reopened by South Carolina.

The association of 1774 was the first assertion of national control over the trade; nor was that prohibition a dead letter. We find from the slave colony of Virginia a document in which the local committee of correspondence at Norfolk, hold up to the "just indignation of the freemen Mr. John Brown, merchant of this place, for illegally importing Africans," and they ask his customers to boycott the offender.*

Beyond the striking of the slave-trade clause from the Declaration of Independence, and certain suggestions in the negotiations of 1782, nothing was done by the nation in regard to the trade until 1787.

In the constitutional convention the subject caused disturbance, and was settled by the well-known compromise which allowed the continuance of the trade until 1808. In nearly every ratification convention this clause provoked discussion; two quotations will illustrate two general lines of argument; the Federalist said that although better might have been wished, yet this near prospect of suppression "ought to be considered as a great point gained in favor of humanity."† Ramsay, a South Carolina delegate, said in a pamphlet: "Though Congress may forbid the importation of negroes after twenty-one years, it does not follow that they will. On the other hand it is probable that they will not" for commercial reasons.‡

While Congress was restrained from immediately prohibiting the trade, it could tax negroes imported; each of the four or five propositions to tax, however, provoked strenuous opposition, and precipitated the first slavery debates in Congress. The friends of slavery, led by Jackson of Georgia, denounced the tax as unjust and unequal, while the foes of the system seemed to think the tax useless, or even as savoring of national participation.

Discussion growing out of the Quaker petitions of 1790, eventually led to the statute of 1794.§ This was the first slave trade act under the Constitution, and forbade the slave trade

* Force's Archives, 4th Series, vol. 2, p. 33.

† Federalist, No. XLI.

‡ Ford: Pamphlets on the Constitution, p. 378.

§ U. S. Statutes at Large I, 347-349.

by United States citizens between foreign ports, or the fitting out of ships here for that trade. It was made more stringent in 1800, and in 1803 a third act gave national assistance in carrying out State prohibitory acts. In spite of these efforts, South Carolina* reopened the trade the same year, because, as her Congressman, Lowndes, said, the United States did not, and the State could not, enforce the prohibition.†

The attempt to prohibit the direct trade to the Territories was frustrated by the overland trade from South Carolina. Senator Smith, of that State, declared from official returns that 39,075 slaves were imported into Charleston in the years 1803 to 1807, partly for this Territorial trade.‡

Thus the necessity of taking advantage of the expiration of the constitutional limitation was apparent. On President Jefferson's recommendation in December, 1806, bills were immediately introduced into both Houses, and the final act passed March 2, 1807, to take effect January 1, 1808.§

The difficulties encountered in framing this bill were the constantly recurring difficulties of slave trade legislation down to the civil war; they were the questions of punishment, and of the disposal of the cargo. The first draft of the House bill punished violations with death, but this was toned down in the act to fine and imprisonment, and not until 1820 was the death penalty adopted. There was warm debate on the disposal of the illegally imported Africans. If they were sold, the moral principle of the prohibition would be violated; if they were not sold Southern Congressmen declared that the law could not be enforced for want of informers. Again, if the negroes were freed, it would add to the dangerous free negro class in the South; if they were not freed, they must be apprenticed, or removed, as was suggested to the free States; or left to the disposal of the President, or returned to Africa. The question was finally settled by not settling it at all, and leaving the disposal to the State.

It is noteworthy that all through the debates it was tacitly recognized that the illicit trade would be large, an admission which showed considerable foresight.

Thus the capstone seemed to have been put upon the long series of attempts to suppress this traffic; the slave trade, as

* Cooper and McCord's Stat., VII, 449.

† Cong. Annals, 8th Cong., 1st sess., p. 992. (This whole speech is significant.)

‡ Cong. Annals, 16th Cong., 2d sess., pp. 74–77.

§ U. S. Statutes at Large, II, 426.

Schouler says, and as every schoolboy is taught, received its "quietus."

How was this law enforced? I will not say it was not enforced at all, nor yet that it was poorly enforced—a statement between the two would be nearer the truth.

The testimony supporting this view is voluminous and convincing; it consists of Presidential messages, reports of cabinet officers, reports of revenue collectors, letters from district attorneys, Congressional reports, testimony of naval commanders, statements on the floor of Congress by Northern and Southern members, British official reports, and the testimony of abolition and colonization societies.

Let us examine a few of these heads: In 1810 President Madison says: "It still appears that American citizens are instrumental in carrying on a traffic in enslaved Africans, equally in violation of the laws of humanity and in defiance of those of their own country."*

The Secretary of the Navy writes in 1811:

"I hear not without great concern that the laws prohibiting the importation of slaves have been violated in frequent instances."†

The collector of the port of New Orleans says in December, 1817: "The most shameful violation of the slave acts, as well as our revenue laws, continue to be practiced with impunity * * * Nearly a thousand slaves at one time arrived in Galveston for the United States.‡ It is almost impossible to obtain witnesses."

A collector in Georgia writes about the same time: "I am in possession of undoubted information that African and West Indian negroes are almost daily illicitly introduced into Georgia. * * * These facts are notorious."§

He charges courts and State officials with connivance. The act of Georgia in 1818 begins "Whereas numbers of African slaves have been illegally introduced," etc., and gives an increased bonus to informers.‖ The district attorney of South Carolina complained of the inefficacy of the law in 1811 and again in 1819. He gives a case of 100 imported Africans

* House Jour. 11th Cong., 3d sess., Vol. 7 [reprint], p. 435.
† Exec. Doc. 84, 15th Cong., 2d sess.
‡ Exec. Doc. No. 12, 15th Cong., 1st sess.
§ Exec. Doc. 348, 21st Cong., 1st sess.
‖ Prime's Digest, p. 798.

offered for sale.* Judge Story in charging a jury in 1819 said: "American citizens are steeped to their very mouths (I can hardly use too strong a figure) in this stream of iniquity."†

An ex-governor of Georgia and United States Indian agent, after an official investigation by William Wirt, was pronounced guilty of prostituting his powers to violating the slave trade laws.‡ Capt. Morris, of the frigate *Congress*, reported to the Secretary of the Navy in 1817 that slaves were being smuggled in through numerous inlets and that the people were but too disposed to aid. He reports that several hundred men were then at Galveston and persons had gone from New Orleans to purchase them.§ Mr. Fowler, of Connecticut, states that when he was a boy the violation of the act of 1807 by Connecticut traders was a topic of conversation in private circles.‖ A committee of Congress in 1818 in an elaborate report said that infractions of the law were notorious.¶ Finally, as a fitting climax, the Register of the Treasury stated in 1819 that heretofore no violation of the law had been reported;** and Secretary Crawford said that no particular instructions had ever been sent out.††

These frequent and notorious violations led to the third series of efforts to suppress the traffic from 1818 to 1840. In 1818,‡‡ 1819,§§ and 1820,‖‖ acts were passed which completed the penal legislation of the United States; the first law strengthened the act of 1807, the second directed imported Africans to be returned to Africa, and the last declared participation in the trade piracy, punishable with death.

The international phase of the question now becomes prominent. In the rejected treaty of 1806, and in the Treaty of Ghent, the United States bound herself to suppress the trade. After her experience with the statute of 1807, it became increasingly evident that the only way to suppress the slave

* House Jour. 11th Cong., 3d sess., vol., 7 [Reprint], p. 475; and Friends' View of Slave Trade, 1824, p. 42.

† Friends on Slave Trade, 1841, p. 8.

‡ Amer. State Papers, cl. 10, No. 529.

§ Exec. Doc. 36, 16th Cong., 1st sess., p. 5.

‖ Fowler's Local Law and Other Essays, p. 122.

¶ Amer. State Papers, 10, No. 44.

** House Exec. Doc. 107, 15th Cong., 2d sess., p. 5.

†† House Reports, 348, 21st Cong., 1st sess., p. 77.

‡‡ U. S. Stat. at Large, III, p. 450.

§§ *Ibid.*, III, pp. 533–534.

‖‖ *Ibid.*, III, pp. 600–602.

trade was the granting of mutual limited rights of search by all maritime nations. Committees of Congress and Cabinet officials several times recommended such policy, but the Government steadily refused to set what she considered a dangerous precedent. As a compromise the United States proposed denouncing the traffic as piracy, not indeed by the law of nations, but by municipal law, thus reserving all cases for her own courts. Even this would be useless, nevertheless, if not enforced on the high seas, and therefore after repeated urgings by England, the United States in 1824 arranged the preliminaries of a treaty with a limited right of search. This was rendered almost valueless by Senate amendments, and consequently rejected by Great Britain. Nevertheless, British cruisers exercised the right of visit in frequent instances, and for a while England claimed, under the rules of international law, a right of visit. Things remained thus until 1842.

Just how much actual importation of Africans into the United States there was in this period is more difficult to decide than at any other time, earlier or later. Undoubtedly importation declined in 1825–1835, but it never ceased; official evidence is always proof of the existence of the trade, but official silence is by no means evidence that it declined. Indeed, from this time until 1860 the reticence of Government officials grows eloquent. Much evidence points to increasing numbers of Americans in the trade; of slavers fitted out at nearly every point on the Atlantic coast, from Portland to New Orleans; probably 200,000 Africans were annually shipped to this continent; consuls, collectors, and marshals are, in several cases, charged with negligence, if not fraud; slavers appear to have had little difficulty in clearing from our ports; the demand for slaves in the Gulf States was rising; and yet only spasmodically and at long intervals do reports of actual importations come in, and even then they are often so obscure as to throw little light on the question.

Either, then, the vigilance of the Government, so lax in some directions, was greater in this than we have any evidence to indicate, or supplies of African slaves reached the South, but so clandestinely that only in case of accident did the facts become generally known. In fact in one of the few known cases the official dispatch states that the capture was made by accident rather than design.

This latter view is supported by the weight of evidence. As to the participation of Americans in the trade, the testimony of our naval commanders, African agents, and foreign ministers, together with that of British official reports, seems conclusive. One of the most notorious slave traders in Brazil said, "I am worried by the Americans, who insist on hiring their vessels for the slave trade,"* and one American officer boarded twenty American slavers in a single African port in one morning.† The negligence of the Government is sufficiently shown by the fact that the United States never had more than two vessels on the African coast, and most of the time did not have one.‡ Our consul at Havana was strongly suspected of connivance at the trade; collectors in the South several times reported that it was impossible to secure the legal freedom of Africans in the known cases of importation. Gov. Rabun, of Georgia, said that an official who would enforce the laws was counted a meddler.§ The reports of the central Government as to the state of the trade continually contradict each other, and toward 1840 Government activity in this direction becomes almost *nil.* The positive evidence is to be found in the many well-known cases, and more especially in the many scattered estimates and illusions. For instance, a South Carolina member, Mr. Middleton, stated on the floor of Congress, in 1819, that in his opinion 13,000 slaves were annually imported, and a Virginia member, Mr. Wright, placed the number at 15,000.‖ An authority told Plumer, of New Hampshire, that in one year 10,000 had been imported and that in 1820 they were coming in by thousands.¶ The United States consul at Havana reports officially, in 1836, that 1,000 slaves had been shipped to Texas in a few months, and that a portion of them "can scarcely fail to find their way into the United States;"** they probably did, for in 1839 a Methodist minister, Rev. H. Moulton, writes that while he was a few years before in the service of a Southern planter he found a

* Foote: Africa and the American Flag, pp. 218–222.

† Ayres to Sec. Navy, 24 Feb., 1823.

‡ Canning to Adams, 8 Apr., 1823.

§ Cong. Annals, 16th Cong., 1st sess., p. 1433.

‖ Jay's Inquiry (1838), p. 59 (note).

¶ Congressional Annals, Sixteenth Congress, first session, p. 1433.

** Trist to Forsyth, February 12, 1836. See Twenty-sixth Congress, second session, Ex. Doc. 115.

number of slaves who could not speak English.* Later the Havana consul again writes that negroes are introduced on the Southern coast, and that the trade will continue to exist, as the profit is a temptation which it is not in human nature as modified by American institutions to resist.† A Cuban estimated that 10,000 were annually taken to Texas,‡ and a high authority told Buxton that the annual number was 15,000.§ Drake, a slave captain, asserted that thousands were introduced into the United States from the Gulf, from 1835 to 1850, while he was manager of a slave farm at Bay Island. They were taught English first and then smuggled in by twos and threes. The firm which hired him had branches in Cuba and in the North, and agents in every slave State. Their only great loss he said was that of the schooner L'Armistad.‖ We now come to the fourth and last period of slave trade suppression, from 1840 to 1862. No subject more vividly illustrates the case of a set of eminently practical legislators being literally forced to an ideal solution of an existing problem than the history of the slave trade in the last period. Theoretically emancipation was obviously the final and only complete cure for the trade. Leaving that remedy out of account, the best preventives in order were: An international limited right of search; joint cruising; declaring the trade piracy; imposing heavy municipal penalties. The United States employed all these remedies, but in exactly the reverse order. We are now at the point where she was compelled to adopt joint cruising, and at the end of the period she has, first, granted the right of search, and then emancipated her slaves. The Quintuply Treaty in 1842 brought forth Cass's celebrated protest, in which a United States minister declared to the world with considerable rhetoric that the United States was so anxious to suppress the slave trade that she refused, sword in hand, to adopt the mildest means which experience had shown would suppress it. The edge of the protest, however, was considerably dulled by the signing in the same year of the Treaty of Washington.

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* Slavery as it is, p. 140.

† Trist to Spencer, November 29, 1839. See Twenty-sixth Congress, second session, Ex. Doc. 115.

‡ *Ibid.*

§ Buxton: Slave Trade, p. 44.

‖ Autobiography of Drake. (1860.)

This treaty was intended to substitute joint cruising for a mutual right of visit. It was a great advance step, but it did little in the long run stop the trade. In fact Slidell and Hammond argued that it increased it. The fact was that the United States squadron was never large enough to carry out the design. In 1850 a British official report states that not a single "United States cruiser had been seen on the coast for several months,"* and even the Secretary of the Navy acknowledged that the squadron was below the stipulated size;† nevertheless, in 1852, he recommends the withdrawal of the squadron on the ground that the traffic was suppressed.‡

This, of course, increased the controversy as to the right of search, as British cruisers continually visited vessels flying the American flag. Undoubtedly the United States had law on her side, but unfortunately that was all she had, for nearly all the ships searched turned out red-handed slavers.

The argument always reduced itself to this: The United States protested her desire to suppress the traffic, but maintained the inviolability of her flag. England protested her respect for the stars and stripes, but declared slavers should not escape by merely raising a flag to which they had no right. Not only was this negligence on the part of the Government apparent abroad, but officials appeared to have been either careless or criminal at home. In spite of many convictions and numerous trials there are strangely few cases of severe punishment, and I never have found a record of the actual hanging of a slave trader for piracy. Perry twice in one year charged United States port officers with negligence or fraud.§ The yacht *Wanderer*, which landed a cargo of slaves in Georgia, was arrested in New York before starting, but released. The captain said it cost him $10,000 to clear.‖

From 1840 on there is no lack of evidence of American participation in the trade to other countries; commanders of squadron several times report the extent of the use of our flag as "shameful." Our ministers to Brazil successively for ten years

* Cumming to Fanshawe. See Thirty-first Congress, first session, Senate Ex. Doc. 66, pp. 13–14.

† Report of Secretary Mason, 1847.

‡ Report of Secretary Kennedy, 1852. See Thirty-second Congress, second session, Ex. Doc. 1, Vol. 1, Pt. 2, p. 293.

§ May 18 and October 22, 1844. See Twenty-eighth Congress, second session, Senate Ex. Doc. 150.

‖ Continental Monthly, January, 1862, p. 86.

sent home a mass of damaging testimony—going so far as to say that nearly all of the tens of thousands of slaves annually imported into that country are imported in United States vessels, under the United States flag, by United States citizens, and backed by United States capital.

At the port of New York, and to a less extent at many other Northern and Southern ports, the scandal seems to have become notorious. From 1856 to 1860 as many as 50 slaves per annum are reported as leaving New York alone. Prominent persons are said to have been involved, and it is hinted that certain New York and New Jersey elections were carried by the proceeds of the trade.*

Moreover, it appears that the introduction of slaves into the United States not only continued but increased. In 1860† the Mobile Mercury says: "Some negroes who never learned to talk English went up the railroad the other day. They did not get aboard at Mobile, but somewhere up in the piney woods county. It is not necessary to mention the particular place."

The New York Herald stated‡ that in 1848 or '50 a number of men determined to commence the bringing in of slaves. It points out one or two obscure inlets on the Gulf coast, as, for instance, Padre Island, where the negroes were hidden and introduced. The Secretary of the Treasury several times writes that attempted importation of whole cargoes are suspected. The British minister in 1852 called the Government's attention to a prevalent custom among American passengers of kidnapping negro lads in Jamaica and importing them.§

For a long time a movement had been apparent among the ultra proslavery party in the South to reopen the trade legally. As early as 1836 Calhoun in the Senate expressed regret that the trade had ever been branded as piracy.‖ This sentiment grew until in 1856 Governor Adams, of South Carolina, startled conservative Southern men by recommending in his message a reopening of the trade. In the Southern commercial conventions, which had a semirepresentative character,

* Continental Monthly, and New York newspapers of the time.

† July 22.

‡ Aug. 5, 1860.

§ Jan. 2, 1852, Crampton to Webster (see 34 Cong., 1st Sess., H. Ex. Doc. 105, pp. 12–13).

‖ Benton's Abridgment, XII, 718.

the demand took form, and the conservatives were finally routed in 1858. The idea began to be advocated in prominent Southern journals, such as De Bows' Review, the Charleston Standard and Mercury, the New York Delta, and others. The New Orleans Picayune* tells us that a "Congo Club" to further the movement was formed at Port Gibson. Books were published advocating the scheme, such as Pollard's Black Diamonds; Alexander Stephens, Fitz Hugh Spratt, and Toombs were warm converts. Schemes of circumventing the laws on technicalities were discussed and tried. One which originated in Charleston was that of bringing in Africans as emigrants and settling their final status after they arrived†; another was to openly import on the ground that the law was void. The House of Representatives in Louisiana passed a law authorizing the importation of 2,500 slaves.‡ This failed in the Senate by two votes. Mississippi preparations went farther than this, and it was said on the floor of Congress that she had nothing to fear from President Buchanan.§ When the Southern Confederacy was formed the trade was prohibited. Whether this was to be a permanent policy or was only a bid made to England and the border States is doubtful. It is significant, however, that a circular letter of instructions addressed by Judah P. Benjamin to Mr. L. Q. C. Lamar, commissioner to Russia, and others ordered them to enter into no treaties on the subject.

The final suppression of the slave trade needs but few remarks. Lincoln's administration infused new life into officials. In 1862 a treaty with Great Britain granting a mutual right of search was concluded and three years later the thirteenth amendment destroyed the motive for the trade, and thus completed the work of two centuries and a quarter.

It remains to ask whether it is possible to make any estimate of the number of illicit importations of Africans. In the nature of things statistics are impossible; but a careful comparison of detailed statements by those who had the best opportunities of knowing lead me to believe that from 1807–1862 there were annually introduced into the United States from 1,000 to 15,000 Africans, and that the total number thus brought in contravention alike of humanity and law was not less than 250,000.

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* July 27, 1860.

† Cobb to Hatch, 36th Cong., 2nd Sess., H. Ex. Doc. 7, pp. 652–6.

‡ Independent, Mch. 11, Apr. 1, 1858.

§ Cong. Globe, 35th Cong., 1st Sess., p. 1362.

This, in brief, is the history of our slave-trade legislation. It is the history of the slow, steady development of an attitude of partial acquiescence in an unfortunate economic situation into dogmatic belief in a great economic fallacy. This fallacy intertwined itself with the economic history of the whole country. If slave labor was an economic god, then the slave trade was its strong right arm; and with Southern planters recognizing this and Northern capital unfettered by a conscience it was almost like legislating against economic laws to attempt to abolish the slave trade by statutes. Northern greed joined to Southern credulity was a combination calculated to circumvent any law, human or divine.

Nevertheless, there is no telling how far a vigorous executive policy in 1820–'50 might have prevented this situation and changed the history of the two following decades, for the clandestine trade itself fanned the flame of fatally prevented economic speculation; but the executive never exerted itself in earnest; the danger developed, and if the political and moral crisis had not settled the burning part of the question in 1861–'65, none the less the economic crisis would inevitably have settled it later and at greater cost.

IX.—STATE SOVEREIGNTY IN WISCONSIN.

By ALBERT H. SANFORD.

STATE SOVEREIGNTY IN WISCONSIN.*

By ALBERT H. SANFORD.

Expressions of State sovereignty sentiment have been made in Wisconsin at two periods: In connection with territorial boundary disputes and in connection with the fugitive slave law. Only so much of the investigation as pertains to the former period is here presented. This phase of the subject was first brought into prominence by Mr. R. G. Thwaites as incidental to his monograph on the "Boundaries of Wisconsin."† I have attempted in this paper to determine the influence that caused the Wisconsin legislature to make announcements of State sovereignty doctrine, the theory advanced in those declarations, and the extent to which they were an expression of public sentiment.

The formation of a State government for Wisconsin was the subject of discussion in that Territory for a number of years before her admission to the Union. Coupled with that question was another which some made of equal importance, viz: Should Wisconsin endeavor to maintain her right to a southern boundary line in the latitude of the southern bend of Lake Michigan, in accordance with a provision of the Ordinance of 1787? On this subject a committee of the Territorial council made a report in December, 1843, which, after a discussion of the entire matter, suggested that Congress should recompense the Territory for the strip of country transferred to Illinois.

The committee said: Should such an appeal to Congress be ineffectual, we could then safely interest ourselves behind the Ordinance of 1787, fortified by the doctrine, well understood in this country, that all political

* This paper was prepared for Prof. Turner's Seminary in American History while the writer was a student at the University of Wisconsin. The paper has also received the helpful criticism of Prof. C. H. Haskins.

† Wisconsin Historical Collections, XI.

communities have the right of governing themselves in their own way, within their lawful boundaries, and take for ourselves and our State the boundaries fixed by the ordinance, form our State constitution, which should be republican, apply for admission into the Union with those boundaries, and if refused so that we can not be a State in the Union, we will be a *State out of the Union*, and possess, exercise, and enjoy all the rights, privileges, and powers of the *sovereign, independent* State of Wisconsin; and if difficulties ensue, we could appeal with entire confidence to the Great Umpire of nations to adjust them.*

An address to Congress was adopted by the same legislature, which declared that a proper compensation for their lost territory was the only means "by which the question could be amicably settled;" but if this was denied, Wisconsin, "relying upon her own resources, and looking to Him who aids the injured for protection, would seek in herself for that measure of redress which her own right arm can bring her."†

What was the real significance of these startling announcements? Did they mean, as has been asserted, that "this Territory adopted as belligerent a tone toward Congress as any State ever did?"‡ Was this, in the words of another writer, "the familiar voice of South Carolina in the days before the civil war * * * a note of seccession sounded among the woods and lakes of the Northwest?"§ If it is true, as we are led to suppose by the quotations from authors who have touched upon this feature of Northwestern history, that State sovereignty had a strong hold upon the people of Wisconsin Territory, then a peculiar interest attaches to an investigation of the causes of its existence.

Wisconsin as a Territory was under the protection and administration of the national Government. She had no traditions of local independence such as account for State sovereignty in the thirteen original States. Nor had she the "peculiar institution" of the South—slavery—to cause her to espouse the State sovereignty doctrine. Either, then, this doctrine had arisen in Wisconsin for other reasons than those which account for its existence elsewhere, or the evidence of its existence upon which reliance has been placed is insufficient and misleading. To find the true explanation is the task which I have undertaken in this paper.

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* Council Journal, 1844. Appendix, Document D.

† Address to Congress, No. 8, substitute. Legislative documents.

‡ Thwaites: "The Boundaries of Wisconsin," p. 481. "The Story of Wisconsin," p. 216.

§ Hinsdale: "Old Northwest," p. 338.

The ordinance for the government of the territory of the United States northwest of the river Ohio, passed July 13, 1787, by the Congress under the Confederation, contained, in the fifth article of compact, provision for the formation of not less than three nor more than five States out of this territory. Boundaries were designated which have become fixed as the east and west boundary lines of Ohio, Indiana, and Illinois, respectively, and the northern boundary of these States, should Congress decide to form one or two additional States in the northern portion of the territory, was to be "an east and west line drawn through the southern bend or extreme of Lake Michigan." This provision of the ordinance has not been followed, since the three States named all extend a greater or less distance north of the line designated, and this in the face of the fact that the article, a portion of which has just been quoted, is one of six which the ordinance declared should be "articles of compact between the original States and the people and States in the said territory, and forever remain unaltered unless by common consent."

When Illinois was admitted in 1818 her delegate in Congress, Nathaniel Pope, succeeded in having the northern boundary placed 61 miles further north than the line designated in the ordinance, and this gave to Illinois a strip of territory 8,500 square miles in area,* including a good lake coast and the city of Chicago. The country north of Illinois was made a part of Michigan Territory, and it was almost twenty years before serious objection was raised to the location of its southern boundary.

In the meantime a dispute had arisen between Michigan and Ohio, culminating in the years from 1833 to 1836, which involved the same general principles that afterward entered into the discussion of Wisconsin's claim to the northern part of Illinois.† The ultimate contention in each case was for the right of admission into the Union with a southern boundary drawn due east and west through the southern bend of Lake Michigan—a right secured by a compact that must "forever remain unalterable unless by common consent." Since in the case of Michigan the dispute was compromised by her acceptance of a tract of territory south of Lake Superior as compen-

* Journal of House of Representatives, first session, Fifteenth Congress, p. 174.

† Cooley's "Michigan," p. 217.

sation for the territory she claimed, the question at issue could hardly be said to have been settled. This question was: had Congress the right, in an agreement with a State, to violate the boundary article of the ordinance without first obtaining the consent of any territory affected by such violation? Encouraged by the example of Michigan, Wisconsin answered this question emphatically in the negative, and it was in the controversy thus arising that utterance was given to such sentiments as those quoted at the beginning of this paper.

Warm discussions arose in the Congress of 1834–'35 and the succeeding Congress, over bills for the organization of Wisconsin Territory and various amendments respecting its southern boundary line.* The debates on these amendments involved the Michigan-Ohio controversy; but since the main point at issue in both cases was the same, the subject was discussed on its merits. John Quincy Adams, in a speech upholding Michigan's claim, said, referring to the article of the ordinance relating to boundaries: "These are the terms of a compact as binding as any that was ever ratified by God in Heaven * * * I appeal to it now in order to say it can not be annulled; that it is as firm as the world, immutable as eternal justice."

These words were often quoted by the advocates of Wisconsin claims. The Territory was, in 1836, finally organized with the present northern boundary of Illinois as its southern boundary.

The subject of the formation of a State government for Wisconsin came before the Territorial legislature as early as 1837, and from this time the question respecting the southern boundary was inseperably connected with that of State government. Again, in 1838, these matters were discussed, and still more during the legislative session of 1839–'40, when several resolutions were proposed and rejected. The one finally adopted (January 13, 1840) provided for a vote of the inhabitants of the Territory for or against the formation of a State government, which was to include the country known as the disputed district, between the northern boundary of Illinois and the line prescribed by the ordinance. If this vote was favorable the governor was to issue a proclamation requiring the electors of the Territory to choose delegates to a convention, the purpose of which was to deliberate upon and adopt such measures as

* Debates of Congress, 1834–'35, House of Representatives, p. 1250.

might seem necessary for the early admission of Wisconsin into the Union, with the boundaries guaranteed by the ordinance. The inhabitants of the disputed district were invited to take a like vote and, if the convention was called, to send delegates.*

This resolution was discussed in the Illinois legislature, and a bill providing for the settlement of the northern boundary of that State was reported, but went no further than the first reading.† The bill was favored by the representatives from the northern counties of Illinois, and these members opened a correspondence regarding this matter with certain members of the Wisconsin legislature.‡

The subject of the incorporation of the disputed tract into the prospective State of Wisconsin was thoroughly discussed in that district during the year 1840, and public meetings were held at the principal towns of at least eight, and probably more, of the fourteen counties interested.§ These meetings were large and enthusiastic, scarcely a voice being heard in opposition to Wisconsin's claim to the territory in dispute. The resolutions adopted at these meetings pledged to Wisconsin the aid of the inhabitants of the disputed district in the maintenance, by all legal and constitutional means, of her rights under the ordinance. They assert that the ordinance is paramount to the constitution, and deny the right of Congress to make any law contrary to its provisions. There can be no doubt that the settlers were in earnest, and that in these counties such sentiments were generally approved.

This discussion culminated in a convention of the northern counties of Illinois, held at Rockford, July 6, 1840, at which it is stated 200 delegates were present. The proceedings were harmonious, and a resolution was adopted recommending that delegates be sent to the Wisconsin constitutional convention, when that should be called by the governor.‖

The first cause for the existence in the disputed district of this remarkable popular demand for annexation to Wisconsin

* Council journal, 1839–'40; resolution No. 7; substitute.

† Journal of house of representatives (Illinois), January 20, 1840.

‡ Madison Engineer, February 22, 1840.

§ See Miners' Free Press, March 10, 1840, and Wisconsin Enquirer from February 15 to March 25, inclusive, April 25 and July 29, 1840, for reports of meetings at Freeport, Rockford, Belvidere, Kishwaukee, Albany, Galena, St. Charles, Pecatonica.

‖ Engineer, July 29, 1840.

may be found in the fact that Illinois was at this time burdened with a debt of about $14,000,000, incurred through the attempted construction of an enormous system of public improvements.* The people of the State, including the inhabitants of the disputed district,† had been loud in demanding these works, but in 1839 they discovered that this policy had resulted in nothing permanent except the debt. The people of the disputed district denied that they wished to join Wisconsin in order to get rid of the debt, and offered to pay for such improvements as had been begun in that section, but the amount of such improvements was very small compared with their share of the debt.‡

Other reasons which they gave for their desire to separate from Illinois were these: The southern part of the State was settled largely by Southerners, the northern by men from New England and New York, and considerable bad feeling existed between the two classes. The northern counties were thinly settled, and the people claimed that they could not get a hearing in the State legislature, but were "the victims of Southern jealousy and Southern prejudice."§

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*Ford, "History of Illinois," 166 ff.; Reynolds, "Illinois—My Own Times," 323 ff.; Davidson and Stuve, "History of Illinois," 433 ff.

†Engineer, April 25, 1840. Letter by Assemblyman Murphy (Illinois legislature).

‡How near Illinois was to repudiation at this period of her history may be judged from the fact that in July, 1841, the payment of interest on the public debt was suspended. Early in 1842 the State banks broke down completely and the bonds of the State were offered at 14 cents on the dollar, with no buyers. One of the ex-governors of Illinois (Reynolds: "My Own Times," 325), states the opinion that at no time was there any sentiment among the masses for repudiation. Ex-Governor Ford asserts, however, that when he came into office in 1842 it was within his power to make Illinois a repudiating State; even if he "had stood still and done nothing," repudiation would have been carried by his (the Democratic) party, except in a few counties in the north. (Ford: "History of Illinois," 292.) With this conflicting testimony it is difficult to determine the exact relation of the evident desire in northern Illinois to be free from the debt to the general movement in the direction of repudiation which took place at this period. There are strong reasons for believing that, had they received sufficient encouragement from Wisconsin, the people of northern Illinois would have attempted to transfer their allegiance to Wisconsin.

§Enquirer, April 15, 1840; correspondence from Winnebago County, Ill.

The Southerners were bitter and even opposed at first the Illinois and Michigan Canal, "for fear it would open the way for flooding the State with Yankees."*

This feeling was a manifestation of the opposition between the two great currents of immigration which, having their sources respectively in the Northern and in the Southern States, met in antagonism in the Mississippi Valley. Another illustration of the same phenomenon is to be seen in the struggle over the town and county systems of government in Illinois.†

Again, the existing boundary line arbitrarily divided the land region, and the people of the vicinity of Galena were thus separated in jurisdiction from the towns of southwestern Wisconsin, although their economic interests were alike.‡ As early as 1828 a petition was sent to Congress from the people of northern Illinois and the southern part of what was afterwards Wisconsin Territory, praying for the formation of a new territory, and protesting against the division of the mining district into two parts.§ The feeling at Galena is well expressed by an editor, who says: "Nine-tenths of all our domestic trade is with Wisconsin, but the conflicting laws and other inconveniences are daily diminishing that trade."‖

Thus we find both a protest against the division of a district in which one economic interest prevailed and an effort to secure the division of sections whose economic and social conditions were at variance. The movement was an attempt to make political boundaries conform to natural and social divisions.¶

The rest of Illinois evidently paid no attention to the agitation in the north. In Wisconsin there was some newspaper discussion, but little sentiment in favor of annexation. Direct

* Ford, "History of Illinois," 279 ff.; Illinois Miscellany, IV; "Illinois Fifty Years Ago;" Fergus Historical Series, II; "Early Society in Southern Illinois."

† Shaw, "Local Government in Illinois;" Johns Hopkins University Studies. First series.

‡ The lead was hauled in wagons to Galena and shipped thence by the Mississippi southward. The roads of the lead region in both States converged at Galena and there was little overland traffic from Chicago or Milwaukee.

§ Galena Miner's Journal, October 28, 1828.

‖ Northwestern Gazette and Galena Advertiser. January 20, 1842.

¶ This seems to support the idea of S. N. Patten in "Decay of Local Government in America." Annals of American Academy of Political and Social Science, July, 1890.

opposition to the scheme came from the northern and eastern sections of the Territory, and public meetings condemning the projects of State government and annexation, but not yielding Wisconsin's claim to the disputed district, were held at Green Bay and Fond du Lac. It was urged that State government would be more expensive than territorial; that the change was desired only by ambitious office seekers; that in event of annexation the Illinois counties would exercise an undue influence on account of their larger population, which was, in 1840, more than double that of Wisconsin.* The suggestion was made, too, that some of the Wisconsin politicians refused to throw their influence in favor of the annexation project because of their apprehension that men of ability would be brought into public life in the new State whose competition they had reason to fear.†

The lack of interest in Wisconsin is conclusively shown by the result of the vote on the question of State government taken in August, 1840, which was 92 votes for and 499 votes against.‡ The total voting population was at least 6,000. Similar votes were taken in 1842,§ 1843,‖ and 1844 ¶ upon recommendation of Governor Doty, and the result was in each case a light vote, in which the number of those opposing was two or three times as large as the vote favoring State government. The opposition in these elections did not come from any particular section, and, moreover, it seems practically impossible to determine whether the opposition was greater to State government or to the proposed annexation. In either case we have a clear indication of indifference on the part of the people.

One of the foremost in urging Wisconsin's claims was James Duane Doty, delegate in Congress from 1839 to 1841, and then Territorial governor until 1844. Mr. Doty had been prominent in Michigan during her dispute with Ohio, and had early attempted the formation of a territory west of Lake Michigan with the boundaries of the ordinance.** As delegate to Con-

* Miner's Free Press, June 2, 1840. Wisconsin Enquirer, May 6, 1840. Population of fourteen northern Illinois counties (1840) 66,618. Of Wisconsin, 30,945.

† Letter from J. R. Bridham, Milwaukee.

‡ House Journal, 1840, 100, 101.

§ Strong: "Territorial History of Wisconsin," 363.

‖ *Ibid.*, 412.

¶ *Ibid.*, 430.

** Thwaites: "The Boundaries of Wisconsin," 463 ff. Wisconsin Historical Collection, XI. The Edwards Papers, 339, 340.

gress from Wisconsin Territory, Mr. Doty exercised much influence by issuing "addresses" to the people of Illinois and Wisconsin, encouraging the former to agitate the annexation project, and trying to induce the latter to assert their rights under the ordinance.* He also introduced a bill relating to the southern boundary of Wisconsin into the House of Representatives, on April 6, 1840. It was indefinitely postponed.

Mr. Doty's views on these subjects may be briefly stated as follows: The divisions of the Northwestern Territory are called "States" in the ordinance. Since the fifth division, according to the boundaries of the ordinance, contained 60,000 inhabitants (this included the disputed tract), it was a "State out of the Union," but had a right to form a State government and demand admission into the Union, with the boundaries as prescribed by the ordinance. This right was inalienable, and paramount to any act of Congress and even to the Constitution of the United States. "Congress may *admit* new States into the Union, but the people *form* them." It is difficult to ascertain exactly Mr. Doty's idea of the *status* of a "State out of the Union." In one instance he says:

> Wisconsin is as much a State as were either of the thirteen original States before they accepted of the Constitution of the United States; and her existence and rights as such are fully acknowledged by a solemn public act of the confederate States.

The meaning of this remarkable statement is considerably modified and obscured by the words which follow:

> Wisconsin is a State under a *temporary* form of government; Illinois is only a State with a *permanent* government. The former is governed by virtue of the Ordinance of 1787; the latter by the Constitution of the United States, by which she has obtained political power and rights which can only be enjoyed by States in the Union. But they were "States" alike created and established by the same authority. The one can have no higher privilege than the other, excepting what the single act of admission into the Union may have conferred. And this did not include the right to take the territory of another State.

The following extract from a message sent by Governor Doty to the assembly will serve to illustrate his theory of statehood. The subject under discussion was the advisability of allowing foreigners to vote for delegates to a constitutional convention.

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*Wisconsin Miscellany, Vol. 42, No. 3, in State Historical Society library. Wisconsin Inquirer, February 15, March 25, September 23, 1840.

After stating that Congress did not exercise or claim the power to prescribe the qualifications of voters in the States, the message continues:

> In a Territory it is different, because Congress has the exclusive right of governing the Territories. But this power ceases when a Territory, by the increase of her population, becomes entitled to admission as a State. The right of voting, there, belongs to the people of the State, as a part of State sovereignty; and that sovereignty becomes vested in the State to be exercised by her according to her own will, so soon as she has 60,000 free inhabitants.*

Governor Doty believed that the people of the disputed district might decide for themselves, independently of Congress, whether they would join the new State or remain with Illinois. We find in this statement a clear enumeration of the principle of squatter sovereignty six years before the definite formulation of that doctrine on the slavery question. In his first, and in each succeeding annual message as governor, Mr. Doty urged the formation of a State government and the assertion of the ordinance line for the southern boundary. Each year, also, there was a report in one or both houses of the legislature on this subject. The assembly report for 1841 opposed State government, principally because the people had never demanded it.

One reason why Governor Doty failed to arouse public interest in these matters was, doubtless, that very early in his term he had incurred the enmity of the legislature. As a result, any measure of which he endeavored to secure the passage was almost certain to meet opposition from all sides, not only in the legislature, but also among the people.

In the summer of 1842, Governor Doty sent an official communication to the governor of Illinois notifying him to refrain from making selections of public lands, under the distribution act, within the territory claimed by Wisconsin. Governor Doty states that he was requested "by many of the inhabitants of that district * * * to protest against the said selections." He adds: "I can not but remark the impropriety of permitting Illinois to become so extensive a land-owner within a district which it is believed does not belong to her, and over which she can only be regarded as exercising accidentally and temporarily her jurisdiction."†

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* House Journal, 1844, Appendix, p. 89.

† Galena Advertiser, July 9, 1842. In his "Story of Wisconsin," Mr. R. G. Thwaites represents Governor Dodge, instead of Governor Doty, as assuming a belligerent attitude, and as the author of this communication. The matter is correctly stated in his "Boundaries of Wisconsin," p. 499.

A strong effect was made at Madison to arouse interest in the boundary question, by a series of public meetings held from January 29 to February 3, 1842,* at which were present delegates from Galena and from Ogle County, Ill. The report of the committee in the council on these meetings declared strongly in favor of Wisconsin's right to the disputed territory, and left the question of the expediency of asserting that right to be decided by the people. If the "independent freemen" of Wisconsin declare in favor of such assertion, then, they say, "let us maintain that right at all hazards—unite in convention, form a State constitution, extend our jurisdiction over the disputed tract, if desired by the inhabitants there, and then with legal right and immutable justice on our side, the moral and physical force of Illinois—of the whole Union—can not make us retrace our steps."† The council ordered five hundred copies of this report printed.

The same committee reported a resolution which recommended a vote in the disputed district for and against State government "as a part of Wisconsin," the returns to be made to the secretary of Wisconsin Territory. They also submitted a bill providing for a vote in the Territory for or against forming a State government and incorporating the disputed district in the future State. Both the resolution and the bill passed the council, but did not come to a final vote in the house before adjournment.

Again, as in 1840, public meetings were held in northern Illinois, though they were fewer in number. In at least three counties (Stephenson,‡ Winnebago,§ and Boone ‖) votes were taken to determine whether the inhabitants of the district in dispute wished to be included in the State of Wisconsin; in each case a full vote seems to have been cast, which was almost unanimous in favor of it. Hon. John Wentworth, of Chicago, is authority for the statement that influential men from Wisconsin agitated annexation in northern Illinois, and that a direct offer was made that Mr. Wentworth and Mr. Joseph P. Hodge, who then represented these counties in Congress, should be made the first United States Senators from the new State,

* Galena Advertiser, February 17, 1842.
† Council Journal, 1842, Appendix, p. 656.
‡ Galena Advertiser, March 19, 1842.
§ Wisconsin Enquirer, August 11, 1842.
‖ *Ibid.*, August 18, 1842.

and that the first governor should be taken from the same district.*

During the legislative session of 1843–'44 the boundary question was referred in the council to a select committee, whose report, prepared by Moses M. Strong, is a most exhaustive treatment of all the disputes in which the Territory was involved on account of boundaries. There were three alleged infringements of Wisconsin's boundaries: on the south, as already described; on the northeast by the act of Congress which gave the upper peninsula to Michigan, and on the northwest by the Ashburton Treaty. In all these cases it was claimed that the rights of the Territory as secured by the ordinance had been violated.

In answer to the question, "What measures ought to be taken in relation to these infringements," the report puts forth the usual arguments based upon the peculiar interpretation of the ordinance already noticed. Then follows the strong language quoted at the beginning of this paper—Wisconsin, if refused compensation, would be a "State out of the Union," enjoying all the rights and powers of a "sovereign, independent State."

The address to Congress submitted by this committee declared that after Wisconsin "has done all to obtain a peaceable redress of her wrongs which reason demands, and shall have failed, she will resort to every means in her power to protect and preserve her rights," and that "she will never lose sight of the principle that whatever be the sacrifice *the integrity of her boundaries must be preserved.*" The address then calls on Congress to "do justice while it is not too late to a people who have hitherto been weak and unprotected, but who are rapidly rising to giant greatness, and who, at no distant day, will

* Fergus Historical Series I, No. 8: "Early Chicago," by John Wentworth; Moses: "History of Illinois," p 279. Referring to this statement, Moses M. Strong writes as follows: "I can only say that I never heard of it and do not think it has any foundation in fact, for several reasons. There was no person authorized to make such an offer. If a State had been formed embracing the 'disputed territory,' and the Senators had been elected with reference to the boundary line of 42° 30′, the population south of that line, embracing the 'disputed territory,' was sufficiently preponderating to have enabled them to control the election. And I have no doubt that that fact had a controlling influence with many in the sentiment of opposition to including the 'disputed territory' within the boundaries of the State of Wisconsin."

show to the world that they lack neither the disposition nor the ability to protect themselves."

The address was not adopted, but in its place a substitute, from which a quotation was made at the beginning of the paper. Both documents exhibit the same spirit, but the printed records contain the original address reported by the committee instead of the substitute actually passed.*

In the various resolutions and addresses adopted by the legislature a plea is made that Congress should recompense Wisconsin for her loss of territory. The cases of Maine and Michigan are cited as precedents in the address of 1843, and a strong argument is made for the right of Wisconsin to receive remuneration in one of two ways—*i. e.*, by "the retrocession to Wisconsin of all the territory of which she has been unjustly deprived," or by the completion of certain public improvements by the Federal Government. The improvements suggested are, a railroad from Lake Michigan to the Mississippi, the opening of the Fox and Wisconsin river waterway, a canal connecting the Fox and Rock rivers, and the improvement of harbors on Lake Michigan. The threats which follow in the address have been quoted, and this "earnest and solemn" appeal closes with an expression of confident reliance upon the sense of justice and the magnanimity of Congress.

Certain newspaper comments upon the action of the legislature in relation to Wisconsin boundaries indicate the belief that the legislature had taken a dangerous position in using language which might easily be construed as the language of nullification. The interpretation put upon these utterances is further indicated by the introduction in the legislature of resolutions which express the fear that there would be excited in the people "the latent passion for war,"† or that the delegates to a proposed convention might "declare themselves an independent state."‡

In the two constitutional conventions which met October 5, 1846, and December 15, 1847, respectively, there was a strong effort made to have the Territory take a last stand by refusing

* This substitute address was printed in the Wisconsin Document February 8, 1844, but not elsewhere that I am aware of. It can be found among the manuscript records in the secretary of state's office.

† House Journal, January 24, 1844.

‡ Wisconsin Enquirer, August 19, 1840. See also House Journal, February 14, 1842. Report of minority committee, by Mr. La Chappelle.

to ratify the changes which Congress had made in her boundaries. The submission of the question to the United States Supreme Court was also strongly advocated. These attempts were futile, and Wisconsin finally accepted the boundaries as fixed by Congress. In the second convention a resolution was debated which asserted Wisconsin's rights, and declared that part of the enabling act of Congress which related to the boundaries "null and void," because in violation of the ordinance. This nullifying resolution was actually adopted (January 25, 1848), but was afterwards reconsidered and amended by striking out the nullifying clause, leaving it simply a declaration of rights. This incident shows that the State sovereignty or, perhaps, the Territorial sovereignty spirit was still alive in some minds. But upon the admission of the State the boundary questions were considered as settled.

The doctrine advocated by the supporters of Wisconsin's claims in these controversies may be properly called the State sovereignty doctrine, but it is a peculiar form of that doctrine, since it is based upon territorial rights under the Ordinance of 1787. The rights which, it was claimed, were secured to a Territory about to become a State, by the ordinance, are made to conflict with the powers over a Territory given to Congress by the Constitution. As Wisconsin had suffered from the exercise of Congressional powers, she appealed to an instrument which was looked upon as the charter of her rights. In this appeal, an interpretation was put upon the character and language of the ordinance which we may test in the light of decisions from the Supreme Court and other courts, both State and Federal.

First, it was asserted that since the ordinance was older than the Constitution it was paramount to the Constitution and to any subsequent act of Congress. But in Strader *vs.* Graham (3 H., 589) the Supreme Court says:

> It [the ordinance of 1787] was superseded by the adoption of the Constitution of the United States. * * * The six articles said to be perpetual as a compact are not made a part of the new Constitution. They certainly are not superior and paramount to the Constitution.

It scarcely requires an argument to show the impossibility of a Congress passing an ordinance which "could be superior to the Constitution of the United States, adopted by the people and the States as the supreme law of the land, and not subject to alteration by Congress, but only by the power which formed and adopted it."

Another argument was based on a series of Congressional acts, beginning with that of August 7, 1789, by which the ordinance was reënacted or revived in full effect. Then by three separate acts (those of May 7, 1800; February 3, 1809; and April 20, 1836) the inhabitants of Wisconsin had been guaranteed the rights, privileges, and advantages granted and secured to the people northwest of the river Ohio by the articles of compact contained in the Ordinance of 1787. Moreover, Congress had required Indiana and Illinois, upon the admission of each, to ratify those sections of their acts of admission which violated the ordinance provisions respecting their northern bounaries. Thus, it was claimed, Congress had always treated the ordinance as a compact which must "forever remain unalterable unless by common consent;" and in fixing the northern boundary of Illinois common consent had not been obtained, since the people of Wisconsin, no less than those of Illinois, were parties to the compact. The conclusion drawn was, that Congress had gone beyond its authority, and that consequently its acts need not be respected.

The justice of this claim depends upon the exact significance of the words "common consent." Evidently Congress considered that common consent had been given when it and a State agreed to the alteration of an ordinance provision respecting that State. This intepretation has been maintaind by the courts in the following cases: Phoebe *vs.* Jay (1 Ill., 268; December, 1828), Spooner *vs.* McConnell (1 McLean, 337; U. S. circuit court, Ohio, December, 1838), Strader *vs.* Graham (3 Howard, 589, January, 1845). So far as I have been able to discover, no case has arisen involving the rights of a Territory to lands under these circumstances; but following the above interpretation, no doubt can remain as to the validity of the act of Congress admitting Illinois with the boundary which that State still has to-day.

The claim made by Governor Doty and others that Wisconsin became a State as soon as it contained 60,000 free inhabitants has been overthrown by the United States Supreme Court (Jones *vs.* Scott, 5 H., 343). A slightly different doctrine was that the words of the ordinance "shall be admitted" were imperative, and that Congress had no option if the Territory had 60,000 inhabitants. But the United States circuit court, in Spooner *vs.* McConnell (1 McLean, 337), uses these words:

> Some of the provisions of the compact contained in the ordinance were subsequently guaranteed by the Federal Constitution. And as far as this

guaranty extends, it may be considered, practically, as superseding the ordinance. This remark applies to that portion of the ordinance which declares that new States shall be admitted into the Union with the same rights of sovereignty as the original States * * *

In place, then, of the imperative expression used in the ordinance the above decision puts the constitutional provision that "new States *may* be admitted by Congress into the Union," thus leaving the time and minor conditions to the discretion of Congress.

In spite of the false basis on which these peculiar doctrines rested, they were in accordance with the views held at the time of these controversies by many of the most prominent American statesmen and lawyers.* The belief that Wisconsin was, or under certain conditions might become, a "State out of the Union" is not to be confounded with the doctrine of secession. Strictly speaking, Wisconsin never threatened to secede. The peculiar doctrine was this: As a Territory Wisconsin was under the government of Congress; but the right to form a State government was guaranteed by the ordinance when the Territory had 60,000 inhabitants. And this right was *independent* of the right of admission into the Union; the latter would be accomplished if Congress adhered to the letter of the ordinance; otherwise Wisconsin might refuse to be admitted, but would none the less be a State—a State out of the Union, but through no direct action of her own.

Throughout the entire discussion two facts of importance seem to have been ignored: That the Congress which passed the ordinance exceeded its powers in so doing; and that Article IV of the "compact" begins with these words:

> The said Territory, and the States which may be formed therein, shall forever remain a part of this confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto.

We are now in a position to offer the following conclusions: The doctrines upon which Wisconsin's claims were based are in themselves worthy of notice, although, as the evidence conclusively shows, the people of the Territory never placed reliance upon them sufficient to result in extended popular feeling or demonstration. Nowhere, except in the legislature, was a decided movement made to secure a recognition by Congress

*Dunn's "Indiana," 249 ff.

of the alleged grievances. We can easily believe, as an old settler testifies, that the people were too busy and too well satisfied with their present possessions and their prospects to engage in any controversy which might bring them trouble and hardship. Furthermore, a study of the legislative action reveals the fact that a very few men are responsible for the existence and prominence of the boundary questions in the legislature. The singular fact that their most extreme measures obtained a hearing and a favorable vote is at least partially explained by the testimony of prominent legislators still living, to the effect that they and others voted for the measures on the grounds of personal friendship, and without faith in the expediency of taking the steps therein advocated.

Doty's failure to excite interest in the State government and boundary questions has been partially explained by the feeling which existed against his administration. After 1845 there was a growing sentiment throughout the Territory in favor of State government, but all efforts to arouse a sentiment favorable to our boundary claims were unsuccessful. Two considerations help to account for this: First, the fact that Michigan had thoroughly tested the basis upon which these claims rested, and had found it insufficient; second, the belief that if Wisconsin insisted upon the settlement of the boundary question, the result would be an indefinite delay in her admission to the Union.

The decided action taken in northern Illinois in favor of annexation to Wisconsin deserves a prominent mention in the history of that State. The movement was influenced by the character of the settlers in the different parts of Illinois, but was due chiefly to the desire to escape excessive taxation.*

The motives which influenced the men who championed the cause of Wisconsin were apparently, in some cases, personal; but it is reasonable to suppose that an underlying cause of the agitation lay in the expectation that substantial grants would thus be obtained from Congress as compensation for the loss of territory. The facts strongly support the hypothesis that when the legislature demanded the restoration of her "ancient limits," it was not northern Illinois nor the Michigan peninsula that were wanted or expected, so much as federal aid for the internal improvements enumerated in the addresses to

*See inaugural address of Governor Ford, Illinois Senate Reports, 1842–'43, p. 24.

Congress. The political leaders evidently believed that Wisconsin was in a position to make demands, and that Congress could be frightened into making liberal appropriations in order to dispose of a troublesome question. But no impression was made upon Congress, and Wisconsin became a State without securing, except in a small measure, the remuneration which had been demanded.*

The threat that Wisconsin would be a "State out of the Union" sounds more formidable than an analysis of its meaning makes it appear. On the theory that the ordinance was paramount to the Constitution, and guaranteed to the northwest Territories statehood and admission into the Union with certain boundaries upon reaching a population of 60,000, Wisconsin, simply demanding the fulfillment of those conditions, would be *by force of circumstances* a State out of the Union, if Congress refused to admit her.

What, then, would have been the exact *status* of Wisconsin, according to the theory, if she had formed and attempted to operate a State government, as Michigan did? During the progress of the controversy the theory was not sufficiently developed to enable us to answer this question satisfactorily. I find no evidence, however, that a position of independence from the United States was contemplated. The only assertion of independence that was intended, says Mr. Strong, "was such a degree of statehood as was justified by the ordinance of 1787." Whether this meant that Wisconsin would be on a plane with the other States, except in not being admitted, or whether it

*One of the members of the first constitutional convention, in advocating radical measures, used the argument, "We can at least obtain as good and favorable terms as Michigan did. I ask, then, why not make the issue?"—Wisconsin Herald, January 23, 1847.

Moses M. Strong, author of the council report of December, 1843, makes the following statement: "There is little profit in speculating upon what might have been, but it is not unreasonable to express the opinion that if our Delegate in Congress at the time the enabling act was passed—Mr. Martin—had been in sympathy with the ideas of the address that much more favorable terms of admission might have been secured; especially as he was able at that time to secure the passage of an act which granted to the State on its admission to the Union, for the purposes of improving the navigation of the Fox and Wisconsin rivers and connecting them by a canal, every alternate section of land for three sections in width on each side of the Fox River and the lakes through which it passes and of the canal."—Letter of Moses M. Strong, December 21, 1891, in the library of the Historical Association.

meant, as Mr. Doty hints, that Wisconsin would be in the position of one of the thirteen original States before the adoption of the Constitution, is impossible to determine; it certainly did not mean secession. Wisconsin would not be a "State out of the Union" by deliberate choice—as she would if she were to secede; and she could assume no other position than that of a "State out of the Union" (as defined by her) without relinquishing the rights secured by the ordinance of 1787, which was, according to the theory, the charter of her liberties. In the opinion of those who supported her claims, if Wisconsin were a "State out of the Union," it would be by virtue of the failure of the General Government to carry out the provisions of the ordinance.

X.—THE EARLIEST TEXAS.

By Mrs. LEE C. HARBY.

THE EARLIEST TEXAS.

By Mrs. Lee C. Harby.

No history has yet been written of Texas which can be accepted as absolutely correct in regard to earliest settlement. Occupying, as she does, a peculiar position in our galaxy of States—insomuch as being an independent and recognized republic she voluntarily resigned her distinct autonomy for union with this country—makes the initial pages of her settlement but the more important and interesting.

Though historians assign 1715–'18 as the dates of permanent colonization and establishment of the mission at San Antonio, then the center of Texan civilization, they are contradicted by records of both State and church. Nor does even Bancroft go back as far as there are positive data for proof. He names 1686 or 1687 as the year that the first Spanish expedition entered Texas; but the archives at Coahuila give a detailed account of one in 1675 commanded by Fernando del Bosque, accompanied by the Franciscan Fathers, Larios, San Buenaventura, and de la Cruz. The historian, Fr. Francisco Frejes, says that the priests relate sending embassies as far as the Medina River, and he makes the beginning of colonization forty-five years before even that date, by asserting that "from the year 1630 there were, among the innumerable tribes which inhabitated this country, various alternations of subjection and rebellion on account of the *colonists who came from many points* to settle in this beautiful land."

The Bosque River in Texas is named from this early explorer, but as yet I have found no proofs that he penetrated so far as its banks. Commenting upon his explorations, the compiler of the State records writes: "The expedition commanded by Fernando del Bosque should be considered, then, as the *second* which penetrated into the territory of Texas; for in an

official work in the archives of the State House at Saltillo it is stated positively that Don Francisco de Urdinola, the younger, commanded the first expedition into Texas with the object of making a reconnoisance of that territory."

This took place in 1575 or 1576, a hundred years before del Bosque. Between these two dates there is evidence of Spanish occupancy. First, Frejes' mention of colonists in 1630; next, Father Damian Manzanet's narrative, containing the first allusion to woman's influence in this new country. The father relates that in 1690 the chief of the Tejas told him of a most beautiful woman "dressed in blue," who had been amongst the Indians in his mother's time, that she had seen her, and so had other old people of the tribe. Father Manzanet does not doubt the story, but chronicles:* "Therefore it can be easily seen it was the Mother Maria de Jesus Agreda who was in those countries very often, as she herself confessed to the guardian father of New Mexico. The last time she was there was in 1631, as is evident from the declarations she made to the custodian father."

Manzanet says he found that the Indians were somewhat evangelized and showed distinct traces of Christian teaching, which he ascribes to the influence of that fearless woman, and tells that those tribes preferred blue cloth to that of any other hue, and desired to be buried in that color, because this beautiful woman had worn it, "and they all wished to be like her."

Yoakum, the earliest and best Texas historian, states 1715 as the date of actual settlement—"the year of missions in Texas;" Bancroft names 1713 as the time, and gives 1718 as the year of the establishment of the mission of San Antonio, accrediting 1690 with seeing the first attempts at colonization, which however, he says, were entirely abandoned in 1694.

Research in the vast fields of church records reveals a different story, and referring also to the archives of Coahuila† we find that "in 1688 one of the first acts of Alonzo de Leon was to establish a presidio or fort at San Antonio, in which place Father Estaban Martinez was already officiating as missionary and instructing the tribes of the Tejas."

This certainly establishes the fact that missionary work commenced long previous to the time named by Bancroft, or how was Estaban Martinez found there at his labors in 1688?

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* Prof. Wipprecht's translation, archives at Austin, Texas.

† Apuntes para la historia Antigua de Coahuila y Texas.

The establishment of the missions in Texas must not be confounded with the building of the mission churches, which was not done until much later when the Indians had begun to show the good effect of evangelicalism. They were taught religion and the practical arts of civilization for a long while before they grew skilled enough to handle tools, and become carpenters and masons under the wise direction of the priests. But it was not until they had learned all this, as well as to be devout Catholics, that the permanent buildings for worship and residence arose.

Correspondence between De Galvez and his exploring lieutenants show that in 1689 the site of the future San Fernando de Bexar—now San Antonio—was occupied as a Spanish camp, and in 1690 it was permanently provided with a troop of Spanish soldiery, and a holy friar for their spiritual comfort. This is confirmed by the records in a curious old book of church chronicles, in manuscript, in the possession of Bishop Neraz, of San Antonio, which state that in 1690 a small garrison of soldiers settled at San Antonio, accompanied by their priests, who built a chapel for their use. It says that in 1691 thirteen Spanish families from the Canary Islands were sent over by the Crown of Spain and settled there; and in 1693 the first marriage was recorded. In the keeping of the church at San Antonio are the records of births, marriages, baptisms, and deaths from that date down to the present time; and these books, kept and signed by the fathers in charge, are undeniable evidence that Texas was not deserted in 1694, as is asserted, but that from the time of Father Estaban Martinez (1688), and perhaps for some years before, the Franciscan fathers stood to their charge through danger and death, want, and malicious misrepresentation, persevering always in their work of education. These old volumes evidence the pains that were taken to instil good morals, enforce the marriage tie, and keep all family records, so that even up to the present day these manuscript books are regarded as best and conclusive evidence in all questions of descent and inheritance. The Indians and colonizing Mexicans intermarried with each other and the Spanish soldiers; the greatest care was taken by the officers of the military companies, the commanders of the provinces, and the priests themselves that the contracting parties should have the consent of parents, guardians, and all proper authorities. This being all duly recorded, fills with writing many tomes, as bulky as they are quaint, authentic, and interesting.

Around the thirteen original Spanish families settled at San Antonio extraordinary precautions were thrown to keep their blood unmixed. They were not allowed to intermarry with the Mexicans or Indians, except by the personal and express permission of the King of Spain, which, if won at all, took years to procure. So their race was kept pure for a long stretch of years, even to the last half century. Under Spanish régime the front door of every house owned and occupied by the descendants of these original families bore upon its inner panel the coat of arms of Spain and a line stating: "This is the house and family of ———, from the Philippine Islands." It has not been more than a decade since the last of these disappeared. However, there seems to be a slight conflict in the records as to whence they came, some authorities saying from the Canaries. These doubtless are incorrect; for Texas was long called "the New Philippines" in honor of her first settlers, and it was not until 1718 that the King of Spain ordered 400 families from the Canaries to be sent to this province, of which number but 16 arrived.

Texas, as a part of Mexico and belonging to the Province of Coahuila, had not in her own keeping the records of her earliest history, and so is still deprived of these papers which should be in her archives; yet she bears within herself the indelible imprint of Spanish dominion. Even the Puritan has not left upon New England as lasting an impression, for the laws of Texas are a monument to the wise civil code of Spain, drawing thence their best provisions. She employs the same measures for land and uses the identical terms in surveying which the priests used when first the mission buildings raised their heads, and the Indians were taught to erect structures that, even in ruins, are an ornament to the land. The names of her rivers, bays, and cities are relics of the Latin race and the religion which civilized her, and the greatest monument in all her borders to the prowess and sacrifice of her sons takes its title—"a name to conjure with"—from a generous and loyal Spanish nobleman. This name of the "Alamo," famous as it is in history, has so far stood unchronicled as to its origin. Local writers in Texas claim that it was the Spanish term for cottonwood, and that a clump of these trees grew near the building which was church and fort in one. But Alamo is the Spanish for poplar, and no tree of that kind grows there, though even if it had existed such nomenclature would contradict the Spanish

usuage to give appellations from their religion and their great men; as, for instance, the mission of San José de Aguayo, from the Marquis of that name; and, in the same way, the Alamo itself was originally called "San Antonio de Valero," in honor of the viceroy of Mexico. That appellation has been forgotten in the one which gave the Texans their war cry on the field of San Jacinto, and which I am at last enabled to trace to its source by means partly of printed records from the archives of Coahuila and partly from the ancient manuscript volumes in keeping of Bishop Neraz.

It was a gallant knight of Spain who established the mission of San Antonio de Valero, naming it in all loyalty after his superior, the viceroy, and paying for it out of his own private moneys. This, and many other distinguished services, coming to the ear of his sovereign, numerous honors were heaped upon him, and a royal letter sent to the people of the new country to tell why this Count de San Pedro de Alamo was so favored. In the meantime the Duke de Aguayo had followed this good example, and contributed largely to the needs of the mission which had been named after himself, even sending a colony of Tlascalans from Mexico to colonize and teach by example their comparatively high civilization to the wild tribes. The Count de Alamo and the fair daughter of the duke were wed, and he then, in 1738, founded a colony in the lovely Valle de Parras, which was called by his name, Alamo de Parras. Shortly after this the mission that he had built, needing a garrison for its protection, a troop of light infantry was sent there from his colony of Alamo; thenceforward the mission lost its old-time identity as San Antonio de Valero, and was spoken of in all military orders and in common parlance as "The Alamo." So, from nobility, enterprise, and arms the Texan stronghold gained its name, surely a more inspiring and suggestive source than that of a mythical clump of trees.

The mission in their first establishment filled many requirements, offering in themselves the varied resources of a city.

As temples of worship they were raised by priests, converts, and men-at-arms, the highest dignitaries taking part in their construction. They were the treasuries of the state and church; they formed cities of refuge for the distressed, and, more often, were courts of justice for the criminal.

As a matter of course they were hospitals, and just as much by necessity, they were forts and magazines of arms.

In absolute contrast to all this they were seats of learning, conservatories of arts, centers of industry, and houses of entertainment for all who claimed hospitality. They reared their heads in the midst of an untrodden wilderness, affording the greatest contrast the New World has ever known, a contrast between the highest culture and savagery, between the jungles of the chapparal and the architect's fairest creation of lofty arch and cunning sculpture wrought in stone. Here the priests lived and labored, taught and pondered, made history and recorded history so clearly and minutely, that the old tomes filled with their wonderful chirography present to the investigator an inexhaustible mine of information.

Until we search into the records, kept with such care by each succeeding priest, we can hardly realize what a watchful eye was turned upon every neophyte, as the converts to Christianity were called. Manners, morals, mind, and hands had all to be trained. The fathers taught them to read, write, and pray (and oftentimes these erstwhile barbarians complained that the "paters" and "aves" were burdensome); to sow, cultivate, and reap; make soaps, sugar, and dyes; to spin and weave; build, work in iron, and carve; irrigate, and raise water ways and aqueducts, which remain and are in use to the present day. The orders of their priests were generally implicitly obeyed, and it is strange to see the impression left by some, resulting in what are present peculiarities. For instance, the knife is the Mexican's favorite weapon; he may seem unarmed, but be sure he has that (hidden, but ever handy), and it means assassination rather than open, honorable warfare. This can be traced as the direct result of an order issued from the Church in 1757, that no half-breed nor man of mixed blood should carry firearms. The intention of this was of the best; the outcome has been deplorable. The mantilla and close-coiled hair of the Mexican woman is also a relic of the discipline of the past. In the record of Church orders in the early days of the missions was one stating that, insomuch as at a solemn mass the women failed to remove their hats, because so doing would disarrange their plaited hair, they were thenceforward forbidden to wear bonnets or braid their hair. Evidently, before that time they did wear bonnets; but ever since and even now the Mexican women of San Antonio wrap their shawls about their heads, and bear silent but eloquent witness to the undying influence of their Church.

The mission buildings, erected in the first flush of religious zeal and endeavor, are rich in legendary history; there are, too, many authentic records of the Church regarding them. All the building materials were at hand, and the Indians did the work under the direction of the Franciscans. These had brought with them from Spain and through Mexico the vessels and vestments appertaining to their religious ceremonials. At or near the present site of Laredo, on the Rio Grande, was established the first mission in Texas. When its church was built the Indians, inspired by the example of their priests, worked with such remarkable fervor that both sexes and all ages took part. The men brought the stone in their arms from the quarry, the women the sand for the mortar in the skirts of their dresses, while the children used their hats, jugs, and earthen vessels to bring the water with which it was mixed. They gave of all they had—a cow, an ox, a horse, an earring, a burro, game, any and everything which might bring in a cent of revenue. So the church was built—18 feet wide by 125 feet long. It was roofed with logs of mesquite, covered thickly with cane; these were overlaid with mortar, and the whole coated with a cement which became hard as stone. This church stood until 1876, when, unfortunately, it was pulled down to make room for its modern successor.

The church of the mission of "Nuestra Señora purisima de la Concepcion" was constructed with mortar, which, as a tribute to the purity of its patron lady, was mixed with milk instead of water, the converted Indians giving gladly from their cows, ewe sheep, and goats for this purpose. It is claimed that its indestructibility is due to this peculiar process, for of all the missions it is the only one in perfect repair. The surrounding walls, built in the ordinary way, are a mass of ruins; but where milk was used there are no signs of decay. The mortar has amalgamated with and become, indeed, even harder than the block of stone. In this church a Mexican congregation still worships, many of them descendants of the original builders.

The limit of time prevents my disclosing more of the riches to be found in this hitherto unexplored field; but what I have said will serve to point the way to future historians.

XI.—GOVERNOR WILLIAM LEETE AND THE ABSORPTION OF NEW HAVEN COLONY BY CONNECTICUT.

By DR. BERNARD C. STEINER.

GOVERNOR WILLIAM LEETE AND THE ABSORPTION OF NEW HAVEN COLONY BY CONNECTICUT.

By Dr. Bernard C. Steiner.

The high character and ability of the early settlers of New England have often been noticed. Amid countless difficulties and perils, dangers from Dutch, French, and Indians, hardships arising from their residence in a new and unsettled country, and from their distance from England, and the severing of the numerous ties that bound them to their old home, they pressed onward, and in the wilderness planted their towns the foundations of our great republic.

"There be of them that have left a name behind them that their praises might be reported," and of this number is Gov. William Leete, who for many years directed the affairs of New Haven and Connecticut colonies.

He was born * in Keystone, Huntingdonshire, in 1611, of a family which had borne a coat of arms for some generations. He chose the law as a profession, and after a probable graduation from Cambridge and study at the Inns of Court, he was for a considerable time registrar of the Bishop of Ely's court at Cambridge. In this position, says Cotton Mather, "he observed that there were summoned before the court certain persons to answer for the *crime* of going to *hear sermons abroad*, when there were *none* to be heard in their own parish churches at home; and that when any were brought before them for *fornication* or *adultery*, the court only made themselves merry with their peccadillos; and that these latter transgressions were as favourably dealt with as ever the *wolf* was, when he came with an *auricular confession* of his murders to his brother *fox* for *absolution;* but the former found as hard

*Joseph Leete's "The Family of Leete," pp. 11, *et seq.*

measure as ever the poor *ass* that had only taken a *straw* by mistake out of a *pilgrim's* pad, and yet upon *confession* was by Chancellour *Fox* pronounced unpardonable." "This observation extremely scandalized Mr. Leete," as was natural; but the great thing that caused him to resign his position was hearing one of the Puritans say, in a reply to the judge, "Faith comes by hearing the word preached; which faith is necessary to salvation; and hearing the word is the means appointed by God for the obtaining and increasing of it; and these means I must use whatever I suffer for it in this world."* These words sank into Leete's mind, and, leading him to a serious consideration of these matters, he examined more thoroughly the doctrines and discipline of the Puritans.

In consequence of this he soon after embraced their opinions and faith and abandoned the society of the men with whom he had formerly associated. He also married Anna Payne,† the daughter of a Puritan clergyman, and became acquainted with the Rev. Henry Whitfield. Mr. Whitfield, a descendant of an old and well-known family of the south of England, a man of wealth and position, had been destined for the law and had studied at Oxford and the Inns of Court. The law was not to his taste and so he entered the ministry and obtained the rich living of Ockley, in Surrey.‡ There he continued for some twenty years, until he became one of the nonconformists, to whose party he had always been friendly. He then left his parish and began gathering about him a little company of young men, with whom he proposed emigrating to America. To this company William Leete, then 28 years old, attached himself.

Preparations were briskly made. On April 13, 1639, Mr. Leete hired § a housebuilder to work for him for three years in America, and probably about May 20 the expedition set sail. Many prominent Puritans, among them Lord Say and Sele, Lord Brooke, and George Fenwick, were interested in a plantation at Saybrook, founded a few years before. It is probable that this was looked to as a possible refuge for many leading men and that if Oliver Cromwell and his friends ever contemplated emigration, it was thither. With Mr. Fenwick, Mr.

* Mather's "Magnalia," I, p. 156.

† Trumbull's Connecticut, II, p. 375.

‡ I Magnalia, p. 593; Sprague's Annals of the American Pulpit, I, p. 101.

§ Mss. of R. D. Smyth.

Whitfield was intimately connected, and near Saybrook his company intended to settle. Anxiously was the arrival of the vessel awaited at Quinnipiack, whither it was bound; for, besides Mr. Whitfield's company, Lady Fenwick, Rev. Mr. Davenport's child, and "many other desirable friends" were on board. Between the 5th and 10th of July the vessel came to land and the captain, liking the harbor, called it a "Fayre Haven," from which remark the names of New Haven and Fair Haven are said to come.

But not in New Haven did our colonists intend to stay. They designed to be "one entire plantation," an independent colony, and before coming to land drew up their Plantation Covenant, in which they promised to be helpful to one another and agreed to delay "getting together in a church way" until "it shall please God to settle us in our plantation." There was no intention of losing themselves in New Haven, and soon messengers were sent to spy out the land. As a result they settled at Menunkatuck, a place about equidistant from New Haven and Saybrook, and attractive to the settlers from the low and fertile land and from the fact that the Indians had already cleared part of the soil. Thither they soon removed, and on September 29, 1639, they purchased the land from the Indian squaw-sachem, Shampishuh. The purchase was made at Mr. Newman's barn in New Haven, and six men were made "feoffees in trust for purchasing the plantation." Among these was William Leete, and he was also a member of a committee of four to take charge of "the administration of justice and the preservation of the peace."*

It was a remarkable set of men that thus became an independent colony. Besides Leete and Whitfield, it numbered among its members such men as Samuel Desborough, later lord keeper of Scotland; Rev. John Hoadley, grandfather of the famous Bishop of Bangor and of the Archbishop of Armagh; Jacob Sheaffe, afterwards a wealthy Boston merchant; and others equally worthy of note. For four years they lived on under the simple government above described, building houses, cultivating the soil, and buying more land from the Indians. Then came a change. The New England Confederation was formed. Menunkatuck was too unimportant to become a separate member of the body and it dared not stand outside of its hospitable shelter. It must join one of the larger colonies, and

*Guilford Town Records, Vol. B.

all save New Haven were too far away. But to join that, a church must be established, and only church members allowed to vote at elections, conditions probably accepted with little grace, for Mr. Whitfield's party were remarkably free from bigotry. However, on June 29, 1643, a church was gathered, consisting of seven men, after the pattern of New Haven. Of this number Mr. Leete was fourth, and to this church the "feoffees" and the "four men" resigned their rights and powers. A full constitution was drawn up, showing lawyer-like care in guarding against New Haven's influence as far as possible; and, all things being ready, on July 6, 1643, Messrs. Leete and Desborough were admitted as Menunkatuck's representatives in the jurisdiction in New Haven. At the same time the name of their town was changed to Guilford, probably in honor of Guildford, the shire town of Surrey.

Among her first men Guilford ever honored William Leete; she made him secretary of the plantation and his scholarly hand is seen on the town records, until his resignation in 1662. From 1643 to 1651 he was sent to the general court, he was made one of the deputy judges of Guilford's particular court, and 1656, for a year,* chosen treasurer of the plantation.

The jurisdiction of New Haven recognized his worth early and in 1646 elected him† its secretary for a year; but 1651 is the year which marks his great advancement, for then he was made the magistrate for Guilford and, as such, entitled not only to preside over the local court, but also to sit in the Supreme Court of the Colony. His calm, judicial, temper, his quiet and deliberate manner, well fitted him for the position and he was soon found adapted to act in greater tasks. In May, 1653, he was made one of the committee of six to act for the colony with full power in emergencies and with two others went to confer with Connecticut in regard to a war with the Dutch. In October, 1653, he was again sent to Connecticut, with three others, to consult in regard to a threatening war with the Narragansetts, and in 1654 and 1655 he was appointed to go with another magistrate across to Southold and heal differences there. June, 1664, saw him with Thomas Jordan, another Guilford man, sent on an embassy to Massachusetts to endeavor to induce her to make a joint war on the Dutch, and the next year he was sent as one of New Haven's two dele-

* Guilford Records, Vol. A. † N. H. C. R., I. p. 275.

gates* to the annual meeting of the United Colonies. He was reëlected yearly while New Haven was a separate colony and after its absorption by Conneticut, in 1667, 1668, 1672, 1673, and 1678, being the president of the meetings in 1667 and 1673.†

In 1658 New Haven colony advanced him to the place of deputy governor, and in 1661 to that of governor, its highest dignity.

Meantime matters had greatly changed. The losses experienced in Delaware and in the Lamberton ship had impoverished the New Haveners, and the death of Charles I and the founding of the commonwealth had not only cut off the stream of immigration, but had even called back to England some of the most prominent of the settlers. These gained wealth and honor under Cromwell and their success tempted those who staid to follow them; while Cromwell's offer to transplant the colonies to Ireland or Jamaica tended to make them still more unsettled. No town suffered more than Guilford; one after another of its leaders went back to the mother country. Desborough returned and wrote Leete that he had sent a letter to the Protector entreating his favor for his friends in New England, and somehow the idea got abroad among Leete's fellow townsmen that Desborough was desiring to get him back to England. They were always attached to Mr. Leete; as early as 1646, when some of the planters went 4 or 5 miles eastward from the main settlement, they asked for one of "better quality" ‡ to go with them, and "strongly pitched upon" Mr. Leete, and later the town gave him £20 a year, besides presenting him with land from time to time, as in 1661, to keep this, almost their last leader. So the rumor of his wishing to return, which doubtless had a basis of truth, troubled them, and Leete writes to Desborough begging him to write to the people of Guilford words of cheer and counsel, that they might see his "still continued tender affection toward the church of Christ here." The tone of the letter is one of discouragement, and we feel that it is only a sense of duty to his neighbors which keeps Leete from returning also. §

As time passed, however, Cromwell died and Charles II returned, and the sturdy republicans of New Haven obliged,

* He was an alternate in 1654.

† Conn. & N. H. Col. Rec. passim.

‡ Guilford Records, Vol. A.

§ N. E. Hist. Gen. Reg., Oct. 1887, p. 353.

against their will, to submit to royalty.* England was not safe for those who had condemned Charles I to death, and two of the regicides, Goffe and Whalley, came to New England and soon to New Haven, where they appeared openly for a while. This came to the ears of Kellond and Kirk, two zealous Royalists appointed to pursue them, and they quickly turned thither. William Leete was acting as governor, Governor Newman having died in November, 1660. To him, therefore, the pursuivants came, and arrived at Guilford May 11, 1661. They wished authority to search, and showed as proofs of their office a copy of the king's orders and a letter from Governor Endicott. These Governor Leete began to read aloud, to the disconcertion of the messengers, who asked him to be "more private in the conversation," whereupon he retired with them to a room and told them he had not seen the colonels, as the regicides were called, in nine weeks. They told him they had been there since then, and wished horses and authority to search for them. While these were being slowly prepared, they heard that the colonels were concealed at "Rev. Mr. Davenport's," and asked for aid and a search warrant at once. This, he said, he could not give without consultation with his magistrates, and as it was now Saturday evening, that would be impossible until Monday. Remonstrance was of no use, and the messengers must wait over Sunday in Guilford, though they afterwards heard that an Indian was sent to New Haven Saturday afternoon, presumably to give the alarm. On Monday morning another messenger was sent before day, and the messengers, getting away after some delay, arrived at New Haven two hours before the slow-moving governor. Then he made objections, "was obstinate and pertinacious in contempt of His Majesty," say the pursuivants, and after a consultation with his magistrates for five or six hours, he said nothing could be done until a general court of the freemen were called. They remonstrated with him, told him of the dangers incurred by harboring traitors, and when he said "We honor His Majesty, but we have tender consciences,"† answered that he pretended that for a refusal.

During the delay the regicides escaped to another place of hiding, and Leete had saved them. It was a daring thing to

*Palfrey "Hist. of New England," II, p. 502 ff.; Stiles "History of Three of the Judges," passim.

†Hutchinson Papers, II, pp. 53–57, give Kellond and Kirk's account of the affair.

defy the royal messengers, and small wonder was it that he exclaimed he "wished he had been a plowman, and had never been in the office, since he found it so weighty."* But he never flinched where duty was in question, and on May 29, 1661, accepted the election as governor of the colony, the last to hold the office.† His intercourse with the judges may have continued later, and a barn cellar in Guilford is still pointed out as the place where he hid them in June,‡ 1661. His friendliness to them had been so great that he became apprehensive for his safety, and went to Boston and induced the Rev. John Norton to write in his behalf on September 23, 1661, to the Rev. Richard Baxter, one of the King's chaplains.§ Leete escaped, but the stern, republican, puritanical character of the colony brought vengeance on it.‖

Even at home Governor Leete had trouble. Dr. Bryan Rossiter, a headstrong man of good abilities, moved to Guilford and became violently opposed to Governor Leete. Fair and just as he was in his judicial decisions, Governor Leete could not avoid offending some, and these gathered in an opposition around Dr. Rossiter.

On January 15, 1660–1, the trouble begins by Rossiter's claiming in town meeting that the town's grant of £20 to Leete was only for one year, and that by taking it every year he did wrongfully. Rossiter had come from Connecticut, and as early as this showed "slight esteme of publique instruments in this colony, and confident boasting of his great interest" with Connecticut. On November 10, 1661, Rossiter brought other charges against the town government, evidently aiming them against Leete, but the majority, as ever, supported the governor. There seems to have been a personal quarrel between Leete and Rossiter, the origin of which is unknown, though I hazard a guess that the cause was Leete's application to Gov-

*Mass. Hist. Soc. Proc., VI, p. 70. Some years later Leete interceded for the notorious Capt. Scott, sending letters begging favor to him to Massachusetts, Plymouth, and Connecticut, as Scott had won his gratitude by interceding for Leete in England after the affair with the regicides.

†Many declined to accept office at that time.—N. H. C. Rec., II, p. 402.

‡Stiles's "Judges," p. 92; F. B. Dexter, in N. H. C. Hist. Soc. Coll., Vol. II, disbelieves this.

§Rev. John Davenport wrote for the same purpose to Sir Thomas Temple on August 19, 1661.—N. H. C. Rec., II, p. 422.

‖Hutchinson Papers, II, pp. 57–60. Letter from Rawson to Leete, stating that New Haven was in danger from harboring regicides.

ernor Winthrop for medical advice, instead of to the local physician.* Unluckily, the town records are blank from 1662 to 1665, but from other sources we learn how the quarrel went on and what influence it had on the history of New Haven colony. There soon appeared three parties in the colony: one led by Davenport, irreconcilably opposed to union with Connecticut; a second, led by Leete, inclined to union on fair and equal terms; and a third, headed by Rossiter, favoring immediate, unconditional union with Connecticut. As early as 1661 Leete wrote to Governor Winthrop, "I wish that you and wee could procure one pattent to reach beyond Delewar,"† and, doubtless, when Winthrop obtained a charter for Connecticut, covering the territory of New Haven, it was after consultation with Leete and with the intention of uniting the two colonies in amicable fashion. But irreconcilables on each side put off the event, and but for Leete's calm and deliberate conduct might have led to a petty civil war. With the question of the union of the colonies became involved the personal quarrel with Rossiter. Leete saw the defects and weaknesses in New Haven jurisdiction, but his fair minded and cautious nature also saw the danger of yielding hastily to the sister colony.

In the early part of 1662 Rossiter and his party "subscribed some offensive papers,"‡ spreading them "abroad to the disturbance of the peace of this jurisdiction;" but in May, when at the election Governor Leete boldly said he "was free to be responsible for any publicke transaction, and should be ready to give answer to any brother or brethren coming to him in an orderly way, desiring to find pardon and acceptance with God and acknowledging their patience and love in passing by anything that hath been done amisse,"§ none dared to object to anything. For the "offensive papers," Rossiter and his party were tried on May 7, 1662, and soon after were obliged to apologize;‖ at the same time the Rossiters were tried for refusing to pay taxes and for resisting officers of the law.¶

In September, 1662, the new Connecticut Charter was presented to the Commissioners of the United Colonies at Boston, and William Leete and his fellow from New Haven cau-

* IV Mass. Hist. Soc. Coll., Vol. VII, p. 546.
† IV Mass. Hist. Soc. Coll., Vol. VII, p. 549.
‡ N. H. Col. Rec., II, pp. 403, 429, 440.
§ N. H. Col. Rec., II, p. 450.
‖ N. H. Col. Rec., II, 454–456.
¶ Mass. Hist. Soc. Coll., III, X, 73.

tiously said: "Wee can not as yett say that the procurement of this pattent wilbe acceptable to us or our Collonie." To many of the "collonie" it was far from being acceptable; to lose the separate existence they so highly prized, to become a part of lax and grasping Connecticut, where nonchurch-members were allowed to vote, was a dreadful thing. The eagerness of Connecticut to take possession of the land her charter gave her, still further embittered matters. In October she voted to "accept and owne, as members of this colony," the inhabitants of Southold, Stamford, and Greenwich, and Rossiter's* party in Guilford, who were inclined to submit to her.

This hasty action was protested against by New Haven, but through Governor Leete's influence† she refrained from doing anything but "witness-bearing" until Winthrop should arrive. It was quickly seen that New Haven must yield in the end, and the next year was spent in sending proposals and answers from one colony to the other, in which correspondence Leete took large part. Complaint was made to the United Colonies,‡ who supported New Haven. Emboldened by this, or weary of waiting for Connecticut to return her adherents in Stamford and Guilford to their former allegiance, as Winthrop had promised should be done, New Haven, on December 9, 1663, ordered all inhabitants to return to their allegiance and pay their taxes. Alarmed by this, Rossiter and some of his friends went to Hartford and induced the council of Connecticut to send back with them a committee of three to Guilford to "treat with Mr. Leete * * * about the indemnity of the persons and estates of those that have actually joined to o'r government." Governor Leete wrote them he would not recede from his early position, signing himself laconically, "Yo'rs in wt. I may." On the 30th of December, about 10 p. m., "an unseasonable hour * * * these short dayes,"§ the committee and Rossiter's partisans rode into Guilford and alarmed the townspeople by shooting of sundry gunnes." Governor Leete was aroused, and getting no satisfaction in his inquiries as to their purpose, he feared "hostile attempts were intended by theyr company." Consequently he sent in haste to New Haven for succor.

* Conn. Rec., I, p. 387.

† N. H. Col. Rec., II, p. 471. This was one of Leete's most important services.

‡ N. H. Col. Rec., II, p. 495.

§ "New Haven's Case Stated," in N. H. Col. Rec., II, p. 527.

Branford and New Haven sent aid; but it was not needed, for the Connecticut men retired after threatening Governor Leete that their colony would resent any ill treatment of the Rossiter party, and seeking in vain for another conference.

This insult still further exasperated the New Haven people and hindered the "loving accord and complyance between vs" which Governor Leete wished.* There had long been "great irritations of spirit among our people," and these "phisitians, * * * too highly conceited of curing diseases by violent fomentation," rather than "by graduall ripening and softening supplements,"† made Leete's task doubly hard, and his credit for aiding in a peaceful union doubly great. His friendship for Winthrop aided him much in his endeavors, and he agreed with him that the Connecticut charter should be "a covert but no controul to our jurisdiccion, untill we accorded with mutuall satisfac'on to become one, which," Leete writes, "I have beene, and still am, a freind to promoue in a righteous and amicable way."‡

On January 7, 1663–'64, Governor Leete called a "generall court," and, telling it of the recent outrage, asked what procedure should be taken in regard to taxing the Rossiter party. Doubtless he heartily agreed with the decision to enter into no treaties with Connecticut except on condition of "redintegrating"§ the colony "by restoring our members at Stamford and Guilford;" for, as Hollister‖ well says, Leete's "gentle nature never showed the decision and strength that lay hidden beneath its surface until all persuasive measures were exhausted," and that time had come. Firmness proved the best policy and on February 14, 1663–'64, Connecticut ordered Rossiter's party "to submit to ye same authority with their neighbors," and turned a deaf ear to all subsequent petitions. This sensible move tended to smooth over difficulties, and the negotiations of union were hastened by news that the King had granted all the land west of the Connecticut River to his brother. This would include the territory of New Haven, and union with Connecticut was preferable to subjection to the Duke of York. So on August 11, 1664, Leete called together the general court and

* IV Mass. Hist. Soc. Coll., VII, p. 551.
† Is this a covert reference to Dr. Rossiter?
‡ July 20, 1663, IV Mass. Hist. Soc. Coll., VII, p. 552.
§ N. H. Col. Rec., II, 514 and 516.
‖ Hist. of Conn., I, p 213.

succeeded in getting it to vote, "that, if they of Connecticut come and make a clayme upon us in his majestie's name and by vertue of their charter, then we shall submitt to ym, untill the commissioners of ye colonies doe meete."* The commissioners met on September 1, 1664, at Hartford, and "although the council did not approve of the manner in which Connecticut has proceeded, yet they earnestly pressed a speedy and amicable union of the two colonies."† As a result, in October, Connecticut sent men to make the inhabitants of New Haven colony submit to it, and invested Leete and others of that jurisdiction "with Magistraticall power."‡

On December 13, 1664, was held New Haven's last general court, and it decided that, if it should appear to a committee then appointed, that they were "put under Conecticutt pattentt, wee shall submitt as from a necessity."§ It was a last despairing gasp, for Connecticut, leaving unfinished the negotiations with the committee, annexed the towns of New Haven, and, on April 20, 1665, saw delegates from them sitting in its general court. The union was peaceful and only a few of the sternest Puritans moved away, so as to be free from the less stern rule of Connecticut. For this peaceful union Leete deserves much credit.

Dr. Rossiter, who had removed and settled Kenilworth‖ with his party, came back to Guilford and tried to obtain damages from Governor Leete for "unjust molestation;" but the general court said all proceedings before the union were "included in the act of oblivion."¶ And here the quarrel ends, as far as is known. It was hard to keep up a quarrel with a man as mild as Leete, and, when Rossiter got into trouble again, some years later, and many wondered why he "should so long be borne with, while he goes on to trouble both county, town, and country with unnecessary pleas and papers so abusive," Leete, who had suffered most from his quarrelsome nature, wrote to Winthrop that he was "looked at to have beene the most backward to doe injustice against Mr. Rossiter."**

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*N. H. Col. Rec., II, p. 546.

†Hollister, I, 229.

‡I Conn. Rec., p. 437. In May, 1665, he was chosen magistrate by the people.

§N. H. Col. Rec., II, p. 551.

‖Afterwards called Killingworth and now Clinton.

¶Conn. Rec., II, p. 23, etc.

**IV Mass. Hist. Soc. Coll., VII, p. 565.

Connecticut honored Leete as well as New Haven had done. He was chief magistrate of the New Haven County Court from 1664 to 1676; was made Moderator of the General Court in 1668 in absence of the Governor and Deputy Governor;* in 1669, was made one of a committee of five to consult with Rhode Island† about boundaries in 1670; was appointed in May, 1671, on a committee to consider laws and "prepare and dispose them," for the consideration of the general court,‡ and was sent in 1674 to keep court in Stonington for the disputed Narragansett country.§ He was granted 300 acres of land in 1667 and chosen Deputy Governor in 1669.

Then came his crowning honor, for on May 11, 1676, William Leete was chosen Governor‖ of Connecticut to succeed his friend, John Winthrop, who had just died. As in New Haven, so here he assumed the government in a troublous time. King Philip's war was raging; Rhode Island was disputing Connecticut's claim to the Narragansett country; Andross¶ had just tried to dismember the colony by asserting New York's claim to the land west of the Connecticut.

When the Indian war was finished, Connecticut was loaded with a heavy debt.** In these difficulties, Leete showed the same calm prudence that ever characterized him, and so endeared himself to the people that, in 1678, they induced him to remove to Hartford that he might be consulted more readily, and gave him £100 salary†† per annum.

Another difficulty was in regard to the "acts of navigation and trade," which Edward Randolph had come over to enforce and which Governor Leete swore to observe, on grounds of expediency, in May, 1680.‡‡ He wore the honors of the governorship seven years and died "full of years and good works" on April

* Conn. Rec., II, pp. 76 and 89.

† Conn. Rec., II, p. 146.

‡ Conn. Rec., II, p. 153.

§ Conn. Rec. II, p. 246.

‖ In 1800 President Fitch, of Williams College, gave the Massachusetts Historical Society manuscripts concerning Governor Leete's administration. *Vide* I Mass. Hist. Soc. Proc., p. 129.

¶ Conn. Rec., II, 508, VI, Mass. Hist. Soc. Coll. has a letter from Andross to F. J. Winthrop, in which he speaks of having corresponded with Leete respecting Connecticut's claim to Fishers Island.

** Conn. Rec., III, 277, 261.

†† Conn. Rec., III, p. 6.

‡‡ Conn. Rec., III, p. 49; Trumbull, I, p. 374.

16, 1683.* "During the term of forty years," writes Dr. Trumbull, "he was magistrate, deputy governor, or governor of one or other of the colonies. In both colonies he presided in times of the greatest difficulty, yet always conducted himself with such integrity and wisdom as to meet the public approbation." †

His estate was valued at £1,370 15*s.* 1*d.*, divided among his children and wife, for whom he shows loving consideration in his will. He was thrice married and had nine children; one of whom, Andrew, became an assistant in the colony, while another, William, several times represented Guilford in the general court.

The character of the man may well be learned from his correspondence, and his descendants, many of whom are known by the writer, show the same characteristics as their illustrious ancestor. We find Governor Leete, in 1682, showing his wisdom in doubting the expediency of the "half way covenant," ‡ while writing to Increase Mather, and a few scattered letters to others are preserved. But in his letters to his bosom friend, Winthrop, he shows himself most fully. From them we get glimpses of the hardships of early colonial life, such as when Leete regrets he can not send much sugar, as the messenger § went on foot from Saybrook to New London and so could not carry a quantity, or when he expresses thanks for your "late large token, very precious to us here, for we have not had such a loaf in our house for sundry years, so far surpassing all our usual Indian loaves." ‖ He writes in a terse, concise, vigorous style, very different from the ordinary diffuse and obscure manner of so many of that time, on all sorts of things; for medical advice and medicines, about his son's marriage, about the trial of cases in court, about church troubles, boundary difficulties, war with the Dutch. visits of his children to the Winthrops, etc.¶

His kind feeling toward the Indians, seen in the letters, was rewarded by a bequest of one hundred acres of land from the sachem, Hermon Garret,** but his virtue needed no such spur.

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* The colony paid £1. 7*s.* 6*d.* for 11 pounds of powder for the cannon fired at his funeral. Edward L. Leete's "The Family of Leete," p. 7.

† Trumbull, I, p. 376.

‡ IV Mass. Hist. Soc. Coll., VIII.

§ IV Mass. Hist. Soc. Coll., VII, p. 538.

‖ IV Mass. Hist. Soc. Coll., VII, p. 543.

¶ IV Mass. Hist. Soc. Coll., VII, pp. 538–586.

** IV Mass. Hist. Soc., Coll. VII, 542. Conn. Rec. III, p. 34.

His religion was fervent and sincere, and truly could he say, "Blessed be God, whome we beseech for aid to prise the least favor and to be prepared to beare and improve the greatest affliction." *

He was not above the beliefs of his time as to witchcraft, but in 1674 he writes in a spirit of rare common sense of one said to have familiarity with "diuell," "I have not medled with him upon those accounts, as he expected, to make a martir of him, which he would desire to boast of."†

He had no bigotry, but could thus write, in 1671, of the recent divisions in the Hartford church and the formation of a second church there: "Notwithstanding our different attainments in light disciplinary, but yet there may be ioyntly aymeing to lift vp Jesus Christ in holynes both of heart and life; that so the brazen wall of our security may yet stand, and the beautifull gate of our spirituall priveledges may not be burnt vp but peace and truth may be our portion to enioy all our dayes, and left to our posterity by wisedome and faithfullnes in our generation, [a] worke incumbent on vs."‡

To sum up the excellencies of his character in one word, it was full of common sense, and that fact was the great reason for his successful career. From his home in Guilford, looking over the Menunkatuck River and the salt marshes, he ruled long and well, and the luster of his fame still remains in the place he made his home.

The popular conception of a Puritan as a narrow-minded fanatic has to be modified in considering a man like this—broad-minded, cautious, and sagacious, blessed with a double portion of common sense. "In his whole government," says Mather, "he gave continual demonstrations of an excellent spirit,"§ and did work true enough and important enough to be worthy of our remembrance and respect.

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* IV Mass. Hist. Soc., Coll. VII, p. 540.
† IV Mass. Hist. Soc., Coll. VII, p. 586.
‡ IV Mass. Hist. Soc., Coll. VII, p. 569.
§ Magnalia I, p. 157.

XII.—THE VISITORIAL STATUTES OF ANDOVER SEMINARY.

By Prof. SIMEON E. BALDWIN, LL. D., President of the New Haven Colony Historical Society.

THE VISITORIAL STATUTES OF ANDOVER SEMINARY.

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The law as to visitation of eleemosynary corporations, not strictly ecclesiastical (that is, not composed of ecclesiastical persons aggregated for ecclesiastical purposes), was put in form by a dissenting opinion of Chief Justice Holt, pronounced two hundred years ago.*

It gives an almost despotic power to the founder of a charity and to his heirs after him. It is his right to see that such rules or statutes as he may prescribe for its government are obeyed. He is a "judge without appeal, and can enforce obedience by summary deprivation of office, or other share in the benefits he may have conferred on the foundation. These functions he may execute himself or may delegate to others."

If a corporation has been constituted, consisting of the persons to be benefited by the charity, the right of visitation remains in the founder or such as he may appoint; but should it consist of trustees, created to superintend the foundation for others who are the real beneficiaries, there is (unless otherwise provided in the charter) no visitor, except these trustees themselves.

By consenting to such a charter of incorporation, or by making a grant to such a body, the founder, if he prescribes no statute to the contrary, makes these trustees visitors in his stead, subject only to the control of the courts of chancery.† He may, however, as is the case at Keble College, one of the recent foundations at Oxford, provide a superior or ultimate visitor, to watch and correct the doings of the ordinary visitors.

*Phillips *v.* Bury, 1 Lord Raymond's Reports, 5; 2 Term Reports, 346.

†See remarks of Mr. Justice Story, in the Dartmouth College Case, 4 Wheaton's Reports, 518.

And if the trustees have title to the funds and the collection of the income as well as its expenditure, the founder reserves by implication a visitorial right to see that their legal estate is properly administered.*

The Phillips family have given their name to two of the best known schools in the United States, the Phillips Academy, in Andover, Mass., and the Phillips Academy, in Exeter, N. H. That at Andover was established during the Revolutionary War, and the founders by a written constitution placed its management in the hands of themselves and ten others, with the master, a major part of whom were to be laymen and freeholders, and a major part also were not to be inhabitants of the town. The first and principal object was stated to be the "promotion of true piety and virtue," and a summary of Christian doctrine was given as a guide to instructors. In 1780 the same thirteen persons were incorporated as the trustees of Phillips Academy, and made the "true and sole visitors, governors, and trustees" of the institution.

In 1807 this charter was amended so as to allow the trustees to receive donations for the purposes of a theological institution in connection with the academy. Members of the Phillips family then agreed to put up suitable buildings for that purpose, and funds were contributed by others for the support of instructors, the donors stipulating in the statutes of their foundation, that "Every professor must be a Congregationalist or Presbyterian and of orthodox principles in Divinity, according to that form of sound words or system of evangelical doctrines, drawn from the Scriptures and denominated the Westminster Assembly's catechism, and more concisely delineated in the constitution of Phillips Academy."

The Congregationalists of Massachusetts had shortly before this time become divided in relation to the doctrine of the divinity of Christ. Dr. Ware in 1805 had been elected to the Hollis Professorship of Divinity at Harvard, and his influence was cast in favor of the Unitarian view. The founders of Andover Seminary took care to provide in their statutes that its professors should always oppose Unitarianism and Universalism. There were, however, other burning questions in the New England theology of the day on which the Trinitarian Congregationalists were not agreed. Calvin was to all the great leader, but there were different schools of his followers

*Eden *v.* Foster, 2 Peere Williams's Reports, 325.

who were respectively known as "moderate Calvinists" and "consistent Calvinists."

The Phillipses were "moderate Calvinists." In the neighboring town of Newburyport was a clergyman prominent among the "consistent Calvinists," Dr. Spring, who was ranked among the "Hopkinsians."

Dr. Hopkins, of Newport, the hero of the Minister's Wooing, had given his name to a considerable body of "consistent Calvinists," whose distinguishing tenets were that all "real holiness" lay in "disinterested benevolence," all sin in selfishness, and that a Christian must be willing to sacrifice his own eternal happiness or be cast off forever, if the glory of God should require it.*

Dr. Spring in 1807 had some wealthy parishioners who, though not professing themselves to be Christians, were desirous to do something to make others such by founding a divinity school at Newburyport, and were quite ready to leave mere questions as to the theology to be taught there to his decision. He was a man of sense, and saw the folly of setting up at about the same time two theological seminaries, within a few miles of each other, under the auspices of the same denomination. At Andover they were willing to accept any additional donations, and to concede any reasonable modification of the scheme of instruction. The result was that the Newburyport money was given to the trustees of Phillips Academy under a set of statutes known as the statutes of the associate foundation, which provided that it should be used for the support of professors who were "consistent Calvinists" and subscribed to a certain creed framed as a compromise between the two schools of Trinitarian Congregationalists. To insure the observance of these statutes a self-perpetuating board of three visitors† was named, two of whom should always be clergymen and one a layman. This board was—

To visit the foundation once in every year and at other times when regularly called thereto; to inquire into the state of this our fund and the management of this foundation, with respect both to professors and students; to determine, interpret, and explain the statutes of this foundation in all cases brought before them in their judicial capacity; to redress grievances both with respect to professors and students; to hear appeals from decisions of the board of trustees, and to remedy upon complaint duly exhibited in behalf of the said professors or students; to review

* Woods' History of Andover Theol. Seminary, pp. 32, 35.

† The founders reserved to themselves also, for life, a place upon the board.

and reverse any censure passed by said trustees upon any professor or student on this foundation; to declare void all rules and regulations made by the said trustees relative to this foundation which may be inconsistent with the original statutes thereof; to take care that the duties of every professor on this foundation be intelligently and faithfully discharged, and to admonish or remove him either for misbehavior, heterodoxy, incapacity, or neglect of the duties of his office; to examine into the proficiency of the students, and to admonish, suspend, or deprive any student for negligence, contumacy, or any heinous crime committed against the laws of God or the statutes of this foundation; and in general to see that our true intentions, as expressed in these our statutes, be faithfully executed, always administering justice impartially, and exercising the functions of their office in the fear of God, according to the said statutes, the constitution of this seminary, and the laws of the land.*

But, *quis custodiet custodes?* The founders were not content to leave this board of visitors in supreme control, and unless its action in any matter should amount to a breach of trust the rule of law was settled that no court could interfere.†

The remedy which under these circumstances they attempted to provide was, it is believed, unique in the history of charitable corporations. It consisted in a right of appeal to the judges of the highest court in the State, and was expressed thus:

Article XXV. The board of visitors in all their proceedings are to be subject to our statutes herein expressed, and to conform their measures thereto; and, if they shall at any time act contrary to these or exceed the limits of their jurisdiction and constitutional power, the party aggrieved may have recourse by appeal to the justices of the supreme judicial court of this Commonwealth for the time being for remedy, who are hereby appointed and authorized to judge in such case; and, agreeably to the determination of a major part of them, to declare null and void any decree or sentence of the said visitors which, upon mature consideration, they may deem contrary to the said statutes, or beyond the just limits of their power herein prescribed; and by the said justices of the supreme judicial court, for the time being, shall the said board of visitors at all times be subject to be restrained and corrected in the undue exercise of their office.

The trustees of the academy and the survivors of its original founders assented to the new donations on the terms prescribed by these statutes, and the founders of the Andover Seminary adopted, in pursuance of a power they had reserved, additional statutes, requiring the professors on their foundation also to subscribe to the new creed, and creating a board of visitors identical in constitution and powers with that provided for in the "associate statutes."

* Associate Statutes, Art. XX; Woods' Hist., p. 265.

† Nelson *v.* Cushing, 2 Cushing's (Mass.) Reports, pp. 519, 530.

The validity of this arrangement was open to serious question. It took the visitation of an important branch of the academy away from its chosen trustees, and gave it ultimately, under certain circumstances, to judges of a court whose religious views or affiliations might be very far from those favored by the founders.

Before it was consummated the opinion of four of the leading lawyers of New England was sought. Of these, George Bliss, of Springfield, replied that as the new visitors were only to visit a particular foundation grafted upon the original academy, he believed that their jurisdiction would be supported. Governor Strong, of Northampton, inclined towards the same view, though recommending that some other word than "visitors" should be used to describe their functions, and suggesting the advisability of asking for further legislation.

The others who were consulted, Chief Justice Daggett, of Connecticut, and Chief Justice Jeremiah Smith, of New Hampshire, concurred in deeming the scheme impracticable. Judge Smith wrote an elaborate and masterly opinion, to the effect that the trustees could not divest themselves of the sole visitorial power, conferred upon them by the constitution and charter of the academy, and that should they attempt to do so, the act would be revocable and, indeed, altogether void.

By what Dr. Woods, in his history of the Andover Seminary,* calls "a merciful ordering of Providence," the responses of the two judges did not arrive for several months, and when they did come the clerical gentlemen had got so far in reconciling their theological differences that they were not disposed to allow legal doubts to stand in the way of the accomplishment of the plan of union, and did not even think it necessary to communicate the adverse opinions to those who were to supply the funds for the new foundation. They had been brought into the project by Dr. Spring, who, though at first unfriendly to it, was now heartily enlisted in its support. Says Dr. Woods:

> He treated every subject with marked candor. He manifested his desire for union by the cautious use he made of the adverse opinions of Judge Smith and Judge Daggett, which had just come to hand. He was aware that a premature knowledge of those opinions would be exceedingly disquieting to the minds of the donors, and particularly to Mr. Norris. He therefore resolved not to communicate them in haste, though he felt himself bound in honor to do it in due time. In the management of all the troubles which occurred at that period he evidently exercised "that wis-

* History of Andover Seminary, p. 115.

dom which cometh from above, and which is pure, peaceable, gentle, and easy to be entreated."

It would seem also that one of those most active on the part of the original Andover foundation, Rev. Jedediah Morse, D. D., had looked with some distrust on the *imperium in imperio* erected by the visitorial scheme.* He was a graduate of Yale, and had been one of its faculty, while many were living who had taken part in the controversy as to the power of the colony of Connecticut to exercise the right of visitation over the college, either original or by appellate proceedings. This had been brought forward in 1763 by a memorial to the general assembly for the appointment of a "commission of visitation," and enforced by arguments from two of the most eminent counsel of the day, Jared Ingersoll, afterwards stamp-master, and William Samuel Johnson, afterwards made doctor of civil law by Oxford University. President Clap had opposed it single-handed and won the day. He had brought to the attention of the assembly the Sutton Hospital† case and that of Philips *v.* Bury to show that not the colony, but those who first contributed to establish the institution, were its founders and natural inspectors or visitors, and had urged with great vigor that "to have visitors over visitors and inspectors would make endless trouble and confusion.‡

These proceedings had attracted wide attention in the colony at the time, and the differences of religious opinion which were at the bottom of them still existed and had become more and more pronounced. Similar differences might well come to affect the peace of Andover Seminary under this scheme of "union on visitorial principles."

All parties in interest agreed in the choice of the first board of visitors, and some years later (in 1824) the legislature sanctioned its creation by an amendment to the academy charter, granted with the assent of the trustees, which incorporated the existing visitors as a corporation by the name of the "Visitors of the Theological Institution in Phillips Academy in Andover," but without power to hold property; and an appeal was given from any action of theirs which should be contrary to the statutes of the foundation or exceed the limits of their jurisdiction, to the supreme judicial court. Except for the

* Letter from Dr. Morse to Dr. Woods, Nov. 21, 1807; Wood's Hist., p. 529.

† 10 Coke's Report, 306.

‡ Trumbull's Hist. of Connecticut, 331. Clap's Annals of Yale College, 69, 74.

substitution of the court for the judges of the court as an appellate tribunal, this act substantially affirmed the visitation statutes already described, which had been adopted in 1808.

The trustees of the academy, sixty years afterward, filed a bill in equity, impeaching the constitutionality of this legislation and the validity of the statutes of 1808, so far as they altered the original scheme of visitation, but both were upheld by the court.*

The remedy by appeal from the board of visitors to the supreme judicial court has been twice pursued.

In 1827, the trustees of the academy, becoming dissatisfied with the manner in which Prof. Murdock, of the theological seminary, discharged his duties, requested his resignation. He declined to tender it, and they then summoned him before them to show cause why he should not be removed, and subsequently passed a sentence of deprivation of office. From this he appealed to the board of visitors, where a full hearing was accorded him and the decree of removal affirmed. The supreme judicial court, on his ultimate appeal to them, held that, while the proceedings before the trustees might have been conducted in an irregular manner, yet Dr. Murdock had been fairly heard before the visitors and that his removal by them was within their jurisdiction. †

The second recourse to the court was taken by Prof. Smyth, in 1887. He had been charged before the visitors with publishing views inconsistent with the seminary creed and statutes. No previous complaint was made to the trustees. After the visitors had summoned him before them, the trustees requested to be admitted as parties to the proceeding. To this the visitors declined to accede, though inviting their presence as spectators.

A decree of removal from office having been passed against Dr. Smyth, he appealed to the court, on various grounds, among which was this exclusion of the trustees from participation in the trial.

This raised a question of a fundamental character as to all visitation proceedings, namely, whether a visitation to inspect the conduct of the incumbent of an office is primarily a visitation to him or to the corporation which appointed him.

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* The Trustees of Phillips Academy *v.* The Attorney-General, Andover Review, Vol. XVI, p. 611; 28 Northeastern Reporter, p. 683.

† Murdock, appellant, 7 Pickering's Reports, p. 303.

The trustees brought at the same time, and to the same court, a bill in equity to set aside the sentence of removal, on the ground, among others, of the refusal to admit them as parties in defense. Their position was that, as they were the general managers of the academy, the owners of all its property, and the authority by which Dr. Smyth was appointed to his chair and the terms of his contract of employment settled, the relations thus existing could not, in the nature of things, be disturbed, without giving them an opportunity to defend their choice and show what reasons they had for remaining satisfied with it.

It was also claimed, both by them and by Dr. Smyth, that the visitors of a charitable foundation visit that, always, whenever they visit at all; that there must be the place for any hearing; and that the real object of any hearing or investigation by a visitor was to ascertain how the managers of the charity were conducting its affairs, since, if they were employing inefficient or unsuitable agents, the fault was, in the first instance, chargeable to the appointing power.

Of direct precedents in the books there were few in England and none in America.

In a controversy arising in 1877 as to the statutory right of the State board of charities of New York to visit all charitable institutions and investigate their condition, it was indeed decided by the court of common pleas (Chief Justice Daly giving the opinion) that they were not bound to notify any such corporation of an intended visitation or to give its managers an opportunity to be heard; but this decision was expressly rested on the ground that the action of the board "is not, and was not intended to be, a judicial investigation," and that "it does not and can not result in any judgment or sentence affecting person or property.* Obviously the members of this board in no sense represented the founder nor were they invested with ordinary visitorial power. The visitor is first to inquire after abuses and then to correct them; but the defendants in the suit in question were only agents of the law to bring abuses to the attention of the legislature or the attorney-general, so that the State itself could then inquire in due form and act for itself, as the ultimate superintending power.

The statutes of the various colleges in the English univer-

* The New York Juvenile Guardian Society *v.* Roosevelt, 7 Daly's Reports, 188, 194.

sities may afford us some help in this matter, for by and upon them the English, and so the American, law of charitable visitation has been mainly built up.

They generally evince a fear lest the visitor should exceed the due limits of his authority and are careful to limit his visits to certain definite periods, unless some extraordinary exigency occurs, and to require due notice of his coming to be given to the corporation.

Those of Exeter College, in Oxford, after mournfully reciting that so prone to evil is the human race that no one can frame statutes which sly and subtle men can not violate by misconstruction or fraud, authorize the bishop of Exeter, for the time being, and no other person or persons, once every five years and also whenever called in by the rector and four, at least, of the seven senior scholars to visit the college by himself or his commissary, to whom, and to no one else, was given full power to inquire into all matters affecting the well-being of the college, examining witnesses under oath, and to administer due punishment and reform abuses. Whenever the bishop visits the college thus in person, the Rector and two senior scholars were humbly and reverently to offer him one collation to cost not over 40 shillings.* If only the commissary came, the Rector might offer him 20 shillings or two collations. These payments, however, were not to be made more than once in any one year, nor could any visitation be prolonged beyond two or, in very rare and urgent cases, three days.†

The case of Philips v. Bury, already referred to as the occa-

* I think that in the Latin of this period, *solidus* may be fairly translated by *shilling*. Dr. Caius (or Keyes), of Cambridge, tells us that in his day, say the middle of the sixteenth century, the solidus was the equivalent of 12 denarii, or pence.

† Proclive est humanum genus, et uti quotidie videmus, vanitas temporum optima quæque aufert et mutat, ut non sit in nostra potestate eas condere leges, et statuta quæ non violet aliquando astutus et versipellis, aut male interpretando, aut aliquid fraudis ingerendo, aut excogitando modum, quo nodum quamvis herculeum dissolvat; nos eam ob causam, ea quæ duximus nostro tempore utilia, et, commoda, inserentes, quod ad ea conservanda, recteque interpretanda attinet, confidimus auctoritati, et benignitati Episcoporum Exoniensum, successorum nostrorum, quos dicti collegii patronos, et visitatores relinquimus, ut illi ex sua liberalitate, et mera benignitate adducti, ac fervida charitate in fidem Christianam inflammati, ad hoc alvearium conservandum invigilent, ut Statuta et ordinationes dicti Collegii firmiter observentur, virtutes et disciplinæ nutriantur, possessiones et bona spiritualia et temporalia, prospero statu floreant, jura, libertates et privilegia defendantur et prote-

sion of the famous opinion of Chief Justice Holt, arose under these statutes in 1690, the question being whether the bishop had legally removed the rector from office. In determining this it was thought material to state by a special verdict that he made the visitations at the college. Copies of his citations

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gantur. Ea de causa liceat domino Episcopo Exoniensi, qui pro tempore fuerit et *nulli alii nec aliis*, quoties per Rectorem dicti Collegii et in ejus absentia Subrectorem et quatuor alios ad minus ex septem maxime Senioribus Scolaribus fuerit requisitus, nec non absque requisitione ulla, de quinquennio in quinquennium, semel, ad dictum Collegium per se, vel suum Commissarium, quem duxerit deputandum, libere accedere. Cui quidem Reverendo patri ac deputato suo, *præterea nemini* tanquam Patrono, at *Ordinario Visitatori*, vigore præsentis Statuti, plenam concedimus potestem, ut super omnibus et singulis particulis, et articulis in dictis statutis contentis, ac de quibuscumque aliis Articulis, Statum, Commodum, aut Honorem dicti Collegii concernentibus, aut quæ in dicto Collegio, aut aliqua illius persona fuerint reformanda, aut corrigenda, Rectorem, Scholares et Electos interrogat, et inquirat, cogatque eorum unumquemque in virtute juramenti, et *per censuras* si opus fuerit, ad dicendum veritatem de præmissis omnibus et singulis, et si super eis non fuerint specialiter requisiti, excessusque ac neglegentias, crimina, et delicta quorumcunque dicti Collegii qualitercunque commissa, et in ea Visitatione comperta, secundum excessus exigentiam, aut criminis aut delicti qualitatem debite puniat et reformet, cæteraque omnia et singula faciat, et exerceat, quæ ad eorum correctionem et reformationem sunt necessaria, aut quovismodo opportuna, etiam si ad privationem aut amotionem alicujus Scholaris, vel electi ab eodem Collegio, Statutis et ordinationibus id exigentibus, procedere contingat. Quos quidem Rectorem, Subrectorem, Scholares, et Electos, ac preterea Ministros quoscunque et famulos, prædicto Domino Episcopo et suo Commissario, sed *nulli alii*, volumus et præcipimus effectualiter intendere et parere. Statuentes insuper, ut nullus in visitationibus prædictis in dicto Collegio faciendis, contra Rectorem, Subrectorem, aut alium ipsius Collegii quemcunque dicat, deponat, seu denunciet nisi quod verum crediderit, seu de quo publica vox vel fama laboraverit, contra eundem in virtute juramenti, ab eo prius Collegio Præstiti. Ordinantes præterea ut Dominus Episcopus Exoniensis, cum in persona propria visitare, et præmissa facere dignetur, Rector et duo Scholares ex præsentibus, maxime seniores, unam in Collegio refectionem, quadraginta Solidorum expensas non excedentem, eidem Episcopo humiliter et reverenter offerant. Commissario autem, cum præmissa fecerit, duas refectiones in collegio vel viginti solidos, per manus Rectoris de bonis Collegii persolvi concedimus, pro omnibus et laboribus et expensis in hac causa tam in itinere quam in Universitate, tempore hujus visitationis. Itaque Dominus Episcopus quadraginta solidos, Commissarius vero viginti Solidos in uno et eodem anno, pro actu Visitationis, ad sumptus Collegii non excedat, nec inceptare aliquam Visitationem, ultra duos dies proxime sequentes, aut ex causis urgentissimis et rarissimis, ultra tres dies, prorogari aut continuari ullo pacto volumus. Sed lapso et acto illo biduo et quando ex causis prædictis ulterius prorogatur, triduo transacto, eo ipso Visitatio illa pro terminata et dissoluta habeatur.

to the college, on each of these occasions, are printed in a contemporary pamphlet.* The first was directed to the Rector and subrector, and bade them convene all the scholars, fellows, and servants of the college in the chapel, and with them there appear before the visitor on Monday morning, July 16, between the hours of 9 and 11, and then and there make due return to the citation. The citation was disregarded, and the bishop, on his arrival, found the gates closed against him. A few days later he appointed another visitation and issued a precept to two persons specially deputed for the purpose, to cite the rector, subrector, professors, scholars, and servants (who were all named, so far as possible, down to the cook) to appear before him in the common hall on Thursday morning, July 24, between 7 and 12. This citation was to be served personally on each, if practicable, otherwise by posting on the college gates.

At the request of the Trustees of Phillips Academy, all the existing records of college visitations at Oxford, whether in print or manuscript, were recently searched by an English barrister† who had paid special attention to matters of this character, in order to ascertain if the practice of visitation at the college, and on notice to the college authorities, was invariable. No instance of any contrary practice was found.

A very full report is on record of a visitation of Exeter College, by its original name of Stapeldon Hall, as early as 1420, made by the chancellor of the university, as the commissary of the bishop of Exeter, in which we find the same formality of practice throughout. The bishop sends a written commission to the chancellor and a citation to the master and fellows to appear before him in the chapel of the college, or any other customary or more suitable place in the same. The commissary read the citation in the chapel of St. Thomas on the day appointed. The master, with five masters of arts, four bachelors of arts, the chaplain and two scholars appeared in response to it, and an investigation was had which led to sentences of punishment against several of those who were named as present.‡

A manuscript volume in the Magdalen College library, en-

* The case or Exeter College, in the University of Oxford, Related and Vindicated: London, 1691.

† R. E. Mitcheson, esq., of Lincoln's Inn, secretary of the Charity Commission.

‡ The record is given in full in Boase's Registrum Collegii Exoniensis (privately printed.)

titled "Visitorial Decrees, Magdalen College," contains a citation issued by the Bishop of Winchester, in 1664, to the president, fellows, scholars, chaplain, and servants of that college, to notify them of an intended visitation, and warn them to appear on the day named, in the college chapel.*

In the Peterhouse College case (The King *v.* The Bishop of

* This paper reads as follows: "Georgius permissione divina Winton: Episcopus, Collegii Beatæ Mariæ Magdalenæ in Oxon Patronus et Ordinarius et ipsius collegii, et singularum personarum possessionum spiritualium et temporalium, jurumque, libertatum, ac privilegiorum Supervisor et Defensor; observationumque, ordinationum et Statutorum dicti Collegii Conservator et ejusdem Visitator, Dilecto nobis in Christo Thomæ Pierce S. T P., Presidenti dicti Collegii nec non Vice-Presidenti, Sociis, Scholaribus, Capellanis, et ministris dicti Collegii, tam præsentibus in Universitate quam non præsentibus, quibuscunque salutem, gratiam et benedictionem. Cum inquisitionis, correctionis et debitæ reformationis apud vos faciendæ officium nobis sit concreditum, fideique nostræ et curæ commissum sit, ne pro defectu boni regiminis aut non observantia Statutorum Collegii dictum nostrum in spiritualibus vel temporalibus sustineat providere et procurare ne Reverendissimi Patris Fundatoris vestri Statuta per abusam vel desuetudinem processu temporum sint aliquatenus neglecta, Nos juxta officii rationem authoritate nostra ordinaria collegium nostrum prædictum personaliter vel per nostrum Commissarium vel Commissarios reformare intendentes, vos omnes et singulos ad comparendum die, hora et loco infra nominandis monendos et peremptorie citandos fore decrevimus. Tenore igitur præsententium vos peremptorie citamus et per vos Præsidentem, Vice-Præsidentem, vel socium Seniorem, omnes Socios, Scholares, et Ministros dicti Collegii quoscunque, qui hujusmodi visitationi nostræ de jure consuetudine aut Statutis dicta Collegii nostri interesse tenentur, etiam peremptorie et debite ac juxta Statutorum dicti nostri Collegii exigentiam citare volumus et mandamus.

"Compareatis et compareat eorum quilibet coram nobis, vel nostro commissario vel commissariis competent: et deputat: in Capella dicti Collegii, die Mercurii, viz: vicesimo die mensis Julii post datum præsentium proximo futuro inter horas octavam et decimam ante meridiem ejusdem diei, visitationem nostram quam tunc et quoad dictum Collegium et omnes inibi collegiatos celebrare et exercere, Deo volente proponimus et intendimus subituri, ulteriusque usque ad finalem et plenariam ejusdem expeditionem de tempore in tempus interfuturi et quod justum est facturi et recepturi quos omnes et singulos etiam tenore præsentium effectualiter monemus, ne vos aut vestrum aliquis sub pæna contemptus abesse presumat. Vobis insuper inhibemus, et per vos omnibus inhiberi volumus et mandamus ne interim ante completam nostram visitationem quicquam in prejudicium ejusdem attemptetis seu attemptent faciatis aut faciant aliqualiter attemptari sub pæna contemptus.

"Datum sub sigillo nostro Episcopali undecimo die mensis Julii Anno Domini millessimo sexcentesimo et sexagesimo quarto, et nostræ translationis anno tertio."

Ely) arising in Cambridge University, in 1787, the appointment of the master belonged to the Bishop of Ely, upon the nomination of two persons by the fellows, between whom he was to choose. A dispute arose as to whether such a nomination had been made, and the bishop, who was also visitor of the foundation, thereupon appointed a third person, without any previous notice to the college. The courts were appealed to, and decided that, if the visitorial power extended so far, it could only be exercised after convening the parties in interest, and giving them an opportunity to make defense.*

No doubt the lawyers who framed the Andover statutes had those of Peterhouse College before them, which are quoted in the report of the case just mentioned. The volume containing them had then been published nearly twenty years, and was in the library of all lawyers in extensive practice, for English reports were then still the great source of authority in American courts.

The Peterhouse statutes were made by the founder in 1344. That in regard to the removal of the master provided that if, through bodily infirmity or other sufficient cause, he should become disqualified to perform his duties, and, as it were, intolerable and useless, the Bishop of Ely, on the complaint of the two or three senior scholars, might take cognizance of the matter and pass sentence of deprivation, according to the persuasions of justice, summarily and plainly, without any judicial contest or formal judgment, especially as the means of the college ought not to be used for litigation.†

Another statute declared that, as establishing rules and statutes amounted to little unless they be preserved in all their strength and those whom they concerned obey them faithfully, no master or scholar who was removed in accordance with their provisions should presume directly or indirectly to question the proceedings, either against the bishop or any of the college authorities, by any suit, appeal, complaint, demand of restitution, or writ obtained by himself or others from any court, ecclesiastical or secular.‡

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*The King *v.* The Bishop of Ely, 2 Term Reports, 336.

†Statute No. 12, quoted in 2 Term Rep., 302.

‡No. 50, quoted in 2 Term Rep., 305: "seu agendo, seu appellando, seu querelando, in integrumve restitutionem petendo, seu cujuscumque curiae ecclesiasticae, vel secularis literas per se vel alios impetrando, obtinendo," etc.

As to the time of visitation these Peterhouse statutes declared that the bishop should once in every three years, and at other times as often as need be or seemed good to him, visit the college as to its head and its members, and, according to the quantity and quality of irregularities found, correct what might be corrected and reform, as might seem to him expedient, whatever demanded reformation.*

Another volume of law reports, which had been in every American lawyer's library since colonial days, contained a voluminous judgment of Lord Mansfield† as to the right of visitation at St. John's College in Cambridge, and set out at length such of the original statutes of the foundation, ordained in 1515, and of those substituted for them by Queen Elizabeth, as related to the visitorial office. The earlier ones, in case of the removal of the master by the visitor, were explicit in denying any right of appeal,‡ and those of the Queen contained a chapter, *De modestia et morum urbanitate*, declaring that all controversies arising in the college should be heard and adjudged there, and that whoever summoned any party concerned in them outside the gates, before another tribunal, without the consent of the college authorities, should be removed from the college.§

Lord Mansfield, in reviewing the case, stated that he had also inquired into the constitutions of most of the colleges at Oxford and Cambridge, and that he regarded it as settled and established since the case of Philips *v.* Bury "that the jurisdiction of the visitor is summary and without appeal from it."

Kyd on Corporations was another book much read by American lawyers in the early years of the century and doubtless in the hands of Samuel Farrar, the counsel by whose pen the Andover statutes were put in form. Kyd‖ quotes at length from the visitorial statutes of Exeter College, in Oxford, and of Clare Hall and St. John's College, in Cambridge.

No one can read the Andover statutes in the light of the precedents then known to their framers without seeing that they

* No. 51, *Ibid.*, 206.

† St. John's College *v.* Todington, 1 Burrows's Reports, 159.

‡ Cessantibus appellationis, recusationis, querelæ aut cujuscumque alterius juris aut facti remediis quibus hujusmodi amotio valeat impediri aut differri; quae omnia irrita esse, volumus, statuimus et decernimus." Cited in 1 Burrows's Reports, p. 176.

§ St. John's College *v.* Todington, 1 Burrows' Reports, 188.

‖ Vol. II, pp. 198, 227, 229, 231.

are the work of thoughtful men, who meant, in some respects, to strike out a new path for themselves.

The verbiage and detail of English statutes they discarded. They followed them in stating their object, "that the trust aforesaid may be always executed agreeably to the true intent of this our foundation; and that we may effectually guard the same in all future time against all perversion, or the smallest avoidance of our true design,"* in providing for a periodic visitation "once in every year, at the aforesaid theological institution, to execute the business of their appointment on such day as they shall assign; also upon emergencies, when called thereto, as hereinafter directed,"† and in afterwards directing that the special visitations should be had "when regularly called thereto,"‡ and in providing for their "entertainment, when met," at the expense of the foundation.§ The full English power of interpreting the statutes was also granted.

But they departed from their models in giving an appeal from the visitors to a civil court.

This appeal is limited as to its scope, though not as to its subjects. Any transgression of jurisdiction, any departure from the true meaning and intent of the statutes, can be corrected; but should the visitors, while keeping within their jurisdiction and acting in conformity to the statutes, come to a wrong conclusion as to the merits of any controversy, there would be no remedy by review.

The statutes, however, were to be administered and interpreted in accordance with "visitorial principles,"‖ that is, those principles of the law of visitation which had been settled by practice and precedents.

It was the opinion of the court in the Smyth case that these principles demanded not only that every visitation, general or special, should be made at the institution, but that the managing authorities of the institution should have notice of it and opportunity to be heard at it before any sentence could be passed affecting the interests under their charge. It was said:

> A special visitation may be made at any time at the request of the governing body, or of anyone claiming a grievance against it, and who on

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* Art. XII of the Associate Statutes.

† Art. XIV of the Associate Statutes.

‡ *Ibid.*, Art. XX.

§ *Ibid.*, Art. XXIV.

‖ Associate Statutes, Art. XXVII; Wood's Hist., 268.

that account has a right to promote the office of the visitors. When special duties are imposed on the board of visitors by the founder, the visitors may perform them at such times as required by the statutes which confer their authority. Ordinarily, at a special visitation the managing body of the institution is necessarily a formal party before the visitors, because the visitation proceeds on a formal application by the managers, or by someone asking relief against them. When questions arise at a general visitation, whatever the form of the proceedings, the real party whose conduct is on trial is the managing board by reason of whose act or omission the institution is alleged to have gone astray. Although the visitors are not a court, in the performance of some of their duties, they act judicially, and they must be governed by the will of the founder, as expressed in his statutes. It is a fundamental principle of all judicial proceedings that one whose conduct is called in question shall be heard in his defense, and this principle is as important in its application to the managing board of the charitable corporation whose acts or omissions are under investigation by a board of visitors as to an individual charged with the commission of a crime.*

It may be added that the Andover Board of Visitors are given jurisdiction only over such foundations as may be specially committed to their care, and that of the four most recent foundations added to the seminary, two were not made in any way subject to their authority.

Every student of law is necessarily a student of history. It is there that he finds the development of the rules, the declaration of the principles that are to be his guide. The English law of lay patronage, and the Canon law of ecclesiastical visitation of churches and spiritual houses give the keys to the interpretation of the constitution of Andover Academy and Andover Seminary.

The Romish ecclesiastics who drew or inspired the medieval statutes of the English universities, were doing a greater service to posterity than they imagined. A new world, not yet discovered, was to follow the lines they marked out, and a Protestant seminary there was to owe to their practical wisdom the most important safeguard for its proper administration.

The term *visitorial* has been used in this paper, to describe the subject under review, though the law courts have more frequently employed the word *visitatorial*. So far as the language of the old charters and statutes is concerned, the Latin

*Smyth *v.* The Visitors of the Theol. Seminary in Andover, Andover Review, Vol. XVI, pp. 611, 615; 28 Northeastern Reporter, p. 686.

expressions are always, I believe, *visitare*, and *visitator*, and *visitator* has the authority of St. Augustine in its favor.

As, however, neither *visitor* nor *visitator* were really Roman words, and as *visitorial* has a better standing outside of court rooms, and a better right to exist in a language that loves brevity and has discarded *visitator* for *visitor*, I have ventured, at the risk of departing from judicial usage, to drop what seems to be a superfluous syllable.

XIII.—SOME NEGLECTED CHARACTERISTICS OF THE NEW ENGLAND PURITANS.

By Prof. BARRETT WENDELL, of Harvard University.

SOME NEGLECTED CHARACTERISTICS OF THE NEW ENGLAND PURITANS.*

By Prof. Barrett Wendell.

On the 15th of February, 1728, the Rev. Benjamin Colman, first minister of the Brattle street church, preached the Boston lecture in memory of Cotton Mather, who had died two days before. Cotton Mather had lived all his life in Boston; if I remember aright there is no record of his ever having traveled farther from home than Ipswich or Andover or Plymouth. Of sensitive temperament, and both by constitution and by conviction devoted to the traditons in which he was trained, he presented, I think, to a degree nowhere common, a con veniently exaggerated type of the characteristics that marked the society of which he formed a part. But Benjamin Colman, at least in earlier life, was of different mettle. After graduation at Harvard College he had passed some years in England, at a time when clever dissenters could see good company. In Boston, whither he had returned late in 1699 to take charge of the new church subsequently known as the Brattle Street, he had been—at least in matters of discipline—so liberal as to impress the Mathers, who were the leaders of the strictly orthodox party, as a dangerous radical. It is not too much, I think, to say that his ministerial career marks the beginning of that movement in the Boston churches which a century later became Unitarianism and put Calvinism, at best, hopelessly out of fashion. In view of this his lecture on Cotton Mather becomes curious.

His text is the translation of Enoch: "And Enoch walked with God, and he was not, for God took him." From these

*Printed in the Harvard Monthly, April, 1892.

words he draws inferences that enable him to expound the career and character of the patriarch, with edifying precision, to the length of four closely printed pages. But what he chiefly insists on is that Enoch's blessed fate—

> Must be resolved into the good pleasure of God, His wise and sovereign will; and to be sure it was not for any merit or desert in Enoch's holy walking with God. Enoch deserved to have died for his sins as well as any before or after him. * * * Elias was a man of like passions with others. * * * It was not due to the righteousness of either that they were taken without seeing death. Before that God formed them in the belly he designed them their translation.

In other words, the Boston divine who, at times, seems the most radical of his generation, feels bound, as a matter of course, to begin his eulogy on the most distinguished of his fellow-ministers by an assertion in the most concrete terms of the doctrine of election.

Beyond question this doctrine was never, for many hours, absent from the mind of Cotton Mather, nor often from that of Samuel Sewall, the two worthies of the period then drawing to a close whose diaries are best preserved. Beyond question too, I think, these men were, in this respect, not peculiar, but typical of their time. There is hardly a figure in the first century of Boston history whose conduct and opinions can present themselves, at least to me, as comprehensibly human, unless we keep this doctrine constantly in mind; and keep it in mind, too, not as a verbal dogma, but as a living reality. It is worth our while, then, to recall exactly what it was.

In the beginning, the Puritans believed, God created man, responsible to Him, with perfect freedom of will. Adam, in the fall, exerted his will in opposition to the will of God. Thereby Adam and all his posterity merited eternal punishment. As a mark of that punishment they lost the power of exerting the will in harmony with the will of God, without losing their hereditary responsibility to him. But God, in His infinite mercy, was pleased to mitigate His justice. Through the mediation of Christ certain human beings, chosen at God's pleasure, might be relieved of the just penalty of sin, ancestral and personal, and received into everlasting salvation. These were the elect; none others could be saved, nor could any acts of the elect impair their salvation.

All this is familiar enough. What puzzles posterity about it is how so profoundly fatalistic a creed could possibly prove a

motive power strong enough to result not only in individual lives but in a corporate life, that was destined to grow into a national life, of passionate enthusiasm, and of abnormal moral as well as material activity.

To understand this I believe we must consider much more emphatically than the writers of New England history generally consider what was the test by which the elect could be recognized. The test of election, the Puritans believed, was ability to exert the will in true harmony with the will of God—a proof of emancipation from the hereditary curse of the children of Adam; whoever could ever do right, and want to, had ground for hope that he might be saved. But even the elect were infected with the hereditary sin of humanity; and besides, no wile of the Devil was more constant than that which deceived men into believing themselves regenerate when in truth they were not. The task of assuring one's self of election, then, could end only with life.

Colman, in his funeral lecture, states this doctrine as specifically as I have found it stated:

> To walk with God means, in all the parts and instances of a sober, righteous, and godly life, and constancy therein all our days. We walk with God in a sincere, universal, and persevering obedience to the written word and revealed law of God; and blessed are the undefiled in the way that walk in the law of the Lord. To walk is not to take a step or two, nor is it for a day or a year, but for the whole life, all our days. We must walk and work while the day lasts; the light is given for this. How much does it concern us, then, to ask ourselves whether we have indeed begun this walk with God and to Him? Whither are we going? What are we doing? How do we live and act; and what will become of us a few days hence? Will God take us; take us on the wings of angels and in their arms to His own presence and glory; or will death drag us out of the body and devils take us away to their abodes of darkness and of fire unquenchable?

The Puritans themselves would probably have told us, as their lineal religious followers sometimes tell us to-day, in both cases with perfect honesty of intention, that this means that it is the duty of man to give himself up to God, with no other purpose than to advance God's glory. But this does not explain in modern terms why any living man ever really did so. Few facts, I believe, seem much truer to modern minds than that human beings do what they do not want to do only when some humanly overpowering motive makes self-denial, in the end, the line of least resistance. And looking at Colman's teaching in a modern spirit I think we may see in it immediately an appeal

to an everyday human motive which goes farther than anything else I know of to explain the apparent inconsistency of Puritan doctrine and Puritan character. In short, what he does, and what all the Puritan preachers do, is to assume the doctrine of election, to declare the test of election to be ability to walk with God, to exert the will in true harmony with His, and then, by every means known to their rhetoric, to stimulate in every one of their hearers the elementary and absorbing passion of curiosity concerning self-preservation.

In the diary of Cotton Mather, the Puritan document I have studied most, this trait appears in a form almost incredibly exaggerated. We have in manuscripts a pretty full account of him from 18 to 61. The number of private fasts he kept was enormous. I should guess that they were at last weekly throughout those forty-three years. For twenty-two of those years he habitually held vigils, too; all-night watches in his library of ecstatic prayer and effort to penetrate the veil that is between God and man. And this was but a little part of his passionate effort to walk with God. And the only modernly comprehensible motive I can see for all this passion is the one he records in a self-examination at the age of 42:

> I am afraid [he writes] of allowing my soul a wish of evil to the worst of all [my enemies]. * * * Q. Whether the man that can find these marks upon himself may not conclude himself marked out for the city of God?

The same trait appears in Increase Mather; the same in that vastly less emotional personage, Samuel Sewall; the same reveals itself, I think, in almost every godly portrait in that quaint gallery of worthies that fills so much of Cotton Mather's Magnalia.

This book, with all its obvious faults and errors, remains, I think, the chief literary monument of New England Puritanism. It has been rather the fashion, of late years, to criticise it as a modern historical document; as a record of actual fact. As such it is certainly untrustworthy from beginning to end. So modern critics are generally disposed to put it aside as worthless, and incidentally to apply the same adjective to its author. To me, however, the Magnalia seems psychologically a document of such historic value that an earnest student of Puritan New England can not safely neglect it. Any work of serious literature must, I believe, inevitably express, at least in its implications, the conditions of society when it was produced. And

these it often expresses in a conveniently generalized form where they may be better studied than in the individual phases from which posterity, as best it may, would draw what it is apt to think more accurate, because more conscious, inductions. What seems to me chiefly significant in the Magnalia is that it possesses as a work of literature two traits that I think followed directly from the fundamental self-curiosity of the Puritan character. Within arbitrary and rigidly defined limits it is intensely imaginative; and it displays throughout a serene disregard for that fine adjustment of phrase to fact which our modern scientific spirit of veracity assumes for the moment to be eternally the chief of the cardinal virtues.

To show what I mean by its intensely imaginative quality I may best, perhaps, refer not to itself but to the passage from Colman's funeral discourse to which I last called attention. The quality is so constant among the Puritans that you may find it almost anywhere:

> Will God [he writes] take us * * * on the wings of angels and in their arms to his own presence and glory? or will death drag us out of the body, and devils take us away to their abodes of darkness and of fire unquenchable?

This sounds commonplace enough, nowadays. But a gentleman still living, who once visited Goethe at Weimar, told me that Goethe's first question was whether it were a fact that in America there were still people who believed in actual winged and crowned angels; and that when he answered, as was then true, that he believed in them himself, Goethe looked at him with an expression he can never forget and exclaimed, "*Das ist wunderbar!*" which exclamation, my friend says, began his emancipation from Puritan anthropomorphism. To come nearer our own time, it is not a dozen years since in a Boston newspaper I read in a very serious obituary notice of a secretary of the American Board of Foreign Missions that "few men on entering Heaven will find a wider circle of personal acquaintance or a larger number of those under indirect obligations." These things all go together: Colman's angels and devils, the material angels of the American boy of 1830, the white-chokered old missionary receiving in staid social formality the emancipated spirits of the Polynesian elect, and the godly ministers and magistrates of our Puritan Plutarch. In earlier and later forms they are concrete examples of the way in which the faculty we call imagination, exerting itself

for generations within the limits of what after all was an intensely anthropomorphic creed, will first create for itself concrete images, only less material than the bronze and marble ones iconoclasm casts down, and then, while denying that bronze or marble can be symbolic, passionately and honestly assert its own image to be real. Nowadays we are apt to look on all these images—material and immaterial alike—as only symbols. But Cotton Mather at least once was rewarded, in ecstacy, by an actual vision of an angel—wings, robes, crown, and all; and there is no reason to question that Colman, who was well on with his preparation for college at this moment of Cotton Mather's highest ecstacy, actually believed his devils to be waiting, with hoofs and horns and tridents, for such of humanity as the unspeakable free grace of his just God had not undeservedly released, with Enoch, from the ancestral penalty of human sin. When Colman spoke of "abodes of darkness and of fire unquenchable," he spoke of something that to the Puritans represented a fact as concrete as the tower of London, or as the George II of whom in the same lecture he writes thus:

> What an honour should we account it if our earthly prince would allow us to walk after him in his garden? Only a few select and favourite nobles have the honour done them.

And it is, I think, not a little significant of the exhaustion of human power that must follow constant, overwrought intensity of exercise that Colman failed to remark the strict incompatibility of darkness and unquenchable flames.

To consider this exercise of imagination in another and more modern spirit, what it amounted to was this: Only by incessant assurance and reassurance that the will was exerting itself in harmony with the will of God could the insatiable curiosity to know whether God's free grace were ours be for a moment stayed. God's way of contemplating things heavenly, earthly, infernal, belongs to that class of perceptions to which so many modern thinkers give the convenient name unknowable; it is a thing which, true or false, can never be verified by either observation or experiment. But the God of the Puritans, for all he was a spirit, was a white-bearded spirit, with limbs and passions: still, "*le père éternel de l' école italienne*," who had made man in His visible image. To them His will in regard to all things, great and small, was a thing not only that might be known, but that—if life were to possess any meaning—must be known; and that being known must be proclaimed. In the

intense, incessant effort that followed to formulate the unknowable in concrete, anthropomorphic terms, imagination exhausted itself. What we call the prosaic colorlessness of Puritan life is merely external. The subjective life of the Puritans was intensely, passionately ideal; blazing with an emotional enthusiasm, constantly stimulated by the unrecognized impulse of selfish human curiosity. If you want proof of it, ask yourselves how otherwise people who are after all not far from us in years and in blood could have survived the discipline and the public devotions which were to them what meat and drink are to the starving.

The difficulty that followed these godly emotional debauches is best phrased, I think, by Increase Mather, the most canny of the Puritan divines whose career I have studied. In early life he habitually recorded the heavenly afflations that rewarded his ecstatic prayers.

"As I was praying," he wrote once, "my heart was exceedingly melted, and methoughts saw God before my eyes in an inexpressible manner, so that I was afraid I should have fallen into a trance in my study." "In his latter years," adds Cotton Mather, writing of him, "he did not record so many of these heavenly afflations, because they grew so frequent with him. And he also found * * * that the flights of a soul rapt up into a more intimate conversation with heaven are such as can not be exactly remembered with the happy partakers of them."

What Colman wrote of Cotton Mather, with whom in his day he had waged fierce fights, may be put beside this:

But here love to Christ and his servant commands me to draw a veil over every failing; for who is without them? Not ascending Elijah himself, who was a man of like passions with his brethren, the prophets; and we have his mantle left us wherewith to cover the defects and infirmities of others after their translation in spirit. These God remembers no more, and why should we? and he blots out none of their good deeds, and no more should we.

Nil de mortuis nisi bonum, in other words, is God's will—and not merely a Latin apothegm. In other words still, it is God's will that the whole truth should never be spoken.

The traits I have thus hastily tried to specify—incessant activity, within rigid limits, of anthropomorphic imagination, strained to the utmost by lifelong efforts concretely to formulate the unknowable; and a sense of veracity weakened at once by incessant dogmatic assertion of unprovable fact and by constant conviction that only such truth should be spoken as was agreeable to the disposition of God—appear through-

out the Magnalia. And whoever does not recognize in the Magnalia an image not to be neglected of the Puritan character can never, I believe, seriously understand the Puritans. These traits, as I have said, both follow inevitably from unquestioning acceptance, in its most concrete form, of the doctrine of election at a time when its freshness had not faded into theological tradition. Doubts assailed the Puritans often enough, but, like Increase Mather, the Puritans met doubts not by reasoning—"it puts too much respect upon a devil, to argue and parley with him, on a point which the devil himself believes and trembles at"—but by "flat contradiction." And the energy that, during the first century of Boston history, fortified them to contradictions as incessant as temptations, sprang, I believe, from no mystic cause, but from nothing more marvelous at bottom than the almost incredible stimulus which acceptance of this fundamental doctrine gave to self-searching, self-seeking curiosity.

I have spoken of these old New Englanders as if I believed them historically to form a unique class. That I can not profess to be a trained student of history must be my excuse for saying that I have fallen into no such elementary error as that. Human affairs, I believe, are as much questions of cause and effect as any other phenomena observable by science. Similar conditions will produce similar characters anywhere. And this old hierarchy of ours will very probably prove more like than unlike the other hierarchies that by and by serious students will have studied comparatively. In none of them, any more than in this, will such fundamental traits as I have tried to specify prove to be the sole ones. In no serious study of corporate character can the serious student for a moment forget for one thing the crushing, distorting influence of those petty material facts to which we give the convenient name of every-day life. And certainly these concrete facts are generally more profitable subjects of study than such subjective matters as I have dealt with here. What is more, of course, such traits as these characterized chiefly the leaders—the clergy, the priestly class. But the influence of this class during the first century of New England history can hardly be overstated. And just because the concrete facts commonly engross professional students and makers of history, it has seemed to me that such aspects of history as I have touched on —aspects that in this case reveal themselves with startling dis-

tinctness to an unprofessional explorer of Puritan records—have been perhaps unduly neglected.

NOTE.—The passages from Colman I cite from *The Holy Walk and Glorious Translation of Blessed Enoch.* (Boston: J. Phillips & T. Hancock. 1728.) The other citations are referred to authorities in my *Life of Cotton Mather.* (New York: Dodd, Mead & Co. 1891.) From this I have taken directly my account of the Puritan creed.

XIV.—HENRY CLAY AS SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES.

By Miss MARY PARKER FOLLETT.

HENRY CLAY AS SPEAKER OF THE UNITED STATES HOUSE OF REPRESENTATIVES.*

By Mary Parker Follett.

Notwithstanding all that has been written about Henry Clay, his Speakership has been neglected. It was overshadowed by his later career. Yet had Clay's public life ended in 1825, with the close of his service as Speaker, that alone would have marked him as one of the greatest of Americans. The accounts of Clay's Speakership are based to a great extent on reminiscences and hearsay rather than upon the records. It has been my purpose to supplement the personal narrative by use of the Congressional Journals and Debates. This material has peculiar value, because it disproves the assumption that the political development of the Speaker's power dates from recent times. I hope to be able to show that Henry Clay was the first political Speaker.

The choice of Clay as Speaker of the House of Representatives in 1811 marks a great change in the spirit of the American people—a change, first, in the objects of their national system, and, secondly, in the parliamentary methods by which those objects were attained. In 1811 the active young Republicans, who were boldly taking matters into their own hands, rebelled against their cautious elders and demanded a more vigorous policy. War with Great Britain was the emphatic cry. President Madison was unfit to direct military operations. Congress had shown weakness and timidity. A crisis had come when the nation needed a new leader and needed him in a position which should correspond to his consequence and power. The natural leader of that moment was Henry Clay. That the position he was given from which to lead the

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country was the chair of the House of Representatives is a fact of great significance.

The new principles set forth during Clay's long service were, first, the increase of the Speaker's parliamentary power; secondly, the retention of his personal influence, and, thirdly, the establishment of his position as legislative leader. As a presiding officer Clay from the first showed that he considered himself not the umpire, but the leader of the House. His object was clearly and expressly to govern the House as far as possible. In this he succeeded to an extent never before or since equaled by a Speaker of the House of Representatives. Clay was the boldest of Speakers. He made no attempt to disguise the fact that he was a political officer. Speakers now, to be sure, following the example of such predecessors as Clay, seek to give their party every possible advantage from their position in the chair; yet, on occasions when nothing is to be gained, they attempt to keep up the fiction of the Speaker as a parliamentary officer. But Clay had no thought of effacing himself in the least degree. He allowed no opportunity of expressing his attitude on the subjects that came before the House to pass unused. When in 1812 the repeal of nonintercourse came up, instead of simply throwing his casting vote with the nays, he took occasion to express "the pleasure he felt in having opportunity to manifest his decided opposition to the measure." He was the first Speaker, moreover, and one of very few, to vote when his vote could make no difference in the result. He demanded the right for the first time when the attempt was made in 1817 to pass the internal improvement bill over the President's veto. Often Clay was very arbitrary. When Mr. Winthrop became Speaker, Clay gave him this advice: "Decide promptly and never give the reasons for your decisions. The House will sustain your decisions, but there will always be men to cavil and quarrel over your reasons." His conception of the Speakership was too wide for the canons of parliamentary law of that time. When an aim was set clearly before him he was too impatient to think of choosing between proper and improper means. He took the means which would most easily and quickly accomplish his end. With a fearless nation and abundant faith in himself, he was heedless of consequences.

An instance of his manipulations of the rules is seen in the way in which he stopped debate on the declaration of war, May

29, 1812. Randolph had the floor. He was first informed by the Speaker that he could not proceed unless he submitted a motion to the House. He complied with the requirement, and again raised his voice to debate the question. Again he was interrupted by the ruling that there could be no debate until the House had consented to consider the proposition. The House took its cue and refused consideration; and Randolph, the thorn in the flesh of the majority, was thus thrust from the floor.

In a later instance, also involving John Randolph, Clay accomplished his ends only by a piece of decidedly sharp practice. On March 3, 1820, Randolph moved that the vote of the preceding day on the bill embodying the Missouri compromise be reconsidered. Clay decided the motion out of order "until the ordinary business of the morning * * * be disposed of." A little later Randolph moved "that the House retain in their possession the Missouri bill until the period should arrive when * * * a motion to reconsider should be in order." This motion, also, the Speaker refused to entertain. And when at last Randolph was allowed to bring up the compromise, the Speaker suavely stated that "the proceedings of the House on that bill had been communicated to the Senate by the Clerk, and that, therefore, the motion to reconsider could not be entertained."

Clay's success in ruling the House was not due simply to the fact that he realized the parliamentary power of his office, but even more to his quickness in using his position so as to influence the mind of the House. Thus the duty of stating the question in the confusion of debate was one particularly suited to Clay's gifts. His ability as a parliamentarian is justly summed up in Mr. Winthrop's criticism when he says: "He was no painstaking student of parliamentary law, but more frequently found the rules of his governance in his own instinctive sense of what was practicable and proper than in 'Hatsell's Precedents,' or 'Jefferson's Manual.'" It is true that no decision made by Henry Clay was ever reversed by the House. But it is not true, as his biographers tell us, that harmony was the chief characteristic of his service. The House was "harmonious," not because it always agreed with the Speaker, but because he usually mastered it.

Clay's leadership in Congress was asserted not only in his opportunities as presiding officer, but also by his continued activity as an individual member. The speaker of the House

of Commons expects to give up his rights as a member for the sake of sitting in the chair. Our first Speakers wavered between the English parliamentary conception of the chair and certain traditions inherited from colonial practice. Henry Clay, in accepting the Speakership, never for a moment expected to deny himself the right to vote, and to exercise his unrivaled talents as a persuasive speaker. He at once took ground that tended greatly to strengthen the position of the Speaker. When casting his vote he never considered his position as presiding officer, but demanded and obtained the full force of a member's vote. Every subsequent Speaker has, therefore, known that in accepting an election he forfeited no privilege. Next to voting, the principal right of a member is to debate. Many of Clay's biographers assert that he frequently left the chair when affairs were not going as he wished, in order that he might give a new character to proceedings. A careful search in the "Journals and Debates of Congress," however, reveals no evidence of Clay's speaking when the House was not in Committee of the Whole; and in Committee of the Whole the Speaker has the status of a private member, and may both speak and vote as he pleases. Henry Clay established the precedent of the Speaker exercising the right so freely that he virtually employed his prestige as Speaker on most of the important measures that came up. The precedent, therefore, established the tradition that a party in putting a leader in the chair does not deprive itself of his services on the floor.

Clay went even further. It was half understood that all important affairs were to be discussed in Committee of the Whole in order that Clay's voice should not be lost. Once at least the records show that this was the object of going into committee; and on one occasion Clay seems to have ventured on an implied reproof to the House for having omitted this attention to him. The House was in committee on the raising of an additional military force. The chairman was about to put the question on the committee rising, when Clay announced that he must delay them longer, and proceeded to say that—

> When the subject of the bill was before the House in the form of a resolution it was the pleasure of the House to discuss it while he was in the chair. He did not complain of this course of proceeding; for he did not at any time wish the House from considerations personal to him to depart from the mode of transacting the public business which they thought best. He merely adverted to it as an apology for the trouble he was about to

give the committee. He was at all times disposed to take his share of responsibility, and he felt that he owed it to his constituents and to himself to submit to their attention a few observations.

Other Speakers have been potent in the chair; and other Speakers, as Mr. Carlisle and Mr. Reed, have made speeches from the floor. But no other Speaker has ever so combined the functions of a moderator, a member, and a leader. Clay often at once framed the policy of the House, appointed the man who should guide proceedings from the chair of the committee, and himself took the management and control of the debate. The vigor and efficiency of Clay's rule are apparent in the contrast between the Congress of 1814, when Clay was absent in Europe, and that of 1815, when he was again in the chair. While the first was notably incompetent, the latter has been characterized as the most active Congress that ever sat at Washington.

Clay's political influence and leadership extended far beyond Congress. He not only led the House, but during the first period of his rule the whole Government seemed to fall under his sway. Clay's Speakership may be divided into two periods, corresponding to the two Presidential administrations of Madison and Monroe. Let us glance at the relative positions of Speaker and President in those periods. The comparison shows in the most striking manner to how great an extent the Speaker was a political officer. When Clay entered the Speakership his policy included war as its first object! To Henry Clay more than anyone else we owe the war of 1812. The committees were at once constituted for war. Pressure was brought to bear on the Senate and Executive. On one occasion at least we know that Clay had a conference with the President, and the result of that conference was the confidential message of April 1, recommending an embargo of sixty days. The President was not opposed to war, but was timid, and he resigned, with apparent willingness, the conduct of the foreign policy to the Speaker of the House of Representatives. With characteristic wit, Randolph summed up the relation of Clay and Madison thus:

After you have raised these 25,000 men, shall we form a committee of public safety to carry on the war, or shall we depute the power to the Speaker? Shall we declare that the Executive not being capable of discerning the public interest, or not having spirit to pursue it, we have appointed a committee to take the President and Cabinet into custody?

The unusual appointment of the Speaker as one of the com-

missioners to execute the treaty of peace was a recognition of his services as originator and supporter of the war.

From the very beginning of Monroe's administration, in 1817, the case was quite different. Clay at once assumed a position of open hostility to the President. Monroe refused to receive his course of action from the Speaker. In form the contest for supremacy was between the President and Congress; but Clay's practical success shows that when the legislative branch gains over the executive, it is the Speaker who gets the spoils of the battle. It shows also that in any such struggle the Speaker has the greater chance to win. Clay exerted all his powers in favor of internal improvements, a protective tariff, recognition of the South American governments, and the Missouri compromise. His proposal to send a minister to the South American Republics was clearly an encroachment on executive powers. Yet all these great measures were carried through, little checked by the vetoes interspersed as warnings by both Madison and Monroe. It is not too much to say, therefore, that Clay was the most powerful man in the nation from 1811 to 1825. That he felt satisfied with the opportunities which the Speakership offered him is evident from his refusal of various executive appointments. In 1825, when he finally left the House, his chief reason was probably that the Speakership, however influential an office, is not a stepping-stone to the Presidency.

Clay's use of the Speakership satisfied not only himself but the House. It is a fact of the greatest significance that the cries of tyrant and despot, so often raised of late years against Speakers less domineering, were not then heard. Yet Clay added to the previously existing body of Speaker's powers much more than has been added by any subsequent Speaker, even including Mr. Reed; and neither he nor anyone else thought of excusing his actions on the ground of "the valuable services he had rendered to parliamentary law." He did what he did confessedly as leader of his party, to push through the measures he had at heart. Yet no voice was raised to cry "abuse of office." His enemies found nothing in his conception of the Speakership to denounce. His friends considered it a special claim to admiration. "His enlarged and commanding mind," says Mr. Foster, "could not be content to sit in inglorious ease and maintain the good order of an assembly, without endeavoring to infuse wisdom into their deliberations and aiding in an attempt to guide and influence their decisions."

We ask, and with the recent events of the Speakership in our minds we ask with an eager curiosity, how Henry Clay was able to carry out his conception of the Speakership. A part of our answer may be found in personal qualifications which made him peculiarly fitted for the office. He displayed in the first place a remarkable tact, a tact which showed itself not only in his treatment of members, but also in the interpretation of his own privileges. Few Speakers have known so well as Henry Clay how to measure their power so as to obtain the utmost possible, and yet not go beyond that unwritten standard of "fairness" which exists in every House of Representatives; how to observe the subtle yet essential difference between "political" and "partisan" action. His appointments of chairmen of committees and of chairmen of the Committee of the Whole were almost invariably from his party friends. Yet he sometimes made exceptions; perhaps the most graceful was the placing of Daniel Webster, in 1823, at the head of the important Committee on Judiciary. Still more was his success due to that wonderful personal fascination which few could withstand. His manner in the chair must have been the ideal bearing of a presiding officer. Although prompt, firm, and decisive, his invariable courtesy and geniality prevented offense. All testify to the marvelous charm of his voice and manner, which attracted attention, awakened sympathy, and compelled obedience. He had a bold and commanding spirit, which imposed its will upon those around him. He carried all before him by the irresistible force of his nature. Thus his personal magnetism combined with his imperious nature to give him complete ascendency over his own party, and the easy leadership of the House.

Like many other American institutions, the development of the Speakership has depended in part upon political ideas current when the Government was founded, in part on the men who have filled the office and given form to unwritten laws, in part on the rise of new conditions which require a new system. The political tradition has been so strongly for an impartial chairman that political writers still speak of it as the normal state of things, from which Mr. Reed and others willfully depart. But meanwhile the counter tradition of a political Speaker has been unconsciously and involuntarily established. Perhaps the next step will be its deliberate and formal acceptance. From colonial times on there was some notion of a

Speaker as party leader. Clay seized upon this notion and developed it. He was keen enough to see and strong enough to grasp the full power of his office; and his influence came at a time when there was still a choice between the two ideas which have struggled for supremacy in the development of the Speakership. It was Henry Clay more than any other individual who determined the direction which that office should take. Within twenty-three years after the meeting of the first Congress Clay led the people to a willing acquiescence in the political idea. When eighty years later a Speaker arose with a similar purpose, though with less tact in effecting it, his action was called revolutionary, and moralists have attempted to prove from it the degeneration of our Republic since its foundation. This brief survey of Clay's administration, however, shows that Mr. Reed's enemies are certainly wrong in one respect, that is, in their assertion that his conception of the Speakership is an innovation in the history of the House of Representatives. It shows that the Speakership from the first tended to become what Clay made it; that in the early years of Congress it did not rest, as has been so often asserted, on the same basis as the present speakership of the House of Commons. But Clay's successful and unquestioned use of extraordinary powers can not be attributed solely to his great personality, since these have been reaffirmed by so many of his successors. Apparently there is a force stronger than tradition and more permanent than personal influence which tends to make the Speaker a party and parliamentary leader. The war of 1812 brought out the necessity for leadership. The growing requirements of the House of Representatives made it necessary to lodge power somewhere. It seemed the only way out of many difficulties to give that power to the Speaker. Moreover, our whole history shows that even republics must delegate power and responsibility to some one; and that the power of one man, chosen for two years and surrounded by a multitude of safeguards, is safer than the power of three hundred. Nothing in our history brings out more forcibly both the need of one-man power and the opportunity which the Speakership offers for one-man power than Henry Clay's administration. To say that the Speaker shall be no longer a political officer is either to confess an ignorance of the lines upon which our institutions are developing or to propose legislative anarchy. Take away the Speaker's power and you apply the ineptitude

of Macon's Speakership of 1809 to the complicated affairs of 1891.

There have indeed been a few Speakers, like Mr. Winthrop, who construed the privileges of the office narrowly and seem to have looked upon it as a parliamentary office to which were added a few political duties. But such a conception of the Speakership, however dignified and admirable, is clearly not in sympathy with the natural trend of our institutions. The men who will later be seen to have had the most influence on the office will probably be such men as Clay and Reed; men who have attempted—perhaps too ungently—to adapt the office to the growth of the House and of the nation.

XV.—LORD LOVELACE AND THE SECOND CANADIAN CAMPAIGN—1708-1710.

By Gen. JAMES GRANT WILSON.

LORD LOVELACE AND THE SECOND CANADIAN CAMPAIGN, 1708-1710.

By Gen. James Grant Wilson.

During the past four centuries six men bearing the knightly name of Lovelace have been known in English history. The earliest of these was that Sir Richard Lovelace who, in the "spacious days of great Elizabeth," amassed a fortune by sharing in the marauding expeditions of his friend, Sir Francis Drake, and who aided in baffling and beating the so-called invincible Spanish Armada. Another was that audacious Lord Lovelace, celebrated by Macaulay, who abandoned King James and took up arms for the Prince of Orange. Two were colonial governors of New York and two were connected with English letters. With one of these Lovelaces, who is nearly as old as the century, I became acquainted under circumstances that I may perhaps be permitted to mention briefly. It was during the summer of 1875 that the late historian, Lord Stanhope, invited me to accompany him to a meeting at Willis's Rooms, the great object of which was to take into consideration the propriety of erecting in London an appropriate memorial to the poet Byron. As we drove to the place of meeting I happened to mention that my countrymen would be interested in such a memorial, and, I felt sure, would be willing to contribute to it. Disraeli presided, and was followed in the opening address by Lords Rosslyn and Stanhope, and by many others, who all delivered carefully prepared speeches. The chairman then announced, to my amazement, with the addition of some complimentary words, that there was an American gentleman on the platform who, he trusted, would now favor the audience with a few remarks. I had no idea of speaking unprepared in such a place and in such a presence, but, however, acting on Stanhope's hint, "Tell them what you told me," I made a short

speech, which was most kindly received. When the chairman and others retired from the platform to the committee room, Mr. Disraeli presented me to Capt. Trelawny, the friend of Byron and Shelley, and then said: "Here is another gentleman that wishes to make your acquaintance," whereupon I was introduced to the Earl of Lovelace, who married Byron's only daughter. After exchanging a few remarks Lovelace astonished Disraeli, Stanhope, and the other speakers, who were grouped around in a circle, by saying: "Gen. Wilson, I think yours was the best speech made to-day;" and then, to the relief of the distinguished orators, added, "for it was the only one that I could hear."

To have immediately followed Lord Cornbury in the administration of New York Province was to the advantage of the character of anyone succeeding him. By the side of the most incapable and discreditable governor of the colony even a person of quite indifferent reputation would have shone brightly. But the character of John, Lord Lovelace, Baron of Hurley, needed no such comparison to commend it. He appears to have been an amiable and worthy gentleman, bearing an honorable name with dignity, and magnifying it by personal virtue. He had served his sovereign at home in positions of trust, and she now conferred on him the delicate task of assuming the government of New York. It was hoped that he might restore a better order to affairs, brought into such disgraceful confusion by the queen's cousin.

The coincidence of two governors of New York within two score years of each other having borne the same name has naturally led to the conjecture that they belonged to the same family; and the nearness and nature of the family tie has been variously stated by historians. While some assert that Lord Lovelace was the nephew, a greater number have made the statement that he was the grandson of Governor Francis Lovelace. The subject, therefore, has assumed sufficient importance to justify a minute examination of the facts. As far back as the days of Henry VI there appears in the records of English genealogy the name of Richard Lovelace, of Queenthite, near London, who purchased Bayford, in Kent. To this individual and his son Lancelot both Francis Lovelace and Lord Lovelace traced their pedigree. Lancelot Lovelace had three sons, of whom the oldest died without issue; William, the second son, inherited the estate; and the name of the third was John.

From these two brothers descended two distinct lines of issue. From William Lovelace the descent is clearly traceable to Governor Francis Lovelace. His grandfather and father were both knighted. His father was Sir William Lovelace, of Woolwich, Kent. His elder brother was Richard Lovelace, the poet and dramatist, who died in 1658, before Francis came to New York. Francis himself, the third son, was also a poet and an artist. There is no record that he was married. Two brothers, Thomas and Dudley, accompanied him to the New World. Richard, perhaps the handsomest Englishman of his time, was among the favorites of Charles the First. His name survives, secure of its immortality, from two of the most faultless lyrics in our language.

Going back now to John Lovelace, the other grandson of the original Richard Lovelace, we find that he himself was the grandfather of that Sir Richard Lovelace who, as mentioned above, was the friend of Sir Francis Drake, and who made a fortune by sharing the latter's marauding expeditions. In the third year of the reign of King Charles I, Sir Richard was elevated to the barony of Hurley, a seat which had been bought by his grandfather John, and from which purchase dates the removal of this branch of the family from Kent to Berkshire. The ancient manor house of Hurley, where many generations of Lovelaces were born, was unfortunately destroyed by fire in 1835, but the historic name remains, and it is also perpetuated on American soil near the banks of the Hudson. To that little Ulster County town founded by Francis Lovelace Washington went in the winter of 1782 and was greeted by an enthusiastic assemblage. An address was delivered by President Ten Eyck, which, as the ancient chronicler informs us, was happily answered by his excellency the commander in chief. The first baron had two sons, John and Francis. When the third lord died, in 1697, without male issue to survive him, the barony passed to the grandson of Francis, who thus became the fourth baron and was the Lord John Lovelace that became governor of New York. It is thus seen that the family connection between the two governors, while there subsisted one, was too remote to be designated by any term of near relationship. Yet it is quite natural that confusion has arisen, the grandfather of Lord John being named Francis, and being also a younger son. In the genealogies, however, there is no record that this Francis Love-

lace had any other brothers,* while those of Governor Francis Lovelace are distinctly mentioned. Indeed, the whole question turns upon these brothers, and therefore special effort has been made to obtain all the facts. In reply to an inquiry, Mr. Sidney Lee, of London, editor of the "Dictionary of National Biography," writes as follows: "The poet Richard Lovelace had four brothers, Thomas, Francis, William, and Dudley. In their mother's will the brothers [after Richard] are mentioned in this order." But, as is well known, in the edition of Richard Lovelace's poems, there is one addressed "To His Dear Brother Col. F. L., immoderately mourning my brother's untimely death at Carmarthen." As Richard died in 1658, and this had every appearance of expressing his grief at the death of Francis before him, *this* Francis Lovelace could not have been governor of New York in 1668–'73. Mr. Lee clears up the difficulty completely, however, by saying that this poem "describes Francis' grief for William's death. I thus regard it as practically certain that this Francis is identical with the governor of New York. * * * The English authorities altogether ignore him in that post."

It need cause no surprise that Queen Anne should have conferred the responsible post of governor of her provinces of New York and New Jersey upon a scion of the house of Lovelace. By the very traditions of his house Lord John was strongly attached to the Protestant succession. His immediate predecessor in the barony, John, the third Lord Lovelace, is characterized by Macaulay as "distinguished by his taste, by his magnificence, and by the audacious and intemperate vehemence of his Whiggism." At one time he contemptuously refused to heed a warrant for his arrest for a political offense because it was signed by a Roman Catholic justice of the peace. He was summoned before the privy council and examined in the presence of royalty itself, but he succeeded in clearing himself completely. As he was leaving the room King James called out in angry tones: "My Lord, this is not the first trick you have played me." "Sir," was Lovelace's spirited rejoinder, "I never played any trick to Your Majesty, or to any other person.

* Berry's "County Genealogies," Kent, pp. 474, 475; Banks's "Dormant and Extinct Baronages," III, 497–499. The latter states that the first baron had two sons and two daughters. Brodhead gives the reference to Banks (New York, II, 143, note) but not to Berry, and he makes the second governor the grandson of the first. Only by a comparison with Berry could that natural mistake have been avoided.

Whoever has accused me of playing tricks is a liar." Macaulay, who relates this incident, speaks thus in regard to his connection with the Revolution:

> His mansion, built by his ancestors out of the spoils of Spanish galleons from the Indies, rose on the ruins of a house of Our Lady in that beautiful valley through which the Thames, not yet defiled by the precincts of a great capital, nor rising and falling with the flow and ebb of the sea, rolls under woods of beech round the gentle hills of Berkshire. Beneath the stately saloon, adorned by Italian pencils, was a subterraneous vault, in which the bones of ancient monks had sometimes been found. In this dark chamber some zealous and daring opponents of the Government had held many midnight conferences during that anxious time when England was impatiently expecting the Protestant wind.

Lovelace was the first nobleman of consequence who proceeded to join William of Orange after his landing. But unfortunately he and his troop of armed retainers were attacked and defeated by superior numbers, and Lovelace was imprisoned. But the success of the prince released him, and later he took an active part in placing the crown of England upon the heads of William and Mary and securing the succession of the throne to Mary's sister Anne. The house of Lovelace must, therefore, have stood high in Anne's regard, and it was eminently deserving of distinguished rewards.

On March 28, 1708, Queen Anne's chief secretary of state, Lord Sunderland, wrote to inform the "Lords Commissioners for Trade and Plantations," that Her Majesty had appointed John, Lord Lovelace, governor of New York and New Jersey. As was customary, with the commission were usually given also a new set of instructions, and the lords of trade were requested to draw these up. But it was not till the middle of October that Lord Lovelace departed for New York. It is easy to surmise what detained him thus for more than half a year. England was then in the midst of the "War of the Spanish Succession," and stood at the forefront in the coalition of European states against France and Spain. Her American colonies felt the effect of this conflict. Where they bordered on the Spanish settlements in the south, and the French at the north, hostilities were carried on briskly, and the period is known in our annals as "Queen Anne's War." The Duke of Marlborough was then conducting the armies of his nation and its allies upon a career of almost uninterrupted success; his every battle was a victory and every siege meant the reduction of the beleaguered place. But the spring of 1708, when Lord Lovelace received

his appointment, was an especially critical period in the history of the war. The battle of Ramillies, in 1706, had resulted in completely driving the French from Belgium, and the cities of Brussels, Antwerp, Ghent, and Bruges had declared for the allies, renouncing their allegiance to Spain, and had accepted garrisons to prevent their being retaken by their ancient masters. But early in 1708, the tide suddenly turned; fortune seemed to abandon the arms of England, and the star of France, now in league with Spain, was once again in the ascendant. The Prince of Vendome penetrated as far as the province of Flanders, and Ghent and Bruges were quickly reduced. With these important strongholds in their possession, that of the whole of Flemish Belgium, reaching from the boundaries of France to those of the Dutch Republic, was assured. This would make the reduction of all Belgium but a question of time.

Now, therefore, if at any time, national pride as well as military duty called every Englishman of the age and rank of the Baron of Hurley around the standard of the great duke. With characteristic promptness a campaign of vigorous offensive operations was at once determined upon and instituted by Marlborough. Joining the troops stationed in Flanders he concentrated them into one mass preparatory to withdrawing them from this province, intending to make Brussels his base of operations, as well as to prevent its being taken by the enemy. In effecting this maneuver he necessarily had to assume the appearance of a retreat, which served only to excite the French with the hope of certain victory, and sent them in eager and confident pursuit. But at Oudenarde, a village on the southern confines of Flanders, and 33 miles directly west of Brussels, Marlborough made a sudden halt, and wheeling around he fell with well-directed and irresistible impetus upon the astonished foe (July 11). It was "a battle fought with muskets, bayonets, and sabers. Neither of the contending parties had much artillery on the ground."* The manner of bringing on the action, almost a ruse on the part of the invincible duke, would account for this peculiar circumstance. The superior numbers of the French availed nothing; they were utterly defeated. Again were they driven from the Low Countries, and before the year closed more than one city

* Wilson's "Sketches of Illustrious Soldiers," p. 201.

of France, in proximity to the Belgian border, had been secured by the allies. "The annals of war," writes Sir Archibald Alison, "can afford no parallel of the skill and resolution of that immortal campaign." Evidently Lord Lovelace, besides sharing in the active operations, and perhaps also in the battle of Oudenarde itself, needed to wait till the full glory of the campaign had been reaped, and the opposing forces had retired to winter quarters, before he could be released and allowed to proceed to his seat of government in America.

About the middle of October, 1708, Lord John embarked on board her Majesty's ship *Kingsale*. He was accompanied by his wife, Lady Charlotte, daughter of Sir John Clayton, and his three sons, all lads of tender age, John, Wentworth, and Nevil; little dreaming as they set out on this voyage that the ravages of death would permit but two of this interesting household to return to their native country. The *Kingsale*, well armed and strongly manned, was one of a fleet; for it was a time of war, and only the year before, Col. Robert Hunter, who was destined to succeed Lord Lovelace in New York, had been captured by a French man-of-war on his way to Virginia, of which province he had been appointed lieutenant-governor; but, by reason of this detention as prisoner in France, he never qualified for office in the southern colony.

The passage proved to be a stormy one, and so rough and unpleasant was the experience to Lord Lovelace that he earnestly contended that at this season of the year not even sailors should be exposed to the terrors of the sea. "No ship ought to be sent hither from England after August at farthest," he wrote. The idea, while doing credit to Lord Lovelace's considerateness, is somewhat amusing in the light of the development of ocean navigation, as witnessed within the past year, when even "records" made in the summer season were broken in the face of November storms of unusual violence. But Lovelace could not foresee the miracles of human achievement of almost two centuries after his date. And he certainly had some reason to complain of the elements. When approaching our "terrible coast," early in December, the squadron encountered a tempest which drove the *Kingsale* out of her course and separated her so completely from her consorts that no trace of any of them had been found even after the governor's arrival in the city, with the exception of the *Unity*, which grounded upon a point of land at Sandy Hook, but got off without loss of life.

The *Kingsale* was forced to seek refuge in Buzzard Bay. Descending thence, after the storm had abated, she pursued her course through the Long Island Sound. Either the masses of floating ice, or the intricacies and perils of the Hell-Gate channel, determined her captain to land at the village of Flushing, on Long Island. It was an unfortunate circumstance for the new governor and his family. Instead of being carried in the comfortable ship directly to the city, they were now compelled to expose themselves, during a land journey of several miles, and the crossing of the East River by ferry, to the inclemency of an unusually severe winter, in a climate to which they were not accustomed, and where this season was ordinarily much colder than in England. The winter of 1708 and 1709 is noted in history as a particularly severe one. In Europe it added to the horrors of war by destroying vineyards in sections where frost was scarcely ever known. In other parts the grain already in the ground for the next year's harvest was frozen, and poverty and famine thus stared the people of the contending nations in the face. In America it set in early and was exceedingly rigorous; the rivers and harbors which the *Kingsale* passed on her way along the Sound were full of ice. That of New York, too, was made almost impassable by the masses of ice in blocks and large fields rushing up and down on either side of the city with the incoming and outflowing tides. When it is remembered what difficulty is experienced by the powerful ferry boats of our day in crossing from shore to shore under these circumstances, it may be imagined what it must have been to effect a passage in a small open boat across the East River from the "Ferry at Breukelen" to the city, in 1708. As it was, Governor Lovelace and two of his children caught serious colds, from which neither of them recovered.

On the morning of December 18, 1708, nine weeks and a few days after his departure from England, Lord Lovelace finally set foot within the capital of his province. Preparations on a liberal scale had been made for his reception. Lord Cornbury himself was present to welcome his successor, and to induct him with what grace he could into the office which, it was plain to him as to everyone, he had forfeited by his misconduct and inefficiency. It is not likely that the new governor was subjected to the fatigues of these inaugural ceremonies on the day of his arrival. But in honor of this event Lord Cornbury and

the council had made provision for a dinner or banquet, which was served on that day in the governor's mansion in the fort.* When on the next day, or a few days later, the new governor's commission was publicly announced and read from the gate at the fort, or from the city hall in Wall street, it may well be believed, after their six years of Cornbury, that the people watched with eagerness for any signs that could give them reason for hoping that the change in governors would be an improvement. With this purpose, many a searching glance was doubtless directed toward him as he made his first public appearance. They would then have beheld a man not much more than forty years of age, prepossessing, if not too greatly harassed by the sufferings of his trying journey; for "nature had endowed him with a magistick and amiable countenance," as Rector Vesey informs us in the funeral sermon he was so soon called upon to preach. A man of refinement and education, too, having graduated at the university; and of military bearing doubtless, fresh from the glorious campaign in Flanders. A man, once more, of a kindly heart and great consideration for others placed in different and lowlier circumstances from himself; for even on that exciting day of his arrival his heart was oppressed by the uncertainty of the fate of those in the other ship; and in the first official letter written later on this same day to the lords of trade, bearing in mind the sufferings of the poor seamen, and recommending a rule of navigation which should prevent their exposure to the rigors of a winter passage in the future.†

But personal amiability and tender-heartedness, while it might prevent a needlessly harsh or unjust interpretation of his instructions, did not leave the governor at liberty to depart from them in the performance of his functions. Largely by reason of the execrable behavior of Lord Cornbury, the people had come to rise up in arms (figuratively speaking as yet)

* It would appear as if even this last act of providing a suitable reception for his successor gave the retiring governor an opportunity of displaying his criminal disregard of financial obligations. At least as late as February, 1712, the honest caterer, Henry Swift (perhaps the Delmonico of his day), who, by an order of governor and council, dated November 17, 1708, had been engaged to furnish the "dinner," as he modestly calls it, was still petitioning for his compensation, which he placed at the not very exorbitant figure of £46 7*s.* 6*d.*, say about $235. ("New York Colonial MSS.," LVII, f. 80.)

† Documents relating to the Colonial History of New York, 5, 67.

against the royal prerogative, and with a unanimity as surprising as it was significant, considering the serious divisions that had arisen out of the Leisler troubles; for many of those who had stood out on the side of constituted authority, and whose adherence to the line of policy had caused the sharp line to be drawn between the Leislerians and anti-Leislerians ever since, were forced into a position of antagonism to the royal claims as interpreted by the extravagant demands for money and the arbitrary exercise of his functions on the part of the ruined spendthrift and profligate who had just been superseded. It was a matter of importance to know, therefore, whether there were any modification or moderation in the royal claims in the instructions to the new governor. These, however, were in no sense different from the ones given to Cornbury. The instructions which the lords of trade, in reply to Lord Sunderland's request of March 28, reported on May 31, 1708, they declared to be "to the same purpose as those that have from time to time been given to the Lord Cornbury."* These were a few additional instructions prepared for Lord Lovelace in July, intending to correct some abuses which had arisen on account of certain "extravagant grants of land made by Col. Benjamin Fletcher."† A lengthy paper was likewise drawn up by the lords of trade for the guidance of the governor in the affairs of the province of New Jersey, which it is needless for the purposes of this history to do more than mention here.

The council appointed to share the responsibilities and cares of government with Lord Lovelace was composed of gentlemen some of whom were members of Cornbury's cabinet, and most of whose names have already become familiar to the reader of these pages. Col. Peter Schuyler, the first mayor of Albany, the friend of the Indians on the Mohawk, and president of the convention at Albany which so long resisted Leisler's authority, was president of Lovelace's council. Next to him was Dr. Gerardus Beeckman, who had been a member of Leisler's council. Rip Van Dam and Thomas Wenham, associated with Col. Nicholas Bayard in a measure of opposition to Lieutenant-Governor Nanfan, appear next on the list. These, with Chief-Justice Mompesson, had been members also of Lord Cornbury's council. Adolph Philipse, the son of Frederick Philipse, prominent under previous administrations; John Barberie, a de-

* *Ibid.*, 5, 42.
† *Ibid.*, 5, 54.

scendant of the Huguenots, and connected by marriage with the Van Cortlandt family; and William Peartree, a merchant, who had been mayor of the city in the years 1703 to 1706, were new accessions to the number of royal councilors.

The first meeting of the council after Lord Lovelace's assumption of his office was held on January 5, 1709.* The action that was then taken was one usual at the accession of a new governor. It was ordered that a proclamation be published declaring the present provincial assembly dissolved. At the same time writs for the election of a new assembly were issued, which was to take place on March 10. The assembly then elected met on April 6, their only business that day being the choosing of a speaker. This honor was conferred, or rather confirmed, upon William Nicoll, who had held the office during the six preceding years, and who was consecutively reëlected for ten years thereafter, when failing health compelled him to decline. Having been duly organized for legislative action, the assembly was ushered into the presence of Lord Lovelace and his council on the next day. He administered to them the oaths of allegiance, they subscribed their names to the inevitable "test act," and he then addressed them in the following speech:

GENTLEMEN: I have called you together as early as you could well meet with convenience to yourselves to consult of those things which are necessary to be done at this time for her majesty's services and the good of the province. The large supplies of soldiers and stores of war for your support and defense, together with those necessary presents for your Indian neighbors, which her majesty has now sent you at a time when the charge of the war is so great at home, are evident proofs of her particular care of you, and I assure myself they will be received with those testimonies of loyalty and gratitude which such royal favors deserve from an obliged and grateful people. I am sorry to find that the public debt of the province is so great as it is, and that the government here hath so little credit, if any at all, left; a government under a queen as famous for her prudent and frugal management at home as for her warlike and glorious actions abroad. I can not in the least doubt, gentlemen, but that you will raise the same revenue for the same term of years for the support of the government as was raised by act of assembly in the eleventh of the reign of the late King William of glorious memory; and I hope you will also find

* To be perfectly correct this date should be written January 5, 170§, because by Englishmen the new year was at that period considered as beginning on March 25; and on the minutes of the council 1708 appears for dates in January and February and part of March. But it will be less confusing to the modern mind, after this explanatory note, to use the number of the year according to our present calculations.

out ways and means to discharge the debt that hath been contracted and allow to the persons concerned a reasonable interest till the principal is discharged. To that end I desire you to examine and state the public accounts, that it may be known what this debt is and that it may appear hereafter that it was not contracted in my time. I must in particular desire you to provide for the necessary repairs of the fortifications of the province. The barracks are so small and so much out of repair that I have been necessitated [*sic*] to billet the recruits that came over with me upon this city, which I am sensible hath been a burthen to the inhabitants, but I hope you will soon ease them of that burthen. The fitting out a good sloop to attend her majesty's men-of-war in their cruisings on this coast I take to be so necessary for the preserving of your navigation that I expect you will find out a proper method to defray that charge. I am willing my salary should be taxed, that I may pay my quota to so useful a service. I think myself obliged further to recommend to your consideration how to prevent the exportation of gold and silver coin out of the province, least in a short time your trade should suffer for want thereof. The Queen hath nothing more at heart than the prosperity of her subjects. I shall approve myself to her majesty in pursuing those methods that will best conduce to that end. It shall be my constant care to promote peace and union amongst you, to encourage you in your trade, and to protect you in the possession of your just rights and privileges.*

Here, then, was a clear and candid presentment of the condition of affairs in the province and of the more pressing necessities that confronted the assembly. It was put before them in the best of tempers and with a transparent honesty. What a contrast between that voluntary proposition of a tax on his salary to carry out the scheme of the armed sloop and Lord Cornbury's demand for an exorbitant sum from the assemblies of both provinces. Remembering his predecessor's exceedingly loose principles in money matters, it was only natural that Lord Lovelace should wish to have it definitely understood that "the burthen of public debt" was not contracted in his time. The main question at issue, however, turned upon the raising of a revenue for a term of years. That had been done by act of assembly in 1702, for a term of seven years. It was now about to expire. But Cornbury's conduct had taught the colonists a lesson, and they saw the advantage of voting a revenue only from year to year and to accompany the grant with specific appropriations to the purposes it should be used for. This issue prepared a battle ground for years to come, resulting finally in victory and independence for the colonies.

The history of the English continental colonies during the first half of the eighteenth century was largely made up of petty bickerings between

*Journal of the Legislative Council of New York, 1, 276, 277.

the popular assemblies and the royal governors. The principle at stake was important, a fixed salary grant would have been in the nature of a tax imposed by the crown. The acrimonious contention was greatly disturbing to all material interests, but it served as a most valuable constitutional training school for the Revolution."*

The assembly of New York were not a whit behind their brethren of the other colonies in standing by their colors. Lord Lovelace, however kindly of heart, and described by one of their own officials as "a Gentleman of those Qualifications, Excellt temper, and goodness, that, had he lived longer with us, he wou'd have reviv'd the country from its former calamity,"† yet was the representative of the crown, and the representatives of the people were now abnormally sensitive to any possible encroachments on their rights, and correspondingly suspicious of the exercise of any governor's functions. They resolved not to accede to his request for the repetition of the grant for a number of years; and for this reason Bancroft exalts this peaceable and pleasant conference, the first and last session of his provincial legislature which the new governor was permitted to attend, into a distinctive and pivotal episode in the great contest which created our Republic of the United States. He does not hesitate to say of it:

The assembly which in April, 1709, met Lord Lovelace, began the contest that was never to cease but with independence.‡

We turn aside, however, from these more general considerations affecting the being of the commonwealth to note what of interest may be discovered in the history of the city during Lord Lovelace's very brief administration. At this time the office of mayor was occupied by Ebenezer Wilson, he having received his appointment in 1707, and serving until 1710. He was the son of Samuel Wilson, who had emigrated from England and had settled in New York shortly after the final cession of the province to the English in 1674. The elder Wilson had succeeded in amassing a considerable fortune, and lived in a comfortable mansion on the south side of Wall street, near what is now Pearl street. He died in the eventful year 1689, leaving a widow and two sons. One of these followed the sea, and became captain of a merchant vessel. The other, Ebene-

* "The Colonies from 1492–1750," by Reuben G. Thwaites (New York and London, 1891), p. 271.

† Doc. rel. Col. Hist. N. Y., 5, 80.

‡ "History of the United States" (ed. 1883), 2, 43.

zer Wilson, like his father, attained prominence in business circles and in political life. A census of the city made in 1703 represents his household as composed of himself and wife and four children, with two male and two female white servants, beside a negro man and woman. As he lived in the paternal mansion he was within but a few steps of the city hall, on the corner of Wall street and the present Nassau street, where now stands the United States sub-Treasury building. The simple fact of its location affords an instructive commentary in itself on the change of conditions in the city within a period of less than fifty years. In 1656 there had been an Indian massacre, and for years thereafter there was still apprehension of Indian attacks; so that the citizens who lived outside the line of the palisades running along Wall street, had need for special watchfulness. Now the chief municipal building stood on ground to the north, and thus outside of that line of necessary defense. The division of the city into six wards, adopted in the days of Governor Dongan, still prevailed, and each of these returned one alderman and one assistant alderman, so that the common council was composed of twelve men besides the chief magistrate. Cornbury's objectionable conduct, which has been noticed as having caused the fusion of opposing parties in provincial affairs, had doubtless had the same effect upon local politics, for there was no repetition of the troubles which had attended the induction of Mayor Noell into office in 1702.

Mayor Wilson's municipal responsibilities were limited to a very small fraction of territory as compared with that over which extends the sway of a mayor of New York in our day. The city hall in Wall street must have been built on somewhat the same principle as the one erected over a century later in the Park or Commons, the rear of which it is said was constructed of a less expensive material because it was not supposed that a majority of the residents would ever be called upon to view it from that side. But a few scattered houses were to be found above John or Fulton street; and all the region north and west of Park Row and Vesey street was mostly unoccupied and uncultivated. In the city proper much was done in the time of Mayor Wilson in the way of improvements. The price of lots was about £30 ($150); and farms bordering on the city line or within it above Wall street were being diligently laid out and sold for dwelling purposes. In 1703 a point of land jutting out into the fresh-water pond or creek

and called the Kalck Hoeck was sold for about £100. There seemed to have been no thought in the mind of the purchaser of building houses or of laying out streets. Indeed the depth of the pond there was considered unfathomable, and thus quite incapable of being filled; a theory which the sight of Center and adjoining streets and of the solid Egyptian walls of the Tombs effectually disproves to the citizen of to-day. The tongue of land remained for many a day a

> ". . . . fairy foreland, set
> With willow weed and mallow,"

the resort of the angler or the huntsman in pursuit of ducks, perhaps a favorite place for summer-day parties. Those fond of a walk in the country could have had that pleasure easily gratified, even if their residence were on Bowling Green or Hanover Square. At the corner of Maiden Lane and Broadway they would have left the houses behind them. Then passing along the line of Boston road or Park Row, or crossing the uncultivated fields of the Commons, over the site of the post-office and the municipal and other buildings they would finally come to the banks of this cool lake. Yet the city itself afforded many an umbrageous thoroughfare, the sides of most of the streets being planted with beech trees and the fragrant locust. During Mayor Wilson's term a special permission was given the residents on Broadway to plant trees (but not tie posts for horses) along their house fronts; while at the same time this street received a pavement extending from Bowling Green to Wall street, doubtless to facilitate attendance at "Old Trinity" in all weathers. A walk along the present Pearl street would have given as uninterrupted a view of the East River as a similar saunter along South street does to-day. Here then, as now, was the chief moorage for large sailing vessels coming from or going on long sea voyages. But around on the other side of the island, along the North River front, virgin nature was as yet undisturbed. The shores of New Jersey far beyond the broad stream were not more verdant and free from the presence of shipping than those of the future location of the scores of piers for "ocean greyhounds" and the palatial steamers that swiftly cleave the waters of the Hudson every summer day. Indeed West street itself, with all its surprising characteristics (some not very creditable to our city), had yet to be created out of the shelving beach or submerged

rocks that permitted the tides to lave the rear of Trinity churchyard.

The mode of paving the streets deserves a word. The pavements in those early days did not extend all the way across the thoroughfare. Along the houses ran a narrow foot-path of large red bricks laid flat; a sidewalk it might be called, but not as now raised above the level of the general roadway. Next to this ran a strip of cobble-stone pavement, not above 10 feet in width, measured from the line of the houses on either side. This left the center of the street in a "state of nature," of which the rain knew how to take advantage, scooping out for itself gulleys or gutters, by means of which so much of it as was not absorbed by the soil sought the rivers or ponds or pools. And this improvised and "self-made" sewerage, or involuntary surface drainage, was all the sewerage which the city then possessed. Yet in this way also were replenished the half dozen wells or cisterns placed in the center of prominent thoroughfares, whence were drawn supplies of water in case of fire. Just at this time, too, "new and more stringent regulations were passed in respect to fires, the fire wardens were directed to keep strict watch of all hearths and chimneys within the city, and to see that the fire buckets were hung up in their right places throughout the wards; and two hooks and eight ladders were purchased at the public expense for the use of the embryo fire department."* Careful and provident as the measures against fire have ordinarily been in our city, yet it is curious to observe that each of the three centuries of its history has known a general conflagration; that of 1627 or 1628, as told by Domine Michaelius; that of 1776, when the British were in occupation; and that of 1835, within the memory of men still living. Then, as always, the commerce of the city was assured, giving large returns, though not even yet without the taint of collusion with piracy. As for manufactures, the history of these had not yet begun for our great city. The citizens, indeed, were yearning to put forth their enterprise and skill and wealth in this direction. But it was systematically repressed and sternly forbidden by the mother country. Nothing must be done to the "prejudice of our manufactories at home," was the constant reminder. Yet American industry was irrepressible. The people of the city and province were

* Miss Booth, "History of New York City," p. 284.

"already so far advanced," wrote Col. Caleb Heathcote in 1708, "in their manufactoryes that ¾ of ye linen & wollen they use is made amongst them, espetially the courser sort." The great land-owner himself ached to enter upon a very important branch of industry, that of shipbuilding.

I hoped and believed and am morally sure, as to myself even beyond a doubt, that I could have built and furnished the crown with all the light frigates that would have been wanted for this coast and the West Indies.*

But Heathcote had to content himself with a deliberate refusal, and bear it with the best grace a royal Briton could. Yet the lords of trade were perfectly willing to make this country a depot for naval stores. Lord Lovelace, in a latter dated March 9, 1709, and which therefore probably never reached him, was enjoined to encourage the making of pitch and tar, and "to consider a proper method for preserving the masts and timber in the woods that are fit for the use of her majesty's royal navy.† But beyond this the American colonists must not presume to go. And thus the mother country checked the best development of her transatlantic citizens; thus she fondly and foolishly prepared the way for their violent separation, while imagining that her course in this matter would prevent that very issue.

By restricting American manufactures the board of trade, the ministry, the united voice of Great Britain, proposed to guarantee dependence. No sentiment won more universal acceptance. The mercantile restrictive system was the superstition of that age. Capitalists worshiped it; statesmen were overawed by it; philosophers dared not question it.‡

Unfortunately for England, it led to the Revolution, and that great shock awakened the mother country to her folly.

The brief administration of Lord Lovelace, which some writers dismiss with a single sentence, and to which even elaborate histories of our city devote not more than a paragraph,§ was nevertheless distinguished by two notable circumstances. Attention has already been called to one of these: that Bancroft saw in this period the beginning of that great legislative battle

* Doc. rel. Col. Hist. N. Y., 5, 63, 64.

† Doc. rel. Col. Hist. N. Y., 5; 72.

‡ Bancroft, "United States," 2, 241, 242.

§ It is worthy of mention that in Cooper's "Water Witch" there is no allusion to Lord Lovelace at all; but Governor Hunter, called "Mister Hunter" by Cornbury, is scornfully referred to by the latter as immediately succeeding him.

which resulted in our national independence. But to this administration is also to be traced the beginning of German immigration to America. Germans had been found in New Amsterdam from its earliest settlement. The first director-general, Peter Minuit, is by many thought to have been one, and it is certain that he was born in Wesel, a city of Germany. Director Stuyvesant had an opportunity to annoy a body of German Lutherans by sending back to Europe the pastor they had presumed to call. Jacob Leisler was a German, but a communicant of the German Reformed Church, and not a Lutheran, for this reason readily affiliating with and even bearing office in the Dutch Reformed Church. But not until the time of Lord Lovelace had there been any large body of German people come over together. Such a movement has usually been thought to have commenced under his successor. But the thousands of souls that came over with Col. Hunter formed but a wave in that great tide of immigration which had already set in toward these shores.

As Lord Lovelace was appointed in March, 1708, there was laid before the Queen in June a petition from the Rev. Joshua Kochertal, asking that he himself and 14 other persons of the Protestant Lutheran religion, from the provinces of the Palatinate and Holstein, might be sent to America at the expense of the English Government. In this petition and in other documents that passed in correspondence on the subject, mention is made of 41 other people of the same nationality and religion who had already been granted the privileges asked for, and who were soon to sail.* It having been carefully ascertained that these 14 additional persons had truthfully presented their case, and that they were equally in need and worthy of aid as objects of her charity, the Queen graciously gave them their wish. One strong plea in favor of these Germans at this time was that they were sufferers at the hands of the common enemy—the French. It is not at all necessary to go back to the Thirty Years' War, which had ended sixty years before, to find the causes for their present exceeding distress.† The Palatinate had been swept with fire and sword by Louis XIV in 1688; and again, during the war now in progress, these parts of Germany had been made to feel the brunt of the conflict

* Doc. rel. Col. Hist. N. Y., 5, 44, 53.

† Mrs. Lamb's "History of New York," 1, 484.

until the battle of Blenheim, in 1704, had driven the armies of France back across her borders.*

These 55 German emigrants were distributed among 13 families, consisting of 29 adults and 26 children, the latter ranging between the ages of 15 years and 6 months. Besides the minister, the occupations of the others were as follows: Eleven farm laborers, some of whom were also vine-dressers; one a "stocking-maker," and one a blacksmith. There was also one carpenter and joiner in the party, and one is registered as a clerk. As Lord Lovelace was proceeding to America at the same time, he relieved the government of the charge of two of the men, whom he engaged as servants for himself and family.† The board of trade also recommended that before their departure from England they be invested with the rights of British citizenship, and that the usual allowance of £20 ($100) for books and clothes to clergymen of the Church of England on going out to the colonies be granted to Mr. Kochertal. Lord Lovelace was also directed to see to it that the minister received a portion of land for a glebe, not exceeding 500 acres.‡ These preliminaries having been made, the Germans were embarked upon the *Globe*, one of the vessels of the squadron which was to convey the governor to New York; and we learn from his letter to the lords of trade that, in addition to the roughness of the voyage, the emigrants and recruits upon this vessel suffered from a scarcity of water, which the others could not re-

* The thousands of Americans who have made pilgrimages to Heidelberg to look upon the picturesque ruins of the old castle will hear with regret that at the present writing the Grand Duke of Baden is considering plans for its restoration. Several months ago a commission was appointed to examine the architectural condition of the former residence of the Counts Palatine, and to decide whether its restoration was possible. The report of the commission, which has just been made public, is favorable to the grand duke's plan, declaring that the castle can be readily transformed into a fitting home for his royal highness. The people of Heidelberg, however, object seriously to the proposed restoration, and it is possible that they will be able to prevent it entirely. They well know that the famous castle, with its broken walls and shattered towers, is the chief attraction for strangers in the city on the Neckar, and declare that if it be restored half of their revenue at least will be lost. The Grand Duke of Baden is wealthy, and has already many palatial homes. Paradoxical as it may seem, it would be inexcusable vandalism on the part of his royal highness to destroy the most interesting ruins in Europe by transforming them into a modern home.

† Doc. rel. Col. Hist. N. Y., 5, 52, 53.

‡ *Ibid.*, 5, 54, 63.

lieve, because the tempestuous weather prevented access to her.* In the summer of 1709 another large number of Palatines were sent over by the English Government, at a cost of between £3 and £4 pounds each; they were generously supplied with agricultural implements and building tools at an expense of 40 shillings each, and for their subsistence in America for one year after settlement on "waste lands" along the Hudson, provision was made at the rate of £5 each. But some of her majesty's subjects murmured, and "objected that should these people be settled on the Continent of America they will fall upon Woollen and other Manufactories to the prejudice of the Manufactures of this Kingdom now consumed in these Parts." The lords of trade at once quieted these fears by reminding the objectors that the province of New York was not under a proprietary, but a crown government, and hence "such mischievous practice may be discouraged and checqued much easier" there than elsewhere.† Thus, in extreme poverty and feebleness, with much distress and suffering, began that mighty flow of German emigration which attained such enormous proportions in our own century, and which, while supplying our entire Republic with millions of valuable citizens who have called forth untold treasures from our natural resources, as well as in the way of manufacturing industries, has at the same time made New York third or fourth in rank among cities populated by Germans.

Not five months had elapsed since Lord Lovelace had landed in the city, the assembly of the province was still in session, and was about to pass upon its first act, when the whole community was startled by the news that the governor's illness, which had never left him during all his stay, had suddenly taken an alarming turn. One of his children, Wentworth, the second son, had already succumbed to the same complaint in April; another, John, the oldest, was seriously affected by it; and doubtless grief at his child's death aggravated the father's malady. The skill of the physicians of that date could hardly be expected to cope successfully with pneumonia, which so ruthlessly and swiftly carries off its victims even to-day. Ere long, therefore, on May 6, 1709, the dreaded announcement came that Lord Lovelace had died, in the flower of his age and upon the threshold of a new and honorable career. A genu-

* *Ibid.*, 5, 67.

† *Ibid.*, 5, 87, 88.

ine sorrow filled every citizen, increased, it may well be supposed, by sympathy with the bereaved lady, watching by the side of the hopeless sick bed of her eldest born, who followed his father to the grave within two weeks.* To give outward expression to this general and proper sentiment, insignia of mourning were everywhere apparent, and the council directed the mayor to "prohibit the acting of any play or plays, and the fighting of any prize or prizes, till further orders."† A few days later (May 12) the obsequies took place, on which occasion the Rev. William Vesey preached a sermon from the text in Psalm xxxvii, 37, "Mark the perfect man, and behold the upright, for the end of that man is peace." At the close he spoke these appropriate and appreciative sentences:

I was once almost resolved against Funeral Panegyricks, as being full

* It was not long after this that the line of the barons of Hurley became extinct. The third son, Nevil, succeeded as baron in 1709, but died in 1736 without issue. At the time that the older branch failed in male descendants, and Governor Lord Lovelace succeeded to the title as fourth baron, Martha, a daughter of the third baron, became Baroness Wentworth in her mother's right. She married Sir William Noel, from whom descended Anna Isabella Noel, daughter of Sir Ralph Milbank, Lord Byron's wife. Lady Byron afterward succeeded to the title of Baroness Wentworth. Byron's daughter, Ada, celebrated in "Childe Harold," was married in 1835 to Viscount Ockham. In 1838 this nobleman, who is still living, was created Earl of Lovelace, the name being revived in consideration of the fact that his wife was the representative of the family whose name had become extinct through failure of male issue—a family whose founder appears among the six hundred and twenty-nine names of William the Conqueror's chiefs borne on the Battle Abbey Roll of 1066, who shared the lands and distinctions of the followers of the defeated Harold. What has happened to the Lovelaces has occurred to many even more illustrious English families. Alnwick Castle has been charmingly described by an American poet, who was there in the summer of 1822, as "Home of the Percy's high-born race;" but the last of the line died more than two hundred years ago, and for a century the proud dukes of Northumberland have been descendants of a female branch, bearing, not the knightly name of Percy, but the prosaic one of Smithson, and it is to a member of that family that our nation is indebted for the noble endowment known as the Smithsonian Institution, of Washington, D. C. (See Banks' "Dormant and Extict Baronages," III: 498, 499; also Burke's "Peerage.") In Motley's "Correspondence" (New York, 1889) II, 301, there is this reference under date July 26, 1858: "I went over to Lord Lovelace's. * * * I like Lady Annabella King, the daughter of Ada Byron, very much. She has much talent, very agreeable manners, and a good deal of fun; plays and paints admirably, and has evidently a very sweet disposition" (p. 333). "Lily [now Lady William Vernon Harcourt] goes up to town every Tuesday, generally passing the day with her friend, Lady Annabella King, at her grandmother's, old Lady Byron."

† "Council Minutes," x, 303 (May 6, 1709).

of Difficulty, full of Censure, but on this extraordinary Occasion Duty obliged me to assist with fragrant spices in embalming the blessed Memory, to strew Flowers on the Hearse, and to shed some Tears at the Funeral Obsequies of so great, so good a Man. The supream Governour of the World seemed to have Mark't out this deceased Peer of Great Britain even in his early days, to have made an Illustrious Figure, and to have been an Instrument of much good to Mankind: for Nature had endow'd him with a Magistick and amiable Countenance, an obliging and grateful Disposition, a generous Spirit and yet a humble Mind, quick Apprehensions and a sound Judgment. Our Dread Sovereign, Queen Anne, after he had done considerable service for his country both at Home and abroad, was pleased to commit to his government the Provinces of New York and New Jersey, whose Inhabitants, however divided among themselves, universally conspired to love and reverence his Person and to express their Satisfaction, under his just and benigne Conduct.*

Immediately upon Lord Lovelace's death the functions of head of the State devolved temporarily upon Col. Peter Schuyler, as president of the council. Richard Ingoldesby had been appointed lieutenant-governor under Lord Cornbury in the year 1702, at the time that the province of New Jersey was added to the jurisdiction of the governor of New York. It was intended by this arrangement that while one officer was present in one province, the other might preside over the affairs of the other. An experience of four years led the lord of trade to recommend to the Queen that she revoke Ingoldesby's commission, with which she complied at once. The order in some way failed to be properly prepared, or it failed to reach him, and thus he retained the position, so to speak, by default, continuing even under Cornbury's successor. Therefore, being the lieutenant-governor *de facto*, if not *de jure*, or by intention of the Queen, on Lord Lovelace's death he was summonded in haste from New Jersey, and took charge of the government on May 9. It was not a new experience for him. At the equally unexpected and sudden demise of Governor Sloughter, in 1691, he had been intrusted with the duties of chief magistrate, on the ground of being the next in military command. He had remained in the colony under Fletcher and Bellomont, but served only in a military capacity until 1702. No sooner did the news of Governor Lovelace's death, and the consequent elevation of Ingoldesby, reach the lords of trade, than they forthwith renewed their application for his removal. On September 17 of this same year Queen Anne signed the second revocation, and care was taken that it was properly transmitted. On

* New York Historical Society Collections for 1880, pp. 321, 336, 337.

receiving the document which constituted his official decapitation, Ingoldesby resigned the government into the hands of the worthy Dr. Gerardus Beeckman, who in the absence of Peter Schuyler was senior member and president of the council.* This occurred in April, 1710; and three months later Robert Hunter, the next governor, arrived.

Ingoldesby signalized the beginning of his administration by exercising his authority in an exceedingly unworthy manner, by behavior not only ungentlemanly, but inexcusably unfeeling. This was the harsh treatment of Lady Lovelace, the bereaved wife and mother. It was of such a nature, indeed, that she found it expedient to betake herself to the ship which was to carry her back in her forlorn condition to Europe as if she were a fugitive from justice. Her own words best describe the disgraceful episode. In a letter to the lords of trade she writes:

Soon after the dismal death of my Dear Husband, and Eldest Son, in the midst of my afflictions (which were and are the most sorrowful that ever befell a poor Woman) Col. Ingoldesby came to me, and Demanded the Papers I had in my hands; I told him they were sent for by Lord Sunderland Secry of State, and show'd him his Lord^{ps} lett^{r}, he told me he did not value Lord Sunderland's lett^{r}, 'twas nothing to him, and in very ruff and threatening terms told me that I shou'd not stir from New-York 'till I had given him the said papers; Both my self and friends told him I shou'd

* Doc. rel. Col. Hist. N. Y., 5:89, 90, 91. An extract from the "Council Minutes" (10:473) is both interesting and instructive on this point of the summary dismissal of Ingoldesby: "April 10, 1710 (Gerardus Beekman, President) Coll. Beekman Communicated to the Councill a Lett^{r} which he rec'd yesterday und^{r} her Majesties Signett & Signe Manuall given att Windsor the 29th of October Last directed to y^{e} President of the Councill in y^{e} Province of New York Signifying that her Majestie has been informed that Severall undue grants of Land in the Province have been passed since the Death of my Lord Lovelace for the Preventing the like abuse for the future her Majestie does thereby Signify that She has thought fitt with the advice of her Privy Councill to ord^{r} that noe Grants of Land be made in this Province till the Arrivall of Robert Hunter Esq. Governour appointed for the same and her Majestie haveing thereby likewise thought fitt to revoke annull and determine the Commission formerly granted to Rich$_{d}$ Ingoldsby Esq. constituting & appointing him L^{t} Gov^{r} of y^{e} said Province the administration whereof will devolve upon the President of the Councill does therefore declare unto him her Pleasure concerning the Premisses prohibitting the Passing any Grants of Lands in the said Province. And Coll. Schuyler being att Present absent from this Province Coll^{o} Beekman who is the next Councillor named to him in her Ma^{ties} Instructions does think fitt to order by the advice of this Board that y^{e} s$_{d}$ Letter be Immediately Published att the Citty Hall in the usual manner."

complain of his severe usage when I came to England, he answered he valued it not, and that England was at a great Distance, and he well knew when another Gov^{r} came over he shou'd be removed: but notwithstanding his Hectoring me, I did at midnight get the trunk of Papers and myself on Ship board, and so prevented my confinement. . . . Also Captain Symons belonging to one of the Companies in a very bullying manner wou'd not let me Remove several things that we put into the Fort and paid for."*

Fortunately the rule of this man was brief, but it was not brief enough to prevent his disgracing himself by conduct such as this, as well as by that reckless granting of valuable lands to himself and friends which had been the bane of former administrations. But one enterprise, the first of its kind in the eighteenth century, which had been set on foot before his incumbency, ripened into action just as he entered upon his functions, and lends some luster to his otherwise undignified rule.

A few months before the death of Lord Lovelace, on March 1, 1709, the Queen addressed to him a letter, officially informing him that "at great expense" the authorities in England were fitting out an expedition to Canada, to be placed under the direction of Col. Samuel Vetch. In this paper the governor was directed to allow himself to be guided in all matters pertaining to this enterprise according to the instructions and plans of which the colonel was the bearer. For fear that the latter might not reach New York in safety, or might not reach it soon enough, a letter reiterating these instructions substantially was sent by post on another vessel. In this document, bearing date April 28, Lord Sunderland carefully detailed the plan of campaign which had been decided on by the ministry in England; and also the mode of preparing for it in America is indicated. Lord Lovelace died before either Col. Vetch or the secretary's letter reached him, but the expedition had been so thoroughly determined on and such earnest provision was made for it that this important business was not in the least interrupted by that sad circumstance.

It may readily be appreciated that the people of the colonies must have been ripe for such an enterprise and would heartily

* Doc. rel. Col. Hist. N. Y., 5, 89, 90. The letter is dated September 3, 1709. By the same ship came Ingoldesby's letters announcing the death of Lord Lovelace and his own assumption of the government. On September 5 the order revoking his commission as lieutenant-governor was passed by the royal council, the Queen being present.

join in the efforts of the home Government. "Queen Anne's war," corresponding with that of the Spanish succession in Europe, had precipitated hostilities on the southern borders in its very beginning, in 1702. The English there had taken the initiative against the Spanish settlements. Governor Moore, of South Carolina, attacked the Spanish town of St. Augustine, in Florida. The town itself was easily taken, but the castle held out until reënforcements compelled Moore to raise the siege and even to abandon his stores in the retreat. A second expedition was organized and assailed the Indian allies of the French and Spaniards dwelling about Appalachee Bay. As a result of this exploit several tribes submitted to the jurisdiction of Carolina. In the year 1706 a French fleet sailed from Havana, intending to reduce Charleston, but the people beat off the enemy, who had effected a landing, with a loss of 300 men killed or prisoners. At the north there hung the ever-threatening cloud of French and Indian invasion, with its accompanying atrocities. The Deerfield massacre had thrilled New England with horror in 1704. It was succeeded by the assault upon Haverhill, on the Merrimac, on August 29, 1708, and fresh horrors might be expected at any moment. It is to be regretted that so gallant and noble a people as the French must ever stand charged at the bar of history with having deliberately incited or encouraged, or at least countenanced, such barbarities. In a burst of righteous anger Col. Peter Schuyler—Quider, the friend of the Indians—sent a message of rebuke and remonstrance to Marquis de Vaudreuil, governor of Canada:

> My heart swells with indignation when I think that a war between Christian princes, bound to the exactest laws of honor and generosity is degenerating into a savage and boundless butchery.*

What wonder that the people rose almost en masse to resist this unnatural and wicked combination of civilization and savagery, and to uproot the power of the French in Canada. Bancroft tells us that during one year in the course of the war actually one-fifth of the entire population able to carry arms were enlisted as soldiers, and that there was universally "fostered a willingness to exterminate the natives."

Colonel Vetch came over with instructions, similar to those which have been noticed as addressed to Lord Lovelace, for the governors of Pennsylvania, Connecticut, and Rhode Is-

* Bancroft, "United States" (ed. 1883), 2: 198.

land. While large supplies were cordially voted and the requisite number of levies made in the more northern colonies, considerable opposition was encountered in the Pennsylvania and New Jersey legislatures, by reason of the prevalence of the Quaker element there. The New York assembly pledged itself to raise the sum of £10,000,* and early in the summer of 1709 its quota of soldiers was already on the way. The plan of campaign as laid before Lord Lovelace was to be as follows:

It is resolved to attack at the same time both Quebeck and Montreal, the first by sea and the second over the lake from Albany, with a body of 1500 men who are to be raised and armed, as you will see in the enclosed instructions. Her Majesty is now fitting out her Commander-in-Chief of the said expedition, with a squadron of ships and five Regiments of the regular troops, who are to be at Boston by the middle of May, and there to be joined with 1200 of the best men of New England and Road Island. They are then to sail with all expedition to attack Quebeck, being provided with Engineers, bomb vessells, and all sorts of artillery for such an enterprise. At the same time the 1500 men from Albany, under the command of one whom you shall appoint, are to make the best of their way to Montreal, which place they are to attack, and if possible to reduce to Her Majtys obedience.†

The chief command over the land forces of the United Colonies was intrusted to Col. Francis Nicholson, who was lieutenant-governor of New York under Sir Edmund Andros, and had since been governor of Virginia. Col. Vetch, to whose experience and zeal the expedition owed its inception and most of its present active preparation, was placed next to him in authority. He was of Scotch birth, and had first come to America in connection with that strange scheme of colonization of the Isthmus of Darien projected by William Paterson, the founder of the Bank of England. When the Darien bubble burst, Vetch, a young man of not quite thirty years, settled at Albany, attaining success as a trader, and married the daughter of Robert Livingston in 1700. In 1705 Colonel (then captain) Vetch was appointed by the governor of Massachusetts a commissioner to Quebec to negotiate an exchange of prisoners, and also, if possible, a treaty of peace or truce. Vetch remained in Canada several months, and he kept his eyes wide open as to the chances of a capture of its chief cities. He "devoted himself to the study of the topography and resources of the country. There were even those who said that, by intelligent

* Doc. rel. Col. Hist. N. Y., 5, 81.
† *Ibid.*, 5, 73.

and none too open observation, he learned more of Canadian weakness than was right for an Englishman in time of war to know."* He was thus well fitted to recommend the Canadian expedition to Queen Anne and her ministry, and to suggest besides the details of the campaign. Having promoted the enterprise also on this side of the Atlantic as vigorously as he had done, he was certainly entitled to be the second in command. It was well understood that in case of a successful issue he was to receive the appointment of governor of Canada.

The rendezvous for the land forces, as directed by the instructions, was Albany. Here the men from the different provinces collected during the month of June, and meanwhile the commander and his staff were utilizing the time by gathering all available information from Indians. Indian scouts had previously been sent far into the enemy's country, some even reaching the villages of the natives along the St. Lawrence. These now began to come in, and much valuable intelligence was gained from them.† On June 28 all was ready for the march upon Montreal. Col. Nicholson, accompanied by the Indian contingent from the ever-loyal Five Nations, under their trusted friend Col. Schuyler, led his little army as far as Stillwater, destined to be a field of glory in a cause more important than even the present. Here was hastily constructed a redoubt, which, in honor of the lieutenant-governor of the province, Nicholson named Fort Ingoldesby.‡ Then crossing the Hudson at a favorable point, many of which the quiet flow of its shallow waters here afforded, the colonial forces traversed the tangled wilderness and primeval forest, and halted and encamped on Wood Creek, at the southern extremity of Lake Champlain. Here news was awaited in regard to the movements of the coöperating fleet. Col. Vetch had gone to Boston at the same time that Nicholson led forth his forces from Albany upon the northern march. The fleet from England, as promised in the instructions, was to have arrived the middle of May. It was essential that the two attacking forces should have a knowledge of each other's situation and progress, and

* Article in International Review, November, 1881, on "An Acadian Governor," p. 467.

† Doc. rel. Col. Hist. N. Y., 5, 85.

‡ "Letters of Hessian officers during the Revolution," translated by William L. Stone, p. 134, note.

Vetch went to arrange some means of communication between them; but when he reached Boston, early in July, the fleet had not yet arrived. After many weary weeks of waiting, instead of a fleet a solitary vessel entered the harbor, a dispatch boat bringing the disheartening news that no English fleet was coming at all. The conduct of the war on the Spanish peninsula having gone against the Portuguese, the allies of England, the destination of the promised squadron with its five regiments of regulars had been changed from Boston to Lisbon.* In September, 1709, this news reached the colonial camp on Wood Creek, in the wilderness of northern New York. Of necessity the expedition against Canada was at an end. The aimless waiting had already depleted the ranks of the little army, and some intentional or unintentional defilement of the waters of the creek near its source had caused a frightful rate of mortality. By October 5 the forces had dwindled down to a mere handful, and these now abandoned the camp and returned to their homes.

With nothing accomplished and after expenses incurred that far exceeded their means, the people of the northern colonies were confronted with the burden of an oppressive debt, in addition to the still threatening perils of French and Indian atrocities. In spite of this almost ridiculous failure, however, Col. Schuyler was determined to force the Canadian, or the French and Indian, question upon the attention of the English court. "I hold it my duty toward God and my neighbor," he had said, "to prevent, if possible, these barbarous and heathen cruelties." At the end of this same year (1709) he took with him to England, at his own expense, five chiefs of the Five Nations.

In London, amid the gaze of crowds, dressed in English smallclothes of black, with scarlet ingrain cloth mantles edged with gold for their blankets, they were conducted in coaches to an audience with Queen Anne, to whom they gave belts of wampum and avowed their readiness to take up the hatchet for the reduction of Canada.†

To this effective expedient on the part of the indefatigable Schuyler we may doubtless trace the better-sustained attempts against Canada of subsequent years, finally resulting in its complete reduction under the empire of Great Britain.‡

* "An Acadian Governor," as cited, p. 495, note.

† Bancroft, "History United States" (ed. 1883), 1: 199.

‡ In recognition of his noble services in this connection and to com-

memorate this remarkable visit, Queen Anne presented Col. Schuyler with a handsome vase, which is still a cherished heirloom in the family, and of which an illustration is to be found in the text. Since Col. Nicholson went over in the same ship with Schuyler and his Indians and also naturally had much to do with presenting them to the Queen, some English historians of that date, with characteristic carelessness in such matters, suppress all mention of the Dutch-American and colonial officer, ascribing the merit of the undertaking to Francis Nicholson alone.

The following is the inscription on the vase: "Presented by Anne Queen of England to Col. Peter Schuyler, of Albany, in the Province of New York, April 19, 1710. To commemorate his visit to England by request of the Provincial government, accompanied by five sachems of the Mohawks."

XVI.—COMMERCE AND INDUSTRY OF FLORENCE DURING THE RENAISSANCE.

By WALTER B. SCAIFE, Ph. D. (Vienna).

COMMERCE AND INDUSTRY OF FLORENCE DURING THE RENAISSANCE.

By WALTER B. SCAIFE, Ph. D. (Vienna.)

Le commerce est la base et l'âme d'un empire;
Qu'il périsse, tout meurt; s'il fleurit, tout respire.

One of the greatest surprises in Florentine history is the fact that this people, which was so violent in its political quarrels, so magnificent in its patronage of the arts, so simple in its home life, and so lavish in its entertainments, was at the same time a nation of business men. Yet such was the fact, often remarked on by their own chroniclers and marveled at by foreign historians. A good illustration of their practical philosophy of life is furnished by one of their old proverbs, which runs "Who wants his mind active must make his hands hard." ("Chi vuol che il mento balli, alle mane faccia i calli.") We are so accustomed to think of the Italians passing their lives in *dolce far niente* that it is difficult for us to realize that the Florentines of the Renaissance were one of the most industrious people that have ever made a name for themselves in the world's history. Only after the Medici became installed as princes did leisure become fashionable and men begin to think more of show than of business and culture.

All business and even professional life of the age centered in guilds, and accordingly it is from a study of them that we may hope to get a glimpse here and there through the veil which Time gradually lets fall over the commercial life of a people. In Florence every branch of trade or manufacture either had its own independent guild or was affiliated to one of a more important calling. The number of independent guilds varied somewhat from time to time, according as the less important were able to assert themselves or were held in check by the more powerful ones. There were two main divi-

sions, called, respectively, the Arti Maggiori and the Arti Minori, or the greater and lesser guilds, there being usually seven of the former and fourteen of the latter, although their number was liable to change as above indicated.

The connection between the guilds and the government was so intimate that the subject requires at least a passing notice. In the first place, the rights of citizenship could be exercised only by such as were regularly enrolled as members of certain guilds; these guilds had furthermore the right of electing certain high officials of the government, and on one occasion the most powerful of the guilds, that of the woolen trade, signed as guarantor, along with the government, a treaty of peace with the city of Siena. Owing to this intimate connection the ups and downs of business were apt to be accompanied with political disturbances, and the early revolutions of Florence are to be attributed in some measure to this fact.

The laws governing trade were very strict, especially in the case of delinquent debtors. These were cast into a loathsome prison, underfed and maltreated, while their debts went on increasing, and they themselves were deprived of the opportunity of doing any business or of earning the means of discharging their obligations. To add to the horror of their situation, a law of 1398 provided that any prisoner for debt might be compelled to perform the duty of public executioner. Against bankruptcy, the laws were equally severe. In the early days, failure in business legally disqualified a man forever from holding office under the government, and a much later law permitted the creditors to conduct a bankrupt to the Mercato Nuovo, and there amuse themselves by butting him on a certain stone in the form of a broad wheel.

The judiciary system of Florence was peculiar, but we shall not enter upon it here further than to call attention to the fact that there was a special court for the adjudication of disputes arising out of differences in commercial transactions. This court was called "Mercanzia" or "Mercatanzia," and was composed of six judges, of whom the presiding one was often a nonresident of Florence. This is a good illustration of a prevalent idea of the Italians of that day which regulated many public offices, namely, that a nonresident was apt to be more impartial in the rendering of judgment than a fellow-citizen. This body of men is said to have combined the functions that to-day are performed by a court of justice and those of the modern chamber of commerce. Arbitration, too, was

also in vogue, and seems to have been a not uncommon method of settling commercial disputes.

At the head of the guilds was placed the one of most dignity and learning, not of the greatest wealth, namely, that of the judges and notaries. In the time of Villani its members numbered from 80 to 100 judges and about 600 notaries. The judges must have completed a certain line of study and become doctors of laws; and, it may be added, the official etiquette of the time required men of other callings to take off their hats to these in salutation. The notaries were not only the official witnesses to important documents, but frequently also the administrators of trustee funds, agents in business negotiations, etc.

The second guild was called "Arte di Calimala," and was composed of those merchants who imported French cloths, and, by processes known only to themselves, finished and dyed them, bringing them to great perfection. Though there were but twenty houses engaged in this business, they were not only rich, but also politically powerful and useful. In the thirteenth century their guild hall was the meeting place of a municipal council of thirty-six, which exercised so much influence in the shaping of public policy that a modern Florentine historian has remarked: "From this shop came out at one bound, as if of itself, the Republic of Florence."

By far the most celebrated of the Florentine guilds, and that which has had, perhaps, the most influence on the world at large, was the "Arte del Cambio," or of the money-changers. Though Florence can not lay claim to have been the first city to establish a bank, she was in all probability the inventor of the art of exchange, one of the most important functions of modern banks, while the extent of her banking connections, together with the sums of money involved, made her the banker of the largest part of the then civilized world. In the city itself there were eighty banking houses, whose ramifications extended far and wide. Already in the fourteenth century the Peruzzi had sixteen branch houses in different cities of Europe, and other Florentine bankers were not far behind them. The popes, the kings of England, France, and Naples were numbered among their customers; and the greater part of the banking business of private individuals in those countries was also conducted through the same channel.

The interest on loans varied at that time as to-day, according

to the condition of the money market and the financial status of the person seeking the loan. The church opposed the taking of all interest as usury, and for a long time public opinion was on the same side. At the opening of the fifteenth century usurers were morally regarded about in the same light as murderers, and were even refused burial in consecrated ground. "It was considered usurious for anyone to make a loan which was not drawn up on official paper, and where, in the instrument itself, it was not stated that the loan was made gratuitously." At an earlier date the punishment of beheading had been decreed against any who should take more than 5 per cent interest per annum. But notwithstanding such opposition, the banking business continued to grow, and the bankers to amass wealth, until public opinion was finally conquered. The usual interest continued to be 5 per cent, although in times of great stringency 15 per cent was practically paid even by the state, and as high as 25 per cent is mentioned as having been paid for private accommodations.

The fourth of the seven major guilds was called "Arte della Lana," or of wool, and was, in the earlier history of these corporations, the wealthiest and most influential of them all. This is the one that signed the treaty with Siena, mentioned above, and at one time into its hands was placed the oversight of the erection of the great cathedral. It was a liberal patron of the arts and, among other things, contributed a beautiful work for the ornamentation of a niche in Or Sanmichele, and also of the exquisite work of Luca della Robbia which still ornaments the façade of the Church of All Saints that faces the Ponte alla Caraja. In its prosperous days this guild numbered two hundred wealthy houses, which manufactured yearly from 70,000 to 80,000 pieces of cloth, among them being magnificent brocades of gold and silver of fabulous value. Not only did the Florentines excel in weaving, but they surpassed all other Europeans of the age in the beauty of their dyes. Red was the favorite color, and one of the celebrated families of the city acquired the name under which it is almost exclusively known from the fact that one of its ancestors discovered in the Orient a process by which the most beautiful red could be produced from a lichen known as the oricello. The name has gone through several mutations and is now usually seen in the form Rucellai. The family palace still exists, though the extensive gardens that once enhanced its beauty so much have been greatly re-

duced in size. Although there were in the territory of Florence about a million sheep, yet the greatest part of the wool used in the manufactures was imported, to a certain extent from Spain, but principally from England. At one time the Florentine agents bought up all the prospective yield of wool of the latter country for several years in advance. Strange to say, the perfection to which this art was brought in Florence was largely due to a brotherhood of monks, who occupied a monastery in the quarter now largely taken up by hotels, and contributed greatly to the prosperity of the city by their ability and ingenuity. This guild had a judge of its own, who was a nonresident and had the power to imprison and put in the stocks, but not to torture or execute. Subordinate to the woolen guild were twenty-five of the lesser trades, over which it exercised arbitrary power.

The manufacturers of silk goods formed another guild, and one that was also of considerable importance. In 1472 there were in the city eighty-three "magnificent shops" devoted to this industry, and from 15,000 to 16,000 people of the city and surrounding country "took part" in it. But the "too much governing" of the Medici princes of the sixteenth century ruined it; and from that blow it has never since recovered, although some beautiful silk goods are still produced here. Mulberry trees probably grew in Tuscany from early times, but no record of them has been found earlier than the fifteenth century, although mention of the silk industry in Florence is made as far back as the year 1225, when the corporation already had 350 matriculates. By a law of 1440 it was enacted that on every "podere" or farm there should be planted yearly five mulberry trees, until there should be on the place at least fifty. Two years later a new law forbade the exportation of raw silk, silkworms, or even of mulberry leaves.

There were two other of the major guilds, which however do not seem to have played any very important rôle in the life of Florence. These were the corporations of the doctors and wholesale druggists, and of the furriers. The medical men of that era did not know much about medicine, if we may judge of them by the fact that the one who enjoyed the greatest reputation of the day, and was called to the bedside of Lorenzo de Medici, gave his dying patient mixtures of ground up pearls and precious stones, evidently laboring under the idea that the more precious the medicine the better would be its effect.

The wholesale druggists traded not only in drugs, but also in dyes, spices, etc. Although the climate of Florence is comparatively mild, the people were then and still are accustomed to wearing furs, both for warmth and ornament, and accordingly the furriers were an element of considerable importance in the business of the city.

As previously intimated, the number of minor guilds was variable, although fourteen of them seem to have been able generally to assert their independence. Of these there is time to give only the names. They were (1) the butchers, (2) the shoemakers, (3) the iron workers, (4) the leather dressers, (5) the builders and stone cutters, (6) the wine merchants, (7) the bakers, (8) the oil merchants and pork butchers, (9) the linen drapers, (10) the locksmiths, (11) the manufacturers of armor and swords, (12) the harness makers, (13) the carpenters, (14) and last, the inn keepers.

In this connection it may be interesting to call attention to several of the smaller matters of business. The art of hammering gold was introduced into Florence as early as 1427, and has since continued to thrive there, while the present century had commenced before the same art made its way into England. At the very threshold of the fifteenth century there is mention of "a good master of pottery" at Feghino, a village not far from Florence, where the manufacture of pottery is still going on, and Luca della Robbia's inventions have made him and his city famous in the history of ceramics. The modern cutting of hard and precious stones first reached perfection also in Florence, if we are to trust the account of the life and work of Giovanni delle Carniuole, the first modern to approach the ancients in the skill of cutting cornelian, from which stone his name is derived, whose works "were the admiration of all Italy." Another curious fact is that false teeth, made of ivory, were here in use as early as the days of Boccaccio; and we hear of a prelate having them made in order to improve his pronunciation. The oldest portrait that represents a person with eyeglasses is probably that of Pope Leo X, a Florentine; and it is believed that that article was invented in this city, where the ashes of the inventor still repose.

With all the wealth, luxury, and learning, the business habits of the Florentines were in many respects far more simple than those of modern times. It was the rule, for instance, rather than the exception, to have the shop and dwelling in

the same house; and in front thereof were benches for the accommodation of the proprietor and his customers, who frequently discussed their affairs seated in the open air. The same man might be a member of several guilds, or he might be in business alone, or, as was generally the case, in partnership with others. Contracts were drawn up and signed then very much as now, governed by the principles of the Roman law. In the art of bookkeeping, however, the Florentines were innovators and far ahead of the rest of contemporary Europe. Business was indeed subject to reverses, as it has always been; but the profits were also in accordance with the risks when a venture was successful. Cosimo de Medici, for instance, inherited in 1429 his share of his father's estate of 179,221 gold florins; and by his business operations was enabled in thirty-five years to give away to the public a half million florins, and still leave a property behind him more than double all that his father had accumulated. Internal feuds, foreign wars, and pestilence ravaged the city from time to time, but so long as liberty remained prosperity was never long banished, but when freedom was dead then fortune also withdrew, and the city that had been the bank, the weaver, and the schoolmaster of Christendom fell into decay; from which condition it is only now partially reviving under a new régime of liberty.

A very important factor in the prosperity and commercial influence of Florence was its coinage. In an age when the precious metals were comparatively scarce, and the coinage of many nations suspiciously alloyed and variable, the authorities of this city coined yearly from 350,000 to 400,000 gold florins, and about 20,000 pounds of subsidiary coins. With a very few exceptions this coinage was maintained at a high standard of excellence, and passed without question not only all over Europe, but also in not a few barbarous countries. The Pope proclaimed excommunication against any who should counterfeit it, "but," adds the ancient chronicler, "in this matter he did not correct himself." The unit of value was the gold florin, a coin of practically pure gold, of about the weight of a $2.50 piece, or of a British half sovereign. But in considering its value it must be borne in mind that the then purchasing power of gold was more than four times its present value.

The labor question in Florence during the Renaissance was a burning one, and the conditions were not very dissimilar from

those that beset us to-day. A large part of the working population lived from remote times in the quarter of San Friano, where they are still crowded together. During the period under consideration there was a gradual change from individual labor in the home to the congregation of multitudes of working people in factories. And this movement was accompanied by a gradual concentration of riches and financial power in fewer hands. The consequent disparity of conditions produced widespread discontent; just as we see all about us to-day, with the cry that the rich are growing richer and the poor poorer. From time to time the discontent broke out in open rebellion against the constituted authorities, and led to scenes of riot, arson, and bloodshed, that fully equaled if they did not excel any demonstration of the kind in recent times. Combined with the industrial were also political grievances, such as do not exist among us; for the rights of suffrage were by no means universal in Florence, and redress of both industrial and political wrongs was usually sought at the same time. Wages were by these means increased; and the scarcity of labor produced by the ravages of the pest, together with the enormous bequests to the poor at the same time, bettered very greatly the financial condition of the working classes. However, we are informed that their moral condition was not thereby improved; but on the contrary, that they became much more dissipated and unruly. During the period of liberty, their discontent and uprisings continued; and they were finally subdued, not by force but by the seductious methods of the Medici, by whom they were gradually enslaved, in the name of freedom, while they meanwhile were ignorantly shouting "Liberty."

XVII.—PARLIAMENTARY GOVERNMENT IN CANADA—A CONSTITUTIONAL AND HISTORICAL STUDY.

By J. G. BOURINOT, C.M.G., LL.D., D.C.L., of Ottawa, Canada.

PREFATORY NOTE.

In this series of three papers the writer has attempted to give, first, a historical review of the evolution and effect of responsible or parliamentary government in the Dominion of Canada; next a summary of the constitutional methods and principles of that government; and thirdly, a comparison between the leading features of the Canadian and the United States systems. He has not pretended—for it does not fall within the legitimate scope of the monograph—to discuss the federal system of Canada. That has been already attempted by the author in one of the Historical and Political Studies of the Johns Hopkins University, to which the present essays may be considered in a measure supplementary.

HOUSE OF COMMONS, OTTAWA,

December 27, 1891.

PARLIAMENTARY GOVERNMENT IN CANADA. A CONSTITUTIONAL AND HISTORICAL STUDY.

By JOHN GEORGE BOURINOT, C.M.G., LL.D., D.C.L., of Ottawa, Canada.

I.—ORIGIN AND DEVELOPMENT OF RESPONSIBLE GOVERNMENT IN CANADA.

The constitution of Canada is not a purely artificial scheme of government, but, like that of England, is a systematical "balance of social and political forces which is a natural outcome of its history and development."* Responsible government is but another phrase for parliamentary government. It has happened in the history of Canada, as in that of the parent state, the principles which lie at the basis of the system were not formulated and adopted in a day or a week, but were slowly evolved as the natural sequence of representative institutions. We do not find in any of the statutes which have emanated from the Imperial Parliament, as the central legislature of the whole Empire, any express or authoritative enunciation of the principle, or any enactment of rules of law which should govern the formation of a cabinet. It is true the British North America act of 1867,† which is the fundamental law of the Dominion as a federation, contains a vague statement in the preamble that the provinces "expressed their desire to be federally united into one Dominion with a constitution similar in principle to that of the United Kingdom." Elsewhere in the act there are provisions for vesting the executive authority and government in the Queen, and for the appointment of a privy council to aid and advise the governor-general

* See Green, "History of the English People," vol. IV, p. 232.
† Imp. Stat., 30-31 Vict., chap. 3.

of Canada, and also for the appointment of a lieutenant-governor and an executive council in the several provinces; but as respects their respective powers and functions, there is nothing authoritative in our written constitution to confer upon a cabinet the great responsibilities which it possesses as the chief executive and administrative body of the Dominion and of each province by virtue of it possessing the confidence of the respective legislatures. In Canada that great body of unwritten conventions, usages, and understandings which have in the course of time grown up in the practical working of the English constitution form as important a part of the political system of Canada as the fundamental law itself which governs the federation. By ignoring this fact, as I have attempted to show on a previous occasion,* an eminent English publicist, Mr. A. V. Dicey, Vinerian professor of English law in the University of Oxford, has fallen into the error of describing the preamble of the British North America act of 1867 as a piece of "official mendacity."† This system of responsible government preceded the establishment of the Dominion by a quarter of a century, and was adopted or rather continued as indispensable to the efficient administration and harmonious operation of the government, not only of the confederation as a whole but of its provincial entities respectively. Its history must be traced through the various dispatches of the secretaries of state, the instructions to the governors-general and lieutenant-governors, and in the journals and debates of the legislative bodies of the provinces for half a century past.

Parliamentary institutions in any shape were unknown to Canada under the French régime, which lasted from 1608 to 1759. Its government during that period was in the hands of a governor, an intendant or minister of finance and police, and a council which possessed executive and judicial powers. Its functions and authority were carefully defined and restrained by the decrees and instructions of the French king, in conformity with the principle of centralization and absolutism that was the dominant feature of French government until the revolution. It was a paternal government, which regulated all the political, social, and even religious affairs of the country, for the Roman Catholic bishop made himself all-influential in coun-

* "Canadian Studies in Comparative Politics," p. 20.

† "The Law of the Constitution" (3d ed.), p. 155.

cil and the people were practically mere automatons to be directed and moved according to the king's sovereign will. When New France became a possession of England and the question arose how it was to be governed, provision was made in general terms for the establishment of representative institutions as in the old English colonies. The proclamation of George III, which was issued in 1763—a severely criticised document on account of its want of clearness*—quite naturally gave expression to the English idea that a representative system in some form or other was a natural consequence of British rule. "In the old [colonial] system," says Prof. Seeley,† "assemblies were not formally instituted, but grew up of themselves because it was the nature of Englishmen to assemble. Thus the old historian of the colonies, Hutchinson, writes under the year 1619 [twelve years after the foundation of Jamestown and eleven years later than Champlain's arrival at Quebec]: 'This year a house of burgesses broke out in Virginia.'" But the Frenchmen of Canada knew nothing of those institutions, so familiar and natural to Englishmen from the earliest days of their history, and even if they had been disposed to elect a representative house, the fact that all were Roman Catholics and still subject to certain political disabilities,‡ stood in the way of such a result. Then a few years later followed the Quebec act which removed these disabilities and established a system of government which restored the civil law of French Canada—if, indeed, it had ever been legally taken away—and gave the people a legislative council nominated by the Crown. In accordance with his instructions the governor also appointed a privy council to assist him in the administration of public affairs. Whilst the English settlers of Canada, then enlarged in area so as to include the present northwest of the United States, received with dismay and dissatisfaction a form of government which made French law prevail in civil matters and prevented the meeting of a legislative assembly, the French Canadians were naturally satisfied with the guarantees given them for the perpetuation of their old institutions, and, ignorant of an English representative system, accepted gratefully one which was far more liberal than that under which they had been so long governed. Fourteen years later the Imperial Parliament again in-

* Bourinot, "Manual of Constitutional History of Canada," p. 9, note.

† "Expansion of England," p. 67.

‡ The proclamation obliged them to take a test oath.

terfered in Canadian matters and passed the "constitutional act" of 1791, which constituted the two provinces of Upper Canada and Lower Canada and, by separating the English from the French Canadians, gave French Canada remarkable opportunities for establishing her language, civil law, and other institutions on a permanent basis. By the beginning of the present century, there were representative institutions in the five provinces of Upper Canada, Lower Canada, New Brunswick, Nova Scotia, and Prince Edward Island. It was asserted authoritatively that the object of the imperial government was to give the colonial peoples a system as like as possible to that of England. One lieutenant-governor* called it "an image and transcript of the British constitution." So far as having a permanent head of the executive and a council to advise the governors and a legislature composed of two houses, there was a similarity between the English and Canadian constitutions. The essential differences, however, lay in the absence of any responsibility on the part of the executive councils to the people's assemblies and to the little or no control allowed to the latter over the revenues, expenditures, and taxation of the country. It would have been more correct to state that the Canadian system of those early times bore a likeness to the old colonial system in its latest phases when the crown-appointed governors were constantly in collision with the representative bodies.† As a rule, in all the old colonies there had been a legislature of a bicameral character and certain councillors who were practically advisers of the governors. Up to 1838, when the constitution of Lower Canada was suspended on account of political difficulties, the government of the provinces was administered by the following authorities, their power being, generally speaking, in the order I have given them:

A secretary of state in England, who had the supervision of the colonial governments.

A governor-general of Canada, and lieutenant-governors in the other provinces, the latter being practically independent of

* Lieutenant-Governor Simcoe, in closing the first session of the legislature of Upper Canada. See Bourinot, "Manual of Constitutional History," p. 25, note.

† Writing of the perpetual antagonism between the legislative bodies and the royal governors, Fiske says ("Civil Government in the United States," p. 66) that it "was an excellent schooling in political liberty," a remark quite applicable to Canada.

the former, and acting directly under imperial instructions and commissions.

An executive council, appointed by the foregoing officials and owing responsibility to them alone.

A legislative council, composed for the most part of executive councillors appointed for life by the crown, that is to say, practically by the governors.

A legislative assembly, elected by the people on a restricted franchise, claiming but exercising little or no control over the government and finances of the provinces.

In the provinces by the sea there was no formal division between the executive and legislative councils as in the upper provinces, but the legislative council exercised at once legislative and executive functions. The governing body in all the provinces was the legislative council which was entirely out of sympathy with the great body of the people, and with their immediate representatives in the assembly, since it held its position by the exercise of the prerogative of the crown, and possessed a controlling influence with the governors, not only by virtue of its mode of appointment, but from the fact that its most influential members were also executive councillors.* In the contest that eventually arose in the working out of this political system between the governors and the assemblies for the control of the revenues and expenditures, and the independence of the judiciary, and other questions vitally affecting the freedom and efficiency of government, the legislative council in every province was arrayed as a unit on the side of prerogative, and at one time or other opposed every measure and principle in the direction of wider political liberty. It is easy, then, to understand that in all the provinces, and especially in Lower Canada to the very day of Papineau's outbreak, the efforts of the popular leaders were chiefly directed to break down the power of the legislative council and obtain a change in its constitution from the imperial authorities. The famous

* This system was modeled on that of a number of the old colonies. "The governor always had a council to advise with him and assist him in his executive duties, in imitation of the king's privy council in England, but in nearly all the colonies this council took part in the work of legislation, and thus sat as an upper house, with more or less power of reviewing and amending the acts of the assembly." Fiske, "Civil Government in the United States," p. 155. The system was in operation in the royal provincial colonies, to which class Nova Scotia also belonged. See Scott, "Development of Constitutional Liberty," pp. 35, 36.

ninety-two resolutions of 1834, which embodied in emphatic phrases the grievances of the popular majority of French Canada, do not directly or indirectly refer to the English system of having in parliament a set of ministers responsible to and dependent on the majority of the popular house, but make a fierce onslaught on the upper chamber. Even in the provinces of Nova Scotia and New Brunswick the opinion of the leaders of the popular body appears to have hesitated for a while between a change in the constitution of the legislative council and the creation of a responsible ministry. A set of resolutions which were passed as late as 1837 by the assembly of Nova Scotia on the motion of Mr. Howe, confessedly the ablest and most eloquent exponent of responsible government in British North America, were aimed against the legislative council "combining legislative, judicial, and executive powers, holding their seats for life, and treating with contempt or indifference the wishes of the people and the representations of the Commons," and concluded with the proposition that, "as a remedy for the grievances his Majesty be implored to take such steps either by granting an elective legislative council or by such other reconstruction of the local government as will insure responsibility to the Commons.* No doubt none of the public men of Canada in those days comprehended more clearly than Mr. Howe, as the discussion on the political system then in vogue proceeded, the true scope and meaning of responsible government and that no mere compromise would meet the crucial difficulty. He like others eventually recognized the fact it was only by the adoption of the English system in its entirety that the public grievances could be redressed and the constant strain on the public mind removed. In Upper Canada, also settled by Englishmen imbued with the spirit of English institutions, public men gradually found that, unless the executive and legislative branches were brought into harmony by the adoption of such principles as had been broadly laid down after the revolution of 1688, and had been developing themselves in England ever since, no mere change in one branch of the legislature would suffice. Even as early as 1829, Mr. Stanley, afterwards the Earl of Derby, and father of the present governor-general of Canada, presented a petition from several thousand inhabitants of Toronto, praying that the judges might

* Howe, "Speeches and Public Letters" (Boston and Halifax, N. S., 1858), Vol. I, pp. 93–96.

be placed on the same independent tenure that they occupied in England, and expressing the hope "that they might have a stable and responsible administration."*

Of course, when we look back at the history of this question we should bear in mind that responsible government, as Canadians now possess it, was necessarily a consequence of the political development of the people. In 1792 the people of French Canada were certainly not ripe for such a system, and the British Government might well hesitate before intrusting so large a measure of freedom to a French Canadian majority without experience of parliamentary government. But it could not have been a question at all under consideration in those days. Canadian writers entirely ignore the fact that the system had been only working itself out under many difficulties since 1688, and was not yet perfectly well understood even in the parent state, and certainly not by the people at large. Even writers like De Lolme and Blackstone, whose works were published a few years before 1792, never devoted even a footnote to a responsible cabinet or ministry; and no constitutional writers, until the last half of this century, attempted to formulate the rules and conventions which regulate this system of unwritten law.† The framers of the American constitution in 1787 never discussed it simply because they did not understand it.‡ The system of government established in the provinces was intended to be an improvement from the imperial point of view on the old colonial system, and to give as great a strength as possible to the executive authority. Sir James Craig, and many of his successors, until the arrival of Lord Gosford, were fitting representatives of an autocratic sovereign like George III, who attempted for years to govern through advisers perfectly willing to be mere ciphers in his hands and acknowledged their real responsibility was to him and not to parliament. It was not until the close of the eighteenth century, a

* MacMullen, "History of Canada" (Brockville, Ontario, 1868), p. 370.

† It is a fact of which Canadians should be proud that the late Dr. Todd, librarian of the parliament of Canada, wrote the fullest and ablest exposition of the principles and workings of parliamentary government that has yet appeared in any country.

‡ "In 1787," says Prof. Bryce, "when the constitutional convention met at Philadelphia, the cabinet system of government was in England still immature. It was so immature that its true nature had not been perceived." Bryce, "The American Commonwealth," Vol. I, p. 273. See also Vol. I, pp. 35, 36.

short time before the passage of the constitutional act of 1791, when the younger Pitt became the head of the administration, that the authority of the king diminished in the councils of the country, and responsible government was established on its proper basis. Public men in the United States, as well as in the colonies of Canada, might well believe that the king and the parliament were the supreme authorities, and that the ministry was an entirely subordinate body, apparently under the influence of the sovereign. As a matter of fact, parliamentary government in England itself was in those days virtually on its trial, and statesmen were from their experience year by year formulating for us in these later times those principles and rules which would bring the executive into entire harmony with the legislative authority.* According as the power of the house of commons increased ministers were less responsible to the king, and personal government, like that of the Stuarts and of George III, became an impossibility. The king gained in dignity according as his ministers assumed that full measure of responsibility for all affairs of state which is in accordance with the fundamental principles of the English constitution, and the permanency of the British system of government was more assured by the agreement between the three branches of the legislature. In the same way in Canada, the people had to work the system for themselves out of their own experiences. Until, however, the necessity of applying the system to the colonies became obvious even to the eyes of English statesmen, the governors of the provinces were from the very nature of things so many autocrats, constantly in collision with the popular element of the country. Sir James Craig berated the assemblage in no mincing language,† and although none of his successors ever attempted to go as far as he did, several of them more than once expressed their disapproval of the action of the popular house indirectly by praising without stint the council, which was, after all, the creature of their own will and pleasure. In some respects the governors of those days were to be pitied. Little versed, as many of them were,

* See Todd, "Parliamentary Government in England," Vol. II, pp. 163-171. And more particularly the first chapter in May's "Constitutional History" (Vol. I, pp. 15-104), where the influence of George III over his ministry and in the government of England is clearly stated.

† See Bourinot, "Canadian Studies in Comparative Politics," p. 17.

in political science, and more learned as they were in military than in constitutional law, they might quite naturally at times give expression to a little impatience under the working of a system which made them responsible to the imperial authorities who were ever vacillating in their policy, sometimes ill-disposed to sift grievances to the bottom, and too often dilatory in meeting urgent difficulties with prompt and effective remedial measures. The secretaries charged with colonial administration were constantly changing in those days, and little fame was to be won in England by the study and consideration of colonial questions. It is quite certain that until the time of Lord Durham, no governor-general or lieutenant-governor ever thoroughly appreciated the exact position of affairs in Canada, or even suggested in a dispatch a remedy that would meet the root of the evil and satisfy the public mind.

The necessary change was brought about with surprising rapidity when the difficulties of the long strained situation in the provinces culminated in uprisings of malcontents in two provinces only. Nova Scotia and New Brunswick had always pursued a constitutional agitation, and by the time of the arrival of Lord Durham in Canada Mr. Howe and his friends had succeeded in obtaining the redress of not a few grievances. That nobleman, and his chief adviser Charles Buller, immediately understood that an elective legislative council was not the true panacea that would cure the body politic of its grievous sores, and the result of their inquiries was a report which, in its clear and impartial statement of the political difficulties of the country, and in its far-reaching consequences, must take a place among the great charters and state documents that have molded the English constitution. If the authors* had written no other sentence than the one which I here quote they would have deserved the gratitude of the people of this country:

"I know not how it is possible to secure harmony in any other way than by administering the government on those principles which have been found perfectly efficacious in Great Britain. I would not impair a single prerogative of the crown; on the contrary, I believe that the interests of the

* No doubt Charles Buller must share the credit in all respects with Lord Durham for the authorship of the report, and indeed it is claimed that he wrote it in its entirety. Read Mr. Howe's just eulogy of Mr. Buller, an able writer and statesman, too soon lost to English public life. Howe, "Speeches and Public Letters," Vol. I, pp. 566-567.

people of these provinces require the protection of prerogatives which have not hitherto been exercised. But the crown must, on the other hand, submit to the necessary consequences of representative institutions; and if it has to carry on the government in union with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence."*

The history of the concession of responsible government has its perplexities for the historical writer on account of the hesitation that marked the action of the imperial government and of the governors of some of the provinces when it was generally admitted that the time had come for adopting a new and liberal colonial policy. Before the appearance of Lord Durham's report, there is little doubt that the imperial government had no intention to introduce immediately the English system in its completeness into the provinces. Even in the provinces themselves there was much indecision in coming to a definite conclusion on the subject. Joseph Howe himself, with all his sagacity and knowledge, had not hesitated to say, in moving the resolutions before mentioned:

"You are aware, sir, that in Upper Canada an attempt was made to convert the executive council into the semblance of an English ministry, having its members in both branches of the legislature, and holding their positions while they retained the confidence of the country. I am afraid that these colonies, at all events this province, is scarcely prepared for the erection of such machinery. I doubt whether it would work well here; and the only other remedy that presents itself is to endeavor to make both branches of the legislature elective."†

But as I have already stated, Mr. Howe, like other public men in Canada, was gradually brought to demand responsible government in the full sense of the term. In fact, it is to him and to the advocates of responsible government in Upper Canada that the chief credit must be given for the eventual establishment of the system as we now possess it. In Lord John Russel's dispatches of 1839,—the sequence of Lord Durham's report—we can clearly see the doubt in the minds of the imperial authorities whether it was possible to work the system on the basis of a governor directly responsible to the parent state, and at the same time acting under the advice of ministers who would be responsible to a colonial legislature.‡ But the colonial secre-

* Page 106 of the Report.

† "Speeches and Public Letters," Vol. I, p. 108.

‡ See his dispatches of 1839 in the Journals of Leg. Ass. of Canada, 1841, App. BB.

tary had obviously come to the opinion that it was necessary to make a radical change which would insure greater harmony between the executive and the popular bodies of the provinces. In these same dispatches, which were forwarded to all the governors, he laid down the principle that thereafter "the tenure of colonial offices held during her Majesty's pleasure will not be regarded as a tenure during good behavior," but that "such officers will be called upon to retire from the public service as often as any sufficient motives of public policy may suggest the expediency of that measure." Her Majesty, he stated emphatically, had "no desire to maintain any system of policy among her North American subjects which opinion condemns" and there was "no surer way of learning the approbation of the queen than by maintaining the harmony of the executive with the legislative authorities." Mr. Poulett Thomson was the governor-general expressly appointed to carry out this new policy. If he was extremely vain,* at all events he was also astute, practical, and well able to gauge the public sentiment by which he should be guided at so critical a period of Canadian history. The evidence is clear that he was not individually in favor of responsible government as it was understood by men like Mr. Baldwin and Mr. Howe when he arrived in Canada. He believed that the council should be one "for the governor to consult and no more," and voicing the doubts that existed in the minds of imperial statesmen he added, the governor "can not be responsible to the government at home" and also to the legislature of the province; if it were so, "then all colonial government becomes impossible." "The governor," in his opinion, "must therefore be the minister, in which case he can not be under control of men in the colony." Sir Francis Hincks, whose opinion in these matters is worthy of consideration, has expressed his belief that Lord Sydenham at the outset had hopes of "being able to find subordinates who would undertake to defend his policy in the house of assembly," and that his object was "to crush party connection."† Be that as it may, Lord Sydenham probably soon found after he had been for a while in the country, and had frequent opportunities of consult-

* This was Greville's opinion of him. See his Journals, under date of January 30, 1836. It is only necessary to read Scrope's Life of Lord Sydenham to find in every line the evidence of his intense egotism.

† See Hincks, "Reminiscences of his Public Life," pp. 41 *et seq.*

ing with the leaders of the popular party who well knew the temper of the country at large, that his policy was not workable at that juncture, and that if he wished to accomplish the union successfully, the principal object of his ambition, he would have to temporize, and disguise his own conception of the best way of carrying on the government of the country. This first council was a mere makeshift, composed of heterogeneous elements, and it is not surprising that Mr. Baldwin should have seized the earliest opportunity of leaving it. When the assembly met it was soon evident that the reformers in the body were determined to have a definite understanding on the all important question of responsible government, and the result was that the governor-general, a keen politician, immediately recognized the fact that, unless he yielded to the feeling of the majority, he would lose all his influence, and there is every reason to believe that the resolutions which were eventually passed in favor of responsible government in amendment to those moved by Mr. Baldwin had his approval before their introduction. The two sets of resolutions practically differed little from each other, and the inference to be drawn from the political situation of those times is that the governor's friends in the council thought it advisable to gain all the credit possible with the public for the passage of resolutions on the all absorbing questions of the day, since it was obvious that it had to be settled in some satisfactory and definite form.* The purport of the resolutions which form the first authoritative expression of the almost unanimous opinion of a colonial legislature on the question must be familiar to all Canadians, but then their importance is such that the material portions of the text should be quoted in full in a paper of this character:

(1) "That the head of the executive government of the province being within the limits of his government the representative of the sovereign is responsible to the imperial authority alone, but that, nevertheless, the management of our local affairs can only be conducted by him by and with the assistance, counsel, and information of subordinate officers in the province.

(2) "That in order to preserve between the different branches of the provincial parliament that harmony which is essential to the peace, welfare and good government of the province, the chief advisers of the representative of the sovereign, constituting a provincial administration under him,

*See Scrope's "Life of Lord Sydenham," 2nd. ed. Also Sir Francis Hincks's opinion on the same subject, "Reminiscences of his public life," p. 42.

ought to be men possessed of the confidence of the representatives of the people; thus affording a guarantee that the well-understood wishes and interests of the people, which our gracious sovereign has declared shall be the rule of the provincial government, will on all occasions be faithfully represented and advocated.

(3) "That the people of this province have, moreover, the right to expect from such provincial administration, the exertion of their best endeavors that the imperial authority, within its consitutional limits, shall be exercised in the manner most consistent with their well-understood wishes and interests."*

Mr. Baldwin also wished to obtain from the assembly a definite expression of opinion as to the constitutional right of the legislature to hold the provincial administration responsible for using their best exertions to procure from the imperial authorities, that their rightful action in matters affecting Canadian interests should be exercised with a similar regard to the wishes and interests of the Canadian people. No doubt, looking at the past political history of the province, and the language of Lord John Russell in his dispatches, and the concealed opinions of the governor himself, of which Mr. Baldwin had in all probability an inkling, he was quite justified in proposing the resolution in question; but it is also obvious that no such proposition could have any practical effect on the adjustment of those nice questions that might arise in the course of the relations between Canada and the parent state.† As set forth in later days by an able statesman of the Liberal party of Canada, "Imperial interests are, under our present system of government, to be secured in matters of Canadian executive policy, not by any clause in a governor's instructions (which would be practically inoperative, and if it can be supposed to be operative would be mischievous), but by mutual good feeling and by proper consideration for imperial interests on the part of her Majesty's Canadian advisers, the crown necessarily retaining all its constitutional rights and powers which would be exercisable in any emergency in which the indicated securities might be found to fail."‡

* That my readers may see that there is little or no difference between Mr. Baldwin's and Mr. Harrison's resolutions, I refer them to Can. Leg. Ass. Journals of 1841, Sept. 3.

† See Todd, "Parliamentary Government in the Colonies," p. 57.

‡ Hon. Edward Blake in a dispatch to the Secretary of State, Can. Sess, Papers, 1887, No. 13. See Bourinot, "Federal Government in Canada," Johns Hopkins University Studies, Vol. 7, pp. 537, 538.

The close of the first session of the first legislature of Canada after the union of 1841 saw responsible government virtually adopted as the fundamental basis of our political system, although for a few years its development was in a measure retarded by the ill-advised efforts of Lord Metcalfe (who came fresh from India, where English officials were so many mild despots in their respective spheres), to assert the prerogatives of the head of the executive in the spirit of times which had passed away, and to govern according to the ideas which it appears Lord Sydenham himself privately entertained when he first came to Canada. The critical period of responsible government in Canada, as well as in the maritime provinces, extended from 1839 to 1848. In New Brunswick, Sir John Harvey, the lieutenant-governor, at once recognized in Lord John Russell's dispatches "a new and improved constitution;" and by a circular memorandum informed the heads of departments that thenceforward their offices would be held by the tenure of public confidence. Unfortunately for Nova Scotia, there was at that time at the head of the government, a brave but obstinate old soldier, Sir Colin Campbell, who had petrified ideas on the sanctity of the prerogatives of the crown, and honestly believed that responsible government was fraught with peril to imperial interests. He steadily ignored the dispatches which had so much influence on the situation of affairs in the other provinces, until at last such a clamor was raised about his ears that the imperial government quietly removed him from a country where he was creating dangerous complications. Nova Scotia, from the time Mr. Howe moved his resolutions in the assembly,* had been making steady headway toward responsible government, as a result of the changes that were made by Lord Glenelg (truly described "as one of the most amiable and well disposed statesmen who ever presided over the colonial department")† in the position of the legislative council, which was at last separated from the executive authority. But the executive council was very far from being in accord with public opinion, and its members had no political sympathy with

* See Howe, "Speeches and Public Letters," Vol. I, p. 220.

† This is a quotation from Howe's "Speeches and Public Letters," Vol. I, p. 144, a work having on the title page the name of W. Armand, M. P. P., as editor, but well understood to have been written word for word by Mr. Howe himself.

each other. The governor's friends predominated and acknowledged no responsibility to the assembly. When Lord Falkland was appointed lieutenant-governor there was every expectation that the political agitation that had so long disturbed the province would disappear, at least as far as it could in a country where every man is a born politician; and indeed for awhile it seemed as if the new governor would exhibit that tact and judgment which were so essential at a time when a new system of government was in course of development, and it was necessary to respect the aspirations of the popular party without unduly wounding the feelings of the men who had for so long controlled the affairs of government, and acted as if they had a monopoly of them for all time.

But the choice of Lord Falkland was in many respects unfortunate. In the provinces, under the old régime, there were two classes of governors who did much harm in their way. First of all, there were the military governors, like Sir James Craig and Sir Colin Campbell, well-meaning and honest men, but holding extreme ideas of the importance of the prerogatives of the Crown, and too ready to apply the rules of the camp to the administration of public affairs; and then there were the gentlemen who wished to recruit narrow fortunes, had no very high opinion of "those fellows in the colonies,"* and in most cases obtained the position not from any high merit of their own, but as a result of family influence. Lord Falkland appears to have belonged to the latter class, and it did not reflect much on the sagacity of the government who chose at a critical period of provincial history a man who clearly had no very correct idea of the principles of the new system he had to administer. He quarreled with the leaders of the Liberal party in a most offensive way, and even descended into the field of political controversy. He used every possible effort to oppose the development of responsible government, and in doing so threw himself into the arms of the party that had so long ruled in social and political life in Nova Scotia. It is certainly a curious coincidence that at a time when responsible government was understood to be practically conceded, Lord Falkland and Lord Metcalfe should have been simultaneously appointed to preside over the provinces of Canada and Nova Scotia; but

* Lord Sydenham in one of his letters applies this contemptuous expression to the members of the legislature. (See Scrope's Life, p. 234.)

it is not at all probable that they were sent with any sinister instructions to impede the development of the new system.* They happened to be the two men whom the colonial office found most conveniently at hand, and like other appointments of the kind in those days they were dispatched without any special inquiry into their qualifications for the important responsibilities they had to discharge. The difficulties that occurred after their arrival were of their own making. One of them was unable by nature and the other by his education in India to understand the way in which their respective provinces should be governed since the adoption of the new colonial policy, which Lord John Russell was the first to inaugurate in general terms. Like Sir Francis Bond Head, the new lieutenant-governor of Nova Scotia was an example of a man who had greatness thrust upon him, for there were some people cruel enough to say at the time of the former's appointment that he received a position which was really intended for his certainly more able relative, Sir Edmund Head, who became in later times governor-general of Canada—another apt illustration, if it were true, of the blunders which colonial secretaries in those days were wont to make.† The history of the contest in Nova Scotia was much more interesting in some respects than that of Canada as soon as the governors began to develop their reactionary policy. Mr. Howe was a poet as well as an orator, and it is curious to note that Nova Scotia has given birth to the few humorists that Canada can claim. "Sam Slick" (Judge Halliburton) was a Nova Scotian, and Mr. Howe, who printed his books in the first place, had also a deep sense of humor which was constantly brightening up his speeches and writings. It must be admitted that his humor was rather that of Fielding and Smollett than of Hood and Lamb, and was not always suited to these more self-restrained times. Some of the most patriotic and soul-stirring verses ever written by a Canadian

* Mr. Howe in his collection of "Letters and Public Speeches" (Vol. I, p. 393), traces "a mysterious connection" between the two governors; but he quotes in a subsequent page an extract from a speech in parliament of Lord Stanley, then secretary of state for the colonies, in which he stated that the "principle of responsible government had been fully and frankly conceded on the part of the government." (*Ibid.*, Vol. I, p. 427.)

† See Sir Francis Hincks's "Reminiscences," p. 15. But Mr. Goldwin Smith ("The Canadian Question," p. 115, note) believes that this story of Sir Francis having been mistaken for Sir Edmund Head "can not be worthy of credence."

can be found in his collection of poems; but relatively very few persons nowadays recollect those once famous satirical attacks upon Lord Falkland, which gave great amusement to the people throughout the province, and made the life of that nobleman almost unbearable.*

In this way the political fighters of the maritime provinces diversified the furious contest that they fought with the lieu-

* These verses are too long, and contain too many local references to be appreciated by those who are not thoroughly conversant with the history of those times, and I shall content myself with a quotation from "The Lord of the Bedchamber," an allusion to one of the positions previously held by the lieutenant-governor. The verses are supposed to show his opinion of the troublesome house of assembly, and his way of conciliating some of its unruly elements. The lieutenant-governor is supposed to be waiting for a reply to a message to the Commons:

"No answer! The scoundrels, how dare they delay!
Do they think that a man who's a peer,
Can thus be kept feverish, day after day,
In the hope that their Speaker 'll appear?

"How dare they delay, when a Peer of the Realm,
And a Lord of the Bedchamber, too,
To govern them all has been placed at the helm
And to order them just what to do?

"Go D—dy, go D—dy, and tell them from me,
That like Oliver Crom. I'll come down,
My orderly sergeant mace-bearer shall be,
And kick them all out of the town."

These remarks are supposed to be addressed in the secrecy of his chamber to one of his pliant friends who ventured to hint that it might not, for him, be quite safe to repeat what was said:

"They've got some odd notions, the obstinate crew,
That we are their servants—and they
A sergeant have got, and a stout fellow, too,
Who their orders will strictly obey.

"Besides, though the leader and I have averred,
That justice they soon shall receive,
'Tis rather unlucky that never a word
That we say will the fellows believe.

"How now, cries his Lordship, deserted by you
I hope you don't mean 'to retire,'
Sit down, sir, and tell me at once what to do,
For my blood and my brain are on fire."

Then the governor's friend suggests a method of settling matters quite common in those old times:

"Suppose!" and his voice half recovered its tone,
"You ask them to dinner," he cried,
"And when you can get them aloof and alone,
Let threats and persuasion be tried.

tenant-governors, and it was certainly better that the people should be made to laugh than be hurried into such unfortunate and ill-timed uprisings as occurred in the other provinces. Happily such a style of controversy has also passed away with the causes of irritation, and no Lord Falkland could be found nowadays to step down into the arena of party strife, and make a personal issue of political controversies.

Lord Metcalfe left the country a disappointed and dying man, and Lord Falkland was stowed away in the East, in Bombay, where he could do little harm; and, with the appointment of Lord Elgin to Canada and of Sir John Harvey to Nova Scotia and with a clear enunciation on the part of Earl Grey of the rules that should govern the conduct of governors in the administration of colonial affairs, the political atmosphere cleared at last and responsible government became an accom-

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"If you swear you'll dissolve, you might frighten a few,
You may wheedle and coax a few more,
If the old ones look knowing, stick close to the new,
And we yet opposition may floor."

This advice was palatable to his lordship:

"I'll do it, my D—dy; I'll do it this night,
Party government still I eschew;
But if a few parties will set you all right,
I'll give them, and you may come, too."

"The Romans of old, when to battle they press'd,
Consulted the entrails, 'tis said;
And arguments, if to the stomach addressed,
May do more than when aimed at the head."

The writer has often thought that a very interesting chapter might be written on the influence of dinners in the politics of Canada. Cabinets, no doubt, have been sometimes moulded and changed as a result of a dinner or two at the house of some astute statesman. I remember well the frequency of dinners about the time it was necessary to bring obstinate Nova Scotia into confederation, and Gen. Williams, of Kars, was sent to Halifax for the express purpose of accomplishing that object so much desired by the English and Canadian governments. I am quite sure that around that warrior's table, over the nuts and wine, more than one doubting member from the country felt his opposition to union waver, and the general was able to add a fresh chaplet to that he had won at the eastern fortress amid the thunder of cannon and the misery of famine. I often think that not a few Canadian members of parliament accustomed to early dinners, domestic habits, and early retirement attribute to the "bad ventilation of the Commons Chamber," what is probably the effect of the very elaborate *cuisine* which is now a well-established adjunct of our system of parliamentary government. In the course of time some of our high functionaries of state, like the famous Brillat-Savarin, may be best remembered, not for their knowledge of political economy, but for their skill in gastronomy.

plished fact. Since those days Canada has had a succession of governors who have endeavored to carry out honestly and discreetly the wise colonial policy which was inaugurated at the union of 1841, and the difficulties which Lord John Russell anticipated have disappeared or rather have never actually occurred in the practical operation of a system of government which has proved itself the best safeguard of imperial interests, since it brings the colony and the parent state more into sympathy with each other by establishing a feeling of mutual confidence and mutual respect, the absence of which marred the history of the old times and seemed more than once likely to weaken the ties that happily have always bound Canada to the parent state.

In the history of the past there is much to deplore: the blunders of English ministers, the want of judgment on the part of governors, the selfishness of "family compacts," and the recklessness of some Canadian politicians; but the very trials of the crisis through which Canada passed brought out the fact that, if English statesmen had mistaken the spirit of the Canadian people and had not always taken the best methods of removing grievances, it was not from any studied disposition to do these countries an injustice, but rather because they were unable to see until the very last moment that even in a colony a representative system must be worked in accordance with those principles that obtained in England, and that it was impossible to direct the internal affairs of dependencies many thousand miles distant through a colonial office generally managed by a few clerks. These very trials showed that the great body of the people had confidence in England, giving at last due heed to their complaints, and that the sound sentiment of the country was represented not by Mackenzie nor Papineau, who proved at the last that they were not of heroic mold, but rather by the men of cool judgment and rational policy, who, throughout the critical period of our history, believed that constitutional agitation would best bring about a solution of the difficulties which had so long agitated the provinces.

Of all the conspicuous figures of those memorable times, which already seem so far away from us who possess so many political rights, there are three who stand out more prominently than all others and represent the distinct types of politicians who influenced the public mind during the first part of this

century. These are Papineau, Baldwin, and Howe. Around the figure of the first there has always been a sort of glamor which has helped to conceal his vanity, his rashness, and his want of political sagacity, which would, under any circumstances, have prevented his success as a safe statesman, capable of guiding a people through a trying ordeal. His eloquence was fervid and had much influence over his impulsive countrymen, his sincerity was undoubted, and in all likelihood his very indiscretions made more palpable the defects of the political system against which he so persistently and so often justly declaimed. He lived to see his countrymen enjoy power and influence under the very union which they resented and to find himself no longer a leader among men, but isolated from the great majority of his own people and representing a past whose methods were antagonistic to the new régime that had grown up since 1837. The days of reckless agitation had passed and the time for astute statesmanship had come. Lafontaine and Morin were now safer political guides for their countrymen. He soon disappeared entirely from public view, and in the solitude of his picturesque chateau amid the groves that overhang the Ottawa River, only visited from time to time by some stanch friends or by a few curious tourists who found their way to that quiet spot, he passed the remainder of his days with a tranquillity in wondrous contrast to the stormy and eventful drama of his earlier life. The writer often, a few years ago, recognized his noble, dignified figure, erect even in age, passing unnoticed on the streets of Ottawa, when, perhaps, at the same time there were strangers walking through the lobbies of the Parliament house asking to see his portrait.

One of the most admirable figures in the political history of Canada was undoubtedly Robert Baldwin. Compared with other popular leaders of his generation, he was calm in counsel, unselfish in motive, and moderate in opinion. If there is significance in the political phrase "Liberal Conservative," it could be applied with justice to him. He, too, lived for years after his retirement from political life almost forgotten by the people for whom he worked so fearlessly and sincerely.

Joseph Howe, too, died about the same time as Papineau, after the establishment of the federal union; but, unlike the majority of his compeers who struggled for popular rights, he was a prominent figure in public life until the very close of his career. All his days, even when his spirit was sorely tried by

the obstinacy and dullness of English ministers, he loved England, for he knew, after all, it was in her institutions his country could best find prosperity and happiness, and it is an interesting fact that, among the many able essays and addresses which the question of imperial federation has drawn forth, not one in its eloquence, breadth, and fervor can equal his great speech on the consolidation of the empire. The printer, poet, and politician died at last, at Halifax, the lieutenant-governor of his native province, in the famous old Government house, admittance to which had been denied him in the stormy times of Lord Falkland; a logical ending assuredly to the life of a statesman who, with eloquent pen and voice, in the days when the opinions he held were unpopular in the homes of governors and social leaders, ever urged the claims of his countrymen to exercise that direct control over the government of their country which should be theirs by birth, interest, and merit.

In the working out of responsible government for the last half century there stand out, clear and well defined, certain facts and principles which are at once a guarantee of efficient home government and of a harmonious coöperation between the dependency and the central authority of the empire.

1. The misunderstandings that so constantly occurred between the legislative bodies and the imperial authorities, and caused so much discontent throughout the provinces on account of the constant interference of the latter in matters which should have been left exclusively to the control of the people directly interested, have been entirely removed in conformity with the wise policy of making Canada a self-governed country in the full sense of the phrase. These provinces are as a consequence no longer a source of irritation and danger to the parent state, but, possessing full independence in all matters of local concern, are now among the chief glories of England and sources of her pride and greatness.

2. The governor-general, instead of being constantly brought into conflict with the political parties of the country and made immediately responsible for the continuance of public grievances, has gained in dignity and influence since he has been removed from the arena of public controversy. He now occupies a position in harmony with the principles that have given additional strength and prestige to the throne itself. As the legally accredited representative of the sovereign, as the recognized head of society, he represents what Bagehot has aptly

styled the dignified part of our constitution, which has much value in a country like ours, where we fortunately retain the permanent form of monarchy in harmony with the democratic machinery of our government. It would be a great mistake to suppose that the governor-general is a mere *roi fainéant*, a merely ornamental portion of our political system, to be set to work and kept in motion by the premier and his council. His influence, however, as Lord Elgin has shown, is wholly moral, an influence of suasion, sympathy, and moderation, which softens the temper while it elevates the aims of local politics. If the governor-general is a man of parliamentary experience and constitutional knowledge, possessing tact and judgment, and imbued with the true spirit of his high vocation—and these functionaries have been notably so since the commencement of confederation—they can sensibly influence the course of administration and benefit the country at critical periods of its history. Standing above all party, having the unity of the empire at heart, a governor-general at times can soothe the public mind and give additional confidence to the country when it is threatened with some national calamity or there is distrust abroad as to the future. As an imperial officer he has large responsibilities, of which the general public have naturally no very clear idea, and if it were possible to obtain access to the confidential and secret dispatches which seldom see the light in the colonial office, certainly not in the lifetime of the men who wrote them, it would be seen how much for a quarter of a century past the colonial department has gained by having had in the Dominion men no longer acting under the influence of personal feeling through being made personally responsible for the conduct of public affairs, but actuated simply by a desire to benefit the country over which they preside and to bring Canadian interests into unison with those of the empire itself.

The success of self-government in Canada can be seen by comparing the present condition of things with what existed fifty years ago, when the provinces that now constitute the Dominion were so many small, struggling communities, isolated from one another, having no direct interest in each other's industrial and political developement, animated by no common aims and aspirations, and having no tie to bind them except that purely sentimental bond which unites communities of the same empire. The total population of all the British North American countries did not exceed 1,000,000 of souls, of whom

the majority were French Canadians, then sullen and discontented, believing that the union was a part of a sinister scheme to destroy their national institutions and place them in a position of inferiority to the English-speaking people. A feeling of unrest was still abroad and no one was ready to speak confidently of the future. If there was ever in this country a small number of men inclined to favor annexation to the United States, they might have been found at that time, when they compared the prosperity and enterprise of the neighboring Republic and its large measure of self-government with the condition of matters in the struggling communities of British North America. But then, as always, the great body of the people were true to themselves and to British connection, and the same spirit of devotion that had carried them through the miseries of war and dangerous political agitation gained strength when they saw that England at last recognized the errors of procrastination and negligence, which had too long been the features of colonial administration, and was ready to concede to the provinces those rights and privileges which they had every reason to expect as free, self-respecting communities animated by the spirit of English institutions. With a recognition of the right of Canada to self-government came a sense of large responsibility. Canadians had to prove themselves worthy of the trust at last reposed in them, and they did so in a manner which has frequently in later times evoked the praise of the wisest English statesmen and publicists. The quarter of a century that elapsed from 1842 to 1867 was the crucial period of Canadian political development; for then the principles of our present system of self-government were firmly established and a new, industrious population flowed steadily into the country, the original population became more self-reliant and pursued their vocations with renewed energy, and confidence increased on all sides in our ability to hold our own against the competition of a wonderfully enterprising neighbor. Cities, towns, and villages were built up with a rapidity not exceeded even on the other side of the border, and the ambition of our statesmen, even years before confederation, began to see in the northwest an opportunity for still greater expansion for the energy and enterprise of the people. The French Canadian learned that he was treated in a spirit of justice, and, instead of his influence diminishing under the régime of responsible government, he had become the potent factor in political affairs.

Then followed another change in the political position of the provinces. The political difficulties between the antagonistic elements in the parliament of old Canada certainly showed its statesmen that the union of 1841 had done its work; but, looking deeper into the causes of the movement that led to the federal union, we can see that the effect of responsible government had been to prepare the public mind for a wider sphere of political action. The time had come for placing the long isolated provinces on a broad basis which would give greater expansion to their energies and industries, and afford them that security for self-preservation on this continent which it was too evident was absolutely necessary in the presence of an aggressive and seldom generous neighbor. The result of this statesmanship was the establishment of a confederation possessing eventually a territory almost equal to that of the United States, and not inferior to them in those resources which form the substantial basis of a nation's greatness, and enjoying rights of self-government which, half a century ago, would have seemed a mere dream to those who were fighting to give Canada the control of her own local affairs, free from the interference of governors and officials in London. This measure gave to Canada many of the attributes of a sovereign independent state. England now has only the right to disallow such acts of the Canadian parliament as may interfere with matters of exclusively imperial jurisdiction. Canada can not directly enter into and perfect treaties with foreign powers—that being an act of national sovereignty—but her right to be consulted and represented in the negotiation of treaties immediately affecting her interests is now practically almost as much a part of our unwritten constitution as responsible government itself. The days of the weak diplomacy which lost Oregon and Maine to Canada have passed away. The public men of the United States must henceforth—as Mr. Blaine has learned to his surprise—consider the Dominion as an all-important factor in all negotiations affecting its territorial or other interests.

The government of Canada is supreme in all other matters of purely Dominion import, including the appointment of lieutenant-governors and the administration of territories out of which a great empire could be formed. Five millions of people now inhabit the old provinces of Canada alone, against the million of fifty years ago, and there is a cordon of cities, towns, and villages, surrounded by wheat

fields, stretching to the mountains of British Columbia, across those immense territories whose great capabilities for feeding the world were long steadily concealed by the studied policy of a gigantic corporation which valued the profits of the fur trade more than the blessings of colonization, and which itself was a relic of the old times when kings parceled out large regions with the same lavishness with which they gave jewels to their mistresses. It is in this great Northwest, with its enormous possibilities, that the future of Canada lies. The next two decades of years must see a remarkable change in the condition of Canada, if the hopes of her people now centered in that vast region are realized.*

The difficulties which the Dominion has to surmount in the working out of its political system are many, and are complicated at times by the conflict of sectional jealousies and rivalries, but these are the inevitable sequence of the government of a country possessing diverse interests, and having a people with a remarkable aptitude for political controversy. If we

* Mr. Barlow Cumberland, president of the Toronto National Club, in an introduction to a series of papers read before that institution, entitled "Maple leaves" (Toronto, 1891), writes with much force and knowledge: "In mid America nature has clearly marked three zones of growth. Far to the south, the torrid Cotton Zone; next to it the tepid Corn Zone, wherein the bulky maize or Indian corn attains to its maturity, both of these entirely within the confines of the United States; next to the north the temperate Wheat Zone, in which alternate winter cold and summer heat are needed to bring the wheat staple to its full perfection. Of this, the wheat zone of America, the United States themselves admit that but one-third is within their territories and two-thirds is within Canada. Seeing then that men eat wheat and do not live on maize or cotton, it is to this Canada of the future that Great Britain and Europe must look for food, and not to the United States. These facts of the isothermal warmth and wheat bearing capacity of the North are so novel to the stranger that the wonder then is, not that our population has developed with comparative slowness, but that it has increased so fast. * * * As we ourselves have only so lately discovered this fertile belt, locked up for centuries by the great fur company whose interest it was that it should be kept an undeveloped waste, why wonder it takes the people of foreign lands some time to believe in its existence? This wealth of Canadian wheat fields we have so far but barely touched, and only in chief by the migration of our own Canadian farmers and fishermen from their eastern homes, yet already in this land, where the length of sunny summer daylight gives eight days to each week, 'mid the rolling hills of Manitoba and by the interweaving waters of Saskatchewan,

"'The valleys stand so thick with corn
That they laugh and sing.'"

compare our condition with that of the United States—for we naturally turn to our great competitor for such comparison—we will see that we have no greater difficulties to contend with than they had during the first century of their existence. For many years after the adoption of the constitution of 1787 there were men who doubted the stability of the union, and had no faith in the development of the West. It was impossible, in their opinion, to connect the East and West, while there was an immense desert between the Pacific and the old settled states. One speaker in the senate, depreciating the value of beautiful Oregon, said that "for 700 miles this side of the Rocky Mountains is uninhabitable," and "the mountains totally impassable." He ridiculed the idea of a railway through such a territory, "for which he would not give a pinch of snuff."* Yet in this country, once described as the desert, there are now the states of Missouri, Kansas, Nebraska, Colorado, and Dakota. The "impassable" Rocky Mountains have been crossed by great lines of railway, and the East and West united by continuous communities of energetic people.

The Canadian people are only repeating in their Dominion under more favorable circumstances the history of their neighbors. The rocky country to the north of lake Superior is no more a barrier to Canadian continuity of development than the once fabulous Sahara of the United States, but will by its mineral wealth add largely to the prosperity of the Dominion. The evidences of national unity—of confidence in a Canadian federation from the Atlantic to the Pacific—are more encouraging than any afforded by the United States at any time in her history from 1787 to 1865, when the civil war closed, slavery and secession received a deathblow, and the cause of national unity triumphed. The people of French Canada and of all the provinces have gained steadily by the adoption of the federal constitution, and under no other system would it be possible to give due scope to the aims and aspirations of the respective nationalities and interests that compose the Dominion. It is a system which, having at its base respect for local and provincial rights, creates at the same time a spirit of common or national interest which binds diverse and otherwise isolated communities together in a union necessary to give them strength against the attacks of foes within and foes with-

* See "Oregon," American Commonwealth series, by W. Barrows, pp. 194–201.

out. In countries peopled and governed like Canada, all history tells us, there are three great dangers always to be avoided. First of all, that Sectionalism which is narrow and selfish in its aspirations and is ever underrating the vital importance of national aims; secondly, that Sectarianism which represents the bigotry of old ages of religious feuds, and would judge all other faiths by its own canons and beliefs; thirdly, that Nationalism which Papineau represented, which wiser men in later times have repudiated, and which may be as dangerous in the English west as in the French east, should it ever again come to mean a "war of races"—English Canadian against French Canadian.

As long as the respective members of the federation observe faithfully the principles on which it necessarily rests—perfect equality among all its sections, a due consideration for local rights, a deep Canadian sentiment whenever the interests of the whole federation are at stake—the people of this Dominion need not fear failure in their efforts to accomplish the great work in which they have been so long engaged. Full of that confidence that the history of the past should give them, and of that energy and courage which are their natural heritage, and which have already achieved the most satisfactory results in the face of difficulties which, fifty years ago, would have seemed insurmountable; stimulated by their close neighborhood to a nation with whom they have always shown a desire to cultivate such relations as are compatible with their dignity, their security, and their self-interest as a separate and distinct community; adhering closely to those principles of government which are best calculated to give moral as well as political strength; determined to put down corruption in whatever form it may show itself, and to cultivate a sound public opinion, Canadians may tranquilly, patiently, and determinedly face the problem which that destiny that "shapes the ends" of communities, "rough hew them how we will," must eventually solve for a Dominion with such great possibilities before it, if the people are but true to themselves, and are not dismayed by the ill-timed utterances of gloomy thinkers.

When we review the trials and struggles of the past, that we may gain from them lessons of confidence for the future, let us not forget to pay a tribute to the men who have laid the foundations of these communities, still on the threshold of their development, and on whom the great burden fell; to the

French Canadians who, amid toil and privation, amid war and famine, built up a province which they have made their own by their patience and industry, and who should, differ as we may from them, evoke our respect for their fidelity to the institutions of their origin, and for their appreciation of the advantages of English self-government, and for their coöperation in all great measures essential to the unity of the federation; to the Loyalists of last century who left their homes for the sake of "king and country" and laid the foundations of prosperous and loyal English communities by the sea and by the great lakes, and whose descendants have ever stood true to the principles of the institutions which have made England free and great; to the unknown body of Pioneers, some of whose names, perhaps, still linger on a headland or river or on a neglected gravestone, who brought the sunlight year by year to the dense forests, and built up by their industry the large and thriving provinces of the Dominion; above all, to the men who laid deep and firm, beneath the political structure of this federation, those principles of self-government which give harmony to the constitutional system and bring out the best qualities of an intelligent people. To all these workers in the past, whether pioneers or statesmen, no more noble tribute was paid than the following verses by Joseph Howe:

"Not here? Oh! yes, our hearts their presence feel.
Viewless, not voiceless, from the deepest shells
On memory's shore harmonious echoes steal,
And names which in the days gone by were spells
Are blent with that soft music. If there dwells
The spirit here our country's fame to spread,
While every breast with joy and triumph swells,
And earth reverberates to our measured tread,
Banner and wreath will own our reverence for the dead.

"The Roman gathered in a stately urn
The dust he honor'd—while the sacred fire,
Nourish'd by vestal hands, was made to burn
From age to age. If fitly you'd aspire,
Honor the dead; and let the sounding lyre
Recount their virtues in your festal hours;
Gather their ashes—higher still, and higher
Nourish the patriot flame that history dow'rs;
And o'er the Old Men's graves, go strew your choicest flowers."*

* From a poem, "Our Fathers," written and recited by the Hon. Joseph Howe at the first industrial exhibition held at Halifax, N. S., 1853.

II.—THE CONSTITUTIONAL PRINCIPLES AND METHODS OF PARLIAMENTARY GOVERNMENT IN CANADA.

While Canada has been able to attain so large a measure of legislative independence in all matters of internal concern, there still necessarily exist between her and the parent state those legal and constitutional relations which are compatible with the respective positions of the sovereign authority of the empire and of a dependency. If we come to recapitulate the various constitutional authorities which now govern the Dominion in its external and internal relations as a dependency of the crown, we find that they may be divided for general purposes as follows: (1) The Queen. (2) The Parliament of Great Britain. (3) The Judicial Committee of the Privy Council of England. (4) The Government of the Dominion. (5) The Governments of the Provinces. (6) The Courts of Canada.*

Before proceeding to explain the nature of the relations between the parent state and the dependency, it is necessary to refer to the various authorities under which the government of the Dominion itself is carried on. These may be briefly defined as follows:†

(1) The queen, in whom is legally vested the executive authority; in whose name all commissions to office are made out; by whose authority parliament is called together and dissolved; and in whose name bills are assented to or reserved. The sovereign is represented for all purposes of government by a governor-general, appointed by her majesty in council, and holding office during pleasure; responsible to the imperial government as an imperial officer; having the right of pardon for all offenses, but exercising this and all executive powers under the advice and consent of a responsible ministry.‡

(2) A ministry composed of thirteen or more members of a privy council; having seats in the two houses of parliament; holding office only whilst in a majority in the popular branch; acting as a council of advice to the governor-general; responsible to parliament for all legislation and administration.§

(3) A senate composed of seventy-eight members appointed

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* See Juridical Review (Edinburgh), April, 1890.

† See Juridical Review, April, 1890; Annals of the American Academy of Political Science (Philadelphia), July, 1890.

‡ B. N. A. Act, 1867, secs. 9, 10–12, 13, 14, 15.

§ B. N. A. Act, 1867, sec. 11.

by the crown for life, though removable by the senate itself for bankruptcy or crime; having coördinate powers of legislation with the house of commons, except in the case of money or tax bills,which it can neither initiate nor amend; having no power to try impeachments; having the same privileges, immunities, and powers as the English house of commons when defined by Dominion law.*

(4) A house of commons of two hundred and fifteen members, elected for five years on a very liberal Dominion franchise in electoral districts fixed by a Dominion law in each province; liable to be prorogued and dissolved at any time by the governor-general on the advice of the council; having alone the right to initiate money or tax bills; having the same privileges, immunities, and powers as the English house of commons when defined by Dominion law.†

(5) A Dominion judiciary, composed of a supreme court of five judges, acting as a court of appeal for all the provincial courts; subject to have its decisions reviewed on appeal by the judicial committee of the Queen's privy council in England; its judges being appointed by the Dominion government, but irremovable except for cause on the address of the two houses to the governor-general.‡

The several authorities of government in the provinces of the Federal Union may be briefly defined as follows:

(1) A lieutenant-governor, appointed by the governor-general in council practically for five years; removable by the same authority for cause; exercising all the powers and responsibilities of the head of an executive, under a system of parliamentary government; having no right to reprieve or pardon criminals.§

(2) An executive council in each province, composed of certain heads of departments, varying from five to twelve in number in a province, called to office by the lieutenant-governor; having seats in either branch of the local legislature; holding their positions as long as they retain the confidence of the majority of the people's representatives; responsible for and directing legislation; conducting generally the adminis-

Ibid, secs. 21–36.

† *Ibid.*, secs. 37–39, 44–52.

‡*Ibid.*, secs. 96–101; Can. Stat., 38 Vict., c. 11.

§ B. N. A. Act, 1867, secs. 58–62, 66, 67.

tration of public affairs in accordance with the lwa and the conventions of the constitution.*

(3) A legislature composed of two houses—a legislative council and an elected assembly in four provinces and of only an elected house in the other three provinces. The legislative councillors are appointed for life by the lieutenant-governor in council, and are removable for the same reasons as are senators; must have a property qualification, except in Prince Edward Island (where the upper house is elective); can not initiate money or tax bills, but otherwise have all powers of legislation within the limits of the British North America act of 1867; cannot sit as courts of impeachment. The legislative assemblies are elected for four years in all cases except in Quebec, where the term is five; dissolved at any time by the lieutenant-governor, acting under the advice of his council; elected on manhood suffrage in Ontario and Prince Edward Island and a very liberal franchise in the other provinces.†

(4) A judiciary in each of the provinces, appointed by the governor-general in council, only removable on the address of the two houses of the Dominion parliament.‡

As regards the Territories of the Northwest, they are divided into districts for purposes of general and local government. These districts are represented in the senate and house of commons by two and four members respectively. The Northwest has a lieutenant-governor appointed by the governor-general in council, and an assembly for local purposes elected by the people; but responsible government, in the complete sense of the term, does not yet exist in the Territories.§

Coming now to review the general features of the government of Canada,‖ we see that at the head of the executive power of the Dominion is the Queen of England, guided and advised by her privy council, whose history is coexistent with that of the regal authority itself. Through this privy council, of which the cabinet is only a committee, the sovereign exercises that control over Canada and every other colonial dependency which is necessary for the preservation of the

* *Ibid.*, secs. 63–66.

† B. N. A. Act, 1867, secs. 69–90.

‡ *Ibid.*, secs. 96–100.

§ Rev. Stat. of Can., chap. 50; Can. Stat. (1887), chaps. 3, 4.

‖ The remainder of this chapter is largely an abridgment of a part of Bourinot's "Parliamentary Procedure in Canada," 2d ed.

unity of and the observance of the obligations that rest upon it as a whole. Every act of the parliament of Canada is subject to the review of the queen in council and may be carried from the Canadian courts under certain legal limitations to the judicial committee of the privy council, one of the committees which still represent the judicial powers of the ancient privy council of England. The parliament of Great Britian—a sovereign body limited by none of the constitutional or legal checks which restrict the legislative power of the United States congress—can still, and does actually, legislate from time to time for Canada and the other colonies of the empire. From a purely legal standpoint, the legislative authority of this great assembly has no limitation and might be carried so far as not merely to restrain any of the legal powers of the Dominion as set forth in the charter of its constitutional action, known as the British North America act of 1867, but even to repeal the provisions of that imperial statute in whole or in part.

But while the sovereign of Great Britain, acting with the advice of the privy council and of the great legislative council of the realm, is legally the paramount authority in Canada as in all other portions of the Empire, her prerogatives are practically restrained within certain well understood limits, so far as concerns those countries to which have been extended legislative institutions and a very liberal system of local self-government.* In any review of the legislative acts of the Dominion, the government of England has for many years past fully recognized those principles of self-government which form the basis of the political freedom of Canada. No act of the parliament of the Dominion can now be disallowed except it is in direct conflict with imperial treaties to which the pledge of England has been solemnly given, or with a statute of the imperial legislature which applies directly to the dependency. The imperial parliament may legislate in matters immediately affecting Canada,† but it is understood that it only does so as

* "It is therefore a fundamental maxim of parliamentary law that it is unconstitutional for the imperial parliament to legislate for the domestic affairs of a colony which has a legislature of its own." Hearn, Government of England, p. 598, Appendix, art. on "The Colonies and the Mother Country."

† "The general rule is that no act of the imperial parliament binds the colonies unless an intention so to bind them appears either by express words or necessary implication." Hearn, p. 596.

a rule in response to addresses of her people through their own parliament, in order to give validity to the acts of the latter in cases where the British North America act of 1867 is silent, or has to be supplemented by additional imperial legislation.

That act itself was not a voluntary effort of imperial authority, but owes its origin to the solemn expression of the desire of the several legislatures of the provinces, as shown by addresses to the crown, asking for an extension of their political privileges.* Within the defined territorial limits of those powers which have been granted by the imperial parliament to the Dominion and the provinces, each legislative authority can exercise powers as plenary and ample as those of the imperial parliament itself acting within the sphere of its extended legislative authority.† Between the parent state and its Canadian dependency there is even now a loose system of federation under which each governmental authority exercises certain administrative and legislative functions within its own constitutional limits, while the central authority controls all the members of the federation so as to give that measure of unity and strength, without which the empire could not keep together. Each government acts within the limits of its defined legislative authority with respect to those matters which are of purely local concern, and it is only when the interests of the Empire are in direct antagonism with the privileges extended to the colonial dependency, the sovereign authority should prevail. This sovereign authority can never be exercised arbitrarily, but should be the result of discussion and deliberation, so that the interests of the parent state and the dependency may be brought as far as possible into harmony with one another. The written and unwritten law provides methods for agreement or compromise between the authorities of the parent

* See argument of Hon. Edward Blake before the judicial committee in case of St. Catharine's Milling and Lumber Co. *vs.* The Queen, published at Toronto in 1888.

† See Hodge *vs.* The Queen, Bourinot, p. 112. Also, correspondence on copyright act (Rev. Stat. of Canada, chap. 62), Can. Sess. P. 1890, No. 35, p. 10. For respective powers of Imperial and Canadian Governments, see report of committee of privy council of Canada relating to appeals in criminal cases to the judicial committee of the privy council of England, Can. Sess. P. 1889, No. 77; Federal Government in Canada, Johns Hopkins University Studies, pp. 38–34; Speech of Sir John Thompson, minister of justice, Can. Hans., March 27, 1889.

state and its dependencies. In matters of law the privy council is guided by various rules which wisely restrict appeals from the dependency within certain definite limits. In matters of legislation and administration, on which there may be a variance of opinion between the Canadian and the English government, the means of communication is the governor-general and the secretary of state for the colonies. The former as an imperial officer responsible to the crown for the performance of his high functions, as the representative of the sovereign in the dependency, will lay before the imperial government the opinions and suggestions of his advisers on every question which affects the interests of Canada, and requires much deliberation in order to arrive at a fair and satisfactory adjustment.*

It may be contended that there is no absolute written law to govern these relations—to restrain the imperial government in its consideration of Canadian questions—to give a positive legal independence to the Canadian government in any respect whatever; but in answer to this purely arbitrary contention it may be argued with obvious truth that when the imperial parliament gave the Canadians a complete system of local government and the right to legislate on certain subjects set forth in the fundamental law of the dependency (the British North America act), it gave them full jurisdiction over all such matters and constitutionally withdrew from all interference in the local concerns of the colony. More than that, in addition to the obvious intent and purpose of the written constitution of the Dominion, there are certain conventions and understandings which appear in the instructions laid down by the imperial authorities themselves from time to time for the self-government of these colonial communities since the concession of responsible government—conventions and understandings which have as much force as any written statute, and which practically control the relations between England and Canada so as to give the latter the unrestricted direction of every local matter and the right of legislating on every question sanctioned by the terms of the constitutional law.

The British North America act then recognizes in a practically unrestricted sense the right of Canada to govern herself, subject only to the general control of the sovereign authority

*"The matter is fought out between the colonial government and the colonial office." Hearn, p. 602.

of the Empire. This act establishes a federal system which gives control over dominion objects to the central executive and legislative authority, and permits the governments of the provinces to exercise certain defined municipal and local powers within provincial limits, compatible with the existence of the wide national authority entrusted to the Federal Government. Within its local statutory sphere each provincial entity can exercise powers as plenary and absolute as the Dominion itself within the wide area of its legislative jurisdiction. For the settlement of questions of doubtful jurisdiction the constitution provides a remedy in a reference to the courts on whose decision must always largely rest the security of a federal system,* and to a minor degree in the power possessed by the Dominion government of disallowing provincial acts—a power, however, as it is shown elsewhere, only to be exercised in cases of grave emergency or of positive conflict with the law and the constitution.†

If we study the constitution of Canada we find that its principles rest both on the written and the unwritten law. In the British North America act we have the written law which must direct and limit the legislative functions of the parliament and the legislatures of the Dominion. While this act provides for executive authority and for a division of legislative powers between the Dominion and the Provinces—as we have seen in the first chapter of this work—it does not attempt to give legal effect or definition to the flexible system of precedents, conventions, and understandings which so largely direct that system of administration and government which has grown up in the course of two centuries in England, and which has been gradually introduced into Canada during the past forty years, and now forms the guiding principles of parliamentary government in the two countries.‡

No doubt, strictly speaking, these conventions are not law in a technical sense, and a distinction must be drawn between the law of the constitution, that is the British North America act, and the understandings of the constitution. If these are of force it is mainly because they have in the course of time

* See Dicey, "The Law of the Constitution," pp. 163–168.

† See Bourinot, "Federal Government in Canada," pp. 58–65.

‡ "With reference to these conventions and understanding, see Freeman, Growth of the English Constitution," pp. 114, 115. Dicey, "Law of the Constitution." Bourinot, "Federal Government in Canada," pp. 33.

received the sanction of custom—of an understanding on the part of the people that they are necessary to the satisfactory operation of parliamentary government and to the security of the political privileges which Canada now possesses as a self-governing country. If a court were called upon to-morrow to consider the legality of an act of the Dominion Parliament, granting large sums of public money for certain public purposes, on the ground that it had not received the recommendation of the Crown at its initiation, in pursuance of a provision of the fundamental law, the judge could properly take cognizance of the objection and adjudicate thereon. If parliament were to exercise its legislative authority beyond the legal term of five years to which it is limited in express terms, its acts after the expiration of its legal existence might be called into question in the courts of Canada. On the other hand, if a ministry should refuse to resign when it is clearly shown that it has no majority in the popular body of the legislature, and can no longer direct and control the legislation of the country, the courts could not be called upon to take cognizance of the fact by any legal act of theirs, however excited public opinion might be on account of so flagrant a violation of a generally admitted convention of the constitution. Parliament, however, in the practical operation of the constitution, would have a remedy in its own hands—it could refuse supply to the ministry, which would eventually find itself unable to meet public expenditures except in the few instances where there would be statutory authority for permanent grants. The courts might be called upon, soon or late, to stop the levy of illegal taxes or otherwise refuse legal sanction to certain acts arising from a violation of those rules and maxims which govern the operation of parliamentary institutions.* But it would be only under such extraordinary circumstances—circumstances practically of a revolutionary character—that the courts could be

* See Dicey, Chap. xv, on the conventions of the constitution, in which he shows that "the breach of a purely conventional rule, of a maxim utterly unknown and indeed opposed to the theory of English law, ultimately entails upon those who break it direct conflict with the undoubted law of the land. We have therefore a right to assert that the force which in the last resort compels obedience to constitutional morality is nothing else than the power of the law itself. The conventions of the constitution are not law, but in so far as they really possess binding force they derive their sanction from the fact that whoever breaks them must finally break the law and incur the penalties of a law-breaker."

called upon to interpose in the working of the constitution. It is mainly in the good sense and the political instincts of the people at large that these conventions find that sanction which gives them a force akin to that given to the principles of the common law. A ministry that violates these rules and conventions, which have been long approved by the test of experience as necessary for good and effective government, must soon or late find itself subject to the verdict of the people under the written law which dissolves parliament every five years, and gives the legally qualified electors an opportunity of condemning or approving the acts of the men who have controlled the work of administration and legislation in the country. The strength of the Canadian system of government is the fact that it not only rests on the written law of the constitution, but possesses that flexibility which accompanies conventions and understandings.

In arranging the details of the federal system of Canada the framers of the British North America act had before them the experience of that great instrument of Federal Government—the Constitution of the United States—and endeavored to perfect their own system by avoiding what they considered to be inherent defects in the institutions of their neighbors. But while of necessity they were forced to turn to the political system of the United States for guidance in the construction of a federal system, they adhered steadily to those principles which give strength to that system of English parliamentary government, and which their own experience for forty years had shown them to be best adapted to the conditions of the confederation. But while the resolutions of the Quebec conference gave expression emphatically to the desire of the Canadian people "to follow the model of the British constitution so far as our circumstances will permit," the written law or British North America act sets forth only in general terms in its enacting clauses the constitution of the executive authority and of the legislative bodies, where are reproduced essential features of the English system. While in the character of the executive and in the bicameral form of the general legislature we see an imitation of English institutions,* we detect actually a tendency to depart from the English model in the provinces

* "The true merit of the bicameral system is that by dividing a power that would otherwise have been beyond control it secures an essential guarantee for freedom." Hearn, p. 553. See Guizot, History of Representative Government, p. 443; Mill, Representative Government, p. 233.

where the upper chamber in several instances has already been abolished. In this respect the Dominion is less English than the United States, where the congress of the federal union and all the state legislatures have rigidly adhered to two houses. When we come to consider the constitution of the executive authority in the Dominion and in the provinces we see that conventions and understandings mainly govern the methods of government throughout Canada. Nowhere do we find formally set forth in the fundamental law of Canada the rules and maxims which govern the cabinet or ministry or government, as the advisers of the governor-general or of the lieutenant-governors are indifferently called, in accordance with the old usage which Canadians have of reproducing old English phrases. We find simply stated in the British North America act that there shall be a council "to aid and advise the government of Canada," and the persons who form that council are "chosen and summoned by the governor-general and sworn in as privy councilors and members thereof." An executive council or ministry in Quebec and Ontario is composed of "such persons as the lieutenant-governor from time to time thinks fit." The constitution of the executive authority in the provinces of Nova Scotia and New Brunswick "continues as it existed at the time of the union until altered under the authority of this act."*

When the other provinces were added to the union their executive authority was defined in equally general terms.† Nothing is said of the principles by which ministers come into, retain, and retire from office. All those principles can be found only in the dispatches of secretaries of state, in the speeches of leading statesmen in England and Canada—especially of those in the former country who have done so much to mold the system in the past—in the rules and usages which have generally received public sanction as essential to the satisfactory operation of responsible government. At present this system of government exists in all its force in the dominion, and in the provinces as well. Canada consequently presents the first instance of a federation of provinces working out in harmony with a written system of federal law that great code of charters, usages, and understandings known as the English constitution. In the Dominion, however, the only advisory body known to the constitutional law is "the queen's privy council

* B. N. A. Act, 1867, secs. 11, 12, 13, 64, 65, 66.

† Bourinot, "Parliamentary Procedure in Canada" (2d ed.).

for Canada," which has its origin in the desire of the Canadian people to adapt as far as possible to their own circumstances the ancient institutions of the parent state.* But all privy councilors in Canada are not the advisers of the governor-general for the time being. At the present time there are in Canada over fifty gentlemen called privy councilors,† but of these only a small proportion, from twelve to fifteen, form the actual government of Canada. Following English precedent the governor-general has also conferred the distinction of privy councilor upon several distinguished gentlemen who have been speakers of the senate and house of commons. Continuing English analogy it may be argued that the fact that these gentlemen have been sworn to the privy council gives them a certain limited right to be consulted by the representative of the sovereign in cases of political emergency, but this is a privilege only to be exercised under exceptional circumstances while Canada enjoys responsible government.‡ For instance, on the resignation or dissolution of a ministry the crown has a right to consult any privy councilor with respect to the formation of a new administration. As a rule of strict constitutional practice, the sovereign should be guided only by the advice of men immediately responsible to parliament and to the crown for the advice they tender. The members of the cabinet or ministry which advises the governor-general must be sworn of the privy council, and then called upon to hold certain departmental offices of state. They are a committee of the privy council, chosen by the governor-general to conduct the administration of public affairs. They are strictly a political committee, since it is necessary that they should be members of the legislature. The political head of this cabinet or ministry

* In Ireland there is also a privy council. In the proposed federal constitution for Australia, the name suggested is "Federal executive council."

† See Col. Office List, 1891, pp. 70, 71.

‡ "The king, moreover, is at liberty to summon whom he will to his privy council; and every privy councilor has in the eye of the law a right to confer with the sovereign upon matters of public policy. The position and privileges of cabinet ministers are in fact derived from their being sworn members of the privy council. It is true that by the usages of the constitution cabinet ministers are alone empowered to advise upon affairs of state, and that they alone are ordinarily held responsible to their sovereign and to parliament for the government of the country. Yet it is quite conceivable that circumstances might arise which would render it expedient for the king, in the interests of the constitution itself, to seek for aid and counsel apart from his cabinet." Todd, Vol. I, p. 116. Also *Ibid.*, p. 334.

is known as the prime minister or premier—a title totally unknown to the written law, and only recognized by the conventions of the constitution.* It is he who is first called upon by the governor-general to form the advisory body known as the ministry. His death, dismissal, or resignation dissolves *ipso facto* the ministry,† and it is necessary that the representative of the sovereign should choose another public man to fill his place and form a new administration. The premier is essentially the choice of the governor-general—a choice described by a great English statesman as "the personal act of the sovereign," since it is for her alone "to determine in whom her confidence shall be placed."‡ A retiring premier may, in his capacity of privy councilor, suggest some statesman to take his place, but such advice can not be given unsolicited, but only at the request of the crown itself.§

But this personal choice of the representative of the sovereign has its limitations, since the governor-general must be guided by existing political conditions. He must choose a man who is able to form a ministry likely to possess the confidence of parliament. If a ministry is defeated in parliament, it would be his duty to call upon the most prominent member of the party which has defeated the administration to form a new government. It is quite competent for the governor-general to consult with some influential member of the dominant political party, or with a privy councilor,‖ with the object of eventually

* Hearn, "Government of England," p. 223. See Gladstone, "Gleanings," Vol. I, p. 244.

† Gladstone, "Gleanings," Vol. I, p. 243.

‡ Sir Robert Peel, p. 83 Eng. Hans. (3), 1004. Also Lord Derby, p. 123; *Ibid.*, p. 11701; Disraeli, p. 214; *Ibid.*, p. 1943.

§ Todd, Vol. I, pp. 116, 328.

‖ It is not essential that the person selected to bring about the construction of a new cabinet should be the intended prime minister. See case of Lord Moira in 1812; 17 E. Hans. (3), p. 464; Wellington Desp., 3d ser., Vol. III, pp., 636–642; *Ibid.*, Vol. IV, pp. 3, 17, 22. In 1851, after the resignation of the Russell administration, the Duke of Wellington was consulted, 114 E. Hans. (3), 1033, 1075. In 1855, after the resignation of Lord Aberdeen, among those consulted with respect to the formation of a new administration was the Marquis of Lansdowne, 123 E. Hans. (3), p. 1702; Greville's Memoirs, Reign of Queen Victoria, Vol. III, pp. 203, 207. In 1891, on the death of Sir John Macdonald, Sir John Thompson, minister of justice in the administration then dissolved, was called upon by Lord Stanley, governor-general of Canada, "for his advice with respect to the steps which should be taken for the formation of a new government." Can. Hans., June 16. It appears he was asked to form an administration, but he declined the responsibility. *Ibid.*, June 23.

making such a choice of prime minister as will insure what the crown must always keep in view—a strong and durable administration capable of carrying on the queen's government with efficiency and a due regard to those principles which the sovereign's representative thinks absolutely essential to the interests of the dependency and the integrity of the Empire. Once the statesman called upon by the Crown has accepted the responsibility of premier, it is for him to select the members of his cabinet and submit their names to the governor-general. The premier, in short, is the choice of the governor-general; the members of the cabinet are practically the choice of the prime minister.* The governor-general may constitutionally intimate his desire that one or more of the members of the previous administration, in case of a reconstructed ministry, or of the political party in power in case of an entirely new cabinet, should remain in or enter the government, but while that may be a matter of conversation between himself and the premier, the crown should never so press its views as to hamper the chief minister in his effort to form a strong administration.† As the leader of the government in parliament, and a chief of the dominant political party for the time being, he is in the best position to select the materials out of which to construct a strong administration, and his freedom of choice should not be unduly restrained by the representative of the sovereign, except in cases where it is clear that imperial interests or the dignity or the honor of the crown might be impaired, conditions almost impossible to arise in the formation of a ministry. The premier is the constitutional medium of communication between the governor-general and the cabinet; it is for him to inform his excellency of the policy of the government on every important public question, to acquaint him with all proposed changes or resignations in the administration. It is always allowable for a minister to communicate directly with the governor-general on matters of purely administrative or departmental concern; every minister is a privy councilor, and as such is an advisor of the crown, whom the governor-general

* When Sir Robert Peel took office in 1834, the principle was for the first time established that the premier should have the free choice of his colleagues. Peel, Mem., Vol. II, pp. 17, 27, 35.

† See Torrens, "Life of Lord Melbourne," Vol. I, p. 233. Colchester's Diary, Vol. III, p. 501.

may consult if he thinks proper; but all matters of ministerial action, all conclusions on questions of ministerial policy, can only be constitutionally communicated to him by his prime minister. It is for the latter to keep the crown informed on every matter of executive action.* It is not necessary that he should be told of the discussions and arguments that may take place in the cabinet while a question of policy is under its consideration, but the moment a conclusion is reached the governor-general must be made aware of the fact and his approval formally asked. All minutes and orders in council must be submitted for his approval or signature, and the fullest information given him on every question in which the crown is interested and which may sooner or later demand his official recognition as the constitutional head of the executive.

When a new administration is formed—whether it is a mere reconstruction of an old cabinet under a new premier, or an entirely new government—there must be a thorough understanding between the prime minister and his colleagues on all questions of public policy which at the time are demanding executive and legislative action. The cabinet must be prepared to act as a unit on all questions that may arise in the legislature or in connection with the administration of public affairs, and if there be a difference of opinion between the premier and any of his colleagues, which is not susceptible of compromise, the latter must resign and give place to another minister who will act in harmony with the head of the cabinet.† While each minister is charged with the administration of the ordinary affairs of his own department, he must lay all questions involving principle or policy before the whole cabinet, and obtain its sanction before submitting it to the legislature. Once agreed to in this way, the measure of one department becomes the measure of the whole ministry, to be supported with its whole influence in parliament. The ministry is responsible for the action of every one of its members on every question of policy, and the moment a minister brings up a measure and places it on the government orders it is no longer his, but their own act, which they must use every effort to pass, or make up their minds to drop in case it does not meet with the approval

* Hearn, p. 223.
† *Ibid.*, p. 218.

of the legislature.* The responsibility of the cabinet for each of its members must cease when a particular member of the cabinet assumes to himself the blame of any acts and quits the government in consequence; and while by remaining in office and acting together, all the members take upon themselves a retrospective responsibility for what any colleague has done, it ceases if they disavow and disapprove of the particular act upon the first occasion that it is publicly called in question.† If a government feels that it is compromised by the misconduct of a colleague, he must be immediately removed.‡

A government once formed is immediately responsible for the work of administration and legislation. As a rule, parliament should be reluctant to interfere with those details of administration which properly and conveniently appertain to a department, and it is only in cases where there is believed to be some infraction of the law or of the constitution or some violation of a public trust, that the house will interfere and inquire closely into administrative matters.§ It must always be remembered that parliament is the court of the people, their grand inquest, to which all matters relating to the public conduct of a ministry or of any of its members as heads of departments, must be submitted for review under the rules of constitutional procedure that govern such cases. By means of its committees parliament has all the machinery necessary for making complete inquiry, when necessary, into the management of a public department. Especially in relation to the public expenditures has the house of commons the responsibility devolved upon it to see that every payment is made in accordance with law and economy, and that no suspicion of wrongdoing rests on the department having the disposition of any public funds.‖

* "The essence of responsible government is that mutual bond of responsibility one for another, wherein a government, acting by party, go together and frame their measures in concert." Earl of Derby, 134 E. Hans. (3), p. 834. See also remarks of Lord Palmerston, Mirror of P., 1838, p. 2429. Also of Mr. Disraeli, 111 E. Hans. (3), p. 1332.

† Lord Derby, 150 E. Hans., pp. 579–670. A new ministry can not be held responsible for the misconduct of one of their members under a previous administration. Todd, Vol. II, p. 481. Also *Ibid.*, Vol. I, pp. 540–543.

‡ Hearn, p. 198.

§ May, Const. Hist., Vol. II, p. 85. Todd, Vol. I, pp. 418, 465–468.

‖ See the reports of the committee of public accounts in the Canadian Commons Journals from 1867 to 1891—especially in the latter year—which

Every act done by a responsible minister of the crown, having any political significance, is a fitting subject for comment, and, if necessary, for censure in either house.* But it is an admitted principle of sound constitutional government that the functions of parliament are, strictly speaking, those of control and not of administration, and undue interference with executive authority is most inexpedient, and an infraction of the Crown's prerogative.† Ministers are primarily and always responsible for the administration of their respective departments, and it is for them to stand between the permanent non-political officials and the censure of the houses when the latter are acting strictly within their functions as advisers and assistants of their political heads immediately answerable to the parliament and the country for the efficient administration of public affairs.‡

A government, however, will itself agree to submit to special parliamentary committees the investigation of certain questions of administration on which it may itself desire to elicit a full expression of opinion, and all the facts possible, but it is not the constitutional duty of such committee to lay down a public policy on any question of gravity. That is a duty of the responsible ministry itself, which should not be shifted on another body. The legislative and executive authorities should act as far as possible within their respective spheres. It is true the house acts, in a measure, in an executive capacity; it does so, not as a whole, but only through the agency of a committee of its own members—the government or ministry—and while it may properly exercise control and supervision over the acts of its own servants, it should not usurp their functions and impede unnecessarily the executive action of the men to whom

illustrate the important functions assumed by this committee in Canada since its formation in 1867. Also Can. Hans., August 19, 1891. Also in the same session, proceedings and reports of the committee of privileges and elections, called upon to inquire into various allegations relating to certain tenders and contracts for public works in Canada.

* Earls Derby and Russell, 171 E. Hans. (3), 1720, 1728. Grey, Parl. Govt., p. 20.

† 11 May, Constitutional History, Vol. II, pp. 85, 86. See also Macaulay, History of England, Vol. II, p. 436.

‡ Todd, Vol. I, pp. 628, 629. Also *Ibid.*, Vol. II, p. 217; 174 E. Hans. (3), p. 416, 184 *Ibid.*, p. 2164; 217 *Ibid.*, p. 1229; 219 *Ibid.*, p. 623; Grey, Parl. Govt. new ed., p. 300.

it has, from the necessity of things, constitutionally intrusted the management of administrative matters.*

Such questions can only be effectively administered by a body chosen expressly for that purpose. If it is clear that the ministry or any of its members are incompetent to discharge their functions, parliament then must evince its desire to recall the authority it had delegated to them, and the crown, recognizing the right of that body to control its own committee, will select from the two houses another set of men who appear to have its confidence and to whom it is willing to intrust the administration of public affairs.

Besides availing itself of the assistance of select parliamentary committees in special cases requiring the collection of evidence bearing on a question, the government may also, by the exercise of the prerogative† or in pursuance of statutory authority,‡ appoint a royal commission to make inquiry into matters on which the crown or the country requires accurate and full information. In this way a great number of valuable facts preliminary to executive and legislative action may be elicited with respect to questions which are agitating the public mind. Questions affecting the relations of capital and labor,§ the improvement and enlargement of the canal or railway system,‖ the employment of Chinese labor,¶ the collection of facts as to the practicability of a prohibitory liquor law,** are among the matters that can legitimately be referred to such royal commissions with the view of assisting the government and parliament in coming to a sound decision before agreeing to the passage of legislation on such subjects. Questions even affecting the honor of the government itself have been referred

* See remarks of Lord Palmerston. 150 E. Hans. (3), p. 1357; 164 *Ibid.*, p. 99. Also Austin, "Plea for the Constitution," p. 24.

† Todd, Vol. II, p. 432. See Pacific Railway Committee of 1873, 2d sess., Can. Com. Jour.

‡ See Rev. Stat. of Can., chap. 10. By chap. 114, Rev. Stat. of Canada, whenever the governor-in-council deems it expedient to cause an inquiry to be made into and concerning any matter connected with the good govment of Canada, or the conduct of any part of the public business thereof, the commission may summon and enforce attendance of witnesses, who may be examined under oath.

§ Can. Sess. P., 1889, No. A.

‖ *Ibid.*, 1871, No. 54.

¶ *Ibid.*, 1885, No. 54.

** See resolution passed in Canadian Commons, June 24, 1891.

to a royal commission in the interest of good government when a parliamentary committee has been unable to attain the object desired by the house of commons.* While it may be sometimes decidedly for the public advantage that the crown should itself appoint a commission to make full and impartial inquiry into such questions, it should in no wise interfere with the privileges and duties of parliament as the great political court of the country.

In the evolution of parliamentary government ministers have become responsible not only for the legislation which they themselves initiate, but for the control and supervision of all legislation which is introduced by private members in either house. In the speech with which parliament is opened there is generally a reference to the leading measures which the government propose to present during the session. This speech, however, does not do more than indicate in almost abstract terms—terms intended to make the document unobjectionable from a political point of view—the intended legislation on matters of public interest. It is generally expected that the measures outlined in the speech will be introduced during the session; but it is admitted by authorities that "ministers are not absolutely bound to introduce particular measures commended to the consideration of parliament in the royal speech at the opening of the session. Sometimes the press of public business will necessitate the postponement of intended legislation to a future session." For instance, in 1870, the queen's speech to the English parliament promised a licensing bill, a trade union bill, and a legal taxation bill, none of which measures were brought down that session.

It is the duty of the government to initiate or promote legislation on every question of public policy which requires attention at the hands of the legislature.

No feature of the English system of parliamentary government stands out in such marked contrast with the irresponsible

* Charges in connection with the contemplated Canadian Pacific Railroad. See dispatches of Lord Dufferin, Can. Com. J., 1873 (2d sess.). Exception was, however, taken to the appointment of the commission as an interference with the right of the Commons to inquire into high political offenses, pp. 226, 227. The commissioners in this trying case simply reported the evidence they had taken, and stated no conclusion, on the ground that the execution of their functions should not in any way "prejudice whatever proceedings parliament might desire to take."

system that prevails in the congress of the United States as that which requires that there shall be a body of men specially chosen from the majority to lead parliament, and made immediately responsible, not only for the initiation and supervision of public legislation,* but for the control of private measures so far as they may concern the public at large.

While private members have a perfect right to present bills on every subject except for the imposition of taxes and the expenditure of public money, they do not act under that sense of responsibility which naturally influences ministers who are the leaders of the house and amenable to parliament and the crown for their policy on all matters of public legislation. Ministers alone can initiate measures of public taxation and expenditure under the constitutional law, which gives control of such matters to the crown and its advisers, while the conventions and understandings of the constitution have gradually intrusted them also with the direction and supervision of every matter which demands legislative enactment. In the ordinary nature of things no measure introduced by a private member can become law unless the ministry gives facilities for its passage. If the house should press on their attention a particular measure they must be prepared to give it consideration and assume full ministerial responsibility for its passage or rejection. They must on all occasions have a policy on every question of public interest, and can not evade it if they wish to retain the confidence of parliament and of the country. As a rule private members perform a useful public duty in bringing up measures which illustrate public sentiment in various directions. Parliament is essentially a deliberative body, and its not least important function is to prepare the public mind for useful legislation and to give it effect at the earliest possible

* Todd, Vol. II, p. 394. Hearn, p. 536. Mr. Gladstone, p. 192. E. Hans (3), pp. 1190–1194. A select committee on the public business of the English Commons has set forth that "although it is expedient to preserve for individual members ample opportunity for the introduction and passage of legislative measures, yet it is the primary duty of the advisers of the crown to lay before parliament such changes in the law as in their judgment are necessary; and while they possess the confidence of the house of commons and remain responsible for good government and for the safety of the state, it would seem reasonable that a preference should be yielded to them, not only in the introduction of their bills, but in the opportunity of pressing them on the consideration of the house." E. Coms. Pap., 1861, Vol. XI, p. 436.

moment. Private members consequently can materially assist the government by their suggestions for the amendment of the law. It would, however, be an evasion of the sound principle of ministerial responsibility if a government should attempt, by means of purely abstract resolutions or by the agency of select committees, to obtain from parliament the enunciation of the principles that should guide them in maturing a measure which imperatively demands legislation at their hands.* It is their duty to gauge public opinion on every subject from the utterances of public men and of the public press, and lay down the main features of the policy that should be adopted. Having submitted a measure to the consideration of parliament, they should be ready to perfect it by the assistance of the houses.

The rules of parliament are framed for the special purpose of giving every opportunity to the house itself to consider a measure and amend it at various stages. Ministers should always be ready to adopt such amendments as are compatible with the general principles of the measure, and should they feel compelled to recede from any position which they have taken, it is a proper concession to the superior wisdom of a deliberate body, and no admission necessarily that they have lost the confidence of the legislature. It is for them to press, as far as reason and consistency dictate, their own views as to details and endeavor as a rule to arrive at a compromise rather than ultimately lose a measure.

A distinguished English statesman, whose judicial fairness in matters of constitutional procedure is admitted by all students of political science, has well said that he "did not think it would be for the public advantage if a government should consider itself bound to carry every measure in the house exactly in the shape they had proposed it, but he hoped that, with respect to questions of legislation affecting the whole body of the people, of whose feelings so many members must be cognizant, the house would retain some of its legislative authority."† Another eminent statesman has admitted that "with

* See remarks of Mr. Lowe on a proposition of Mr. Disraeli to go into committee of the whole to consider the question of a reform act; 185 E. Hans. (3), p. 960. Also Earl Grey, pp. 1294, 1288. Mr. Gladstone's proposed motion; *Ibid.*, pp. 1021, 1022. See, also, 233 *Ibid.*, pp, 1753, 1825.

† Lord John Russell, 73 E. Hans. (3), p. 1638.

respect to many great measures, the sense of the legislature ought to prevail; and that if no great principle be involved and very dangerous consequences are not expected to result, the government ought not to declare to parliament that they stake their existence as a government on any particular measure, but are bound on certain occasions to pay proper deference to the expressed opinions of their supporters."* But it must be added, if the measure under consideration embodies a policy to which the political faith of the ministers is pledged, which they consider indissolubly connected with their own existence as a government, chosen from a particular party, and from which they can not recede without a sacrifice of principle and dignity, they must at once assume the ground that its defeat or material amendment means their resignation or an appeal to the people in case they believe the house does not represent the sentiment of the country on the question at issue.

Isolated defeats of a government possessing the confidence of parliament do not necessarily demand a resignation, but when the people's house continues to refuse its confidence to them, it is impossible for them to remain in office.†

Although it is not usual for a minister of the crown to take charge of a private bill, it is the special duty of the government, as the responsible leaders of legislation, and the chosen guardians of the public interests in parliament, to watch carefully the progress of private legislation in the house and its committees, and see that it does not in any way interfere with the policy of the ministry or the statutory law in reference to the public lands, railways, canals, public works, and such other interests as are intrusted to the Dominion authorities. It is in the standing committees of the house that the supervision of private bill legislation is chiefly exercised. One of the most important committees of the commons, that of railways, canals, and telegraph lines, has frequently for its chairman one of the ministers of the crown, and the minister in charge of railways is also one of its members, whose special duty it is to watch closely all legislation that may affect the policy of the government.

In a country like Canada, stretching over such a wide area

* Sir R. Peel, *Ibid.*, pp. 1639, 1640.

† Lord John Russell, Mirror of P., 1841, pp. 2119, 2120.

of territory, having so many diversified interests and resources, requiring to be developed by public and private legislation, the committees of this class have great responsibilities resting upon them. The federal system divides jurisdiction over a great variety of subjects between the Dominion and the Provinces, and it is therefore the special duty of each government to see that questions of conflict are avoided and each legislative authority acts within the fundamental law.

When a ministry is defeated in parliament its members must resign their respective offices of state unless the political conditions are such as to justify the governor-general to grant them an appeal to the people. When, however, they are prepared to give way to a new government, they only remain in office until their successors are appointed. Up to that time they should carry on the work of their departments. If the political body, known as the cabinet or ministry is dissolved *ipso facto* by the death, resignation, or dismissal of the chief minister, the heads of departments continue to hold office until they are asked to retire or continue in office by the new premier.* It is always understood that in such an event it is for the premier to intimate his wishes in the matter. In this case, however, it is the understandings and conventions of the constitution that control the formation of the ministry.

From a legal point of view the heads of departments, such as the minister of railways, the minister of finance, or the minister of public works, hold their office by statutory enactment regulating their respective departments. Their offices are held "during pleasure" and they must either formally resign or be formally dismissed when the cabinet is dissolved in accordance with constitutional understanding. The premier, in the case of dismissal or resignation, is the usual medium of communication by whom the representative of the sovereign expresses the wishes of the crown.† In case an entirely new ministry is formed by the premier, and all the members of the former administration have resigned, those members of the

* 16 Parl. Deb., p. 735; 195 E. Hans. (3), p. 734. Mirror of P. 1830, pp. 273, 536, 541; *Ibid.*, 1834, p. 2720. Todd, Vol. II, p. 513.

† 205 E. Hans. (3), p. 1290; Wellington Dispatches, 3d ser., Vol. IV, pp. 210, 213, 215. It is competent, however, for a minister to resign his office at a formal interview with the sovereign or her representative. Lewis, Administrations, p. 448, note. Walpole, Life of Perceval, Vol. II, p. 234.

privy council who accept a departmental office in the government must seek reëlection in conformity with the statute regulating the independence of parliament. The fact that a man is sworn to the privy council, and is a member of the political body, known as the cabinet or ministry for the time being, does not vacate a seat in parliament and demand a reëlection by the people, but the fact that a privy councilor is appointed to a certain salaried office mentioned in the statute in question. When there is a reconstruction of a cabinet, on the death or resignation of a premier, no reëlection is necessary in the case of those departmental heads who continue to hold office in the government, though it may be a new government in a political sense.* Even if a minister should resign his former office and take another in the new administration no reëlection is necessary in his case. It is not necessary either under the English or the Canadian law for a minister to vacate his seat in case he is reappointed to an office he had resigned upon a change of ministry unless some one else had been appointed and held the office in the interim. As stated by high authority "ministerial offices are not vacated by a mere resignation, but only on the appointment of a successor."† The Canadian law, as shown elsewhere, provides only for a a reëlection in the case of a minister resuming office after he has resigned and a successor in a new administration has occupied the same office.‡ Members of a government are sworn in as privy councilors, and consequently when a new cabinet is formed those men who have been previous to that event sworn in as members of the queen's privy council for Canada

* For instance, on the death of Sir E. Taché in 1865, Sir Narcisse Belleau was made premier. The former members of the cabinet remained in office. See Turcotte, Canada, Sous l'Union, Vol. II, pp. 565, 566. On the death of Sir John Macdonald, in 1891, Mr. Abbott, a member of the privy council and leader of the senate, was appointed premier, and all members of the former administration retained their offices. See Can. Hans. commencement of volumes for 1890 and 1891, where there are lists of ministers of each cabinet. For English cases: Liverpool administration on assassination of Mr. Perceval in 1812; Twiss, Life of Lord Eldon, Vol. I, pp. 493, 497; Russell administration on death of Viscount Palmerston in 1865; Ann. Reg. (1865) p. 159; Disraeli administration on retirement of Earl of Derby in 1868; Todd, Vol. I, p. 240.

† See 2 Hatsell, 45 note, p. 394.

‡ Bourinot's "Procedure and Practice," p. 177.

need not again take the oath of office which binds them to secrecy,* while acting in that capacity. Once privy councillors, they remain so until formally dismissed for good and sufficient

* "The obligation of keeping the king's counsel inviolably secret is one that rests upon all cabinet ministers and other responsible advisers of the crown, by virtue of the oath which they take when they are made members of the privy council." Todd, Vol. II, p. 84. See *Ibid*, pp. 83, 84. The oaths taken in Canada by a privy councillor, and a member of a cabinet on acceptance of a departmental office, are as follows:

THE OATH OF THE MEMBERS OF THE PRIVY COUNCIL.

You, ——— ———, do solemnly promise and swear that you will serve Her Majesty truly and faithfully in the place of her council in this Her Majesty's Dominion of Canada; you will keep close and secret all such matters as shall be treated, debated, and resolved on in privy council, without publishing or disclosing the same or any part thereof, by word, writing, or any otherwise to any person out of the same council, but to such only as be of the council, and yet if any matter so propounded, treated, and debated in any such privy council, shall touch any particular person, sworn of the same council, upon any such matter as shall in anywise concern his loyalty and fidelity to the Queen's Majesty, you will in nowise open the same to him, but keep it secret, as you would from any person, until the Queen's Majesty's pleasure be known in that behalf. You will in all things to be moved, treated, and debated in any such privy council, faithfully, honestly, and truly declare your mind and opinion to the honor and benefit of the Queen's Majesty, and the good of her subjects without partiality or exception of persons, in nowise forbearing so to do from any manner of respect, favor, love, meed, displeasure, or dread of any person or persons whatsoever. In general you will be vigilant, diligent, and circumspect in all your doings touching the Queen's Majesty's affairs; all which matters and things you will faithfully observe and keep, as a good councilor ought to do, to the utmost of your power, will, and discretion. So help me God.

——— ———.

OATH OF ALLEGIANCE.

I, ——— ———, do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, as lawful sovereign of the United Kingdom of Great Britain and Ireland and of this Dominion of Canada, dependent on and belonging to the said kingdom, and that I will defend her to the utmost of my power against all traitorous conspiracies or attempts whatever, which shall be made against her person, crown, and dignity, and that I will do my utmost endeavor to disclose and make known to Her Majesty, her heirs, and successors, all treasons or traitorous conspiracies and attempts which I shall know to be against her or any of them; and all this I do swear without any equivocation, mental evasion or secret reservation. So help me God.

——— ———.

cause by the crown. If reinstated then they must again be sworn in as privy councillors.*

It will be seen from the foregoing brief review how largely the precedents and conventions of the political constitution of England mould and direct the parliamentary government of Canada. The written or fundamental law lays down only a few distinct rules with reference to the executive and legislative authority in the Dominion and the provinces, and leaves sufficient opportunity for the play and operation of those flexible principles which have made the parliamentary government of England and of her dependencies so admirably suited to the development of the best energies and abilities of a people.

Like the common law of England itself the system of parliamentary government which Canadians now possess—to apply the language of an eminent American publicist with respect to the common law—"is the outgrowth of the habits of thought and action of the people. Its maxims are those of a sturdy and independent race, accustomed in an unusual degree to freedom of thought and action, and to a share in the administration of public affairs; and arbitrary power and uncontrolled authority are not recognized in its principles."†

III.—PARLIAMENTARY GOVERNMENT COMPARED WITH CONGRESSIONAL GOVERNMENT.

We see both in the political and legal systems of the United States and of the Canadian Dominion the fundamental principles of the parliamentary government and the common law of England; but necessarily, in the course of time, very important divergencies have grown up in the two countries in

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OATH OF MINISTERS ON TAKING PORTFOLIO.

MINISTER OF ——— ———.

I, ——— ———, do solemnly promise and swear that I will duly and faithfully do to the best of my skill and knowledge execute the powers and trusts reposed in me as minister of ——— ———. So help me God.

——— ———.

The foregoing oath was taken and subscribed by ——— ———, the ——— ——— as minister of ——— before me, being duly empowered under a commission from his excellency the governor-general to administer the said oath at Ottawa, this —— day of ———.

——— ———.

* Case of Mr. Fox, dismissed in 1798, and reinstated in 1866, Jesse, Geo. III, Vol. III, pp. 361, 472. Also of Lord Melville, resworn of the council, after his dismissal for alleged malfeasance in office. Haydn, "Book of Dignitaries," p. 135.

‡ Cooley, "Constitutional Limitations," pp. 32, 33.

the operation of those principles. Canada, closely adhering to the example and practice of the parent state, has followed in their integrity all those principles of parliamentary government which makes the cabinet or ministry responsible for every act of administration and legislation. The Queen or her representative acts under the advice of a responsible ministry, which holds its position as long as it retains the confidence of the crown, and the majority of the people's representatives in the legislature. In the United States the President and his cabinet have no direct responsibility to congress. Parliamentary government, in a few words, is a system of responsibility to the crown or its representative, and to the legislature, which is practically supreme during its legal existence, only controlled by the prerogative right of the crown to dismiss its advisers and dissolve the parliament on occasions of grave public necessity. Congressional government is a system under which congress controls legislation, and the work of administration in all essential respects, by means of its numerous committees, without the enormous advantage of having advisers of the executive present to direct legislation and otherwise control the practical operation of government.

In the United States a discussion has quite recently grown up among thoughtful men—among those men who are always in advance of the purely practical politician and ambitious statesman too ready to meet only the political exigency of the moment and the mere demands of party—whether the English or Canadian system has not many decided advantages over the system that prevails in the United States—a system which divides all the powers of government among so many authorities, and places so many checks on each that responsibility is weakened, and the unity and effective operation of government seriously impaired. On the other hand, perhaps among Canadians themselves, at times when the political difficulties of Canada are intensified by the rivalry of parties and the unscrupulous methods of party managers, men will be found to question the advantages of responsible government itself. It may be asked whether as the country grows older we shall continue to adhere to those principles of parliamentary or responsible government which notably distinguish Canada from her neighbors, or whether there is any appearance of a gravitation towards the political institutions of the Federal Republic. In the opinion of the writer there is no tendency

whatever in Canada to change the system of responsible government for the relatively irresponsible system which exists in the United States at Washington as well as in every state of the union; and, indeed, if there was any such tendency, I think a little reflection will show that any such change would not be in the direction of popular liberty, of popular sovereignty, of political morality, or of efficient government.

Although some Canadians may, according to their political proclivities, doubt if their country is always well governed, none of them can raise the issue that it is not governed enough. If there is safety in a multitude of counsellors, then Canada need assuredly have no fears of the future. One most important result so far of the contest for a complete system of parliamentary government that was fought by the people of the British North American provinces during the century now at its close, and that reached its logical and successful conclusion with the establishment of the federal system that unites all the provinces, has been the formation of a strong central government to deal with the national or general affairs of the Dominion, and of seven separate governments having distinct authority to deal with the local and municipal affairs of the several provinces that constitute the federation.* So it happens that the Dominion, with a population of about 5,000,000 souls, finds presiding over the administration of its public affairs a body of men, constitutionally known as the queen's privy council of Canada, but commonly called a ministry, or cabinet, or government, consisting at the present time of fifteen ministers, of whom one has a seat in the council without office. Coming now to the provinces and commencing with the east, we find that Prince Edward Island, with a population of 110,000 people, has an executive council, a name generally given to the local cabinets or ministries, of nine members, of whom six are without office. Nova Scotia, with a population of less than half a million, the province, too, where representative institutions were first established in the Dominion, has an executive council of seven members, of whom four are without office.† New

* The territories of Canada have also a system of representative government, and the right to manage their purely local affairs, but they have not yet been organized into provinces with responsible government. See Bourinot's "Parliamentary Practice," etc. (Montreal, 1892), pp. 76, 77.

† A legislative assembly met at Halifax in October, 1758, or one year before the fall of Quebec. See Bourinot, "Manual of the Constitutional History of Canada," pp. 96, 97.

Brunswick, which was separated from Nova Scotia in 1873, with a population now of 320,000 souls, has an executive council of seven members, of whom only two are without office. In the French-Canadian province of Quebec, with a population of 1,500,000, of whom the English Canadians form a small minority, the ministry consists of nine councillors, of whom only one is without portfolio. The province of Ontario, with a population of over 2,000,000 souls, a province always ably and economically governed, had until quite recently an executive council of only seven members, all of whom had charge of some department, but now it has been decided to adopt the luxury in vogue in the other provinces and bring in an executive councilor without office. The new province of Manitoba, with a population of 150,000 souls, has an executive council of five members, all of whom hold some office of state. Passing by the great territories of the Northwest, with a whole population of 70,000 souls, still without responsible government, although the lieutenant-governor possesses a small advisory body with limited powers, composed of members of the legislative assembly, we come to the mountain province of British Columbia, with a population of less than 100,000 people, and an executive council of five members, of whom one is called the president. So we see that the Canadian people in their wide country have altogether eight cabinets, composed in the aggregate of sixty-five councillors, with the power in the respective executive heads, that is to say, in the governor-general and the lieutenant-governors, to increase the number *ad libitum*. Of course any political student on reading these figures will be naturally inclined to make comparisons with the great country on the borders of Canada, which is also a federation of different communities with separate governments. At Washington there is a body of eight men, commonly called a cabinet, appointed by the President to preside over certain public Departments. In all the states* there are governors, who in certain respects may be considered equivalent to the lieutenant-governors of the provinces; in the majority, there are lieutenant-governors who do not exist in Canada; in all, there are secretaries of state; in almost all, attorneys-general; in some comptrollers; in many, auditors. The executive officials of Ohio, for instance, consist of a governor, a lieutenant-governor, a secretary of state, a state auditor, a state treasurer, a state

* See Woodrow Wilson, "The State," sec. 965.

attorney-general, a state commissioner of common schools, three members of a board of public works, or nine executive officers in all, who may be compared with the nine members of the executive government of Ontario.

No doubt Canada could be governed with a smaller number of councillors at Ottawa, but it is obvious to those who follow closely the constitutional and political history of the Dominion, that in forming a cabinet, party or sectional considerations must necessarily often prevail, and no one can fairly take any exception to the principle that the crown should have full liberty in the choice of its councillors, and that men may be properly appointed to seats in the government without office, when they can give additional strength to the body and represent therein special interests. But, as a matter of fact, comparisons in this particular with the central government at Washington,* or with the governments in the several states of the union, whether large or small, are somewhat fallacious since the political system in the two countries is based on diametrically opposite principles, which naturally affect the positions, functions, and number of the executive or administrative heads in both countries. The United States has a federal government which makes the president the chief executive officer, and an active functionary in the working of the administration; which even confers on the Senate certain executive functions in the ratification of treaties and appointments made by the chief magistrate. Although the president has the benefit of the advice and assistance of eight heads of departments, there is no cabinet in the English or Canadian sense, and while the term is used in the United States with reference to the chief officers of state at Washington, it has no place in the fundamental law or in the statutes of the country. Congress, with the aid of its numerous committees, exercises the sovereign power of legislation within the limits of the constitution, and is the real governing body of the union; and the president himself, to whom the constitution gives the right of vetoing its enactments, is powerless in the face of a two-thirds majority in the senate and house of representatives. In each state of the union the governor is an active officer, having considerable responsibilities which afford him constant occupation. In none of the states is there an executive council bearing an exact analogy to the ministers of the provinces, but

* See Bryce, "The American Commonwealth," II. 108, 109.

there are simply so many departmental officers, who have not in any state even those responsibilities which have in the course of time devolved upon the so-called cabinet at Washington in consequence of having become an advisory or consultative board, summoned at the mere will or motion of the president, but without the power of controlling legislation in congress. "Under our system of state law," says a careful critic of institutions, "the executive officers of a state government are neither the servants of the legislature, as in Switzerland, nor the responsible guides of the legislature, as in England, nor the real controlling authority in the execution of the laws, as under our federal system. The executive of a state has an important representative place, as a type of the state's legal unity, but it can not be said to have any place or function of guiding power.* On the other hand, the privy council and executive councils govern a dominion of seven provinces and immense territories, stretching from the Atlantic to the Pacific, and covering an area of territory not inferior to that of the Federal Republic. They exercise functions of large responsibility, political as well as administrative, as the chosen committees of the different legislatures of the union, in whose hands rests the fate of the ministries, and, practically, of the government of the whole country. These committees perform all the duties which devolve, in the United States, on the president, the governors, and the respective departmental officers; and in addition, initiate and direct all important legislation, or in other words practically perform the functions of the chairmen of congressional committees.

The advantages of the system of responsible government can be best understood by stating a few facts and arguments which naturally suggest themselves when we compare it with the system of divided responsibility that exists in the United States.

It is especially important to Canadians to study the development of the institutions of the United States, with the view of taking advantage of their useful experiences, and avoiding the defects that have grown up under their system. All institutions are more or less on trial in a country like Canada, which is working out great problems of political science under decided advantages, since the ground is relatively new, and the people have before them all the experiences of the world, especially of England and the United States, in whose systems Canadi-

*See Woodrow Wilson, "The State," sec. 964.

ans have naturally the deepest interest. The history of responsible government affords another illustration of a truth which stands out clear in the history of nations, that those constitutions which are of a flexible character, and the natural growth of the experiences of centuries, and which have been created by the necessities and conditions of the times, possess the elements of real stability, and best insure the prosperity of a people. The great source of the strength of the institutions of the United States lies in the fact that they have worked out their government in accordance with certain principles, which are essentially English in their origin, and have been naturally developed since their foundation as colonial settlements, and what weaknesses their system shows have chiefly arisen from new methods, and from the rigidity of their constitutional rules of law, which separate too closely the executive and the legislative branches of government. Like their neighbors, the Canadian people have based their system on English principles, but they have at the same time been able to keep pace with the progress of the unwritten constitution of England, to adapt it to their own political conditions, and bring the executive and legislative authorities so as to assist and harmonize with one another. Each country has its "cabinet council," but the one is essentially different from the other in its character and functions.

This term, the historical student will remember, was first used in the days of the Stuarts as one of derision and obloquy. It was frequently called "junto" or "cabal," and during the days of conflict between the commons and the king it was regarded with great disfavor by the parliament of England. Its unpopularity arose from the fact that it did not consist of men in whom parliament had confidence, and its proceedings were conducted with such secrecy that it was impossible to decide upon whom to fix responsibility for any obnoxious measure. When the constitution of England was brought back to its original principles, and harmony was restored between the crown and the parliament, the cabinet became no longer a term of reproach, but a position therein was regarded as the highest honor in the country, and was associated with the efficient administration of public affairs, since it meant a body of men responsible to parliament for every act of government.* The old executive councils of Canada were obnoxious

* See Todd, II, p. 101.

to the people for the same reason that the councils of the Stuarts and even of George III, with the exception of the régime of the two Pitts, became unpopular. Not only do we in Canada, in acordance with our desire to perpetuate the names of English institutions, use the name "Cabinet," which was applied to an institution that gradually grew out of the old privy council of England, but we have even incorporated in our fundamental law the older name of "privy council,"* which itself sprung from the original "permanent" or "continual" council of the Norman kings.† Following English precedent the Canadian cabinet or ministry is formed out of the privy councillors, chosen under the law by the governor-general, and when they retire from office they still retain the purely honorary distinction. In the United States the use of the term "Cabinet" has none of the significance it has with us, and if it can be compared at all to any English institutions it might be to the old cabinets who acknowledged responsibility to the king, and were only so many heads of department in the king's government. As a matter of fact, the comparison would be closer if we said that the administration resembles the cabinets of the old French kings, or to quote Prof. Bryce, "the group of ministers who surround the Czar or the Sultan, or who executed the bidding of a Roman emperor like Constantine or Justinian." Such ministers, like the old executive councils of Canada, "are severally responsible to their master, and are severally called in to counsel him, but they have not necessarily any relations with one another, nor any duty or collective action."† Not only is the administration constructed on the

* The name of "privy council" was applied to the council formed under the Quebec act in 1776 (Bourinot's Manual, p. 16). Delaware was the only one of the old colonies which used the title in its original constitution. (See Bryce, I. 124, note.) In the debates of the constitutional convention of 1787 it was suggested that the president be provided with a privy council, but none of the propositions to that effect obtained any favor with the majority. (See Jamieson, "Essays on the Constitutional History of the United States," pp. 173, 174.) The title still exists in the little colonies of Bermuda and Jamaica, where there is no responsible government.

† "The nobles assembled on special occasions, by special writs, formed, in combination with the officers of the court, the 'past council' or 'common council' of the realm. The chief advisers of the crown, who were permanently about the king, constituted the 'permanent' or 'continual' council thence, in later times, rose the privy council." (See the Privy Council, by A. V. Dicey, pp. 5, 6.

Bryce, I, p. 123.

principle of responsibility to the president alone, in this respect the English king in old irresponsible days, but the legislative department is itself "constructed after the English model as it existed a century ago,"* and a general system of government is established, lacking in that unity and that elasticity which are essential to its effective working. On the other hand the Canadian cabinet is the cabinet of the English system of this century, and is formed so as to work in harmony with the legislative department, which is a copy, so far as possible, of the English legislature of these modern times.

The special advantages of the Canadian or English system of parliamentary government, compared with Congressional government, may be briefly summed up as follows:†

(*a*) The governor-general, his cabinet, and the popular branch of the legislature are governed in Canada as in England by a system of rules, conventions, and understandings which enable them to work in harmony with one another. The crown, the cabinet, the legislature, and the people have respectively certain rights and powers which, when properly and constitutionally brought into operation, give strength and elasticity to our system of government. Dismissal of a ministry by the crown under conditions of gravity, or resignation of a ministry defeated in the popular house, bring into play the prerogatives of the crown. In all cases there must be a ministry to advise the crown, assume responsibility for its acts, and obtain the support of the people and their representatives in parliament. As a last resort to bring into harmony the people, the legislature, and the crown, there is the exercise of the supreme prerogative of dissolution. A governor, acting always under the advice of responsible ministers may, at any time, generally speaking, grant an appeal to the people to test their opinion on vital public questions and bring the legislature into accord with the public mind. In short the fundamental principle of popular sovereignty lies at the very basis of the Canadian system.

On the other hand, in the United States the president and

* Hannis Taylor, Atlantic Monthly for June, 1890, p. 769, "The National House of Representatives."

† These and following remarks relating to the rules and conventions of responsible government, of course apply with the same force to a lieutenant-governor in a province that they do to a governor-general.

his cabinet may be in constant conflict with the two houses of congress during the four years of his term of office. His cabinet has no direct influence with the legislative bodies, inasmuch as they have no seats therein. The political complexion of congress does not affect their tenure of office, since they depend only on the favor and approval of the executive; dissolution, which is the safety valve of the English or Canadian system—"in its essence an appeal from the legal to the political sovereign"—is not practicable under the United States constitution. In a political crisis the Constitution provides no adequate solution of the difficulty during the presidential term. In this respect the people in the United States are not sovereign as they are in Canada under the conditions just briefly stated.*

(*b*) The governor-general is not personally brought into collision with the legislature by the direct exercise of a veto of its legislative acts, since the ministry are responsible for all legislation and must stand or fall by their important measures. The passage of a measure of which they disapproved as a

* In these times the right of the crown to dismiss its advisers and to dissolve the legislature is a prerogative which, constitutionally exercised, is in the interests of the people themselves. On the dismissal of a ministry the crown must at once obtain the aid of a new body of advisers, who must assume full responsibility for its action before the legislature and before the people as the ultimate resort. Dissolution immediately brings all the issues which have to be settled for the time being under the purview of the sovereign people for their final verdict. Prof. Dicey ("The Law of the Constitution," 3d ed., p. 356) says with respect to the dismissal of the ministry and dissolution "that there are certainly combinations of circumstances under which the crown has a right to dismiss a ministry who command a parliamentary majority and to dissolve the parliament by which the ministry are supported. The prerogative, in short, of dissolution may constitutionally be so employed as to override the will of the representative body, or, as it is popularly called, 'The People's House of Parliament.' This looks at first sight like saying that in certain cases the prerogative can be so used as to set at nought the will of the nation; but in reality it is far otherwise. The discretionary power of the crown occasionally may be and according to constitutional precedents sometimes ought to be used to strip an existing house of commons of its authority. But the reason why the house can in accordance with the Constitution be deprived of power and of existence is that an occasion has arisen on which there is fair reason to suppose that the opinion of the house is not the opinion of the electors. A dissolution is in its essence an appeal from the legal to the political sovereign. A dissolution is allowable or necessary whenever the wishes of the legislature are or may fairly be presumed to be different from the wishes of the nation. (See, on the same subject of dismissal, Todd, "Parliamentary Government in the Colonies," pp. 584–590.)

ministry would mean in the majority of cases their resignation, and it is not possible to suppose that they would ask the governor to exercise a prerogative of the crown which has been in disuse since the establishment of responsible government and would now be a revolutionary measure even in Canada.*

In the United States there is danger of frequent collision between the president and the two legislative branches, should a very critical exercise of the veto, as in President Johnson's time, occur when the public mind would be deeply agitated. The chief magistrate loses in dignity and influence whenever the legislature overrides the veto, and congress becomes a despotic master for the time being.

(*c*) The Canadian ministry, having control of the finances and taxes and of all matters of administration, are directly responsible to parliament and sooner or later to the people for the manner in which they have discharged their public functions. All important measures are initiated by them, and on every question of public interest they are bound to have a definite policy if they wish to retain the confidence of the legislature. Even in the case of private legislation they are also the guardians of the public interests and are responsible to parliament and the people for any neglect in this particular.

On the other hand, in the United States the financial and general legislation of congress is left to the control of committees, over which the president and his cabinet have no direct influence, and the chairman of which may have ambitious objects in direct antagonism to the men in office.

(*d*) In the Canadian system the speaker is a functionary who certainly has his party proclivities, but it is felt as long as he occupies the chair all political parties can depend on his justice and impartiality. Responsible government makes the premier and his ministers responsible for the constitution of the committees and for the opinions and decisions that may emanate from them. A government that would constantly endeavor to shift its responsibilities on committees, even of

* In matters affecting Imperial interests the governor-general does not directly exercise the veto he has under the B. N. A. act of 1867—only a continuation of a veto always given to governors-general since 1792—but the general power of disallowance possessed by the imperial government is considered adequate to meet all such cases. A bill may be reserved under exceptional circumstances, but as a rule the power just mentioned is used. (See Bourinot's "Parliamentary Procedure in Canada," 2d ed.)

their own selection, would soon disappear from the treasury benches. Responsibility in legislation is accordingly insured, financial measures prevented from being made the footballs of ambitious and irresponsible politicians, and the impartiality and dignity of the speakership guaranteed by the presence in parliament of a cabinet having the direction and supervision of business.

On the other hand, in the United States, the speaker of the house of representatives becomes, from the very force of circumstances, a political leader, and the spectacle is presented—in fact from the time of Henry Clay—so strange to us familiar with English methods, of decisions given by him with clearly party objects, and of committees formed by him with purely political aims, as likely as not with a view to thwart the ambition either of a president who is looking to a second term or of some prominent member of the cabinet who has presidential aspirations. And all this lowering of the dignity of the chair is due to the absence of a responsible minister to lead the house. The very position which the speaker is forced to take from time to time—notably in the case of last congress—is clearly the result of the defects of the constitutional system of the United States and is so much evidence that a responsible party leader is an absolute necessity in congress. A legislature must be led, and congress has been attempting to get out of a crucial difficulty by all sorts of questionable shifts which only show the inherent weakness of the existing system.

In the absence of any provision for unity of policy between the executive and the legislative authorities of the United States, it is impossible for any nation to have a positive guarantee that a treaty it may negotiate with the former can be ratified. The sovereign of Great Britain enters into treaties with foreign powers with the advice and assistance of her constitutional advisers, who are immediately responsible to parliament for their counsel in such matters. In theory it is the prerogative of the crown to make a treaty; in practice it is the ministry. It is not constitutionally imperative to refer such treaties to parliament for its approval—the consent of the crown is sufficient; but it is sometimes done under exceptional circumstances, as in the case of the cession of Heligoland. In any event, the action of the ministry in the matter is invariably open to the review of parliament, and they may be censured by an adverse vote for the advice they gave the sovereign and forced to retire from office. In the United

States the Senate must ratify all treaties by a two-thirds vote, but unless there is a majority in that house of the same political complexion as the president the treaty may be refused. No cabinet minister is present, leads the house, as in England, and assumes all the responsibility of the president's action. It is almost impossible to suppose that an English ministry would consent to a treaty that would be unpopular in parliament and in the country. Their existence as a government would depend on their action. In the United States both president and senate have divided responsibilities. The constitution makes no provision for unity in such important matters of national obligation.

A thoughtful writer,* not long since, contributed a somewhat elaborate defense of the present irresponsible system of the United States, whose defects have been so clearly pointed out for some years past by a number of acute students of institutions, of whom Professors Bryce and Woodrow Wilson are generally admitted to stand at the head. Several of Dr. Freeman Snow's arguments have been already met in the course of the comparisons I have drawn between the respective systems of the two countries, but there are some points to which I may make special reference, since he appears to attach much importance to them.

Dr. Snow, like Mr. Lawrence Lowell,† appears to think that responsible government is not adapted to a federal system, governed by a written constitution or fundamental law, for he commences his paper with the following remark:

"In the English system the government of the state, in all its breadth and details from foundation up, is intrusted to the majority of the people, to be changed or modified at pleasure. In the American [he means, of course, the United States] system, on the other hand, a limit is set to the power of the majority by establishing certain fundamental laws, which can be changed only by a more general assent of the people and after a most mature deliberation."

Dr. Snow ignores throughout his paper the example of Canada, which completely refutes the argument he bases on the foregoing proposition, and Mr. Lowell practically does the same thing, for after devoting a number of pages to the contention that a federal system can not be effectively worked

* Dr. Freeman Snow, in the Papers of the American Historical Association, July, 1890.

† See, in his "Essays on Government," his remarks on "Cabinet Responsibility," pp. 20–59.

under English responsible government, the latter suddenly remembers that Canada has a federal constitution or fundamental law, not changeable by the caprice of a majority in the Dominion legislatures, and condescends to devote a short footnote to the mention of the fact at the close of the chapter, which is simply remarkable for its absence of any argument bearing on the point at issue. The parliament of Canada can not change the fundamental basis of the federal constitution, which can be amended or revoked only by the same authority that gave it existence, the imperial parliament. The legislatures of the provinces can amend their own constitutions, but only within certain limitations. Neither the general parliament nor the provincial legislatures can touch the division of powers between the central and provincial governments or other fundamental parts of the federal scheme.

Only three relatively unimportant amendments, to relieve doubts respecting the establishment of provinces in the territories and to define the privileges and powers of Parliament, have been made in the British North America act since 1867, when it was passed.* If a change is at any time necessary in the constitution it must be brought forward in the shape of an address and agreed to by the two branches of the parliament of Canada, under the direction of a responsible ministry. This address would then have to pass through the ordeal of the imperial parliament, which in this important particular is not likely to act hastily. Consequently there are checks imposed upon the will of the majority in the Canadian parliament, not only in the case of a proposed amendment of the constitution, but in all matters of legislation affecting the federation. The courts can at any moment pass upon the constitutionality of any act of the several legislative bodies of the Dominion. In the provinces, as well as in the Dominion itself, there are ministries responsible for every act of legislation and administration, and consequently in the working of the various parts of the federal government there is provision

* Imp. Stat., 34–35 Vict., chap. 28: "An act respecting the establishment of provinces in the Dominion of Canada;" and 38–39 Vict., chap. 38: "An act to remove certain doubts with respect to the powers of the Parliament of Canada under section 18 of the B. N. A. act, 1867." Also 49–50 Vict., chap. 35: "An act respecting the representation in the Parliament of Canada of territories which for the time being form part of the Dominion of Canada, but are not included in any province."

made for unity and harmony. Each ministry is responsible to the people of its own province, and it is quite possible that the men directing provincial affairs, as in the majority of the provinces at present, hold views on Dominion affairs antagonistic to those of the general government. But experience has shown that, as one of the results of responsible government, Dominion and provinces can safely administer public affairs within their respective political spheres without having any immediate party connection with one another. While every province has its distinct party issues, there is overshadowing each and all a Dominion or National sentiment, or, in other words, Dominion or National issues which govern the tenure in office of the general government. The people, having in their hands at certain intervals the fate of each of these eight ministries, necessarily feel they have to discharge important obligations and responsibilities which do not devolve upon the people of the United States.

"But something more than mere checks upon the power of the majority [continues Dr. Snow] is essential to the successful working of popular government; there must be in the people a capacity for self government. And perhaps the most important difference between the two systems under consideration is the different degrees in which the people take part in the conduct of their respective governments. This question involves the relative merits of so-called congressional and cabinet or parliamentary government."

Every authority who has studied the effects of the two systems and given his opinion on the subject is at direct variance with these remarks of Dr. Snow, and indeed no one at all conversant with the practical working of institutions would deny that the great advantages of the English or Canadian system lie in the interest created among all classes of the people by the discussions of the different legislative bodies. Parliamentary debate involves the fate of cabinets, and the public mind is consequently led to study all issues of importance. The people know and feel that they must be called upon sooner or later to decide between the parties contending on the floors of the legislatures, and consequently are obliged to give an intelligent consideration of public affairs. Let us see what Bagehot,* ablest of critics, says on this point:

"At present there is business in their attention [that is to say, of the English or Canadian people]. They assist at the determining crisis; they

* "The English Constitution," pp. 89, 90.

assist or help it. Whether the government will go out or remain is determined by the debate and by the division in parliament. And the opinion out of doors, the secret-pervading disposition of society, has a great influence on that division. The nation feels that its judgment is important, and it strives to judge. It succeeds in deciding because the debates and the discussions give it the facts and the arguments. But under the presidential government a nation has, except at the electing moment, no influence; it has not the ballot box before it; its virtue is gone and it must wait till its instant of despotism again returns. There are doubtless debates in the legislature, but they are prologues without a play. The prize of power is not in the gift of the legislature. No presidential country needs to form daily delicate opinions, or is helped in forming them."

Then when the people do go to the ballot box, they can not intelligently influence the policy of the government. If they vote for a president, then congress may have a policy quite different from his; if they vote for members of Congress they can not change the opinions of the president. If the president changes his cabinet at any time they have nothing to say about it, for its members are not important as wheels in the legislative machinery. Congress may pass a bill, of which the people express their disapproval at the first opportunity when they choose a new congress, but still it may remain on the statute book because the senate holds views different from the newly elected house, and can not be politically changed until after a long series of legislative elections. As Prof. Woodrow Wilson well puts it:*

"Public opinion has no easy vehicle for its judgments, no quick channels for its action. Nothing about the system is direct and simple. Authority is perplexingly subdivided and distributed, and responsibility has to be hunted down in out-of-the-way corners. So that the sum of the whole matter is that the means of working for the fruits of good government are not readily to be found. The average citizen may be excused for esteeming government at best but a haphazard affair upon which his vote and all his influence can have but little effect. How is his choice of representative in congress to affect the policy of the country as regards the questions in which he is most interested if the man for whom he votes has no chance of getting on the standing committee which has virtual charge of those questions? How is it to make any difference who is chosen president? Has the president any great authority in matters of vital policy? It seems a thing of despair to get any assurance that any vote he may cast will even in an infinitesimal degree affect the essential courses of administration. There are so many cooks mixing their ingredients in the national broth that it seems hopeless, this thing of changing one cook at a time."

* Congressional Government, pp. 301, 332.

Under such a system it can not be expected that the people will take the same deep interest in elections and feel as directly responsible for the character of the government as when they can at one election and by one verdict decide the fate of a government, whose policy on great issues must be thoroughly explained to them at the polls. This method of popular government is more real and substantial than a system which does not allow the people to influence congressional legislation and administrative action through a set of men, sitting in congress and having a common policy.

Then we are told by Dr. Snow: That the system of government by responsible leaders "fails to call out, indeed it seeks to repress, that mental activity, in political matters, of the great body of legislators which is found in the system of congressional government." That the peoples' representatives "take a more active part in the affairs of government and retain to a greater degree the feeling and the reality of political responsibility." That cabinet government "develops leaders at the expense of the real strength of democracy;" that "the greater harmony and greater efficiency in legislation" which he admits are the results of the Canadian or English system, are "bought at the expense of the real strength of democracy—the independence and general political training of the many."

I think it does not require any very elaborate argument to show that when men feel and know that the ability they show in parliament may be sooner or later rewarded by a seat on the treasury benches, and that they will then have a determining voice in the government of the country, be it dominion or province, they must be stimulated by a keener aptitude for public life, a closer watchfulness over legislation and administration, a great readiness for discussing all public questions, and a more studied appreciation of public opinion outside the legislative halls. Every man in parliament is a premier *in posse*. While asking my hearers to recall what I have already said as to the effect of responsible government on the public men and people of Canada, I shall also here refer them to some authorities, worthy of all respect, who have expressed opinions directly contrary to those of Dr. Snow with reference to the points in question.

Bagehot says with his usual clearness:*

"To belong to a debating society adhering to an executive (and this is no napt description of a congress under a presidential constitutional) is not an object to stir a noble ambition, and is a position to encourage idleness. The members of a parliament excluded from office can never be comparable, much less equal, to those of a parliament not excluded from office. The presidential government, by its nature, divides political life into two halves, an executive half and a legislative half, and, by so dividing it, makes neither half worth a man's having—worth his making it a continuous career—worthy to absorb, as cabinet government absorbs, his whole soul. The statesmen from whom a nation chooses under a presidential system are much inferior to those from whom it chooses under a cabinet system, while the selecting apparatus is also far less discerning."

Another writer, Prof. Denslow,† does not hesitate to express the opinion very emphatically that "as it is, in no country do the people feel such an overwhelming sense of the littleness of the men in charge of public affairs" as in the United States. And in another place he dwells on the fact that "responsible government educates officeholders into a high and honorable sense of their accountability to the people," and makes "statesmanship a permanent pursuit followed by a skilled class of men."

Prof. Woodrow Wilson says so far from men being trained to legislation by congressional government, "independence and ability are repressed under the tyranny of the rules, and practically the favor of the popular branch of congress is concentrated in the speaker and a few—very few—expert parliamentarians." Elsewhere he shows that "responsibility is spread thin, and no vote or debate can gather it." As a matter of fact and experience, he comes to the conclusion"‡ the more power is divided the more irresponsible it becomes and the petty character of the leadership of each committee contributes towards making its despotism sure by making its duties interesting."

Prof. Bryce, it will be admitted, is one of the fairest of critics in his review of the institutions of the "American Commonwealth;" but he, too, comes to the conclusion§ that the system of congressional government—

Destroys the unity of the house [of representatives] as a legislative body.

* The English Constitution, pp. 95, 96.

† In the International Review, March, 1877.

‡ "Congressional Government," p. 94.

§ "The American Commonwealth," I. 210, *et seq.*

Prevents the capacity of the best members from being brought to bear upon any one piece of legislation, however important.
Cramps debate.
Lessens the cohesion and harmony of legislation.
Gives facilities for the exercise of underhand and even corrupt influence.
Reduces responsibility.
Lowers the interest of the nation in the proceedings of congress.

In another place,* after considering the relations between the executive and the legislature, he expresses his opinion that the framers of the constitution have "so narrowed the sphere of the executive as to prevent it from leading the country, or even its own party in the country." They endeavored "to make members of congress independent, but in doing so they deprived them of some of the means which European legislators enjoy of learning how to administer, of learning even how to legislate in administrative topics. They condemned them to be architects without science, critics without experience, censors without responsibility."

And further on, when discussing the faults of democratic government in the United States—and Prof. Bryce, we must remember, is on the whole most hopeful of its future—he detects as amongst its characteristics "a certain commonness of mind and tone, a want of dignity and elevation in and about the conduct of public affairs, and insensibility to the nobler aspects and finer responsibilities of national life." Then he goes on to say† that a representative and parliamentary system "provides the means of mitigating the evils to be feared from ignorance or haste, for it vests the actual conduct of affairs in a body of specially chosen and presumably qualified men, who may themselves intrust such of their functions as need peculiar knowledge or skill to a smaller governing body or bodies selected in respect of their more eminent fitness. By this method the defects of democracy are remedied while its strength is retained." The members of American legislatures, being disjoined from the administrative offices, "are not chosen for their ability or experience; they are not much respected or trusted, and finding nothing exceptional expected from them, they behave as ordinary men."

I give these short citations, so different in their conclusions from those of Dr. Snow, in preference to any opinions of my own, because they are the criticisms of men who have given

* *Ibid.*, 304, 305.
† *Ibid.*, Chap. 95, Vol. III.

the closest study to the practical working of the institutions of our neighbors, and who can have no political bias or prejudice in the matter. But Dr. Snow practically gives away his whole case when, at the close of his ably argued paper, he admits that "party government, as carried on in the United States during the last sixty years, has undoubtedly tended to the corruption of the political morality of the people." And this unfortunate condition of things was predicted, and its cause stated, more than fifty years ago by the ablest constitutional writer that the United States has produced—one of those eminent men who, by their great learning and remarkable judgment, have done so much to elucidate and strengthen the constitution.

"If corruption," wrote Judge Story, "ever silently eats its way into the vitals of this Republic, it will be because the people are unable to bring responsibility home to the executive through his chosen ministers."*

But Dr. Snow looks hopefully to the future of his country, because there has been going on for some time past a steady movement "for reform in the civil service and the ballot," but at the same time he refuses to see that in all probability these much-needed reforms would have been brought about long ere this had there been responsible leaders to guide congress and the legislatures of the states.†

At all events, in Canada the permanency of the tenure of public officials and the introduction of the secret ballot have been among the results of responsible government. Through

* "Commentaries," sec. 869.

† A writer in the Annals of the American Academy of Political and Social Science well observes on this point: "It is beyond question that precisely this public and personal responsibility has converted both parliament and ministers from the corrupt condition of Walpole's time, and half a century later gradually and steadily to the purified condition of the present day, has extinguished bribery at elections, and to that end has led the house of commons to surrender its control, in the case of disputed elections, into the hands of the courts. It is this personal responsibility which has been the instrument of carrying into effect more extensive and at the same time peaceful reforms in the interest of the masses of the people at large than have been achieved in the same time by any other nation in the world." On the other hand, the same writer says of the irresponsible United States system of congressional committees that "this is an arrangement so fruitful of corruption and jobbery that it would drag down and corrupt the purest and ablest body of men in the world." (See article on "Congress and the Cabinet," November, 1891.)

the influence and agency of the same system, valuable reforms have been made in Canada in the election laws, and the trial of controverted elections has been taken away from partisan election committees and given to a judiciary independent of political influences. In these matters the irresponsible system of the United States has not been able to effect any needful reforms. Such measures can be best carried by ministers having the initiation and direction of legislation, and must necessarily be retarded when power is divided among several authorities having no unity of policy on any question.

In making these comparisons between the very diverse systems of Canada and the United States I have attempted simply to give, as far as possible within the limits of a single paper, some of the leading arguments that can be adduced in favor of responsible government. I must not be understood to say that its principles can be fully and easily applied to the federal government of the United States; on the contrary, I agree with Dr. Snow that it would require a radical change in the written constitution, and in the whole machinery of government, were the responsible government of Canada and England applied in its entirety to the administration of the affairs of the union of the states. In preference to such a radical amendment of the whole constitutional system, various methods are proposed from time to time to bring the executive and legislative authorities into closer relations, with the view of insuring some unity of policy in administration and legislation. The Swiss system, it is pointed out, would enable the members of the cabinet to assist in the work of legislation, and, no doubt, would have its advantages over the present defective system, which leaves the administration practically powerless in legislation.

The Swiss cabinet is not chosen on a party basis. Its members are elected for a fixed term of three years by the federal assembly; they can not vote, and do not go out of office if the legislation they support is rejected by the majority of the house. The system works well in the Swiss Republic,* and could be easily introduced into the United States. A thoughtful writer, however,† believes that "to vest in the cabinet the right to appear in both houses, initiate legislation and then

* See Bourinot, "Canadian Studies in Comparative Politics."

† Hannis Taylor, author of "The Origin and Growth of the English Constitution," in the Atlantic Monthly for June, 1890.

debate it, would be simply to make of them a dumb show," and it is necessary "the cabinet should represent, in its corporate person, the political force which alone can make its presence effective." He suggests that each of the great political parties by a resolution of its national convention should "vest in its presidential candidate and his cabinet, in the event of success, the official party leadership, according to the English practice." But this cabinet would be in no sense an English or Canadian ministry, for it would not be chosen from a committee of the governing body, the essential feature of responsible government. Such a body of men would have no direct influence on congress, not as much as the Swiss officials, who are at all events the nominees of the legislature. Difficulties would constantly arise from the fluctuating character of majorities in congress. During the presidential term the complexion of congress might change, and this cabinet would find its usefulness practically gone. The fact is, the whole constitutional system of the United States is, one of checks and balances, so arranged as to prevent unity and harmony at some time or other in the various branches of government, and the only practicable improvement that can be adopted without a revolution in the whole machinery of the federal fabric seems to be the adoption of the Swiss system in some form or other. It would not by any means remove all the dangers and difficulties inherent in the present system, but it would probably aid congress, the real governing body of the country, in legislation, and throw greater light upon the administration of public affairs. In the meantime, while the United States are working out this difficult problem for themselves, Canadians find satisfaction in knowing that responsible government provides all the machinery necessary to give expansion to their national energies, mature efficient legislation, and keep the administration of public affairs in unison with public opinion.

Party government undoubtedly has its dangers arising from personal ambition and unscrupulous partisanship, but as long as men must range themselves in opposing camps on every subject there is no other system practicable by which great questions can be carried and the working of representative government efficiently conducted. The framers of the constitution of the United States no doubt thought they had succeeded in placing the president and his departmental offi-

cers above party when they instituted the method of electing the former by a body of select electors chosen for that purpose in each state, who were expected to act irrespective of all political considerations. A president so selected would probably choose his officers also on the same basis. The practical results, however, have been to prove that in every country of popular and representative institutions party government must prevail. Party elects men to the presidency and to the floor of the senate and house of representatives, and the election to those important positions is directed and controlled by a political machinery far exceeding in its completeness any party organization in England or in Canada. The party convention is now the all-important portion of the machinery for the election of the president, and the safeguard provided by the constitution for the choice of the best man is a mere nullity. One thing is quite certain, that party government under the direction of a responsible ministry, responsible to parliament and the people for every act of administration and legislation, can have far less dangerous tendencies than a party system which elects an executive not amenable to public opinion for four years, divides the responsibilities of government among several authorities, prevents harmony among party leaders, does not give the executive that control over legislation necessary to the efficient administration of public affairs, and in short offers a direct premium to conflict among all the authorities of the state—a conflict, not so much avoided by the checks and balances of the constitution as by the patience, common sense, prudence, and respect for law which presidents and their cabinets have as a rule shown at national crises. But we can clearly see that, while the executive has lost in influence, congress has gained steadily to an extent never contemplated by the founders of the constitution, and there are thoughtful men who say that the true interests of the country have not always been promoted by the change. Party government, in Canada, insures unity of policy, since the premier of the cabinet becomes the controlling part of the political machinery of the state; no such thing as unity of policy is possible under a system which gives the president neither the dignity of a governor-general, nor the strength of a premier, and splits up political power among any number of would-be party leaders, who adopt or defeat measures by

private intrigues, make irresponsible recommendations, and form political combinations for purely selfish ends.*

It seems quite clear then that the system of responsible ministers makes the people more immediately responsible for the efficient administration of public affairs than is possible in the United States. The fact of having the president and the members of congress elected for different terms, and of dividing the responsibilities of government among these authorities, does not allow the people to exercise that direct influence which is insured, as the experience of Canada and of England proves, by making one body of men immediately responsible to the electors for the conduct of public affairs at frequently recurring periods, arranged by well-understood rules, so as to insure a correct expression of public opinion on all important issues. The committees which govern this country are the choice of the people's representatives assembled in parliament, and every four or five years and sometimes even sooner in case of a political crisis, the people have to decide on the wisdom of the choice. The system has assuredly its drawbacks like all systems of government that have been devised and worked out by the brain of man.† In all frankness, I confess that this review would be incomplete were I not to refer to certain features of the Canadian system of government which seem to me on the surface fraught with inherent danger at some time or other to independent legislative judgment. Any one who has closely watched the evolution of this system for years past must admit that there is a dangerous tendency in the Dominion to give the executive—I mean the ministry as a body—too superior a control over the legislative authority. When a ministry has in its gift the appointment not only of the heads of the executive government in the provinces, that is to say, of the lieutenant-governors, who can be dismissed by the same power at any moment, but also of the members of the upper house of the parliament itself, besides the judiciary and numerous collectorships and other valuable offices, it is quite

* See Story, "Commentaries" (Cooley's 3d. ed.), sec. 869.

† For a clear and practical exposition of the superiority of the Canadian over the United States system of government the reader is referred to an address issued to the Liberal Party of Canada by the Hon. Oliver Mowat, premier of Ontario, who is specially qualified by his great constitutional knowledge and his statesmanlike qualities to speak authoritatively on such questions. (See Toronto Globe, December 14, 1891.)

obvious that the element of human ambition and selfishness has abundant room for operation on the floor of the legislature, and a bold and skillful cabinet is able to wield a machinery very potent under a system of party government. In this respect the house of representatives may be less liable to insidious influences than a house of commons at critical junctures when individual conscience or independent judgment appears on the point of asserting itself. The house of commons may be made by skillful party management a mere recording or registering body of an able and determined cabinet. I see less liability to such silent though potent influences in a system which makes the president and a house of representatives to a large degree independent of each other, and leaves his important nominations to office under the control of the senate, a body which has no analogy whatever with the relatively weak branch of the Canadian parliament, essentially weak while its membership depends on the government itself. I admit at once that in the financial dependence of the provinces on the central federal authority, in the tenure of the office of the chief magistrates of the provinces, in the control exercised by the ministry over the highest legislative body of Canada, that is, highest in point of dignity and precedence, there are elements of weakness, but at the same time it must be remembered that, while the influence and power of the Canadian government may be largely increased by the exercise of its great patronage in the hypothetical cases I have suggested, its action is always open to the approval or disapproval of parliament and it has to meet an Opposition face to face. Its acts are open to legislative criticism, and it may at any moment be forced to retire by public opinion operating upon the house of commons.

On the other hand, the executive in the United States for four years may be dominant over congress by skillful management. A strong executive by means of party wields a power which may be used for purposes of mere personal ambition, and may by clever management of the party machine and with the aid of an unscrupulous majority retain power for a time even when it is not in accord with the true sentiment of the country, but under a system like that of Canada, where every defect in the body politic is probed to the bottom in the debates of parliament, which are given with a fullness by the

press* that is not the practice in the neighboring republic, the people have a better opportunity of forming a correct judgment on every matter and giving an immediate verdict when the proper time comes for an appeal to them, the sovereign power. Sometimes this judgment is too often influenced by party prejudices and the real issue is too often obscured by skillful party management, but this is inevitable under every system of popular government; and happily, should it come to the worst, there is always in the country that saving remnant of intelligent, independent men of whom Matthew Arnold has written, who can come forward and by their fearless and bold criticism help the people in any crisis when truth, honor, and justice are at stake and the great mass of electors fail to appreciate the true situation of affairs. But I have learned to have confidence in the good sense and judgment of the people as a whole when time is given them to consider the situation of affairs. Should men in power be unfaithful to their public obligations they will eventually be forced by the conditions of public life to yield their positions to those who merit public confidence. If it should ever happen in Canada that public opinion has become so low that public men feel that they can, whenever they choose, divert it to their own selfish ends by the unscrupulous use of partisan agencies and corrupt methods, and that the highest motives of public life are forgotten in a mere scramble for office and power, then thoughtful Canadians might well despair of the future of their country; but, whatever may be the blots at times on the surface of the body politic, there is yet no reason to believe that the public conscience of Canada is weak or indifferent to character and integrity in active politics. The instincts of an English people are always in the direction of the pure administration of justice and the efficient and honest government of the country, and though it may sometimes happen that unscrupulous politicians and demagogues will for a while dominate in the party arena, the time of retribution and purification must come sooner or later. English methods must prevail in countries governed by an English people and English institutions.

*The debates of the senate and house of commons are very fully reported by an official staff; but the newspapers in Toronto and Montreal give remarkably long reports of all important discussions. The official debates of the commons are given in French and English.

It is sometimes said that it is vain to expect a high ideal in public life, that the same principles that apply to social and private life can not always be applied to the political arena if party government is to succeed; but this is the doctrine of the mere party manager, who is already too influential in Canada as in the United States, and not of the true patriotic statesman. For one I still believe that the nobler the object the greater the inspiration, and, at all events, it is better to aim high than to sink low. It is all important, then, that the body politic should be kept pure and that public life should be considered a public trust. Canada is still young in its political development, and the fact that her population has been as a rule a steady, fixed population, free from those dangerous elements which have come into the United States with such rapidity of late years, has kept her relatively free from many serious social and political dangers which have afflicted her neighbors, and to which I believe they themselves, having inherited English institutions, and imbued with the spirit of English law, will always in the end rise superior. Great responsibility therefore rests in the first instance upon the people of Canada, who must select the best and purest among them to serve the country, and, secondly, upon the men whom the legislature chooses to discharge the trust of carrying on the government. No system of government or of laws can of itself make a people virtuous and happy unless their rulers recognize in the fullest sense their obligations to the state and exercise their powers with prudence and unselfishness, and endeavor to elevate and not degrade public opinion by the insidious acts and methods of the lowest political ethics. A constitution may be as perfect as human agencies can make it, and yet be relatively worthless while the large responsibilities and powers intrusted to the governing body—responsibilities and powers not embodied in acts of parliament—are forgotten in view of party triumph, personal ambition, or pecuniary gain. "The laws," says Burke, "reach but a very little way. Constitute government how you please, infinitely the greater part of it must depend upon the exercise of powers which are left at large to the prudence and uprightness of ministers of state. Even all the use and potency of the laws depend upon them. Without them your commonwealth is no better than a scheme upon paper, and not a living, active, effective organization."

In Canada, to quote the words of a Canadian poet—

"As yet the waxen mould is soft, the opening page is fair;
It's left for those who rule us now to leave their impress there—
The stamp of true nobility, high honor, stainless truth;
The earnest quest of noble ends; the generous heart of youth;
The love of country, soaring far above dull party strife;
The love of learning, art, and song—the crowning grace of life;
The love of science, soaring far through nature's hidden ways;
The love and fear of nature's God—a nation's highest praise.
So in the long hereafter this Canada shall be—
The worthy heir of British power and British liberty."

APPENDIX.—BIBLIOGRAPHICAL AND CRITICAL NOTES.

In the following bibliography the writer has attempted only to note those special works and essays which relate to the evolution of parliamentary government in the provinces of the Dominion of Canada, explain the nature and operation of its conventions, understandings, and rules, and enable the student of political institutions to make comparisons between the Canadian system of responsible government, as briefly set forth in the foregoing pages, and the very divergent system of congressional government that prevails in the United States. With the view of making this review as complete as possible, it has also been thought useful to give such references to leading Canadian authorities on the French régime as will enable the reader to trace more clearly the evolution in the political development of the Dominion from the beginning of the seventeenth to the closing years of the nineteenth century.

I.—THE FRENCH RULE.

Edits, Ordonnances Royaux, Déclarations et Arrêts du Conseil d'Etat du Roi, Concernant le Canada. Imprimés sur une adresse de l'Assemblée législative du Canada. Revus et Corrigés d'après les Pièces originales déposées aux archives provinciales. Quebec: E. R. Fréchette, 1854. pp. 648.

In the foregoing and following collections of documents we see clearly the nature of the absolute government established in Canada during the days of French rule, when the king and his supreme or superior council regulated all the affairs of the council, even the sale and price of bread. It was a parental control, which kept the people in the condition of children.

Arrêts et Règlements du Conseil Supérieur de Quebec, et Ordonnances et Jugements des Intendants du Canada. Quebec: E. R. Fréchette, 1855.

Complément des Ordonnances et Jugements des Gouverneurs et Intendants du Canada, précédé des Commissions des dits Gouverneurs et Intendants et des différents officiers civils et de justice, avec une table alphabétique de toutes les matières contenues tant dans ce volume que dans les deux volumes précédents. Quebec: E. R. Fréchette, 1856. 8vo, pp. 776.

Jugements et Délibérations du Conseil Souverain [Supérieur] de la Nouvelle France; Publiés sous les auspices de la législature de Quebec. Quebec: A. Coté et Cie., 1885, 1886, 1887, 1888; Joseph Dussault, 1889, 1891. 6 vols. in 4to, pp. lxi, 1084, 1142, 1163, 1194, 1110, 1276.

The introduction (i–lxi) on the constitution of the supreme or superior council of Quebec was written by one of the ablest French Canadian publicists and scholars, the late Hon. P. J. O. Chaveau, F.R.S., Can.

Cours d'Histoire du Canada, par J. B. A. Ferland, Prêtre, professeur d'histoire à l'Université Laval, 1534–1759. Quebec: Augustin Coté, 1861, 1865. 2 vols., 8vo, pp. xi+522; vi+618.

A scholarly work, in which an impartial narrative of the French régime is presented; but its account of the system of administration is not as full as that of Garneau. The Abbé Laverdière revised the proofs of the greater part of the second volume, as the author died before his manuscript was all in print.

Histoire du Canada, depuis sa découverte jusqu'à nos jours. Par F.-X. Garneau. Quatrième édition. 4 vols. Montréal: Beauchemin et Valois, 1882. 8vo, pp. xxii+396, 467, 407, cccxcviii; the fourth volume containing a biographical notice by M. Chaveau, an analytical table by M. B. Sulte, and a poem on French Canadian history by M. Louis Fréchette.

This is, in some respects, the ablest Canadian history of the French régime and of the French province of Quebec from the discovery of Canada until the union of the provinces of Upper and Lower Canada in 1841. It is, however, largely influenced by French Canadian ideas and is in no sense Canadian in the large sense of the word, which should include all nationalities and interests. It gives a clear account of the government under the French régime and a very favorable review of the effort of Papineau and his friends to obtain a more popular system of government. Papineau is the hero of the book.

The Old Régime in Canada. By Francis Parkman. Boston: Little, Brown & Co., 1874. 8vo, pp. xvi+448.

No work that has yet been published gives a more accurate or interesting view of the actual condition of affairs in Canada under the system of feudalism and absolutism that governed the province during the days of French rule. Chapter XVI describes the nature of the government and its defects and abuses. The concluding chapter is a powerful summing up of the effects of Canadian absolutism on the formation of Canadian character and of the radical differences between the New England and the French colonists.

The History of Canada. By W. Kingsford, LL.D., F.R.S., Can. Toronto: Roswell & Hutchison, 1887–1890. 4 vols., 8vo, pp., xi+488, xi+564, xviii+580, xix+584.

This latest contribution to the history of Canada—completed, so far, to 1763—is written from an English-Canadian point of view and is on the whole a dispassionate narrative of the French régime; but the author does not attempt like Garneau to give an extended account of the fabric of government as it existed from the conquest.

The History of Canada under French Régime, 1535–1763. By H. H. Miles, LL.D., D.CL., Secretary of the Quebec Council of Public Instruction.

Montreal: Dawson Bros., 1881. 12mo, pp. xvi+521, with maps, plans, and illustrations.

Written from an impartial standpoint and giving an authentic review of the governmental institutions of French Canada in the course of the narrative.

Le Droit Civil Canadien suivant l'ordre établi par les codes. Précédé d'une histoire générale du droit Canadien par Gonzalve Doutre, B.C.L.; et Edmond Lareau, LL.B. Montreal: Doutre & Cie.,1872. Large 8vo, pp. xvii+784.

This work gives a carefully prepared résumé of the political and legal institutions of Canada from 1608–1791. The second volume, on the period from 1791 to 1867, never appeared, as the principal author, M. Doutre, died without completing it.

Histoire du Droit Canadien depuis les Origines de la Colonie jusqu'à nos jours. Par Edmond Lareau, avocat, docteur en droit, professeur à la faculté de droit de l'université McGill. Montreal: A. Periard, 1888. 2 vols., 8vo, pp. x+518, 544.

This treatise gives an excellent exposition of the civil, legal, and political institutions of French Canada from its settlement until the present time. The author was engaged with M. Doutre in the preparation of the work just mentioned, which was never completed in accordance with its original design on account of the death of the latter. This book practically meets the want which Messrs. Lareau and Doutre intended to supply when they brought out the former book conjointly.

II. ESTABLISHMENT OF REPRESENTATIVE INSTITUTIONS—EVOLUTION OF RESPONSIBLE GOVERNMENT.

Debates of the House of Commons in the year 1774 on the bill for making more effectual provision for the government of the province of Quebec. Drawn up from the notes of the Rt. Hon. Sir H. Cavendish, Bart. London: Ridgway, 1839. 8vo, pp. vii+303, with a copy of Mitchell's map of Canada.

Invaluable to students of the dawn of the legislative history of Canada.

The Quebec act, 1774. By Gerald E. Hart. Limited edition. Montreal: 1891. 8vo, pp. 44. Reprinted from Canadiana, Vol. II, No. 10.

This is a paper read before the Society for Historical Studies, Montreal, 1890, and attempts to show that the Quebec act was unpopular among some French Canadians, for whose benefit it was specially framed. The appendix contains extracts from Cavendish's Debates. It has an illustration of the bust of George III, which was defaced in Montreal by some enemies of the Quebec act.

Nine Lectures on the Earlier Constitutional History of Canada, delivered before the University of Toronto, in Easter term, 1889. By W. J. Ashley, M. A., professor of political economy and constitutional history. Toronto: Rowsell & Hutchinson, 1889. 8vo, pp. 100.

This series of lectures, which do not profess to throw any additional light on the period of which they treat, has an interesting sketch "of the beginnings of representative government in Nova Scotia." The author also dwells on the system of government introduced in 1663 in Canada, and concludes with a review of the Quebec act and its effects.

Selections from the Public Documents of the Province of Nova Scotia. Edited by T. B. Akins, D.C.L., commissioner of public records. Halifax, Nova Scotia: C. Annand, 1869. 8vo, pp. 755.

This useful compilation contains a number of original documents relating to the establishment of representative government in Nova Scotia.

Reports on Canadian Archives, 1883–1891. By Douglas Brymner, archivist. Ottawa: Government printer.

Throughout these useful volumes references are given to valuable state papers bearing on the civil government of Canada. The volume for 1890 has citations from documents relating to the constitutional act of 1791 and the establishment of representative institutions in Upper and Lower Canada.

The Life and Times of General John Graves Simcoe. By D. B. Read, Q. C. Toronto: George Virtue. 1890. 8vo, pp. xv+305, with a portrait of of Simcoe, and other illustrations.

This is a well-written life of the first governor of the province of Upper Canada (Ontario), when it was established in 1792. It gives a brief narrative of the inauguration of representative government in that section.

A history of the late province of Lower Canada, parliamentary and political, from the commencement to the close of its existence as a separate province, embracing a period of fifty years; that is to say, from the erection of the province in 1791 to the extinguishment thereof in 1841 and its reunion with Upper Canada by act of the Imperial Parliament, in consequence of the pretensions of the representative assembly of the province, and its repudiation in 1837 of the constitution as by law established, and of the rebellions to which these gave rise in that and the following year, with a variety of interesting notices, financial, statistical, historical, etc., available to the future historian of North America, including a prefatory sketch of the province of Quebec, from the conquest to the passing of the Quebec act in 1774 and thence to its division in 1791 into the provinces of Upper and Lower Canada; with details of the military and naval operations therein during the late war with the United States, fully explaining also the difficulties with respect to the civil list and other matters; tracing from origin to outbreak the disturbances which led to the reunion of the two provinces. By Robert Christie. Quebec: T. Cary & Co., 1848–1850; John Lovell, 1853–1854. 5 vols., 12mo, pp. xiv +360; i+396; xi+564; iv+540; vi+424.

Interesting Public Documents and Official Correspondence, Illustrative of and Supplementary to the History of Lower Canada. Published by Robert Christie. Montreal: John Lovell, 1855. 12mo, pp. xii+468.

The title pages of these six volumes sufficiently indicate the scope of a work which is invaluable to the student of representative and parliamentary government in Canada. The author was for years a member of the Lower Canada legislature, and has given us a review of public events remarkable for its fairness and accuracy, and doubly valuable from the fact that he quotes very many official documents in whole or in part. Garneau's History, mentioned above, must be read in connection with this work.

Histoire du Canada sous la Domination Française, Montreal (1837 et 1843). Histoire du Canada et des Canadiens sous la Domination Anglaise (*Ibid.*, 1844 et 1878.) Par Michael Bibaud. 12mo.

These works show industry, and are distinguished for impartiality on the whole in the review of the period from 1763 to 1837, when the work closes. Its literary merit, however, is inferior to that of Ferland or of Garneau. It is now practically forgotten.

The Life and Times of W. Lyon Mackenzie, with an account of the Canadian Rebellion of 1837, and the subsequent frontier disturbances, chiefly

from unpublished documents. By Charles Lindsey. Toronto: Samuel Pike, 1863. 2 vols., 8vo., pp. 401, 400, with portraits of W. L. MacKenzie and Sir Francis Head.

The author was a son-in-law of the old Canadian "patriot," and has not been able always to give a perfectly impartial opinion on the events of the exciting period of which he writes. On the whole, however, it is a valuable contribution to the history of the momentous struggle for free government.

The story of the Upper Canadian Rebellion, largely derived from original sources and documents. By John Charles Dent, author of "The Last Forty Years." Toronto: C. Blackett Robinson, 1885. 2 vols., 4to, pp. viii+384; vii+382, with excellent portraits of Dr. Rolph and W. Lyon MacKenzie.

This work is written from a point of view very different from that of the work just cited. It is characterized by Mr. Dent's lucidity of style, and is in many respects a severe arraingment of MacKenzie's recklessness as a public man, while making full allowance for the public grievances under which the province labored before 1839.

A Narrative. By Sir Francis Bond Head, Bart. London: John Murray, 1839. 8vo., pp. viii+448, with an appendix, pp. 38.

This is a defense of the injudicious administration of Lieutenant-Governor Sir Francis Head, during the trying times in Upper Canada which culminated in the futile efforts of W. Lyon Mackenzie and a few others to raise a rebellion in that province. It contains the most important of his dispatches to the imperial government.

Report on the Affairs of British North America, from the Earl of Durham, Her Majesty's high commissioner for the adjustment of certain important questions depending in the provinces of Upper and Lower Canada, respecting the form and future government of the said provinces. Submitted to Parliament, 1839.

A remarkable exposition of the defects that until 1840 prevented the effective operation of representative institutions in British North America. It laid the foundation of responsible government in Canada, and on that account must always be cited as among the great state papers of the world influencing the destinies of peoples.

The Last Forty Years: Canada since the Union of 1841. By John Charles Dent. Toronto: George Virtue, *circa* 1880–1881. 2 vols., 4to, pp. 392, 648.

This is the best history of the period when responsible government was being firmly established in the two Canadas. It has portraits of Lord Durham, Lord Sydenham, Louis Joseph Papineau, W. Lyon Mackenzie, Robert Baldwin, Sir H. L. Lafontaine, Sir Charles Bagot, Sir Francis Hincks, Lord Metcalfe, and Lord Elgin, whose names are indissolubly connected with the political history of Canada. Strange to say, Mr. Howe's portrait is omitted, though we see the faces of other public men much inferior to him in ability, reputation, and influence.

"Les Quarante dernières Années, Le Canada depuis l'Union. Par J. C. Dent." Etude critique, par l'Abbé Casgrain. Trans. of Roy. Soc. of Can., Sec. I, 1884.

The Abbé Casgrain, a well known French Canadian *littérateur*, here takes exception to some of Mr. Dent's comments on the history of the times of which he treats. The Abbé is always *ultra* French Canadian.

Le Canada sous l'Union. 1841–1867. Par Louis Turcotte. Quebec: Des Presses du Canadien, 1871. 2 vols., 12mo, pp. 225, 613.

The author was, until his death, one of the officers of the legislative library of

Quebec, and employed his leisure in writing a narrative of that important period of the history of Canada when responsible government was firmly established in that province. It is readable and accurate.

Dix Ans au Canada, de 1840 to 1850. Histoire de l'établissement du gouvernement responsable. Par A. Gerin-Lajoie. Quebec: Demers et Frére, 1888. Large 8vo, pp. 618.

This work was left in manuscript by a former assistant librarian of the parliament of Canada, a well-known French-Canadian *littérateur*, and was only printed some years after his death, mainly owing to the efforts of the Abbé Casgrain. It gives a narrative of the most important period in the history of responsible government in Canada, from 1840 to 1850, from Lord Sydenham to Lord Elgin. It is written from a strongly French-Canadian point of view, and may be read in connection with Dent's valuable history, which is more English in spirit; in fact, more Canadian in the large sense. This work first appeared in Le Canada Français (1888), a literary periodical published at Quebec under the auspices of Laval University.

Memoir of the life of the Rt. Hon. Charles Lord Sydenham, G. C. B., with a narrative of his administration in Canada. Edited by his brother, G. Poulett Scrope, M. P. London: John Murray, 1843. 8vo, xii+498, with a portrait of Lord Sydenham.

An impartial account of the life of an English statesman who, during his short administration in Canada, assisted in laying the foundation of the liberal system of government the country now enjoys. It contains all his speeches and letters bearing on this interesting and important epoch of Canadian political history.

The life and correspondence of Charles Lord Metcalfe. By John W. Kaye. A new and revised edition. London: Smith, Elder & Co., 1858. 2 vols., 12mo, pp. xxiv+453, viii+480.

Lord Metcalfe's career in Canada was remarkable for its tendency to impede the progress of responsible government, and this work, which is strongly partisan, endeavors to place the most favorable construction on his political action in this trying period of Canada's political development.

Letters and Journals of James, eighth Earl of Elgin, Governor of Jamaica, Governor-General of Canada, etc. Edited by T. Walrond, C. B., with a preface by Arthur Penryhn Stanley, D. D., Dean of Westminster. London: John Murray, 1872. 8vo, pp. xii+467.

Chapters III–VI, inclusive, are devoted to a review of Lord Elgin's remarkably able administration oi public affairs in Canada, where with consummate tact he established responsible government on stable foundations.

The Colonial Policy of Lord John Russell's Administration. By Earl Grey. 2d ed., with additions. London: Richard Bently, 1853. 2 vols., 8vo, xxviii+446, xii+508.

Lord Grey was colonial secretary when responsible government was finally established under the administration of Lord Elgin in Canada. In this work he informs us of the general tenor ot the instructions given to that able governor-general, and of the successful result of his policy and conduct.

Review of the Colonial Policy of Lord J. Russell's Administration, by Earl Grey, 1853, and of subsequent colonial history, by Rt. Hon. Sir C. B. Adderley, K.C.M.G., M.P. London: Edward Stanford, 1869. 8vo viii +423.

The author entertains a view of the theory of colonial government different from that put forth in Lord Grey's work. The latter was an advocate of large parental control over dependencies by the sovereign, "as the constitutional head of the executive and final constituent of legislature;" but in the opinion of the former "such control distance must make more galling and of which the more benevolent and

conscientious its exercise the more fatal must be the effects upon the vigor and prosperity of its subjects, which not only deprives them of the exercise of self-administration, but exposes them to having their affairs treated as the materials of party struggles in England, with which they have no concern." As in the case of Canada, eventually "a minister must yield the freedom which will not wait to be trained by him." The part of the work devoted to Canada is a judicious and correct résumé of the political affairs of Canada and of the provinces of Nova Scotia, New Brunswick, Prince Edward Island, and British Columbia, until Confederation. Mr. Adderley, then under-secretary for the colonies, had charge of the union act in the commons, and was one of its most earnest and able advocates.

The Constitutional History of England Since the Accession of George the Third, 1760–1860. By Sir Thomas Erskine May, K. C. B., D. C. L., with a new supplementary chapter, 1861–'71. Sixth edition. 3 vols. London: Longmans, Green & Co., 1878. 12mo, pp. xix+459, xi+420, xiv+499.

In the third volume of this well-known work by the late clerk of the English Commons we have a chapter (XVII) devoted to a historical review of colonial constitutions and the development of constitutional liberty in Canada and other dependencies of the empire.

How British Colonies got Responsible Government. By Sir Gavan Duffy, K.C.M.G. Contemporary Review for May and June, 1890.

An important contribution to the history of responsible government by an able public statesman, who was a member of the first administration formed under that system in the colony of Victoria, Australia. He does not exaggerate the abuses of the old system in Canada or the value of Lord Durham's report. He is also correct when he says that "the birth and parentage of colonial rights are traceable to the soil of Canada," for her success in obtaining free government led to its establishment among all the important dependencies of the Crown.

The Speeches and Public Letters of the Hon. Joseph Howe. Edited by W. Annand, M.P. Boston: J. P. Jewett & Co., 1858. 2 vols., 8vo, pp. ix+642, iv+558.

In this collection of the best speeches and letters of the ablest exponent of responsible government we see clearly laid down its principles and doctrines, as urged on the public platform, in the legislative halls, and in the press in the times when Canadian statesmen and people were earnestly contending for an extension of their political liberties.

Reminiscences of His Public Life. By Sir Francis Hincks, K.C.M.G., C.B. Montreal: W. Drysdale & Co., 1884. 8vo, pp. 450.

The author of this work was one of the most prominent public men of the old province of Canada, and took part in the exciting decisive struggle that preceded and followed the introduction of responsible government. In Chapter IV he gives his version of the action of Lord Sydenham (Poulett Thomson), who assisted in the establishment of the union of 1841 and in the laying of the foundation of a responsible system. It is valuable as a personal contribution to the literature of those times by an actor who did much to mold the political constitution of Canada. He was no admirer of Lord Sydenham.

Canada During the Victorian Era; A Short Historical Review. By J. G. Bourinot, LL.D. Magazine of American History (New York), May and June, 1887.

Intended mainly to show the political development of Canada since the concession of responsible government, which was inaugurated during the first years of the reign of the Queen.

Canada: Its Political Development. By J. G. Bourinot, LL. D. The Scottish Review (Paisley & London) for July, 1885.

A brief review of the leading features of the constitutional progress of Canada for a century.

A History of Our Own Times from the Accession of Queen Victoria to the Berlin Congress. By Justin McCarthy, M.P. New York: Harper Bros., 1880. 2 vols., 8vo, pp. 559, 682.

Contains two chapters which are readable accounts of the political development of the Canadas and of the birth of the Dominion, viz, chapter 3, on Canada and Lord Durham, and chapter 55, on "The example of The New Dominion." This work is now justly considered as an effort of a skillful and superficial journalist rather than of a deep political thinker. Be that as it may, the writer forms a fair estimate of the service Lord Durham performed for Canada.

The History of Canada from its First Discovery to the Present Time. By John MacMullen. Second edition, revised and improved. Brockville, McMullen & Co., 1868. 8vo, pp. xviii+613.

A readable historical narrative, imbued with strong English Canadian ideas, and not always accurate, probably on account of the author not having access to many original sources of information. It gives on the whole, however, an impartial account of the development and establishment of responsible government in the old provinces of Upper and Lower Canada.

History of the Dominion of Canada. By Rev. W. P. Greswell, M.A. (*Oxon.*). Under the auspices of the Royal Colonial Institute. Oxford: At the Clarendon Press, 1890. 12mo, pp. xxxii+339.

This little school history has a generally accurate sketch of the evolution of responsible government from Papineau's Rebellion until Confederation, and gives also in the Appendix a summary of the Quebec act of 1774, of the constitutional act of 1891, of Lord Durham's Report of the Union act of 1840, and of the British North America act of 1867.

A popular history of the Dominion of Canada from the discovery of America to the present time. Including a history of the provinces of Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, British Columbia, and Manitoba; of the Northwest Territory and of the Island of Newfoundland. Revised and extended edition brought down to 1888. By W. A. Withrow, D.D., F.R.S., Can. Toronto: W. Briggs, 1888. Large 8vo, pp. 680, with maps and portraits of the Queen, Lord Dufferin, etc.

This is the only Canadian work that gives a readable and generally accurate history of the several countries comprising the Dominion from their settlement to the present time. The author gives an account of the growth of the principles of civil liberty in the provinces and of the development of the present Canadian constitution, with judicial impartiality, though there is no evidence in the work of original research or any attempt made to throw new light on controverted points of Canadian constitutional history. The author has written a successful popular history and has not promised or attempted more.

History of Prince Edward Island. By Duncan Campbell. Charlottetown: Brenner Bros., 1875. 12mo, pp. 224.

A short history, accurately narrating the struggles for responsible government in the little island.

In addition to the works cited above the writer may also refer to a chapter on responsible government, sketchy but readable, in the second volume (chap. xii, pp. 369-391) "Exodus of the Western Nations," by Lord Bury (2 vols., 8vo., London, 1865).

Numerous references are made to the events that preceded and followed the Upper Canadian rebellion of 1837, and to the support given by Rev. Dr. Ryerson to Lord Metcalfe in opposing political appointments, in "The

Story of My Life," by Rev. Dr. Ryerson (Toronto, 8vo, 1883). The histories of the maritime provinces of Canada are defective, in so far as they do not contain any coherent and valuable narrative of the struggles for responsible government. Murdoch's History of Nova Scotia (3 vols., 8vo, Halifax, N. S., 1865–1867) is brought down only to 1827, and while it marks the establishment of representative institutions in Nova Scotia in 1758, and follows the political development of the province for seventyyears later, we have at the best only a meager chronicle of facts, without a single comment on their influence on the condition of the people. In the second volume of Judge Haliburton's readable History of Nova Scotia (2 vols., 8vo, Halifax, N. S., 1829) there is a chapter on colonial government, but it is only "a brief outline," as the author himself admits. The later history of responsible government in the provinces by the sea has yet to be written for the student and people. Campbell's History of Nova Scotia (8vo, Halifax, N. S., and Montreal, 1873) is not much more than a dull narrative of material development. Some valuable observations on the political progress of Canada under responsible government are made throughout the first volume—the second was never published—of "Confederation, or the Political and Parliamentary History of Canada, from the conference at Quebec in October, 1864, to the admission of British Columbia in July, 1871," by Hon. J. H. Gray, M. P., who was himself a member of the conference.

III.—CONSTITUTION OF CANADA SINCE CONCESSION OF RESPONSIBLE GOVERNMENT.

Parliamentary Debates on the subject of the Confederation of the British North American Provinces, third session, eighth Provincial Parliament of Canada. Printed by order of the legislature. Quebec: Hunter, Rose & Co., Parliamentary Printers, 1865. Large 8vo, pp. ix + 1031.

This volume contains the official report of the debates in the old legislature of Canada that preceded the final adoption of the federal resolutions of the Quebec Conference of 1864. We have here the speeches of the leading men of that province in relation to the scheme of union, and are able to gather their opinions as to the practical operation of that system of responsible government of which confederation was the capstone.

Constitution of Canada: the British North America Act, 1867; its interpretation, gathered from the decisions of courts, the dicta of Judges and the opinions of Statesmen and others; to which are added the Quebec Resolutions of 1864 and the Constitution of the United States. By Joseph Doutre, Q. C., of the Montreal Bar. Montreal, John Lovell & Son, 1880. 8vo + pp. 414.

This work is now of little value; at the best it was a hasty collection of legal decisions bearing on certain sections of the British North America Act. The appearance of later works on the same line has necessarily made it out of date.

The Powers of Canadian Parliaments. By S. J. Watson, Librarian of the Parliament of Ontario. Toronto: Carswell & Co., 1880. 12mo, pp. xii+160.

This treatise is intended to show that the present legislatures of Ontario and Quebec "are the political heirs-at-law of the old historical parliaments of Upper and Lower Canada, and of the late province of United Canada."

Are Legislatures Parliaments? A Study and Review. By Fennings Taylor, Deputy Clerk of the Senate of Canada. Montreal: John Lovell, 1879. 12mo, pp. 208.

This volume is written from a point of view quite different from that of the foregoing book. It is intended to minimize the powers and functions of the local legislatures in the Canadian federation. It is largely based on fallacious or purely theoretical premises.

Parliamentary Government in Canada. A lecture read before the Law School of Bishop's College, Sherbrooke. By C. C. Colby, M. P. Montreal: Dawson Bros., 1886. 12mo, pp. 57.

This lecture is a lucid exposition, in small compass, of the leading principles that guide the operation of responsible government. The author was, for many years, in the Canadian parliament, and was exceptionally qualified to write intelligently on the subject.

Parliamentary procedure and practice, with a review of the origin, growth, and operation of parliamentary institutions in the Dominion of Canada, and an appendix containing the British North America act of 1867, and amending acts, governor-general's commission and instructions, forms of proceedings in the Senate and House of Commons, etc. By John George Bourinot, C.M.G., LL.D., D.C.L., Clerk of the House of Commons in Canada. Second edition, revised and enlarged. Montreal; Dawson Bros., 1892. 8vo, pp. xx+929.

The title of this work sufficiently shows its scope. Besides giving a short historical review of constitutional government in British North America, it closes with a chapter on the practical operation of the Canadian system which has been for the most part reproduced in the second part of this monograph.

A manual of the constitutional history of Canada from the earliest period to the year 1888, including the British North America act, 1867, and a digest of judicial decisions on questions of legislative jurisdiction. By John George Bourinot, LL.D., F.R.S., Can., Clerk of the House of Commons of Canada. Montreal: Dawson Bros., 1888. 12mo, pp. xii +238.

This little volume is an abridgment of the historical parts of the foregoing volume and is used by students in Canadian universities.

Federal Government in Canada. By John George Bourinot, LL.D., clerk of the House of Commons of Canada. Johns Hopkins University Studies in Historical and Political Science. Seventh Series. Nos. X, XI, XII. Baltimore, Md., 1889.

In the third paper of this series there are comparisons made between the diverse systems of legislation and government in vogue in Canada and the United States from a practical point of view.

Parliamentary Government in the British Colonies. By Alpheus Todd, Librarian of Parliament, Canada, author of Parliamentary Government in England. Boston: Little, Brown & Co., 1880. 8vo, pp. xii+607.

In this book the able author explains the operation of "parliamentary government in furtherance of its application to colonial institutions." It is a valuable supplement of his larger work on parliamentary government in England mentioned above. It directs particular attention to the political functions of the crown, of whose prerogatives, within the legitimate lines of the constitution, Dr. Todd was a strong supporter.

The Constitution of Canada. By J. E. C. Munro, of the Middle Temple,

barrister at law, professor of law, Owens College, Victoria University, Cambridge. At the University Press, 1889. 8vo, xxxvi+356.

This work, useful as it is for its analysis and abstracts of statutes and documents relating to the Canadian constitution, has the defects of a treatise written by an Englishman who obtains all his knowledge of colonial institutions from books and has had no opportunities of a practical insight into their actual operation. Had it been submitted to a Canadian conversant with the subject, just as Prof. James Bryce availed himself of the positive knowledge of eminent Americans in the preparation of his great work on the American Commonwealth, this book on Canada would be more accurate and intelligible.

Documents illustrative of the Canadian constitution, edited with notes and appendices. By William Houston, M. A., librarian to the Ontario legislature. Toronto: Carswell & Co., 1891. 8vo, pp. xxii+338.

By the aid of this collection of official and legal documents the student will be able to trace out authoritatively and positively the most important stages in the evolution of parliamentary government in British North America. The notes are full and accurate.

Colonies and Dependencies. By J. S. Cotton and E. J. Payne. English Citizen Series. London: McMillan & Co., 1883. 12mo, pp. 164.

This little work contains a historical sketch of the colonies, a review of the relations between them and the parent state, and a chapter on colonial government, which is full of errors. For instance, the province of Quebec is given a legislature with two houses, both elective, the fact being that the upper house has always been appointed by the crown. Manitoba is said to have no legislative assembly, when the province has had one for over twenty years. It is the legislative council, or upper house, that has been abolished in that province. This book illustrates the inaccuracy of the majority of English works professing to describe institutions in Canada and other dependencies.

The Government Handbook. A record of the forms and methods of government in Great Britain, her colonies, and foreign countries, with an introduction on the diffusion of popular government over the surface of the globe, and on the nature and extent of international jurisdiction. By Lewis Sergeant. Third edition. London: T. Fisher Unwin, 1890. 12mo, pp. viii + 544.

A work for popular reference, intended to exhibit "in a summary manner the principal forms and methods of government in the various states of the world." Like all English works of a similar character it is misleading in many ways so far as Canada is concerned. The privy council does not necessarily include (p. 114) lieutenant-governors *ex officio;* the present lieutenant-governor of Manitoba is not a privy councilor. Some are privy councilors because called to the cabinet before being appointed to a lieutenant-governorship. To say that the house of commons "is summoned every five years under the great seal," is a delusion. The crown must dissolve it in five years, if not sooner, and the house is elected by the people. Such works should be revised by persons who know something of the constitution of each country.

The Colonial Year Book for 1890. By A. J. R. Trendell, C. M. G., of the Inner Temple, with introduction by Prof. Seeley, M. A. London: Sampson, Low, Marston, Searle, and Rivington, 1890. 8vo, pp. xxix+753.

This is one of many English publications in these times going to show the interest taken in the material and political development of the colonial dependencies of England. It gives a short sketch of the constitution of the Dominion and of the provinces, which calls for no particular comment. The statement, however, that the governor-general is assisted by a privy council is somewhat misleading. It would be more correct to say that he is assisted like the Queen, by a ministry or cabinet, who must be members of the Queen's privy council.

The Statesman's Year Book for 1891. Edited by J. Scott Keltie, librarian to the Royal Geographical Society. Twenty-eighth annual publication. London: MacMillan & Co., 1891. 12mo, pp. xxviii+1132.

Contains in a few pages an accurate summary of the political system of the Dominion of Canada.

An Essay on the Government of Dependencies. By Sir G. Cornewall Lewis, K. C. B. Edited, with an introduction, by C. P. Lucas, of Baliol College, Oxford, and the Colonial Office. London: Clarendon Press, 1891. 8vo.

This work of a distinguished English statesman and man of letters was first published in 1841, and is well described as "a systematic statement and discussion of the various relations in which colonies may stand towards the mother country." Sir George Lewis possessed eminently that practical common sense and keen critical faculty which make all his writings valuable to the political student, but times have changed since he wrote. His work on Administrations of Great Britain (London, 1864) and his Letters to Various Friends (London, 1870) are also of value to the student of the practical operation of parliamentary institutions.

Chapters on the Law relating to the Colonies, to which is added a topical index of cases decided in the privy council on appeal from the colonies. By C. J. Tarring, of the Inner Temple. London: Stevens & Haynes, 1882. 8vo, pp. xiv+204.

This book is here cited as showing the legal and constitutional relations of the colonial dependencies to the parent state, the laws to which they are subject, the nature of the office, powers, and duties of the governors, and the extent of legislative power, all of which are subjects within the scope of this monograph.

The Colonial Office list for 1891: Comprising historical and statistical information respecting the colonial dependencies of Great Britain, an account of the services of the officers in the colonial service, a transcript of the colonial regulations, the customs tariff of each colony, and other information. Compiled from official records, by the permission of the secretary of state for the colonies, by John Anderson and Sidney Webb, of the Colonial Office. London: Harrison & Sons, 1891. With maps.

The title sufficiently indicates the importance and value of a work necessarily accurate in all particulars. The digest of the constitutional system of Canada is excellent.

IV.—THE CABINET SYSTEM.

The Crown and its advisers; or Queen, ministers, lords, and commons. By A. C. Ewald, F. S. A., of Her Majesty's Record Office. Edinburgh and London: W. Blackwood & Sons, 1870. 12mo, pp. 222.

This work contains a series of lectures prepared with the object of "extending to my fellow-countrymen a knowledge of the leading facts and principles of our constitution." It is well worthy of a careful perusal by all who are commencing the study of the English constitution. The elementary principles of responsible government are clearly laid down.

The Institutions of the English Government: being an account of the constitution, powers, and procedure of the legislative, judicial, and administrative departments. By Homersham Cox, M. A., barrister at law. London: H. Sweet, 1863. 8vo, pp. xcii+756.

In this work is given a "general account of the British Government, of the powers and practice of its several departments, and of the constitutional principles affecting them." It was practically the forerunner of Dr. Todd's and other works

that have since appeared on the administrative institutions of England. Chapter X is on the "Privy Council and Cabinet Council." For research and insight into the practical operation of parliamentary government it is much inferior to Dr. Todd's well-known treatise.

History of the English Institutions. By Philip Vernon Smith, M.A. Cantab.). Rivington's: London, Oxford, and Cambridge, 1873. 12mo, pp. xiv+303.

An attempt to classify in a very condensed form the various institutions of the English Constitution. Chapter IX, on the executive, is divided into several subheads, among which are the "Cabinet Council," "Political Parties," "The Ministry," "Control of Parliament," "Power and Growth of the Executive," etc. It is useful to young students.

Fifty Years of the English Constitution, 1830–1880. By Sheldon Amos, M. A. London: Longmans, Green & Co., 1880. 12mo, pp. xxxii+495.

The preface to this work very truly says that it is "no longer to lawyers and law-books alone that reference must be had for ascertaining what is the mode of government under which the English people live," but rather "to the utterances of statesmen, to critical acts of public policy, to the conduct of parliamentary majorities, and to the assumptions of the executive government." This treatise, consequently, treats the whole question from a political and ethical point of view. The sections in Chapter II (pp. 206–420) give considerable insight into the relations between the crown and its ministers and between the ministers and the parliament; but the style of the author is far from being lucid and he has a tendency to theorize which perplexes the student.

Central Government. By H. D. Traill, D. C. L. English Citizen Series. London: McMillan & Co., 1881. 12 mo, pp. 162.

In a popular and sketchy style, we have a somewhat useful essay on the executive government and on the formation, functions, and responsibility of the cabinet under the constitutional system of England.

The Growth of the English Constitution from the Earliest Times. By Edward A. Freeman, M. A., Hon. D. C. L., LL. D., etc. Fourth edition. London: McMillan & Co., 1884. 12mo, pp. xvi+234.

In this suggestive and scholarly disquisition, Prof. Freeman points out the distinctions between the law of the constitution and "that code of political maxims, universally acknowledged in theory, universally carried out in practice," which directs the working of parliamentary government. See Chapter III.

A Short History of Parliament. By B. C. Skottowe, M. A. (*Oxon.*). London: Swan Sonnenschein, Lowrey & Co., 1886. 12mo, pp. iv+339.

A book for the general reader. The last chapter contains some judicious remarks on cabinet government.

Das englische Verwaltungsrecht der Gegenwart in Vergleichung mit den deutschen Verwaltungssystemen. 3te. nach deutscher systematik umgestaltete Aufl. Rudolph Gneist. Berlin, 1884.

The History of the English Constitution. By Dr. Rudolph Gneist, professor of law at the University of Berlin. Translated by Philip A. Ashworth, of the Inner Temple. Second edition, revised and enlarged. London: W. Clowes & Sons, 1889. 2 vols., 8vo, pp. xvi+437, vii–542.

In this exhaustive work of an eminent German scholar there are four chapters (LIII, LIV, LV, LVI, VOL. II) which should be read on the subject of parliamentary government, since they deal with the following matters: The relations of the Crown to Parliament. The King in Council and the King in Parliament. Origin of Party Government. Constitutional nature of the Cabinet. Transition to the modern ministerial system. The formation of parliamentary parties. Theory and practice of parliamentary party government.

The Students' History of the English Parliament in its transformations through a thousand years. Popular account of the growth and development of the English Constitution, from 800 to 1887. By Dr. Rudolph Gneist. Third English edition, by Prof. A. H. Keane. London: H. Grevel & Co., 1889. 12mo, pp. xxix+462.

This is the best translation of a work (Das englische Parlament, Berlin, 1886) showing all the thoroughness of German scholarship, even in a students' manual. From p. 346 to p. 376 there are some original suggestive reflections on the relation of the government of the realm to parliament, the relation of the cabinet to parliament, the construction of parliamentary parties, the evils of party government, and the realization in England of the conception of political liberty "implying the capacity of the people to legislate for itself, and to enforce of itself its own laws through its own free self-government."

Le Gouvernement et le Parlement Britanniques: I.—Le Gouvernement; II.—Constitution du parlement. La Procédure parlementaire. Par le Cte. de Franqueville, ancien maître des Reqûetes au Conseil d'Etat. Paris: J. Rothschild, 1887. Trois vols., 8vo, xi+594, viii+567, viii+575.

This is the most exhaustive work written by a French political student on the administrative and the parliamentary system of England. The first volume contains an elaborate and clear review of the relations between crown and parliament, of the position of the cabinet, and of the nature of ministerial responsibility.

The Government of England; its structure and its development. By the honourable W. E. Hearn, Q.C., M.L.C., Chancellor of the University of Melbourne. Second Edition. London: Longmans, Greene & Co., 1887. 8vo, pp. xvi+636.

This work is not only valuable for its thoughtful review of the evolution and operation of parliamentary government in England, but for the assistance it gives to students of the relations between the parent state and the colonies since the growth of responsible government. On this question, see Appendix II, "Lecture on the Colonies and the mother Country."

On Parliamentary Government in England; its origin, development, and practical operation. By Alpheus Todd, LL. D., C. M.G., Librarian of the Parliament of Canada. Second edition by his son. London: Longmans, Green & Co., 1887. Two volumes, 8vo, pp. xxx+844, xxvi+964.

The author of this elaborate treatise, during the evolution of responsible government in Canada, after the union of 1841, devoted himself to researches into the practical operation of the system in England, with the view of assisting colonial statesmen, and the result of his labors for over a quarter of a century is here presented. It is the most valuable contribution yet made to this branch of political science. The conventions and understandings that direct the workings of responsible or parliamentary government are here set forth with fullness and clearness.

The Law and Custom of the Constitution. By Sir W. R. Anson, Bart., D. C. L., of the Inner Temple, Warden of All Souls College. Oxford, at the Clarendon Press, 1886–1892. 2 vols., 8vo, pp. xx–336; viii+494.

This work is most useful to all students of the Canadian parliamentary system, closely modeled, as it is, on the parliamentary institutions of England.

How we are governed; a handbook of the Constitution, Government, laws, and power of the British Empire. By Albany de Fonblanque. Sixteenth edition. London and New York: Warne & Co., 1889. 12-mo, pp. xii+208.

A useful treatise for busy people who have no time to give much study to con-

stitutions. Letter V is devoted to a brief but clear explanation of the responsibility of ministers and of the nature of the cabinet system of England.

Introduction to the Study of the Law of the Constitution. By A. V. Dicey, B. C. L., of the Inner Temple, Vinerian professor of English law, etc. Third edition. London: MacMillan & Co., 1889. 8vo, pp. xiii+440.

This is the most notable work on the English constitution that has appeared of late years in England. Stress is laid "upon the essential distinction between the 'law of the constitution,' which, consisting (as it does) of rules enforced or recognized by the courts, makes up a body of 'laws' in the proper sense of that term, and the 'conventions of the constitution,' which, consisting (as they do) of customs, practices, maxims, or precepts which are not enforced or recognized by the courts, make up a body not of laws, but of constitutional or political ethics." (See chap. XIV.)

The Cabinet. Encyclopædia Britannica. Ninth edition. Edinburgh.

This carefully prepared article is from the pen of Mr. Henry Reeve, C. B., registrar of the privy council of England, translator of De Tocqueville's Democracy in America, and author of several works of value.

The Elements of Politics. By Henry Sidgwick. London and New York: MacMillan & Co., 1891. 8vo, pp. xxxii+632.

In this thoughtful and suggestive work of a learned English thinker, imbued with the spirit and thoroughly conversant with the methods of parliamentary government, the chapter on the "Relation of Legislature to Executive" demands the special attention of the student of ministerial responsibility. The whole work must be carefully read as the resultant of the studies of a close and safe observer of institutions.

Political Science and Comparative Constitutional Law. By John W. Burgess, PH. D., Professor of History in Columbia College. Boston and London: Ginn & Co., 1890. 2 vols., 8vo, pp. xx+337, xx+404.

In this elaborate essay on political science by an eminent American scholar, there are some purely theoretical remarks on the crown and the cabinet (pp. 209–215), which even the writer believes are "crude and novel," and consequently afford no assistance to those who are anxious to understand the practical operation of the English and American systems of government. It is no doubt interesting from the point of view of speculative political science to be told that a cabinet in the English system "represents the majority quorum in the legislature," and this "majority quorum, chosen upon a cabinet issue, is the state;" but it is hardly a formulation that will bring about the reform in the irresponsible political system of the United States which Woodrow Wilson and others, who are at all events intelligible, would bring about.

Gesetz und Beordnung. George Jellenek Freiburg. I. C. B. Mohr., 1887. 12mo, pp. 412.

This work is interesting to a student of English and Canadian institutions, because it is an able disquisition on what the author believes—and justly in most cases—to be encroachments of the administrative upon the legislative authority in England and other countries. The tendency in Canada itself, nowadays, is to give too much power and influence to the executive government.

In the foregoing bibliographical notes of this section the writer has cited only those constitutional and historical works which show the nature and operation of the cabinet system of England, by whose principles Canadian ministries have been regulated since the adoption of responsible government. The important and erudite works of Hallam and Stubbs, or the interesting treatise by Creasy, or similar authorities, which treat of the constitutional history of England generally, are not here taken into account, inasmuch as they have no special comments

on the modern system of ministerial responsibility to parliament which will aid the student in the study of the Canadian system. But it is not necessary to add that no student can master the whole subject of parliamentary government unless he has read these great books time and again.

V.—PARLIAMENTARY COMPARED WITH CONGRESSIONAL GOVERNMENT.

The English Constitution and other Political Essays. By Walter Bagehot, editor of the London Economist, etc. Latest revised edition. New York: D. Appleton & Co., 1889. 12mo, pp. 468.

This is a remarkably lucid treatise on the practical operation of parliamentary government, as it is now understood in England, and is especially interesting to students in Canada and the United States from the fact that it was the first attempt to show the defects of the political system of the federal republic on account of the absence of a responsible cabinet. It points out the elasticity of the English system, and the nature and scope of the leading principles that govern its practical working.

Congressional Government. By Woodrow Wilson. Boston: Houghton, Mifflin & Co., 1885. 12mo, pp. 333.

Undoubtedly the clearest and ablest effort made by an American writer on political science to show the weaknesses and defects of the political system of the United States. Replete with incisive argument, it shows most effectively the superiority of the English or Canadian system, which makes a cabinet immediately responsible to parliament for legislation and administration.

The American Commonwealth. By James Bryce, M. P., D. C. L. I.—National Government; II.—The State Governments—The Party System; III.—Public Opinion—Illustrations and Reflections—Social Institutions. London: Macmillan & Co., 1888. 3 vols., 8 vo., pp. xxvii + 551, ix + 683, ix + 699; with a map to illustrate the growth of the United States.

This well-known work is the ablest, most thoughtful, and most comprehensive that has yet appeared in any language on American Institutions. The chapters on the cabinet (vol. I, chap. IX), on the committees of congress (vol. I, chap. XV), on congressional legislation (vol. I, chap. XVI), on congressional finance (vol. I, chap. XVII), and on the legislature and executive (vol. I, chap. XXI), especially demand the careful study of those who wish to compare the working of the English or Canadian system with that of the United States.

Canadian Studies in Comparative Politics: I.—Canada and England; II.—Canada and the United States; III.—Canada and Switzerland. By John George Bourinot, C. M. G., LL. D., D. C. L., Clerk of the House of Commons of Canada. Trans. of the Roy. Soc. of Canada, vol. VIII, sec. II; also Montreal: Dawson Bros., 1891. 4to., pp. 92.

In these three papers the author has attempted to show the origin, the development, and the nature of the political constitution of Canada, and to compare it, not only with the political institutions of England and of the United States—the countries in which Canada has naturally the deepest interest—but also with those of the little federal republic of Switzerland, where local government has existed in some form for many centuries.

Canada and the United States; A Study in Comparative Politics. By J. G. Bourinot. Annals of the American Academy of Political and Social Science, vol. I, No. 1, July, 1890, Philadelphia.

This essay is a condensation of the second paper in the foregoing work. It was also published in the Scottish Review, July, 1890.

The British versus the American System of National Government. By A. H. T. Lefroy, M. A. (*Oxon*), Barrister-at-Law. Toronto: Williamson & Co, 1891. 12 mo., pp. 42, paper.

A treatise showing, briefly but clearly, the disadvantages of the United States system as compared with the English or Canadian methods of parliamentary government.

Congress and the Cabinet. By Gamaliel Bradford, in the Annals of the American Academy of Political and Social Science, vol. II, November, 1891, Philadelphia.

Should be read in connection with Woodrow Wilson's work. It gives a succinct account of the futile effort made in congress in 1881 to give the principal officers of the executive departments a seat on the floor of the two houses.

The Place of Party in the Political System. By Anson D. Morse. *Ibid.*

Shows that despite its inherent defects, the party system "constitutes an informal but real and powerful primary organization in the political government of a country."

Essays on Government. By A. Lawrence Lowell. Boston and New York: Houghton, Mifflin & Co., 1889. 12 mo, pp. 229.

The first essay is on "Cabinet Responsibility and the Constitution," and is intended to combat Prof. Woodrow Wilson's arguments in the work just cited; but the effort is not eminently successful.

A Defense of Congressional Government. By Dr. Freeman Snow, of Harvard University. Papers of the American Historical Association for July, 1890.

This able paper is fully criticised in the third part of this monograph.

The National House of Representatives; Its Growing Inefficiency as a Legislative Body. By Hannis Taylor. Atlantic Monthly (Boston), June, 1890.

This is a thoughtful essay by the author of an excellent constitutional history of England, the first volume of which only has yet appeared. He recognizes the necessity of giving the cabinet at Washington "the right to a place and voice in each house, with the right to offer in each such schemes of legislation as it might see fit to advocate."

The Speaker as Premier. By Prof. A. Bushnell Hart (Harvard). Atlantic Monthly for March, 1891.

In this essay the writer attempts to prove that the speaker of the house of representatives "is a recognized political chief, a formulator of the policy of his party, a legislative premier," and even ventures the opinion that "he is likely to become, and perhaps is already, more powerful, both for good and for evil, than the president of the United States." Dr. Hart also appears to believe in the usefulness of the system of legislation by congressional committees.

Government in Canada; the Principles and Institutions of our Federal and Provincial Constitutions. The B. N. A. Act, 1867, compared with the United States Constitution, with a Sketch of the Constitutional History of Canada. By D. A. O. Sullivan, M. A., D. C. L. Second edition, enlarged and improved. Toronto: Carswell & Co., 1887. 8vo, pp. xx+ 344.

A carefully prepared treatise on the Canadian Constitution, written largely from a purely legal standpoint.

Etudes de Droit Constitutionnel, France, Angleterre, Etats-Unis. Par E. Boutmy, membre de l'Institut, directeur de l'Ecole libre des sciences

politiques. Second édition. Paris: Librairie Plon, 1888. 12mo, pp. iv+ 345.

In this work of an astute political student we have reflections on the weaknesses of the United States system—especially on the difficulties that may arise from the absence of means of accord between the executive and the legislative authorities—and on the superiority of the principles that govern the operation of English parliamentary government and enable the crown and parliament to work in harmony.

The Ministry. By John W. Clampitt, in the Cyclopædia of Political Science, Political Economy, and United States History, Vol. II, pp. 855–857.

A short paper on the distinctions between the English and the United States cabinet.

The State; Elements of Historical and Practical History and Administration. By Woodrow Wilson, PH. D., LL. D., author of "Congressional Government." Boston: D. C. Heath & Co., 1889. 12mo, pp. xxxvi + 686.

This work is a useful contribution to the practical theory of comparative politics, and is cited here as giving a generally accurate sketch of the development of the cabinet and of ministerial responsibility in England, and of the government of the colonies. Some slight inaccuracies are noted, for instance, when the author says the governor-general's veto "is almost never used." No case of the direct exercise of the veto in Canada has occurred, though bills are reserved for the approval of the queen in council. He is also mistaken in saying that the officers of the English House of Commons (p. 324) are elected both in Canada and England. The clerk and sergeant-at-arms are appointed by the crown and not by the houses themselves. The speaker alone is elected by the commons, while in the upper chamber he holds his office under the great seal.

Government and Administration of the United States. By W. W. & W. F. Willoughby. Johns Hopkins University Studies in Hist. & Pol. Science, Nos. I and II, Ninth series. 1891. Baltimore: 8vo, pp. 143.

The section relating to the cabinet and executive departments of the United States is useful to all students of institutions, and especially to Canadians who wish to make comparisons between the English and Canadian methods of administration.

Kin beyond Sea. By the Right Honorable W. E. Gladstone, M. P. North American Review (New York) for September-October, 1878; also in first volume of "Gleanings of Past Years" (London), pp. 203–248.

This fanciful title gives no idea whatever of the scope of a paper deeply interesting to the students of constitutional science. Mr. Gladstone not only shows that English institutions are, in certain respects, more popular than those of England's "Kin beyond Sea," and "give more rapid effect than those of the Union to any formed opinion and resolved intention of the nation." The comments on the position of the cabinet in the English system are very instructive. It is "the three-fold hinge that connects together for action the British constitution of king or queen, lords, and commons." It is, perhaps, "the most curious formation in the political world of modern times, not for its dignity, but for its subtilty, its elasticity, and its many-sided diversity of power." It is "the entire complement of the entire [constitutional] system, which appears to want nothing but a thorough loyalty in the persons composing its several parts, with a reasonable intelligence, to insure its bearing, without fatal damage, the wear and tear of ages yet to come."

La Crise du Régime Parlementaire. Par A. D. Decelles. Trans. of Roy. Soc. of Can., Sec. I, 1887.

The author, one of the librarians of the Canadian Parliament, in a desultory manner, reviews the governmental system of Canada and shows its superiority in certain essential respects to that of the United States.

XVIII.—BIBLIOGRAPHY OF PUBLISHED WRITINGS OF MEMBERS OF THE AMERICAN HISTORICAL ASSOCIATION FOR 1891.

BY A. HOWARD CLARK,

ASSISTANT SECRETARY AND CURATOR OF THE AMERICAN HISTORICAL ASSOCIATION.

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FORD, PAUL LEICESTER—Continued.

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