
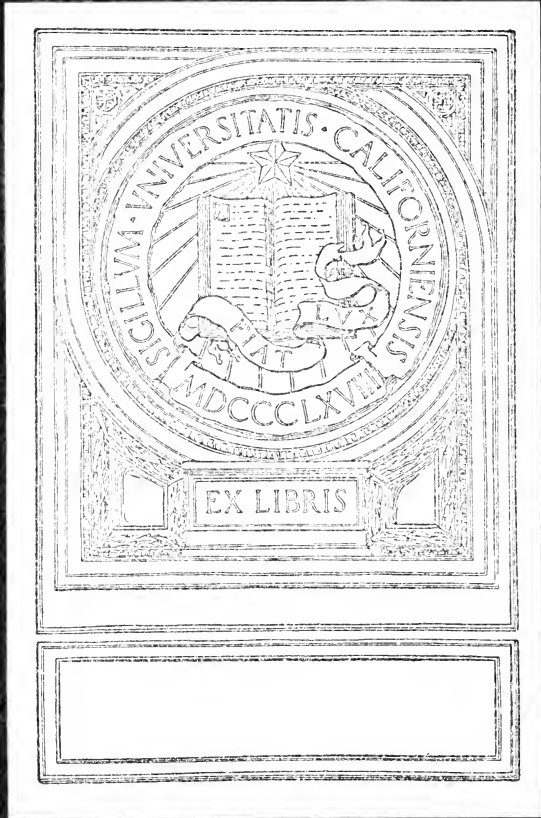


JK  
469  
18916

UC-NRLF  
  
\$B 22 136

YC 08691

71469 001



DISINTERESTED PUBLIC SERVICE.



# AN ADDRESS

DELIVERED BEFORE THE

ALUMNI AND STUDENTS OF THE DEPARTMENT  
OF LAW, OF THE

UNIVERSITY OF MICHIGAN,

WEDNESDAY, JUNE 24, 1891.

BY

HON. THOMAS F. BAYARD, LL. D.,  
OF WILMINGTON, DEL.



ANN ARBOR, MICH.:  
PUBLISHED BY THE UNIVERSITY.  
1891.

JK 469  
1891 &

.....  
THE COURIER OFFICE, PRINTERS.  
.....

TO THE  
ADVERTISERS

## DISINTERESTED PUBLIC SERVICE.

---

Not infrequently we have heard and still hear the United States of America alluded to as the "Young Republic of the West," or sometimes as the "Latest Experiment in Government," and its short national life contrasted with the older governments of Christendom; and yet, dating the birth of our Government from the year in which its Federal Constitution was adopted by the several States of which it is composed, and it was launched on the sea of political existence, one hundred and two years ago, it has outlived all of its contemporaries. Is it not safe to say that, looking at actual political conditions, at realities and not names, the United States Government, constituted in 1789, retains its identity of form and substance more than any other government in Christendom, which existed at the time we entered the family of nations? That it is in fact the senior and not the junior of the world's governments and has had a longer continuity of unaltered political institutions? The chronic political confusion and fluctuating systems, the checquered existences of the States and communities of Mexico and every Central and South American State, intermittently rent by political dissensions and overturned by revolutionary violence, have left to no other Government on this hemisphere a permanence or longevity comparable with our own.

The Great Britain of 1789 is unquestionably Greater Britain of to-day; but who can detect much resemblance between the government dominated by the narrow mind and personal will of George the Third, and that over which in our day the venerable Victoria so mildly reigns, but does not rule? Within sixty years the government of Great Britain, expanding by military and commercial conquests, has been transformed from a monarchical aristocracy into a monarchical democracy in which the laboring classes are the strongest element numerically. The outline of a monarchy remains, a silhouette of its former self, but the balance of political power has been shifted. Its transfer to the middle classes took place under the reform bill of 1832; to the laboring classes by the acts of 1867 and 1884; and, finally, the redistribution act of 1885 installed an actual democracy in power.

On our northern border "old Canada," with one French and one English province, is almost concealed from view in the ample embrace of the young "Dominion," now enjoying its 24th year of virtually independent self-government.

The straggling and vast, but dissevered provinces, scantily populated, have stretched in lusty manhood from Nova Scotia through the wilderness to the Island of Van Couver. Thrown on their own resources mainly, and finding strength and security in a closer Union, they have learned the great lesson of self-reliant manhood, and, with institutions free as our own, are to-day no longer a mere colonial dependency, but the most important and powerful link in the federation of the British Empire.

Which of the present continental governments of Europe has the permanence of a century of unbroken and settled government behind it?

Since Benjamin Franklin, Silas Dean, and Arthur Lee signed our first treaty in February, 1778, with His Most Christian Majesty of France, that nation, shaken to its foundation and convulsed with the successive whirlwinds of anarchy and tyranny, has, as it were, but yesterday collected her shattered powers, and found repose and promised health under the forms of Republican Government. The discontents and disorders of France culminated in revolution in the very year of the adoption of their present constitution by the United States, and put an end not only to the legitimate monarchy and settled government in that country, but the brilliant and blighting career of Napoleon Bonaparte, in the twenty years of his evil ascendancy, spread the spirit of destruction and dislocation throughout all the other European States. He moved kings and princes like puppets; at Erfurt in the insolence and intoxication of newly possessed power, he filled the pit of his theatre with kings he had deprived of their kingdoms. He tore crowns from royal heads and placed them upon whatsoever head he pleased. He crumpled up treaties and constitutions, trampled upon international law, obliterated boundaries, and remodelled at will the policies and institutions of nearly every European state.

If, therefore, we desire to consider European governments in their present entities, we need go no further back than where Napoleon left them in 1815, or may indeed stop at much later dates—as witness the first appearance of Belgium as a separate nationality, in 1832, and the obliteration of Poland from the map of Europe at about the same date. And the worst, the most baleful, legacy of the Napoleonic period, is the belief in Militarism, to which he gave birth, and with which he surrounded himself as the only safe reliance, the sole essential, for the establishment of peace in Christendom and a just equilibrium of power. This it is which to-day makes Europe one vast entrenched camp, in which the balance of power is maintained only by the “tug of war,”—a condition of things which cannot be permanent and is inimical and absolutely inconsistent with successful industry, and, need I say, is necessarily fatal to the principles of liberty, and the expansion of human faculties for the elevation and advancement of the race.

As an historian of our time has said, “the arts of destruction are the arts which have made the greatest progress.” Looking at the

armaments on land and sea of the newly constructed Empire of Germany, contemplating the life and teachings of Von Moltke, her greatest soldier, whose venerable form has just been reverently consigned to earth, and listening to the utterances of her young "War Lord" who accepts no law but his own will,—how far from actual truth is the description by Machiavelli, four centuries ago, "A prince is to have no other designs, nor thought, nor study, *but war*, and the arts and discipline of it?" As permanence and stability are desirable, and, as all must admit, essential to secure the two greatest blessings of humanity—Peace and Liberty—I will ask the favor on this occasion to submit some reflections upon the best means by which they can be secured.

In the new arrangements of political power to secure the blessings of liberty for themselves and their posterity, our forefathers defined with wise precision the methods by which this great object was to be attained.

To this end they altered the machinery of other times and countries, and laid as the bed rock, the foundation stone of their edifice, non-use for personal aggrandizement, or private objects, of whatsoever belonged to the people and was needful for their government. Agents were, of course, necessary, and these were to be properly compensated, but the will of the agent was never to become the government, nor the public power entrusted to him to be made an engine for private profit.

The shortness of the lives of other governments instructed them how to prolong the life of their own, and in the graveyard of nations they read the common epitaph—"DIED of the selfishness of Rulers and the want of disinterestedness in the guardianship of public powers."

But equally did they guard against the oppression of the citizen, well knowing that a free nation must be composed of free men, and therefore amid abundant guarantees of individual freedom, it was ordained that private property should not be taken for public use without just compensation.

If in addition to the protection of private property from public appropriation, we could equally secure public property from being taken, and public powers from being perverted, for private use, we would by a single stroke have deprived much of our present legislation of its inequality and inequity, and have gone a long way to lessen or put an end to those popular discontents which so seriously threaten the prosperity and peace of our country, and the endurance of our institutions.

It is confidence in the impartiality of the judicial branch that chiefly conduces to peace, order, and content; belief in this leads to acquiescence in decisions, however disappointing and adverse, for the loser feels that he has had a fair hearing and trial, and that the scales of justice have not been turned to any possible personal advantage to the magistrate who decides. And the question arises, can not a spirit of confidence in the disinterestedness and impartiality of the legislator, equally with the Judge, be created in the minds of our countrymen?

Why should not the same public spirit animate equally both branches of the public service?

The first step towards such a consummation will be the acceptance of the great principle that public powers cannot be dedicated to private purposes, but that all laws should be framed and administered in a general interest of the public alone; in following this equal laws can be best secured.

We say of a Judge's function—it is *jus dicere non jus dare*—but it must be evident to any mind that the function and duty *jus dare* is fully as important, possibly even more important, than *jus dicere*, and should be exercised in as high and impartial a spirit.

How can this be secured?

I answer, by creating a standard of public opinion that will not allow it to be possible for a popular representative to work and vote for private interests in connection with public questions. If we cannot find a frame of words for such an expression in our written law, it must pass into unwritten law that public powers shall not be so prostituted for private gain.

Justice will never be established by mere appointment of judges and formation of courts, but by the maintenance of these courts in the administration of impartial laws. Laws framed under personal and selfish influences, and for personal aggrandizement, can never be agencies of justice, and if we go back into the region of causes for the swift decay of governments, if we seek the *causa causans* of the short life of power, we shall discover it to exist in unequal laws, and inequality before the law.

The gigantic selfishness of Napoleon Bonaparte rendered him blind to the consequences of his systematic sacrifice of all sense of social duty, outweighed the force of his marvelous genius, and brought his insane ambitions to their logical and necessarily barren goal.

“The principle of natural right is the only science that does not require to be studied—but is engraved on every person's heart”—and for this he cared nothing.

Depend upon it, gentlemen, this government of ours was meant to endure, and not become the toy of selfish and capricious rulers, the engine of avarice, nor the foot-ball for party passions and personal ambitions. Public powers were necessarily vested in individual rulers as the agents for their execution; but they were never to be employed and perverted for private ends.

All through the great charter of our political liberties, see how plainly “public office is a public trust,” and note the necessary implication in every grant of power that it is for the use of all and not for a favored few.

Take the most important and far reaching of all powers, the power to lay taxes, duties, imports, and excises without limit as to amount—but for what purpose?—“the common defense, the general welfare”—and it



was made obligatory that all such burdens were to be “uniform throughout the United States.”

Why was a census to be taken every ten years? Because the burden of direct taxes and the right to proportionate representation were welded together; no direct tax was to be laid unless in proportion to such enumeration of the inhabitants, and each individual was to bear his proportionate share, and no more.

Why were no preferences to be given by any regulation of commerce or revenue to the ports of one State over another? Because the power to regulate commerce and exact duties was to be exercised with equality over the whole territory and the entire population of the union.

Why were titles of nobility interdicted and their grant by the States or by the United States forbidden? Because individual interests or selection for special advantage was not in the spirit of equality before the law.

Why were Senators or Representatives in Congress made ineligible for any office created during the term for which they were elected, or the emoluments whereof should have been increased during such term? Because they were not to be allowed to increase their own power or profit personally by their own votes, or gain private advantage from the public power held by them in trust.

And lastly: Why was a regular statement and account of receipts and expenditures of all public money to be published from time to time? Because the people were to have the evidence that “public money” had not been applied to other than public purposes, and had not been diverted into forbidden channels of private emolument.

If we are asked why the United States at the lapse of a century has retained unaltered more of the original features of its Constitution and polity than any contemporaneous government, must not the reply be that such permanence is chiefly to be ascribed to the public and impersonal objects and spirit of our institutions, and the principles of personal disinterestedness and unselfishness which were ingrained in the grant of the necessary powers, and which were respected and obeyed by the representatives entrusted with their administration?

But it cannot be doubted that, in the rapid progress of the nation in wealth and power, with the consequent multiplication of such prizes, under the untrammelled freedom for individual faculties to avail themselves of the wonderful natural resources of the country, the principle of disinterestedness and unselfish administration has been seriously impaired and invaded in the sharp competition of trade and the keen rivalries of business. Combinations of capital, intelligence, and selfish vigor incorporated in legal strength, have been formed upon a scale unknown in the previous history of the world, and, amid the exigencies and excitements of civil war, have contrived to obtain possession of governmental agencies and powers and are exercising them not for public but for private profit and advantage.

“The common defence and general welfare” have been disregarded or

subordinated to individual and class profit and advancement, which are boldly claimed as just objects for special encouragement and protection by public legislation,—and a construction of the constitution which warrants such action has become with many a political creed.

Such a condition has not been attained *per saltum*, but by tentative steps and a gradual aggrandizement of private power over things pertaining to the public, and which should be carefully guarded for the public use.

In a time of public danger and confusion the cloak of patriotism was the outer garment which concealed the real objects, and where the schemes could be adroitly engrafted on public measures they were carried along by the force of virtuous association.

But it is plain that the fruits of such disregard of basal principles will be the same in all countries, and that there is no magic in the name or forms of a republic by which to exorcise such evils or save us from their logical and inevitable consequences. We are witnessing on a vast scale, and with various and powerful combinations, efforts to convert a government which should be supported by its citizens, into a vast organization of citizens claiming to be supported by the government.

This dangerous and widespread misconception of the true theory and principle of our government undoubtedly exists, and imperils the safety and permanence of our institutions.

An important illustration of the evil I refer to is found among that influential and aggressive class who uphold the "spoils system" in the conduct and regulation of the civil service.

These men hold that the public offices which, as the name implies, are apportionments of public functions and duties for the public advantage, are created in order to furnish means of support and personal emolument to the individuals who are placed in them, thus losing sight altogether of the mutual relation of a government and its agents; indeed subverting that relation and making the public the servant of its own employees and agents; and this theory logically and practically carried to its conclusion involves nothing less than the revolution and defeat of our republican system. In fact, it reproduces the rule of the Praetorian Guard of ancient Rome.

Carlyle says somewhere that many speak of "the rudder of the government," but in reality they mean "the spigot of taxation." This phrase is suggestive, for that vast and sovereign power by which all amounts that may be fixed by law can be drawn from the body of the people to fill the public treasury, wherein are placed fruits of human labor, is proven to be controlled by "a spigot" called the "rudder of the government," and turned off and on under the control of select classes of interested parties.

I will not abuse the privilege given me to speak in this presence, by trenching upon the issues between the political parties of the day, nor enter upon the relative merits of restricted or unrestricted commerce with foreign countries; but, as touching the principles of justice which are essential

to all parties and governments, I wish to draw your attention to the results of the perversion of the most essential and far reaching of public power, that of taxation, by the insertion, under personal influences and for personal ends, of provisions in our tariff laws, which, being expeditiously adopted under the operation "of the previous question," are upon closer examination discovered to contain consequences, never discussed, nor understood by the legislature which enacted, nor by the defenceless public which in the end was to suffer by them.

Debates upon the items of a tariff bill in Congress will be found to consist usually of the disquisitions by expert manufacturers and their agents, congressional and lobby, in which the chemical, mineral, or vegetable history and composition of the article under consideration is entered into with an elaborate fullness and technicality quite incomprehensible to an ordinary mind, and which usually is settled by the dogmatic statements of alleged specialists and their convincing briefs.

In such discussions, and such a mode of treating a subject so multifarious, it is naturally impossible to apply any principle of taxation, and the attempt does not appear to be frequently made.

But after enactment into law, the time soon arrives for its practical interpretation by Collectors of Customs and Treasury Agents, and then the "true inwardness" of the clauses is made manifest to the public.

On the dockets of the United States Courts, cases arising out of disputed interpretation of the tariff are to be found by thousands.

When the phraseology of all the various provisions of the tariff have been collated for joint and several construction, under the critical analysis of learned judges and well instructed counsel, aided by experts and specialists, some excessive rate of duty is at last settled, a meaning is found which was placed in the public law by the cunning hand of private interest, and hidden by a complication of language and the detachment of controlling words, placed in some unsuspected and remote recess of the statute; in no other way can duties practically prohibitory be accounted for.

By such means duties are not laid for the common defence and general welfare, but for private interests; and "commerce with foreign nations" is not regulated, but prohibited by private dictation; and the intent of the fundamental law is evaded or overthrown.

Sometimes the desired profit is attained by a reverse of these methods, and extensive entries are made, by the initiated, of certain merchandise under high rates of duty, which are paid, but under protest. Cases are permitted to accumulate, until vast sums have been paid into the treasury, while the legality of the exactions still continues dependent upon subsequent judicial decision.

When the aggregation of cases is satisfactory, and sufficient time has elapsed for the duties to be added to the foreign price of the merchandise and paid by the purchasing and consuming American public, then comes

the time to gather the fruits of the slumbering meaning of the tariff, and "a test case" is brought up for decision.

Then it is disclosed that a lower and not a higher duty lay in the inner folds of the tariff acts, and the rival ambiguities are duly marshalled, the mysteries of classification, commercial nomenclature, and foreign manufacture are explored, and as a result "another job" has been successful, and the "spigot of the Treasury" is turned on to pay again to the dealer the money he had already collected from his customer in the shape of duties added to the foreign price.

Such cases are not rare exceptions; like "sorrows," they

"———Come not single spies,  
But in battalions———."

It matters little to the suffering taxpayer by what contrivance or under what private interest he is impoverished—like the wound of Mercutio, "'Tis enough, t'will serve—," and, like Mercutio, he may exclaim—"A plague o' both your Houses."

Take the illustrations from the Circuit Court reports of the city of Philadelphia in the present month of June:—

"The government paid out last year \$2,500,000 in refunding duties paid on hat trimmings wrongly classified by the Collector as silk manufacturers."

And on the eighth of June: "In the United States Circuit Court this morning began the case of Meyer versus the Collectors. Unusual interest is manifested, as something like \$30,000,000 is at stake, the case involving a refunding of duties on satins, plushes, and velvets alleged to come under the same ruling as the hat trimming cases."

This is one of the modes in which the common wealth is subtracted from the common treasury, and private profit is obtained under an abuse of the law making power of the republic; now see how the same result is obtained in Russia—an autocratic government—tempered (as Talleyrand said) by assassination:

#### WHAT IT COSTS TO BURY A GRAND DUKE.

"The vast sums of money absorbed by the extravagant lives led by many of the Russian Grand Dukes, and the irregular methods occasionally employed to levy them, constitute one of the most irksome burdens of the taxpayer—who is the peasant. Grand Ducal luxury, contrasted with the misery and silent suffering of the tillers of the soil, are constant themes of conversation in every mouth; but the death of some Grand Dukes—a Field Marshal or a Lord High Admiral of the Fleet, for instance—is to the full as costly a matter in proportion as his life.

It was in the light of a financial burden that the Russian authorities at first considered the death of the Grand Duke Nicholas Nicholovich, and so heavy did it appear to them that the decision was about to be taken to con-

veal the news of his death until his body could be removed from the Crimea to the station of Bologoye, between Moscow and St. Petersburg, where his decease might be declared to have taken place; but on giving the matter more careful consideration, the disadvantages of this line of action became apparent, and it was found advisable to proclaim his death at once. According to the ceremonial which regulates the burial of a Field Marshal, two double lines of soldiers must be stationed on either side of the road through which the body is being conveyed from the place where he died to his last resting place. This would necessitate the displacement of whole armies, under cover of which any number of troops could be massed on the western frontiers without exciting comment or remarks at the time. Moreover, no less than twenty-four colonels must accompany the body all the way, fulfilling certain duties which the elaborate ceremonial declares absolutely indispensable. I have not succeeded in discovering the exact number of troops which will take part in the ceremony between the Crimea and St. Petersburg, but I have very creditable authority for stating that the military expenditure alone will reach the round sum of 300,000 rubles, say, £40,000!"

Note, I pray you, the sedulous care exhibited by our forefathers in the very commencement of our government to separate by positive inhibition public interest from the private interests of its officials.

At the very first session of Congress, on September second, 1789, they established the Department of the Treasury, and provided:

"No person appointed to the office of Secretary of the Treasury, or First Comptroller, or First Auditor, or Treasurer, or Register, shall directly or indirectly be concerned or interested in carrying on the business of trade or commerce, or be the owner in whole or in part of any sea vessel, or purchase by himself, or another in trust for him, any public lands, or other public property, or be concerned in the purchase or disposal of any public securities of any State, or of the United States, or take or apply to his own use any emolument or gain for negotiating or transacting any business in the Treasury Department, other than what shall be allowed by law." And then follows penalty for infraction.

The next Congress extended similar prohibitions to "every clerk employed in the Treasury Department," and these laws remain intact upon the statute books, and are in force today as Sections 243-4 of the Revision.

Why the heads of the Post Office, and indeed of all the other departments, should not have been included within these salutary laws to prevent the intermingling of private interests with public functions, and to protect from discoloration that perfect clearness that should be inseparable from the execution of high trusts of power, I cannot answer; but the reason of the law, which is the soul of the law, applies with equal force to every public trust—not to the executive and judicial branches only, but to

the legislative as well—and in the degree of its observance will be found the proportionate moral influence of the Government upon the people.

With just pride and satisfaction can we as members of that profession from which the judicial branch of the Government is filled, recognize the universal obedience to the delicate and honorable obligation, not written in the law but scrupulously heeded in the administration of justice, that a judge will decline to sit in causes wherein his personal interests are directly or even indirectly involved; or in cases where at any time he has been of counsel, or in which he has given an opinion, or in which a near relationship to any of the parties may exist.

This maintenance of impartiality and avoidance of all possible grounds of suspicion have borne their fruits and have implanted in the public mind a feeling of universal confidence in the judiciary, which is one of the chief elements of our strength and safety.

These principles of disinterested administration of public powers can certainly be demanded in every branch of the government, and, if followed, will be conducive to permanence and good order, because they will engage and command popular confidence and compel the respect of mankind.

Under their operation the abuses arising from unequal and unjust legislation and the intrusion of sordid and selfish interests will be checked, and the causes of popular restlessness and discontent cannot fail to be abated—in short, it would be a radical remedy for the chief ills and dangers that now threaten the health of the body politic.

There is no lack of statutory penalties against public officers for malversation, and illicit profits are abundantly prohibited. Chapter 6 of the Revised Statutes, relating to crimes, contains numerous provisions for the protection of the public against abuse of official powers and the betrayal of public trust, and I draw your attention to these features of the law as recognizing the duty and necessity of preventing the use of public powers for private emolument or advantage, and as illustrating the great American idea of government, that its blessings are to be held high above the selfish control of any, and are to be reserved for the benefit of all in equal measure; in other words that law and justice are to be inseparable.

With the inspiring motive personal, selfish, and mercenary, the outcome must needs be corruption, and public service will soon be honey-combed with dishonesty, and our institutions will crumble with the dry rot.

Events transpiring with alarming frequency in our centres of population, demonstrate how the fear of the exposure of a guilty member of the official association leads to the concealment of his defalcations and crimes, by those near him and cognizant, or strongly suspicious, of his guilt, because the combination of personal interests that has placed official power in their hands, has either excluded or subordinated the public welfare, the common wealth, from its rightful and primary place.

Beginning with a lawful salary attached to an office, to enable the

duties to be performed, but given and received as a personal reward, and for other than public service, it is impossible that unlawful uses of the public powers of the office should not follow, and that, private gain being the motive, it should not be pursued in every direction, in utter disregard of honesty and fidelity to the public interests.

A late defalcation in the office of treasurer in one of the largest and richest communities in the United States has disclosed, among other delinquencies, the fact, that, though owning valuable real estate, no taxes were required to be paid thereon by the influential incumbent for several years prior to the discovery of his immense defalcations, nor any return or record made of such a delinquency. Such a condition of things could only result from a long-continued and widespread system by which public office is permitted to be the spoils of party, and the whole official atmosphere becomes infected with a mercenary spirit. No matter how high the office—the man placed in it by such methods, under such rules, and with such associations, cannot ignore them nor free himself from connection with them, nor from their influence.

“Do men gather grapes of thorns, or figs of thistles?” When the roots of power are imbedded in the soil of mercenary and corrupt politics, is it not idle to hope for the permanence of such a system? It is contrary to justice, and, in the order of a Divinely governed world, must be short-lived. In the words of Carlyle—“Add only this first, last article of faith, the ‘Alpha and Omega’ of all faith among men, that nothing which is unjust can hope to continue in the world.”

Honest men are naturally excluded from such association, for they would be fatal to its objects. At best they may admit men of negative honesty,—that kind of honesty which, as Judge Black said, it is a disgrace to lack,—but of affirmative aggressive honesty, that, which strikes fraud wherever it sees it, they stand in dread, and rule its owners out as unfitted for “practical politics.”

He who serves the public, who believes that the powers of whatever office he may hold are held by him in trust for the public, has a basis of conduct, a pathway of action, which leads him away from the snares and pitfalls which private profit offers for his entanglement and seduction.

The spoils system, the theory of mercenary objects only in executing public powers, as it expands in its vicious acceptance, necessarily lowers the conception of the government and its high responsibility in the minds of officials, nor can it fail to lower the tone of our national character, and discourage those moral forces which are the chief defence and reliable mainstays of national safety.

The increasing comprehension, by means of their letters and contemporaneous memoirs, of the public men of the earlier years of our government, discloses almost without exception how strong and pervading was the sense of disinterestedness and unselfish devotion to their public duties.

*Facile princeps*, George Washington, declined from the first to the last, in the field or in the council, to accept any pecuniary compensation beyond his actual expenses.

The concession of the principle that public powers—powers attached to public office and necessary or incidental for the performance of its functions—can be bestowed for private ends, or exercised for private profit or advantage, unquestionably substitutes a selfish and mercenary motive and theory for a disinterested and patriotic motive and theory; and, by repetition, the former becomes the accepted rule of action, low conceptions of duty take the place of high and honorable tone, mean and contracted views, limited to self and selfish objects, narrow the scope of vision, and all proper perception of the general welfare and generous policies for a nation's interest are lost.

I have said that giving over the civil service of the country to the spoils-system would be destructive of the character of our government and therefore fatal to its permanence.

It is not needful to dwell upon its inefficiency and consequent expensiveness, because an increased number of officials might after a fashion possibly accomplish the same amount of work that a much smaller number selected on the score of fitness and merit could do much better, when organized and acting on different lines and under a different inspiration. For, if public office is to be conferred on men as personal rewards and for the one purpose of obtaining its emoluments,—and as good behavior did not put them in office, so neither will it retain them there,—and with the principle to gain all they can while rendering as little public service as possible, who can be surprised if illicit profits should be sought, and such a sorry sight as is now presented in the great city of Philadelphia be the natural result?

There may be a measure in money of the cost of an inefficient civil service, but not of a selfish and corrupt one. The lowered tone of public service in a popular government leads to a degradation in the national character, and a resultant disbelief and disrespect for popular self-government. Heaven help a people when the virus of self-distrust shall enter the veins of the body politic, for it is the precursor of decay and revolution.

Mercenary issues will be tried by mercenary men and mercenary methods, and if the contests of political parties, the choice of their candidates, the selection of their measures, shall turn upon the spoils and money profits of place, other issues vital to public prosperity and affecting the honor and perpetuity of the government will cease to occupy the minds of our citizens, and men competent to deal with such topics will not be called into public service. Thus our rulers will be trading politicians, and not statesmen, and the great and noble purposes for which our government was organized will fall into neglect and be forgotten. If such mercenary combinations shall control the choice and action of political parties, the sub-



stance as well as the form of our government will be changed, and, for the short time it would exist, we should see a government of placemen by placemen and for placemen.

The serious and responsible duties which are inherent in all governments being delivered into the hands of men wholly unfitted for their comprehension cannot be executed, for mere placemen can never perform the tasks of statesmen any more than cooks and scullions can navigate a stately ship.

• The creation of material wealth will not relieve the danger, but will increase it. There are trials and temptations in such prosperity more difficult to withstand and more fatal to public virtue than poverty. The greater the prizes, the fiercer and less scrupulous the competition to gain them, and he must indeed be blind who does not read the signs and portents of danger and disorder in this country which threaten the permanence of its institutions: the discontent of the laboring classes; the separate and special organizations and associations, combining for relief to procure mitigation of the causes of their distress,—the Brotherhoods of skilled artisans—Knights of Labor—Trades Unions—Farmers' Alliances—together with countless "orders," and alas! secret political societies; all joining in a common complaint of the inequality of the burdens and of the benefits of the laws, of their unequal share in the distribution of the profits of the productive industry which they claim to represent, and demanding the enactment of sweeping and drastic measures which shall in some undefined way, about which there is no agreement, make things more equal.

How can laws be equal unless they are framed by men who are impartial, and private interest is not permitted to write on the statute books measures for its own advancement?

The chronic evils of older societies and over-crowded populations surely ought not so soon to threaten this broad land with its countless acres of tillable soil open to occupation and waiting only

"To be tickled with the hoe  
That they may laugh with a harvest."

But nevertheless they do threaten us. History proves that whenever special privileges and immunities are conceded, although they may produce splendid fortunes for the few, yet they stand out in conspicuous contrast, towering over a long low level of impoverishment and distress of the many.

This government of ours was never intended by its founders to add artificially to the natural and inevitable inequalities of men, but was intended to be a government of laws, in which none should be above the law, and none should ever be depressed below the level of the law.

Impossibilities they did not essay, and the only equality they sought to establish was the equality of opportunity, and in order that the public

laws should not become engines to destroy it, they placed the great and essential powers of government under a written deed of trust, to be exercised by agents sworn to respect its limitations and execute its powers for the equal use of all and only for public ends,—and the permanence of the system will depend upon the fidelity with which this American principle is observed.

Never before have inequalities in fortune been so extreme as those now exhibited in the United States, and in no State more conspicuously than in California, where the contrasts are painful and amazing, and yet where but a few years ago absolute equality reigned, and society was organized upon the most primary basis.

Listen to the comments of an intelligent and friendly foreigner, Professor Bryce, in his *American Commonwealth*:

“The growth of vast fortunes has helped to create a political problem, for they become a mark for the invective of the more extreme sections of the Labor party. But should its propaganda so far prosper as to produce legislative attacks upon accumulated wealth, such attacks will be directed (at least in the first instance), not against individual rich men, but against incorporated companies, since it is through corporations that wealth has made itself obnoxious. Why the power of these bodies should have grown greater in the United States than in Europe, and why they should be more often controlled by a small knot of men, are questions too intricate to be here discussed. Companies are in many ways so useful that any general diminution of the legal facilities for forming them seems improbable; but I conceive that they will be even more generally than hitherto subjected to special taxation; and that their power of taking and using public franchises will be further restricted. He who considers the irresponsible nature of the power which three or four men, or perhaps one man, can exercise through a great corporation, such as a railroad or telegraph company, the injury they can inflict on the public as well as on their competitors, the cynical audacity with which they have often used their wealth to seduce officials and legislators from the path of virtue, will find nothing unreasonable in the desire of the American masses to regulate the management of corporations and narrow the range of their action. The same remark applies, with even more force, to combinations of men not incorporated but acting together, the so-called Trusts, i. e. commercial rings, or syndicates. The next few years or even decades may be largely occupied with the effort to deal with these phenomena of a commercial system far more highly developed than the world has yet seen elsewhere. The economic advantages of the amalgamation of railroads and the tendency in all departments of trade for large concerns to absorb or supplant small ones, are both so marked that problems of this order seem likely to grow even larger and more urgent than they now are. Their solution will demand, not only great legal skill, but great economic wisdom.”

Looking back to the birth of our republic we see none but very poor

men—not a single fortune that to-day would be deemed considerable. With heart and brain our forefathers devoted themselves to the creation of safeguards of civil and religious liberty. The unit of the State was the free individual, and they knew that with the individual freedom preserved, a State composed of such units would remain free. Therefore men and the rights of men were to be represented in the structure of public powers they were about to build, and to property they gave political representation in but a single instance, and that a quasi property with characteristics that rendered it indeed “a peculiar institution.”

I refer to the recognition of property in negro slaves, to which a certain reduced right of representation in the popular branch of the Legislature was accorded in those communities in which these “other persons” (for the word “slave” never was used in the constitution) were held. When in the evolution of free institutions an end came to property in man, the last vestige was removed from our system of the right of any species of property to political representation and consequent control.

But who will say that wealth and property are without representation in our government? Do they not admittedly, unduly, and dangerously influence legislation? The growth of the plutocratic tendency in our country has been too rapid and too baleful to be ignored, and against it every champion of constitutional liberty, and every man who desires the permanence of republican institutions should oppose himself steadfastly, for under the selfish rule of wealth every noble sentiment and just sense of unselfish obligation to society would wither, labor would soon be sunk into pauperism, and pauperism easily turned to crime, and then property becomes the object of assault and ultimately is undermined and perishes.

All the methods of plutocracy are base and evil and tend to corrupt and degrade humanity.

Bribery has been described as “the revenge that property takes on numbers,” and bribery is the chief and natural weapon of plutocracy whenever safety will permit its insulting use. The outrage and insult of the crime seem especially bitter when a people are bribed with their own money, and unjust laws passed in their names are made the means of plundering them. When a great and essential public power like taxation is turned into a means of supply for the bribery of the masses, from whose labor the taxes have been drawn, the intent of the grant of that power to Congress is wickedly defeated.

The taxing power is public property—it belongs *per capita* to all citizens of the republic—and all contrivances by which it is exercised for private profit create inequality and are in violation of the conditions under which the power was delegated.

This principle I hold to be essential for that equality of law which is the chief security of its permanence. It is not obscure; it is capable of precise formulation, it can be defined in clear language, seen by the eye,

heard by the ear, and comprehended by the mind of every reasonable being. It is the friend of individual liberty; it is a foe to socialism; it appeals to the spirit of manhood which desires no undue advantage or favor in the struggle for life. It is sustained by Honor, which is a fine sense of justice; it contains the essence of fair play and will elevate and ennoble every man who becomes its advocate and disciple.

Standing before an audience of young Americans, I earnestly beg of you as you love your country and wish its institutions to endure, accept no construction of the Constitution, and consent to the enactment of no law, that does not impartially exercise public power for the welfare of the public alone and forbid the hand of individual profit, no matter under what pretext, to stretch its fingers into the peoples' treasury, or their private pockets.

An object lesson has been lately supplied of the causes that tend to secure permanence in public affairs, which I believe will interest and instruct you.

I find it in a monograph prepared by Mr. Henry Harrisse, of Paris, a distinguished savant and scholar, assisted by the liberality of that true friend of letters, the late Samuel L. M. Barlow, of New York, and lay before you the remarkable history of the Bank of St. George, in Genoa.

A few years ago a letter was offered for sale in this country, alleged to be the original, written by Christopher Columbus, from Seville on April 2nd, 1502, when he was about to sail on his fourth and last voyage, and addressed to the magnificent House of St. George at Genoa. Thanks to the intelligent research and acumen of Mr. Harrisse, the real original was discovered in the files of the Bank of St. George, in Genoa, and its fraudulent simulation was deprived of success. Of the purport of this letter, suffice it to say, that it contains the gift, in trust to his correspondent, of one-tenth of the entire revenues of his newly discovered trans-atlantic dominion, for the purpose "Of reducing the tax upon corn, wine, and other provisions" of his fellow countrymen. It discloses the great-hearted generosity and public spirit of the mighty discoverer, but its revival after the lapse of four centuries brings with it other lessons which may well be heeded in our own day.

The office or Bank of St. George was founded in the year 1407, and was at first what we would now call a private corporation, although endowed with the most extensive capacity ever granted to a body corporate; but it soon acquired other prerogatives and ceased to be amenable to the judicial power of the state and became invested with a sovereignty which rendered the institution equal to the state itself. In fact, there existed a curious dual sovereignty, and an historian of the times remarks "We behold in the Ufficio di San Giorgio what legislators and philosophers never did anticipate, viz: two republics existing within the

same city walls—the one turbulent and constantly disturbed by factions; the other stable, serene, and the guardian of venerated custom for the good of all.” This remark was only a repetition of what Machiavelli had said half a century before, and has been repeated by all subsequent historians who have had occasion to speak of the Bank of St. George.

This institution survived in useful existence for four centuries, and only disappeared in 1796 by the brute force and spoliation of Napoleon Bonaparte, who overthrew the Republic of Genoa, and placed new rulers in power, who inaugurated their regime by depriving the Bank of St. George of all its resources and changing the essential character of the institution.

The spirit which prompted its creation is manifested in the first sentences of the act of incorporation.

“Whereas the Commonwealth of Genoa is immensely in debt and nothing is left in the treasury to meet daily expenses or unexpected and unavoidable expenditures, nor to redeem public loans, and taxes which, when first levied, were made redeemable, are at present becoming perpetual:

Now, therefore, the General Assembly does hereby appoint a Commission with full power to sink and extinguish the liabilities of the Commonwealth, settle and unite all shares of various companies, by consolidating so that they form a single corporation, called “Compere di San Giorgio,” to revise accounts, collect assets, fix revenues, reform rules and privileges, and induce all other modification and order such other payments as they may deem useful and necessary, without having recourse to any process of law, and as much as can be without injury to anybody.”

The records of this remarkable institution remain intact and explain fully the causes for its survival in the wreck of matter and the crush of dynasties and governments, amid which it stood erect for so long a time.

It was not a mere moneyed institution intended only to enrich its participants, but by its administration it became in the belief of the Genoese a permanent and inviolable refuge for public as well as private interests.

In all the mutations of public power amid popular tumults and the vicissitudes of affairs, the people of Italy longed for a stable institution upon which they might lean for support, and the bank of St. George imparted this confidence and afforded a stronghold inaccessible to political ambition—the scourge of Italy. The people were impressed with the firm belief that it was an institution where could be lodged in safety whatever they had laid by for old age, for their families, and for public charities, and this confidence grew until the institution seemed to be endowed with moral power, embodying all that was noble in the race and great in the state, and containing elements for the personal welfare of every citizen.

The annals of the institution teem with instances of patriotic service

to the state, and the rights and immunities conferred upon it by the state were used with such skill, success, honesty, and patriotism as to elicit the admiration of statesmen and the gratitude of the republic, because the welfare of the citizen was always first, and the pecuniary gain of the Bank always subordinate and secondary, in the conduct of its operations.

It is of interest to learn what were the bases of such an institution.

In the first place it was independent and no one connected with it could hold a state office.

Its supreme powers were vested in a Board of Directors, styled "Protectors," who were chosen in a manner calculated to insure a choice as impartial as could be. These Protectors received no emoluments whatever, but had titles of high honor and were treated with the greatest respect.

These Protectors and all other important functionaries of the Bank were elected for only one year, and only one member of any family could hold office during that term.

The Protectors when retiring convoked the electoral college and were bound to impress upon its members the paramount duty of laying aside personal preferences and prejudices, and to vote only for men whose intelligence, patriotism, and integrity were calculated to secure the existence and welfare of the Bank.

No high functionary of the Bank was re-eligible until three years had elapsed. The managers were strictly forbidden to speculate, and to own a private interest in any of the bank's affairs; nor could they be interested in another banking house, and not only were their functions purely honorary, but they were obliged to take oath never to solicit for themselves or their relations any salaried office.

To secure the observance of these rules there were four overseers, called "Sindicatori," who watched over the deeds of everyone connected with the Bank, high or low, not excepting the Protectors. These supervisors were appointed for a single year, at a salary of twenty-five gold florins, and no more.

Duly sworn Notaries Public alone entered the debts, credits, and orders to pay, and these Notaries were changed every year.

The book-keeping was by double entry, and the system, in its perfection, is not surpassed by the Bank of England to-day.

Secrecy and silence were maintained, to which all the officers, clerks, and menials were bound.

Every one connected with the Bank subscribed the following oath:

"I swear on the Holy Writ to discharge legally and faithfully the duties entrusted to me by the office, to defend and promote to the best of my ability the honor and welfare of the company, and neither myself nor my wife nor my children have or will have an interest in state taxes or impositions of any kind, so help me God."

By such provisions it was sought to guard against the frailty of human

nature, and, reading the history of our own time and the melancholy and mortifying history of many banks of the present day, we may learn what principles are essential to secure permanence in any human institution.

Is it not an independent disinterestedness, and unselfish impartiality in the administration of the affairs of others? And the wider the scope of the agency, the vaster the field of action, the greater the importance of the subjects,—so much the more necessary is the observance of these principles.

Under their influence the edge of corruption would be blunted, nepotism and favoritism would be discouraged, and a purification of the national character from selfish motives and selfish actions would be largely induced.

To what class of American citizens can appeal for a recognition and support of these principles be made more confidently and fittingly than of those who have adopted the study and practice of the law as their profession? What is the *real* lawyer's just and abiding duty? To ascertain what is the law and lend his aid to have it truly declared and enforced.

*Pro clientibus sacpe.*

*Pro lege semp'r.*

History records the services of lawyers in every age to the cause of liberty, and, in the country from which our institutions are chiefly derived, it will be found that the leaders in the Parliamentary struggles to uphold the laws against corrupt and arbitrary power and the prerogative of Kings, have been members of that profession.

The laws of our government should embody the principle upon which that government is organized, and under our written constitution careful and constant attention should be given to restrain the statute within the limitations of the delegations of power.

I have endeavored, imperfectly as I am aware, to enforce the essential theory of our popular system, that as we have no government but the law, we should have no laws but such as are disinterestedly framed in the interests of the people at large for the common defence and general welfare, and not at the dictation of individual or class interests.

The equities of our system are ennobling to the mind and nature of any one who can comprehend them and is willing manfully to sustain them. As a *profession*, honorably followed, ours is the noblest—as a *trade*, it is the meanest.

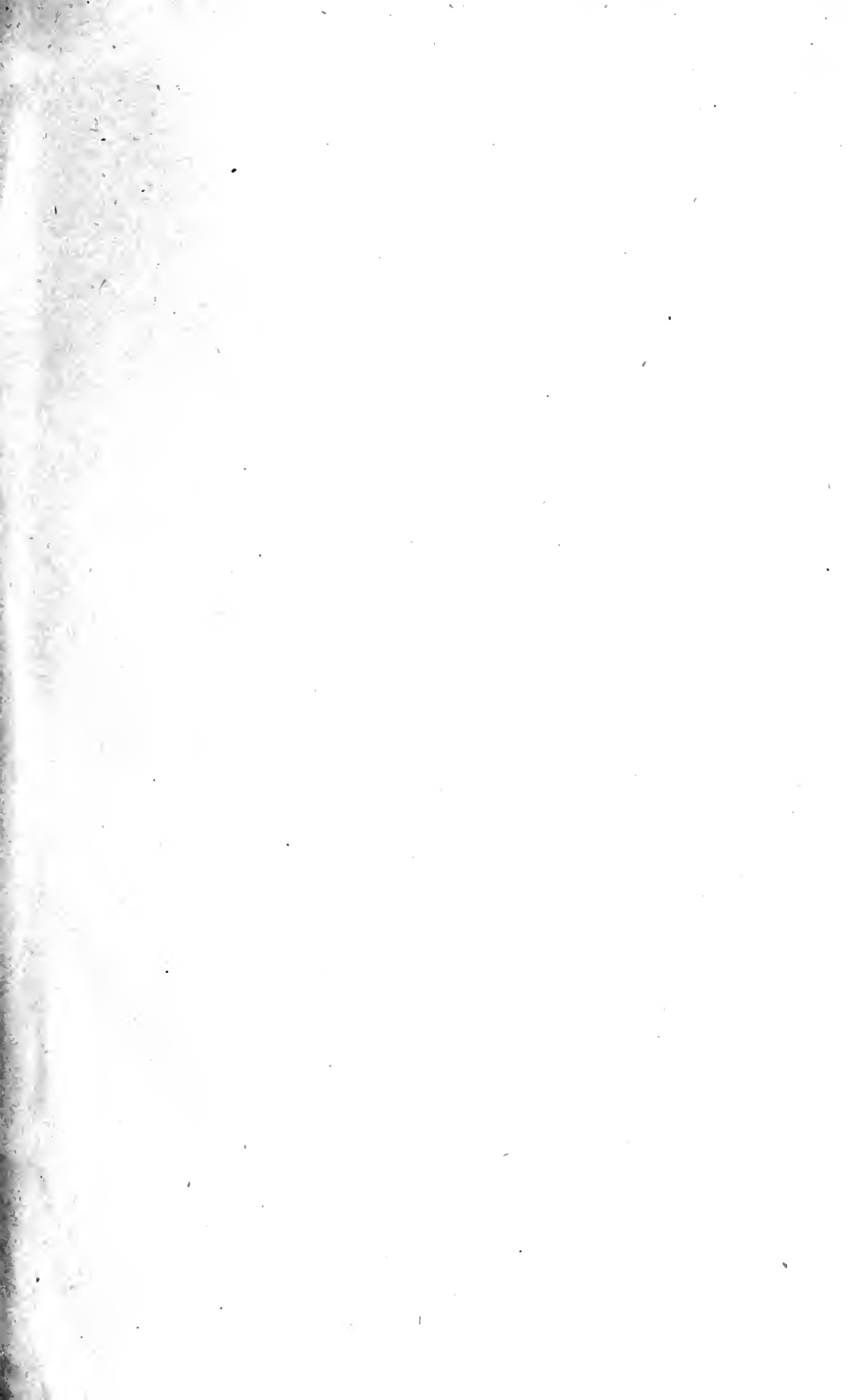
So long as civilized society exists, justice will be sought for by men as the essential basis for individual claims and the settlement of their infinite and various causes for disagreement, and in the enactment and administration of just laws lie the best hopes for permanence and prosperity of human institutions. These are to be the subject of your studies and the guides to your exertions. If I have to-day aided to place one stone firmly in the great wall of truth and justice, I shall have my reward

personally and professionally in the sense of disinterested service to a government under which I was born and whose blessings have descended to me as a precious inheritance.

Gentlemen: The chief and great lesson of this University is the vital force and value of disinterested service. If it shall be asked what induced its foundation, what has erected these buildings, equipped them with all scientific apparatus, libraries, and other endowments, what has brought together here this faculty of learned, laborious, honored, and beloved professors and instructors, there can be but one answer—the spirit of disinterested public service caused it all. For neither wealth nor love of wealth, nor fame, nor power could have done or prompted such work as has been done here, nor produced such results to the country and to mankind as by the blessing of God have been produced and are hereafter to be produced by this noble institution.

Carry the lesson with you, my young countrymen, into the active careers of American citizenship, on the threshold of which you now stand, and remembering all that unselfish and disinterested public spirit has done for you in these halls, see to it that in full measure you make return by infusing such principles into the government and laws of your country. For in them lies the best hope for the permanence and stability of free institutions.







Binder

Gavlord Bros., Inc.  
Stockton, Calif.  
T. M. Reg. U. S. Pat. Off.

YC 08691

M223913

THE UNIVERSITY OF CALIFORNIA LIBRARY

