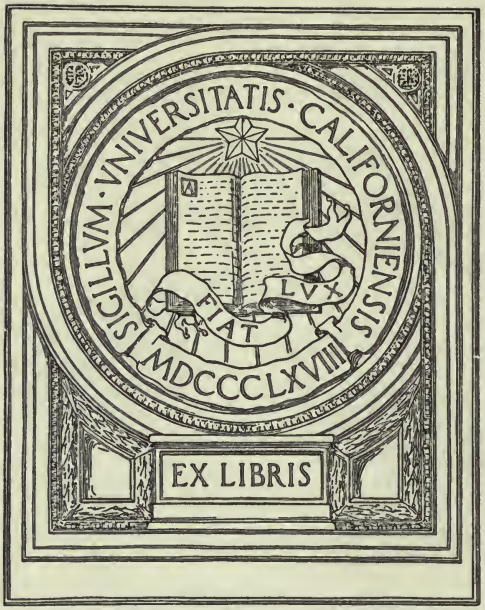
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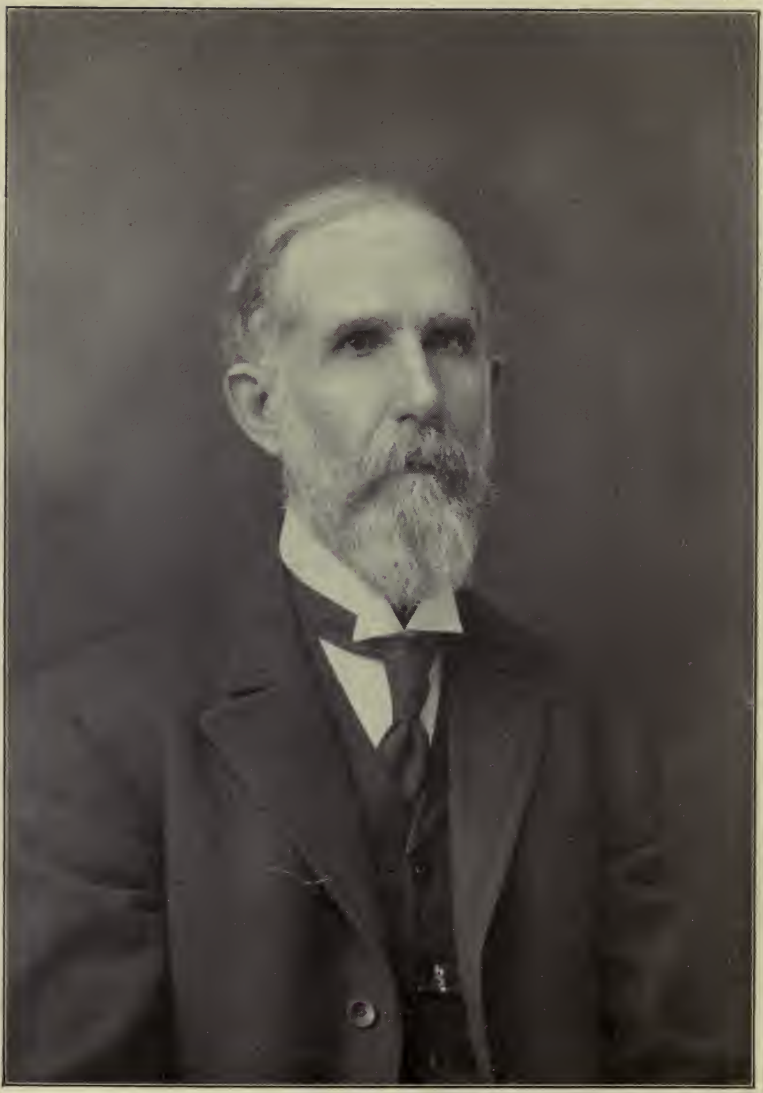

Stephen H. Allen

THE EVOLUTION OF GOVERNMENTS AND LAWS

EXHIBITING THE GOVERNMENTAL STRUCTURES OF ANCIENT AND MODERN STATES, THEIR GROWTH AND DECAY AND THE LEADING PRINCIPLES OF THEIR LAWS

BY

STEPHEN HALEY ALLEN

"Quis custodiet ipsos custodes?"

"Mens, et animus, et consilium et sententia civitatis, posita est in legibus"

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INTRODUCTION

The wide research and long study preceding and attending the preparation of this work have been prosecuted for the purpose of extracting from the recorded experiences of the various people of the earth, in the governments they have had and the laws under which they have lived, such broad and general principles as may be helpful in the work of framing constitutions and formulating laws. Neither government-building nor law-making is a science. That the moral law has some force and application is generally admitted, but that it may be violated, when deemed expedient to do so, is constantly asserted in practice. What is the moral law, and where may its precepts be found? Perhaps most men will answer, in the sacred books. But it may again be asked, what books are sacred? To this the Brahman will unhesitatingly answer, the Vedas and the code of Manu; the Buddhist, the Greater or the Lesser Vehicle, according to his sect; the Mohammedan, the Koran; the Jew, the Talmud; the Parsee, the Zend-Avesta; the Christian, the Bible, and so on through less widely accepted codes. While much of agreement can be found in all of them, there are direct antagonisms of the utmost importance.

Mohammed taught war and commanded the propagation of the word by the sword. Christ forbade it, yet is recorded as having said. "I came not to send peace but a sword." Manu taught caste and inequality among men; Buddha equality. All the Asiatic codes, including the Christian, countenance slavery, which the moral sense of Europe and America now condemns. All nations resort to war; yet its immorality is its most apparent characteristic. Every normal person feels a capacity for determining the moral quality of the acts of himself and of others, yet varying capacity, education and surroundings lead to diverse judgments on many subjects. A definition of the moral law as the rule determining right from

wrong merely leaves the question unanswered. Nevertheless it would seem self-evident that there are moral principles of universal application, binding alike on all men, by which the quality of human conduct may be tested. They attend and inhere in our existence. The fact that any such principle is not generally perceived or followed does not prove its non-existence.

Many natural laws have remained concealed from man through all the ages, and moral laws are natural laws. The progress of the age is measured by the discovery and application of natural laws to science and art. Perhaps a fair definition of the moral law would be, the Divine, the natural law, which fixes the duty of man to himself, to other human beings and to all living creatures. A man living in complete isolation from all other human beings would owe himself the duty to appropriate to himself everything that would contribute to his welfare, comfort and highest development, taking food, clothing and shelter wherever he could get the best. But civilized man does not live in isolation. His duty to himself continues, but always subject to the limitations resulting from the rights of others. A duty and corresponding right attaches to each one to provide for himself and the right of each becomes a limitation on that of every other one. This conflict of interest and loss of right to freely appropriate whatever is at hand is more than compensated by the advantages of combined effort and mutual help. It is clear that the moral law applies to all alike and commands a just sharing among the people of all the things that nature provides as well as of the fruits of their united efforts. In the division of the bounties of nature equality appears to be the natural law, but equality of opportunity to take every kind of natural product and resource in a densely peopled world is impossible. Human activities are largely applied to the search for and gathering of useful things from the surface of the earth and the mines beneath. The value of the things gained by these activities depends in great measure on the labor expended in acquiring them. There is difficulty in separating the added labor value from that of the thing as it was before

man touched it. Combination of effort for common ends implies the assignment to each of a special part of the work. Specialization requires the assignment to each of the task for which he is best qualified. Division of labor calls for the exchange of products. Advancing civilization is attended by increased combination of effort, division of labor and specialization of occupation. Amid the complexity of modern business conditions the applicability of fundamental moral principles to the rights and duties of each member of society is obscured and often lost to view. In the division of labor inequalities of burden inevitably arise. In the distribution of the benefits of combined effort equality of share to each is difficult of attainment, if not impossible. The necessity for direction and leadership implies a degree of mastery, which may be carried so far as to become oppression. Out of a disregard of duty and of the rights of others come oppression, strife and crime. In an ideal state the law would oppose its force to all unsocial and immoral conduct. To give positive sanction to conduct that violates ethical principles is inexcusable. Practical men do not expect an ideal system of laws completely enforced, but a nearer and nearer approximation to the moral law.

Let us notice a few of the customs that have long been sanctioned by the laws of great nations. In China the inferiority and servitude of the females to the males lies at the foundation of the whole social system. The wife and daughter may be abused, overworked and mistreated by the husband and father almost at will. The power of the father over his sons is also very great. Prior to the late revolution the Imperial Clan and descendants of Confucius constituted privileged classes and were supported from the taxes gathered from the toiling multitude.

In India, from remote ages, the rigid rules of caste have kept the lower orders in enforced ignorance and servitude to the ruling classes. Denial of the right to engage in any business or calling, other than those assigned to his caste, has deprived the members of all castes of that personal freedom of effort so essential to high development. Rank injustice

and disregard of natural rights lie at the base of the whole system.

In Mohammedan countries the Koran's precepts allow polygamy, and far worse than this, command the propagation of religion by war, the most immoral of all concerted efforts of men. The errors and falsehoods of the Koran are taught as divine revelation, and all inquiry tending to replace them with truth is stifled.

Throughout all the history of Rome slavery was recognized and the machinery of the government was employed to enforce the dominion of the masters. Much of the learning of the great jurists consists in rules governing the relations of masters and their slaves, and determining the personal status of persons as citizens, coloni, freedmen and slaves. Even in our own land, within the memory of the writer and those of his generation, slavery was the most important institution in nearly one half of the Republic. No law can be a greater departure from the moral law than that which sanctions slavery and allows one man to compel another to serve him according to his arbitrary will and take all the proceeds of his labor to use as he pleases. Nothing can better illustrate the tendency to depart from the moral law in framing human laws than the history of the law of slavery. The feudal system of land tenure after the decline of the Roman Empire worked out results similar to slavery.

Without stopping at this time to apply moral tests to the leading principles of modern law in Europe and America, let us consider what influences produced the laws above mentioned. Clearly the authors of such laws were not guided in their work by any moral principles, for the injustice of them is obvious. The universal motive has been advantage for the ruling class, and the excuse for taking the advantage has been expediency or necessity. During periods of war or civil discord men seek to assure their own safety by the destruction of their enemies. The victors in the contest seldom give nice consideration to moral rules in imposing term on the vanquished. Primitive tribes either kill or enslave their captives. Slavery has its root in war. Greeks and Romans, though ad-

mitting the immorality of slavery, enslaved their captives and always maintained the dominion of the masters by law. In the conquest of India by the Aryan invaders the subjugated natives were assigned to a servile class. The system of castes arose from the organization of the priestly and military orders and the enslavement of the native races. The victor in a fierce conflict often considered himself humane to accord life to his enemy on terms of perpetual service. The institution of slavery was never originated by a deliberative body of law-makers, nor by any great autocrat acting merely as a law-giver. Where the institution has existed, law-makers have undertaken to apply some moral rules to its incidents, leaving its fundamental vice undisturbed. We shall find as we proceed that the habit of accepting immoral systems and then attempting to apply moral principles to their incidents is universal. The enslavement of the recently overpowered and disarmed enemy appears in very different light from that of the child born in slavery. In the latter case the law of inheritance of condition is required to pass mastery from the captor to his son and the status of a slave from the captive to his child.

Under the feudal system conquest of land carried with it rulership over the occupants of it, and a theory of ownership of the face of the earth was made to give in effect ownership of the people inhabiting it. This mastery was mitigated in time by rules governing the relations of lords and tenants and out of these rules came the early English laws of real property. It cannot be truthfully said that the idea of absolute ownership of the face of the earth is an outgrowth of war. It seems rather to have arisen from continued occupancy by successive generations of families and tribes. The influence of habit, education and environment, in moulding opinions on all questions of political science, is quite as marked as in religion, fashion and industrial habits. Nothing is more natural or more common than to base reasoning on the fundamental principles of existing institutions, and to assume that the existing system is in its main features a natural and necessary one. Thus in Roman jurisprudence

patria potestas, slavery and inheritance of personal status and of property were foundations which endured a thousand years. So also in India caste is the key to all judicial research, and in China paternal authority and filial piety. Following the American revolution individual liberty and restriction of the powers of government were the leading ideas of the revolutionists concerning social organization. The founders of the United States were close students of the relations of the state to its citizens, but did not concern themselves deeply with the laws governing the relations of man to man, or attempt radical changes in the laws relating to property. Even so immoral a business as the trade in African slaves was not prohibited at once, and slavery was recognized as lawful though immoral. Freedom from the unnecessary restraints of government was their great desideratum. The word liberty is given a great variety of meanings. As expressive of the freedom of action which is permissible to a person it must necessarily mean such freedom as is compatible with equal freedom for all others. Where many persons live in close proximity to each other, complete freedom of action in each with full protection against the acts of others is impossible. The moral law imposes its restraints, and not only denies all liberty to wrong or injure others, but enjoins positive duties toward them in endless variety resulting from the interdependence of man and his fellows. No system of laws has ever yet been worked out on even a professed adherence to fundamental moral principles.

Most of the confusion of thought and defective reasoning of those who speak and write on the subject of political science arise from a failure to observe the difference between questions of morality and questions of expediency and the limitations on expediency imposed by morality. While it is impossible to draw sharp lines of separation, it is not difficult to perceive that each has its legitimate field, and that the science of law, when law-making becomes a science, must rest on the application of moral principles to the determination of the rights of men and their conduct in life and an intelligent understanding of the principles which affect the selection of

expedients for the accomplishment of moral ends. Real progress and improvement in social conditions follow the promulgation of the moral law in such form that it is learned, understood and accepted as authentic by the multitude. Most great teachers of it have given their rules a religious sanction. It is entirely logical to do so, for the moral laws which should govern the relations of men must emanate from the overruling power that gives life. Moses, Confucius, Gautama, Christ and Mohammed, have each left a deeper and more enduring impression on the world than all the conquerors who have terrorized the earth combined. The fact that error is combined with truth in some of their teachings does not disprove the divinity of the moral law. It may prove the existence of the human element in the teacher and his liability to err. The work of these great teachers has been truly constructive, while that of the great warriors has been the organization of forces and the use of them for purposes of destruction and mastery. Simple moral truths of universal application lie at the base of every great system of religion. The beliefs and ceremonials are the shell and husks, ostensibly designed to protect and nourish the kernels of truth, yet in fact concealing them. It is easily perceived that moral principles are eternal truths, established by and according with the power that rules the universe. They are the same everywhere and under all circumstances. The imaginings as to the unknowable, the priestly establishments, the creeds and religious ceremonials, human inventions, are changed and moulded to suit changing tastes and inclinations.

Departure from the moral law in human conduct is due either to unreasoning impulse or views of expediency, or both combined. The rules of morality and expediency must of necessity be identical as to acts or conduct affecting the actor alone, for it is right to do what best promotes his permanent welfare, and it is also expedient. The departure from the true course in such matters is usually due to a desire for some excessive temporary pleasure, to be compensated later by corresponding pain or depression, or the gratification of some particular desire at the expense of others more laudable.

There is full liberty of choice of food, clothing, ornament, labor, recreations, fields of inquiry, aims in life, ideals, and of every activity so far as each of them is equally consistent with human welfare.

In conduct affecting others expediency is the justification which the wrongdoer makes to himself for the greatest departure from moral rectitude. Murder, robbery, theft, forgery and every other crime and intentional wrong to others, have their root in a belief or impression of the expediency of the act. Expediency is the justification claimed for all crafty schemes through which men gain riches and power to the detriment of others. Expediency is the excuse for falsehood and cowardly neglect of duty. The inability of a man to protect himself and those dependent on him by strictly moral means makes room for resort to immoral acts, deemed necessary. It is immoral to kill or maim another, yet deemed justifiable in self-defense or to protect one's family. Though expediency prompts to all kinds of immoral conduct, it has its legitimate field of vast extent. There are many different ways of accomplishing a desirable end by moral methods. The choice and use of expedients are the most common employments of the mind. The moral law fixes limitations. Expediency may freely lead in every path that touches no forbidden ground. The diversity of human accomplishments is due to choice of expedients and ends to be accomplished. Choice and use of moral expedients for moral ends are the true field of liberty. Choice of food, clothing, habitation, furnishings, labor, repose, recreation, amusement, associates, literature and moral purposes to be accomplished, affords an illimitable field for selection of activities. One may freely follow the dictates of his own tastes and inclinations wherever full liberty of action is permissible.

Parental Authority

Whatever the social state, from the lowest savages to the most cultured nations, parental authority over young children is recognized everywhere. The parental relation is established by the divine law of reproduction. Among the most degraded

savages the relation of the mother to her child is obvious, while that of the father is often obscure or wholly unknown. All the burdens connected with rearing the young are borne by the mothers, who are often enslaved and oppressed by the males with whom they come in contact. The first well defined step in the advancement of civilization is the establishment of family relations with fathers recognizing definite relations to their wives and children. As society improves, the purity and strength of domestic ties increase. The happiness of each person and the welfare of the state are dependent everywhere on the measure of love, unselfishness and devotion to duty prevailing in the homes. To rear and protect their offspring, parents must direct, restrain and instruct them. The rulership is arbitrary in the sense that the parent acts according to circumstances on his own judgment and without restraint from fixed rules. The protection of the child from mistreatment lies in the love of the parent, who finds joy in the comfort and happiness of the child and pain in its suffering. While anger and hatred are sometimes exhibited by parents, pity and love almost invariably temper the blows and quickly restore the bond of sympathy. No other shield against harm could possibly be found of anything like the strength and efficiency of parental love. While parents have full power to direct and restrain, they must of necessity accord to their children an ever increasing measure of liberty of action commensurate with their expanding strength and mental powers. Lessons in self-reliance are necessary and may be taught to the very young with advantage. It is often better to let the little child suffer the punishment nature imposes for its act than to restrain it. The pain caused by heat and cold can only be clearly understood by experiencing it. Pain is a sentinel that warns of immediate danger, and through some pain the child must learn what to shun. What dangers and sufferings the child should be subjected to must depend in great measure on the care and instruction the parents can give it. The child has its rights and is entitled to its due measure of liberty. Of the limitations of these the parents of necessity must judge from time to time, till the capacity of the child to

govern himself is approximately equal to that of the parent to govern him. Nature fails to indicate a definite size or age at which this capacity first comes into existence. In Rome the power of the father over his son continued throughout life and over his daughter so long as she remained under his hand, that is till she married and was transferred to the family of her husband. The patriarchal system was a very natural development in those parts of Asia which were inhabited by a settled population, living under peaceful conditions and supporting themselves from agriculture or pastoral pursuits. The father of the family was the natural head of it, and the family included grandchildren, as well as children, and all other members of the household. Polygamy in places greatly extended the membership of the family and made the head of it a ruler over a community. To people reared under such conditions a paternal government would appear to be the only natural one. Among savage tribes like the American Indians and the lower Africans frequent wars disrupted families. The leadership of war parties was taken by the strong and vigorous young men, and their feats in arms gave them influence in the councils of the tribe. The elders were listened to in council, but lacked the requisite strength and endurance for commanding war parties. The organization of such war-like tribes was democratic, and combinations of the Indian tribes mostly took the form of confederacies.

In the Asiatic monarchies the king assumed authority over all the people similar to that exercised by the father over his family. This power was arbitrary and without limitation. The theory of such a government is false, because the love, which is such an active and constant monitor in the home and furnishes such a safeguard against oppression, is wanting in the kingdom. The love of even the best of kings for their subjects is largely theoretical, and in the nature of things cannot be the same in quality as that of the father for his own family. The restraining force being absent, tyranny of course results. In a populous state warm sympathy for and full appreciation of the peculiarities of each citizen by the sovereign is impossible.

Public Regulation of Private Morals

Ought the state to concern itself with private morals? That the state, which is but the aggregate of all the people in it, is deeply interested in the morals of every private person in it is clear, but that the public can interfere with the conduct of a person which concerns him alone with advantage either to him or to the state is not so evident. The Greeks deemed the culture of physical strength and beauty of form a matter of public concern as well as mental and moral training. The code of Manu deals minutely with many habits of body and mind and private acts affecting the soul, and prescribes penances and expiations for infractions of its rules. It seeks to direct the soul in its struggle to gain mastery over the body and all evil propensities of body and mind. Religion and education are the forces employed to guard against all secret violations of its commands. From early youth the people are taught that the law is self-enforcing and that every infraction of it is followed by certain and adequate punishment. In China mourning for the dead is deemed a matter of prime importance, and is enforced in the prescribed form under severe penalties. While the Book of Rites deals mainly with forms of intercourse between different persons, it also enjoins many observances affecting the individual alone. Mohammed strictly commanded ablutions, the morning and evening prayer, and other personal observances tending to cleanliness and health as well as requiring the observance of religious forms. The Church of Rome also takes cognizance of private morals and requires confession of secret sins and imposes penances for the expiation of them. Other Christian churches also deal with secret acts affecting the actor alone.

The prevailing doctrine in America and the more advanced states of Europe is that the citizen is accountable to himself and the Supreme Being only for his private morals and care of his personal welfare. This doctrine is adopted both on the ground of rightful liberty and of the inexpediency of state regulation of purely personal concerns. It must not be inferred however that this non-interference by the government

indicates indifference on the subject, or an entire lack of public influence in the direction of the best private morality. Through the public schools educational influences, potent and far-reaching, are brought to bear. By encouragement to acquire knowledge, to love truth and form and follow high ideals, the state leads rather than drives to purity of private morals.

Public Regulation of the Family

Should the state undertake to regulate and improve the relation of members of the family to each other? That these are of the highest interest to the public does not admit of doubt. The citizens constituting the state are reared in the homes and started in life with such opinions, habits and purposes as home influences have produced. Vicious and immoral parents usually rear children with similar character. On the other hand lofty purposes and upright conduct are best promoted by the lessons of the domestic fireside. From the home atmosphere of love, devotion to the welfare of each other and kindness toward all mankind radiate those warm and vitalizing influences that stimulate the growth of all that is good on earth. Viewing the importance of preventing the propagation of evil and of encouraging the growth of virtue, may the state safely leave the homes to be ruled as the members of the household deem best? This presents the practical question, where can better influences be found than those which spring spontaneously from matrimonial unions. The state concerns itself with the foundation of the household by marriage. Only in the lowest and most degraded tribes is promiscuous sexual intercourse tolerated. Though polygamy is lawful among more than two-thirds of the people of the earth, there can be no doubt of the superior morality of the union of the single pair. This is indicated by the near approximation in the numbers of each sex born into the world and is recognized even in the countries where polygamy is allowed, for in them monogamy is the rule and polygamy the exception. A few tribes allow plurality of husbands, but this system is regarded with almost universal disfavor.

There is great diversity in marriage ceremonies, but these are of relatively small concern. It is far more important to determine who may intermarry. Restrictions preventing the lower classes from intermarrying with the higher are most marked in India, and are common with the princely houses of Europe. These are designed to prevent the upper from being contaminated with the lower orders.

The family being established by lawful marriage its government is usually left almost entirely to its own members. The theory of domestic rulership varies from the *patria potestas* of the Romans, with power of life and death over all members of the household, including adult children and their wives and their offspring, to that of equal rights of father and mother over minor children and complete emancipation of the children at the legal age of majority. The right to punish children is universally conceded to parents, subject in advanced states to the limitation that the punishment must not be cruel or excessive. When it is considered that the citizens constituting the state are born and reared in these households, the vast importance of domestic morals is apparent. If the state can improve them by regulation it is desirable to do so, but before the attempt is made it must be found that the moral purposes of the state, as an organized acting force, are better than those generally dominating in the homes. It seems clear that this cannot be safely asserted, even in the best governed states, but that the reverse is generally true, and that the impulses which advance public standards originate in the homes. This of course is most apparent in democracies and republics, but domestic morals exert a profound influence, even under the most despotic governments. In this connection it must be noticed that there is as wide a difference in the character of households as of persons. Virtue and all noble impulses germinate in the homes, but so also does much vice. Moral as well as physical qualities usually, though not universally pass by inheritance from parent to child. The ancient Spartans encouraged propagation by the strongest and most perfect physical specimens, and exposed the defective infants. They however grossly underrated the factor of

love and devotion of husband and wife to each other, so absolutely essential to the highest development of the moral character of the offspring. Where husband and wife are normally healthy physically and morally there is little or no need of state interference with their domestic affairs, but may not society interfere and protect itself from the consequences of those unions that are productive of vicious and defective children? Ought the criminal, the insane and the imbecile to be allowed to marry and multiply their kind? No intelligent stock-raiser allows the propagation of defectives among his flocks and herds. He takes the utmost care to eliminate them, and understands quite well how to improve the breeds of horses, cattle, hogs and fowl. The wise farmer carefully selects the seed for his fields, excluding every defective kernel as far as practicable. Neither among domestic animals nor field crops does he hope for good results from bad seed. Why may not society exercise the same care and intelligence with reference to the propagation of the human race that it does over the lower animals? To answer this question we have first to determine whether it is morally right to protect future generations from criminals and defectives by preventing their propagation; second, whether it is expedient to do so, and third, what system can be adopted and what are the limitations of the rightful exercise of the power.

In a household which starts from a well mated, healthy and congenial pair, perfect liberty to live lives of devotion to each other and to their children is recognized as of the highest value. So sensitive and delicate are the adjustments of the affections that no one without the circle can fully appreciate or understand them. All such pairs realize their responsibility for their own welfare and shrink from all outside interference. The state generally recognizes its inability to add to domestic happiness, and interferes only in those cases where one or both parents have been grossly derelict in duty or children are incorrigible. The moral right to domestic privacy and freedom is generally conceded, and the inexpediency of state interference with domestic relations under normal conditions is recognized.

In the treatment of children parents act according to their own dispositions and capacities and those of their children. The uplifting force is love and devotion to their welfare. The happiest homes are doubtless those where the parents are able to lead their children in the right paths by reason; where all good impulses are sympathetically encouraged and the capacity for self-restraint developed as early in life and as rapidly as possible. Where force is resorted to it should always be as a temporary expedient to overcome resistance of authority. Its educational value can be no more than to inculcate the lesson that resistance is futile, and it is therefore necessary to make its use accomplish the desired result. It may well be doubted whether beating, scolding or restraint of liberty, inflicted merely as punishment for disregard of duty, ever accomplishes a beneficial result. The problem is to arouse the impulses that lead to right conduct. Blows excite a spirit of resentment and angry words responding anger. The spirit manifested by the parent arouses its counterpart in the child. Fear of punishment tends to cowardice, resort to falsehood and deception to avoid the punishment, rather than to stimulate a wish to do the things the parent will approve. The legitimate object of correction is improvement in the child, and this can only come by stimulating good impulses, convincing its reason, or awakening its perceptions of the moral quality of the act or duty involved, or leading it to see advantage or superior enjoyment in good conduct. It is often assumed that very young children can be ruled only by force. Adults are led by suggestion. The force of suggestion is most potent to the infant. The incapacity of the parents to lead by suggestion induces resort to force to drive the child in the desired direction or punishment after the act for misconduct. The primary need is that the parent be instructed in the art of governing children.

On no subject is the law more divergent than that of divorce. Even among the states of the American Union there is nothing like uniformity of rule on the subject. Theories vary all the way from allowing divorce at the pleasure of either party to denying it altogether, and the practices pre-

vailing go nearly to these extremes. A decree of court is required in all the states, but in many of them it may be obtained for slight cause and under few restrictions. The Hebrew law allowed the husband to divorce his wife at will, and Mohammed announced the same rule in substance. The objections to divorce do not appear so serious where there are no children of the union, but a child has claims on each parent for love, care and protection, and a right to a home with both father and mother in it, bound together by love. Parents of little children cannot divide the home without violating the moral law. But when husband and wife find themselves utterly unable to live together in harmony, what is to be done and what rule of public law can make adequate provision for the case? No decree of court or administrative process has ever been discovered that can compel kindness and affection. The moral rules applicable to the conduct of the parties are not difficult to perceive, but unless they voluntarily follow them, no external force can compel them to do so. By allowing a divorce the law sanctions the disruption of the family, by denying it an innocent party may be doomed to endure unbearable treatment. The obligation of the state to provide as far as practicable against unsuitable marriages and to make conditions as favorable to domestic happiness as possible may call for attention to many matters now neglected. The possibilities of improvements along these lines present a field too wide to be covered in this brief review.

Crimes and Punishments

The primary domestic function of a government, recognized in all ages in all countries is the preservation of order and protection of the citizens from violence and wrong other than such as the governing power and the sentiment of the people tolerate. In the most primitive states violence to the person is the prevailing form of crime, and retributive justice usually takes the form of vengeance inflicted by the injured party or his friends. For homicide the kinsman of the murdered man may kill the murderer. In some states provision has been made for the payment of blood money to appease

the avenger, and for places of refuge into which the avenger may not follow. In the code of Hammurabi of Babylon, the Jewish and other ancient codes the *lex talionis,* wrong for wrong, was the rule of punishment; for any injury a corresponding injury to the wrong-doer. There is something in this simple rule that seems to appeal to the sense of justice of the child and of a great part of the grown people as well. To return blow for blow, when attacked, and to kill an assailant, when necessary to preserve one's own life is regarded as justifiable in the most enlightened states. Self-preservation appears to be a natural right. Organized society goes farther than this and after the danger is past, the culprit overpowered and held securely, as a return and punishment for the wrong done, inflicts a corresponding wrong on him. In considering the general aspect of the administration of the criminal law in Christian states the first question to be considered is, is it morally right in principle, second, is it the most expedient to promote the general welfare. Writers on political science are unable to agree on the theory of punishments. The primitive idea is to compensate crime with suffering, and deter the commission of like offenses by fear of like punishment. This view is still widely entertained. Another is that the state takes such measures as appear necessary to protect society from a repetition of the offense, abstaining from merely vindictive punishments. A third is that society owes a duty to the culprit, and should aid him in every way to overcome his unsocial propensities; that the state has no moral right to inflict injury or pain on any human being for the mere purpose of punishment for any act or conduct; that good will toward the culprit must prevail in his treatment, and his welfare and reformation be prime considerations. That the state has the moral right to do whatever is necessary to protect the people when the criminal openly violates the rights of others and forcibly resists the rightful exercise of private rights or public authority, and that he must be left in danger of injury while the struggle continues and cannot claim protection from the public against the immediate consequences of his own acts, appear evident.

But when the power of resistance of the criminal is overcome, what measure of duty does the state owe him? It cannot then do him harm on the plea of immediate necessity. Can there be a defenseless human being wholly without the pale of governmental care? May the state assume a permanently hostile attitude toward criminals as men, or is it morally bound to have the same concern for those who, because of innate defects or unfavorable environment, have committed crime, that it has for normal humanity? It is apparent that the infliction of the death penalty is not on the theory of conferring a benefit on the criminal. Confinement in jails and penitentiaries under needlessly rigorous conditions rarely has any tendency to reform, but on the contrary stimulates the study of crime, induces hateful and revengeful feelings, and at the end of the term turns out a more expert and hardened criminal. The view generally entertained is that the system followed tends to protect society from further wrongs by the criminal and also to deter others from ilke offenses by the fear of like punishment. So far as the criminal's own conduct is concerned experience abundantly proves that the protection of society ends with his confinement. Unless he goes out with better social purposes than he had when he went in, the public purpose has not been accomplished. It is at least doubtful whether cruelty has any tendency to convince him of the immorality of the act for which he is punished. He will, however, readily perceive the immorality of the excessive cruelty to himself, and hate those who inflict it on him. The state being responsible for his confinement; he quite naturally attributes all his suffering to the public and feels that society in general is his enemy. To put him out into society with such feelings is almost equivalent to an invitation to recompense himself as best he can at the expense of society for the wrongs done him. So far as the tendency to deter others from like offenses is concerned, severity of treatment in confinement can have no effect unless known to the persons whose conduct it is desired to influence. This could only become generally effective by making the barbarities practiced generally known, which of course the state and the prison officials would be unwilling to do.

The researches of modern criminologists disclose the extreme crudity of the penal codes of Europe and America, which yet appear far better than the ancient *lex talionis* or the Asiatic codes of modern times. Malicious murder, deliberately committed, always produces a profound sensation of horror, usually accompanied by a general desire for speedy vengence on the murderer. Of such murders many are induced by a desire of revenge for some real or fancied injury. These are seldom if ever committed under normal mental conditions, for the normal state of the human mind is one of either indifference or good will toward others. The misanthrope is such because he is abnormal from birth or made so by subsequent influences. The normal healthy person desires the welfare of others, and it is because of this general feeling that the community is shocked when a murder is committed. If all or a majority were misanthropes, they would feel pleasure rather than pain at the destruction of a human life and applaud rather than condemn the act of the murderer. The law now prohibits the friends and relatives of the murdered man from killing the murderer under the natural promptings of anger and resentment caused by the deed; but after trial and conviction, it requires a public officer, having no feeling in the case different from that of the general public, to put the murderer to death, deliberately, intentionally, and at a time and place appointed by the court in accordance with the law. In a large part of the cases the general summing up of the matter is that the murderer has taken a human life to gratify his private desire for vengeance, and the public has taken his life to gratify a general desire of the people for vengeance. Hatred moved the murderer to commit the deed, and hatred of the crime, carried on to hatred of the human being who committed it, induces the public to execute the murderer. Not only is the public act similar to the private crime, but the motive inducing it is essentially the same. In morals then the punishment is wrongful as well as the crime.

One of the cardinal doctrines of the criminal law is that the defendant must be tried for the particular offense with which he stands charged, and the inquiry be strictly limited

to his guilt or innocence of that offense. It is not a century since people were executed in England for small larcenies and other minor offenses. The extreme penalty of death was inflicted for the single act without reference to the general character and conduct of the culprit, or to his environment. It is apparent that organized society has no greater moral right to harm a citizen merely to gratify the general desire for vengeance than a private person has.

The whole system of harsh punishments rests on views of expediency for its justification. It is doubtless true that some people are deterred from crime by fear of punishment, but it is equally true that criminals usually rely on concealment of their crimes and escaping the punishment, whatever its severity. The moral tone of any state that punishes harshly is necessarily low. Reports of the hangings of criminals shock the finer sensibilities and teach lessons of hatred and disregard for human life. If the state is cruel and merciless why may not the private citizen be so too? The criminal in fact seldom weighs the punishment against the crime, He always expects to avoid conviction and escape the penalty, whatever it may be. Fines and forfeitures may deter from conduct having no moral turpitude, but prohibited by law, but have little influence on hardened criminals. The best justification that can be found for vindicitive punishments is that the state has not sufficient intelligence and moral force to find better means for the execution of its laws. If laws prescribe punishment for their infraction and no other means of compelling obedience to them, then the punishment must be administered or the law is without force. The general sentiment of mankind is strongly in favor of law enforcement, so vindictive punishments continue.

Can expedients be found for the prevention of crime and the protection of society without the violation of the moral law by the state itself? Manifestly this question must be answered in the affirmative, yet perhaps no person is capable of giving a full and clear statement of the expedients which would fully accomplish the object. Parents find it necessary to study the peculiarities of their children and to adapt their

corrections to these peculiarities. This however is of minor importance, for the secret of success in governing the young lies in earnest loving care, which instructs and leads the child to act for its own best interests and greatest joy, which gives liberty to choose where the question is only of expediency or taste, which makes clear the consequences of wrong-doing, not in arbitrary human punishment, but as ensuing naturally and necessarily from the misconduct itself. It is by leading the child to a clear understanding of the advantages of good conduct, and by instilling lofty sentiments of virtue, truthfulness and kindliness, coupled with the opportunity to realize in practice the truth of the instruction, that strong characters are formed. Mere abstract teachings may not be, and usually are not, comprehended. The child must be led in the right paths and restrained from going in the wrong ones. At no time and under no circumstances is it permissible for the parent to exhibit or feel hatred toward the child. Love attracts, hatred repels. No person can by any possibility exercise a beneficial influence under the impulse of hatred. Neither cruel beatings nor weak indulgence in wrong-doing is to be tolerated. The parent must maintain a close bond of interest in the doings of the child, encouraging all good deeds, and pointing out the evil and showing why and wherein it is wrong. Children instinctively rely on parental instruction, if parents are truthful and sincere, and delight in their sympathy and approbation. Knowledge that an act is condemned by parents who are habitually kind and sympathetic is usually sufficient to prevent its repetition. To restrain misconduct and compel the performance of duty the use of physical force is sometimes necessary; but when used it should always be made manifest that it is justly used for good ends. Many parents lack moral force and are unable to control their own passions and weaknesses. The children must then suffer accordingly. In such cases whence is the elevating impulse to emanate? Usually and mainly from the love of the parent for the child.

To society the correction of its weak immoral and vicious members presents the same task but in a different form. The

state undertakes to protect each of its citizens against the violence and aggression of others. Most monarchical governments have been based on the principle of paternal authority in the ruler over all the people. Unfortunately the exercise of paternal power by a ruler over great numbers of people lacks the sympathetic element which emanates from the parental relation. The king has a great many bad children whom he proceeds to punish. He knows of their vices only. These he hates and carries the hatred on to the possessors of them. He punishes in a spirit of vengeance and harshly. From the bamboo to the headsman's axe the purpose is to extirpate crime and inspire fear in others of like rigor for like offenses. To perform the service of administering the punishment men are chosen who are not greatly shocked at exhibitions of cruelty, and even delight in it. Though instances of compassion for criminals are not wanting in Christian countries, and at times morbid sympathy is exhibited, the general spirit is all too similar to that in despotic governments.

To approach the consideration of crime with a feeling of genuine desire for the welfare of the criminal as well as of society may be beyond the stage of morality generally prevailing, yet it is not too soon to perceive and declare the true principles applicable to the subject. Everyone who has had much experience with criminals knows that practically all of them have virtues and are susceptible to friendly attachments as well as other people. They are usually specialists in crime. The homicide may be truthful and scrupulously honest in the payment of debts and performance of contracts. His crime is generally due to some abnormal emotion. It is impossible to draw a clear line of demarkation between irresponsible insanity and responsible passion. The legal rule that the defendant is responsible for his act if he knew at the time of committing it that it was wrongful, even though he was powerless to master his passion, is harsh when the purpose of the law is merely to measure out a given quantity of punishment. The forger, the pickpocket, the defaulter or the perjurer, may have as little inclination to do bodily harm to another as the most exemplary citizen. The robber and the

horsethief almost invariably have generous impulses and devoted friends to whom they are strongly attached. The perjurer may have no other prominent vice, and may have friends whom he does not deceive. Crime may be committed in accordance with a well defined inclination to a particular class of offenses, or under stress of circumstances which produce a temporary moral depression. This is more apparent in homicides than in other crimes, but offenses against property are often the result of temporary external influences which the culprit cannot resist. To weigh the conduct of a person charged with crime fairly, the judge should be able to see his act from his standpoint. This he is but rarely able to do. Everybody departs more or less from the strict line of moral rectitude. The Chinese, more logically than the Europeans, treat every failure to perform a duty or obligation as an offense to be corrected, and grade punishments according to the magnitude of the wrong done and all the circumstances connected with the offense. They are however far less sympathetic in their treatment of offenders than Americans.

It is now quite well understood by criminologists that a single offense may be committed by one who is not necessarily starting on a career of crime, but may completely overcome his criminal inclinations; that it is necessary to know the character and environments of a convict in order to understand how he should be treated with a view to his reformation, and that men are made better by sympathy and encouragement in doing what is right and useful, rather than by harsh punishments. Many crimes are directly attributable to abnormal and diseased conditions of the body or the brain. Some of these can be speedily and certainly cured by surgical and medical treatment. Instead of burning or hanging the humane and logical punishment of rape would be castration, which would free the culprit from all further impulse to commit such a crime. The same operation might be performed with great advantage on some of the imbecile, insane and criminals of other sorts. Imbeciles who are a public charge certainly ought not to be allowed to propagate, nor the incurable

insane or confirmed criminal. This like every other treatment of unfortunates should be done in a spirit of kindness, and for the purpose of benefiting rather than injuring them. In many states laws are now in force prohibiting the marriage of members of these classes, but such laws are by no means a full protection to society. In many cases it is necessary to take more effective measures. The exercise of such power is not necessarily liable to greater abuse than of others now commonly employed. Whatever measures are taken to cure mental and moral diseases should be prompted by the same motives as those which prompt surgical operations or medical treatment for normal people. All these unfortunate classes are children of the state, and the state is responsible for their welfare.

Opposed to the performance of its moral duty by the state in the treatment of criminals and defectives are views of expediency. In apprehending and disarming criminals and lunatics it is often necessary to employ force and to do them bodily harm, yet a resolute man can often make an arrest without any injury, where another would have a serious conflict. It is impossible for the state to always select the best possible agents to do this work. So long as men are imperfect, they will fall short of the best possible achievements in every line, and a state, acting on the most humane and enlightened principles and theories, will necessarily exhibit imperfections in practice. It is of the utmost importance however that the state free itself from every just charge of acting on the principle of hatred toward any class of its citizens. Charitable institutions, prompted by sympathy for unfortunate humanity, are being rapidly multiplied. The elimination of all the burdensome classes by wise and just means is not an idle dream, but an accomplishment which may be approximated in the near future.

The code of Hammurabi of Babylon exhibits the spirit of hatred toward criminals. Of all punishments, maiming, so frequently imposed by this code, is the most impolitic, for it leaves society still burdened with the criminal after his power to be useful has been diminished and his hatred for others

stimulated. To put out an eye or cut off a hand or foot is a most shocking exercise of cruelty, yet such punishments were long recognized as just throughout Babylonia and Judea.

One of the most valuable ideas developed by Bentham in his Morals and Legislation is that of the fecundity of various impulses. Much of the cruelty and misery in the world has resulted from laws like those of Babylon, which constantly instilled a lesson of hatred into the minds of the people. The propagation of sentiments of amity and sterilizing those of enmity are matters of prime importance for the consideration of legislators in dealing with crime, and should not be left in the sole care of moralists and religious teachers. It is evident that no state ever has or ever can weigh out and impose on each culprit a measure of punishment nicely balancing his offense. The multiplicity of considerations to be taken into account in each case is so great that adequate judicial machinery cannot be constructed for the work. Restraints seem necessary, and the imposition of them must be in accordance with law by public agents, but the deeper and stronger purpose is to induce good conduct. Wars, the execution of criminals, torture and all vindicitive punishments propagate the spirit of hatred and induce criminal conduct.

National Crimes

The strong nations are subject only to self-imposed checks, prompted by sentiments of justice, selfish interest, fear or other considerations influencing their conduct. There is no superior force to restrain or punish them. That great nations commit great crimes is apparent. The example of an aggressive war teaches all the people of the nation a lesson of crime. While the nation itself acts the part of a criminal how can it hope to instruct its citizens in morality? An aggressive war to take by force that which belongs to another is identical in principle with the deed of the robber. The incidental slaughter in battle corresponds exactly with the murders the robber commits in getting his booty. Logically the state should deny to itself utterly the right to use military force against another except in self defense. The moral law ap-

plies as well to nations as to persons. It is only by full recognition of its binding force in all human relations that a state can hope to deal successfully with its morally weak citizens. Judicial settlement of international disputes in accordance with fixed principles is indispensable to a complete scheme for the elimination of crime. The false lessons inculcated by a great war affect the moral tone of the people for generations. The nation should be the great teacher and exemplar of morality. When it voluntarily goes to war it becomes a great teacher of crime.

Legislative Morality

The functions exercised by a state are divided into legislative, judicial and executive. Briefly stated, the legislature declares the law, the judiciary interprets it and determines its application and the executive carries it into effect. It would seem that the business of a law making body would naturally be to formulate rules of conduct and of rights expressive of the moral law. The most casual examination of the work of any such body will disclose the fact that considerations of expediency largely predominate, and that the pure moral law is generally regarded as too good for practical use in a world where men are constantly seeking personal advantage by the use of more or less immoral expedients. In defining crimes the legislature gives names to certain classes of immoral acts. The list is brief when compared with one including all the immoral conduct of which people are guilty, but it includes those most vicious and common. Concerning some vices there is a tendency for public opinion to ebb and flow, and for legislatures to adopt extreme measures of repression at one time and at another to indulge the utmost toleration. Thus drunkenness, gambling, prostitution, liquor selling, usury taking and like offenses are sometimes visited with severe penalties, and at others with none. Heresy, witchcraft and other fictitious crimes are at times visited with death by torture and at others laughed at as absurd. Resistance of an oppressive ruler is treason when unsuccessful and patriotic revolution when it results in the expulsion of a

tyrant. Smuggling goods is an offense or not according to the prevailing policy of the government with reference to revenue and foreign trade. It involves no moral wrong when the trade is in useful articles and the parties to the transaction are mutually benefited, except as there may be a moral obligation to pay a tax on the goods.

On the other hand there are moral wrongs in great number which European and American states never attempt to punish as crimes. It is morally wrong for an able bodied man to live by begging instead of useful labor. This is sometimes punished though the beggar gets only the most meagre subsistence from the public. It is a far greater moral wrong for a strong healthy intellectual man to live in idleness and luxury on the labors of others, yet those who have means to do so are not only never punished, but are usually looked up to as of a superior class. It is always wrong to refuse to pay a just debt when able to do so, but it is not classed as a crime. It is a moral wrong to withhold from another anything that of right belongs to him, yet in many cases it is not regarded as a crime. The Chinese more logically classify all wrongful acts and failures to perform duties as punishable offenses. It is morally wrong to fail in any duty to aid another, yet rarely punishable. It is morally wrong to refuse to do a useful part in life and exchange service for service and kindness for kindness, yet it is not and seldom could be a punishable crime.

From the instances given it is apparent that a legislative body in selecting offenses to be punished is governed by views of necessity and expediency. It is utterly impracticable to have courts sitting in judgment on every trifling deviation from strict moral rectitude. Such trials would be an intolerable burden, productive of great harm and little or no good. The legislature therefore selects such crimes as appear most dangerous to society and imposes penalties for their commission. In dealing with these it is a matter of great difficulty for the state to keep within moral limits. With the abolition of whipping posts, pillories and the death penalty and the adoption of more humane treatment of prisoners in places of confinement, there are evidences of a grow-

ing conviction that the state has no moral right to do evil to a criminal to gratify public hatred of the crime. The true theory of the relation of the state to criminals is that it is one of guardianship and similar to that assumed in the care of lunatics. Its duty is to protect the public against their violence and cunning, and at the same time promote the welfare of the culprit.

In dealing with the rules governing what are termed civil cases the legislature has a far wider field to cover. Crime is abnormal and exceptional, but in highly civilized states the people are interdependent, and the rules governing their dealings and relations have more or less effect on all. It would seem to be the business of the law-making power to elaborate and arrange in logical order all rules which are to be observed as law. It would also appear to be its duty to make every rule conform to the moral law; in fact to make rules which are merely expressive of the moral law applicable to each different class of relations and transactions. Neither of these things, however, has ever yet been accomplished. Nothing can better illustrate human selfishness and fallibility than the deficiencies and imperfections of the great codes which have been promulgated in different ages and parts of the earth. Cases continually arise for which there is no provision, and doubts as to what rule governs under a given set of circumstances perplex the judges. All great codes have been in main compilations of the rules already observed in the courts, and have naturally embodied whatever unjust and immoral system had been before firmly established. Thus the Code of Manu, so exalted in much of its principles, is based on classifications of the people designed to maintain the supremacy of the priestly and military orders; The code of Justinian merely continued the laws concerning slavery, personal relations and property rights with slight modifications, none of which reached their fundamental immoralities, and the Chinese code adheres to the theory of the inferiority of women and cruel punishments for all serious derelictions.

The absence of any general codification of the law in English speaking countries may be accounted for in part by the

greater complexity of industrial and commercial affairs, the rapid substitution of new methods for old, and the adherence to judicial precedents to supplement the statutory law. The difficulty in bringing a large representative body like the British Parliament or an American legislature to an agreement on so many and such varied topics as would necessarily be included in a code covering the whole field of civil law is too great to allow a complete codification at one time and as a single act. Codification by topics is more feasible, and some progress has been made in this way in several states. The rapid multiplication of judicial precedents, the disposition of some courts to draw nice and even fanciful distinctions in order to reach a desired result, the breaking down of wholesome rules by the multiplication of exceptions to them, and the growing impracticability of administering substantial justice by the system now followed, call for some form of more concise and authoritative statement of the law. The multiplication and diversification of business enterprises and combinations have complicated the law of agency, employer and employee, corporations and kindred topics. Continuing development will doubtless cause many more rapid changes in methods. The law governing the new relations thus developed cannot lead, but must necessarily follow the new conditions. Codification for the future can only cover the field of past and existing needs; it cannot adequately provide for the unknown.

The principal functions ordinarily exercised by all legislative bodies relate to the creation of offices, defining their functions, designating the manner of filling them, levying taxes, expending public money and regulating the various branches and departments of the governmental system. In exercising these functions they work in the true field of expediency. There is nothing in the moral law indicating the number of officers needed by a state, the duties properly attributable to each, the length of time each should serve or the mode of their selection. It does, however, require that each public servant should render a just equivalent in service for the salary he receives, and impose restrictions on his invasion

of the rights of the people. In devising and constructing the machinery of government the law-making power has the task of providing governmental agencies to restrain the people from doing wrong and to compel them to do right. In this it undertakes to exert a moral force superior to that which directs the conduct of such of its citizens as it is designed to regulate. All experience proves that the men chosen for official positions, no matter what the form of the government, are not distinctly superior in moral purposes to the average citizen. They are however superior to the classes most needing restraint and supervision. By carefully defining their duties and strictly limiting their powers the officers are restrained from misconduct and instructed in the performance of their duties.

The law-making power constructs the judicial system, establishes courts, provides for the selection of judges, fixes their compensation and tenure of office, prescribes rules of procedure and is responsible for the principles of law administered in them. It also outlines the organization of all the executive branches of the government, fixes the number and prescribes the duties of each class of officials and provides compensation for their services. It authorizes the organization and equipment of armies and imposes taxes to maintain them. In doing each of these things it is evident that the end to be accomplished should be a moral one, but in devising means to accomplish it, the legislature necessarily chooses such instruments and methods as it deems best adapted to the end. Considerations of expediency are controlling. If these were necessarily considerations of public expediency, the state would be in no danger except from errors of judgment, but unfortunately personal and party expediency are quite too often controlling considerations. Where autocratic power is given to one man, his ambitions and personal interests usually outweigh the public welfare. If he has the instincts of a robber, he makes war on his neighbors for his own aggrandizement, and leads his subjects out to be maimed and slaughtered in the effort to kill others. Where the law-making bodies are composed of many members, factional and party

expediency often leads astray. An exchange of personal favors between members at the public expense is also a most fruitful source of bad legislation. There is a never failing tendency to multiply offices and increase salaries to the utmost limit that the people will bear. This is true of all forms of government, though most extreme in the most despotic. It results everywhere from mere motives of personal expediency.

There is a further question in which no moral consideration is directly involved, yet concerning which there is much strife and hot contention. What business functions and useful enterprises ought the state to conduct? With the increasing disposition and capacity of men to combine and coöperate in enterprises calling for concert of action, industries have developed employing great numbers of men. Railroad, telegraph, mining, manufacturing and trading companies, deal with so many people that their management becomes a matter of public concern. It is demonstrated that they can be operated successfully by private corporations acting through their own agents and officials and under their private laws. It is also shown by experience that some of them can be successfully operated by public agents. The question then is primarily one of expediency. Yet expediency deals with the selection of means to accomplish ends, and we often find public expediency and private in sharp conflict. Whenever it can be truthfully said that the public is as well served by a private owner or corporation as by a public agency, it would seem to accord with the principle of liberty to leave the business in private hands. But where the governing agency of a private corporation uses its power to enrich a few at the expense of the many, or fails to give as good service as its revenues warrant, it would appear necessary to either effectually supervise or assume the management of the business. Supervision necessitates two sets of managers, one for the private owner and the other for the public. There is a marked trend in the direction of the assumption by governments of useful business functions, but no modern state has ever approximated the business organization of ancient Peru, which

singularly affords a model of state ownership of the ultimate title to all the land, mines, fisheries, flocks and herds, as well as the roads and public buildings.

In determining the expediency of assuming business functions by the state the capacities of the men whom it can and will place in public office and their moral purposes are factors of prime importance. No mere theory of organization, however attractive, can make good a lack of capacity for the duties imposed on public agents. Much may be done by those charged with the general supervision of grant enterprises to systematize and simplify the work of each subordinate, and by careful instruction in their respective parts to qualify men of moderate capacity for their work. This is equally true under public and private management. The great corporations exhibit great inequality in the apportionment of the benefit of the combined efforts of many in the conduct of their business. These inequalities are based in part on the value of the effort contributed, but much more on positions of advantage held by some, due to the government of the affairs of the corporation by a select few. This results from the plan now generally followed of allowing a majority of the stockholders to rule. It usually insures efficiency and vigor of management, but at the expense of much injustice. The Post Office, operated by the governments, is the greatest and best business organization in the world, and is a model for other lines.

The legislature makes provision for public schools, in all the American and European states, with some few exceptions. In assuming the function of educating the young in public schools modern states have done more to elevate conceptions of duty, standards of morality and efficiency in all lines of activity than by any other means. Here direct public supervision has been shown to be vastly better than private direction. The Hindoos sought to insure the education of the twice born classes by requiring the instruction of the youths as a religious duty. The Chinese encouraged learning by making it the avenue to public employment. Modern states give instruction as a preparation for all the duties of life.

The Hindoos, the Mohammedans and many Christian states regard the maintenance of the established religion and the observance of religious forms and ceremonies as not only a legitimate function of government, but one of prime importance. The Chinese regard forms and ceremonies, mournings, costumes, kneelings, knockings and salutations of all kinds as matters worthy of strict regulation by the state. It is difficult to perceive that any moral question is involved in religious ceremonial or the formalities of Chinese etiquette, though education and the general consensus of opinion may give them an artificial value hard to comprehend.

Except where limited by constitutional restrictions, as in the United States, the legislature is free to select its fields of activity, to choose the ends it will try to accomplish and the means it will employ for its purposes. It may deal with matters affecting the welfare of the individual only, with those relating to the intercourse of one with another, and with all forms of organization and combination of men, and it necessarily deals with the political organization. Viewing the limitless field of possible activity and the varied impulses that representatives from all parts of a great country bring together, it is not surprising that schemes in endless variety are presented for consideration. As a condition precedent to any improvement there must be a suggestion of something new. On the other hand, in order to proceed safely, it is necessary that a new rule of action, to be followed by many or all, should be well understood by those it affects. So, much discussion and consideration of new projects is indispensable. The reformer, imbued with the great value of his scheme is anxious to have it put into immediate operation, while the conservative objects, inquires and hesitates till thoroughly convinced that it is good. The friction caused by the ardor of those who propose and the immobility of those who resist often produces heat and sometimes conflagrations; yet the best results seem to call for something of this process, followed by a general agreement. Before any great change in the order of things can be of full benefit, it is necessary to prepare the public mind for it and educate the people to act

in accordance with it. The French revolution clearly exhibits the force of habit and education in continuing bad systems in spite of sweeping reforms devised and put forth by the legislative power. Men who had been long accustomed to obey a master could not at once find prosperity in liberty. The laborer, who has always performed tasks under a master for wages, may be and often is incapable of conducting a business of his own with any degree of success. He may utterly fail to obtain the materials necessary for his employment at the only work he knows how to do. The greatest human achievements requiring the combined efforts of many are only possible of accomplishment by specialization and division of labor. To each participant some part must be assigned which he fully understands. There must be intelligent leadership, causing all to move harmoniously with strength united and not opposing the force of one to another. The distribution of the profits resulting from a great enterprise may be most unequal and unjust, so that those who furnish the capital or direct the operations receive grossly excessive shares, yet if the underpaid laborers are incapable of carrying on the business at all without the capital or supervision, there may be no other alternative but to continue in the service or starve. In all attempts to substitute a just for an unjust system it is indispensable that those who are to be benefited be educated to act according to the new plan.

In despotic countries every combination of the people not directly authorized by the government is looked on with suspicion as likely to breed resistance of arbitrary power. In the most advanced states the various forms of voluntary organization promoted by private citizens are almost innumerable. Their numbers and size bear evidence of the increasing confidence of man in his fellows, as well as of growing capacity for combined effort. The earliest charters in England and the American colonies were granted by the crown or act of Parliament or colonial legislature as a special favor. Now corporations may be formed under general laws for designated purposes, and in many states the only limitation of purposes is that it be to carry on a lawful business or for

social, religious or charitable purposes. In recent years vast fortunes have been accumulated by promoters and manipulators of corporations by more or less dishonest transactions in their stocks and bonds. The unscrupulous men and the immorality of their methods have been concealed behind the artificial structure of the corporation. The vast aggregation of capital and combination of men under the control of the managers of the great business corporations in the United States have given great influence to them in political and governmental affairs. All departments of the government have been more or less tainted by their insidious and often corrupt methods. One of the great problems now prominently before the people is that of correcting and prohibiting the abuses connected with these great business organizations without impairing their usefulness. This cannot be done by merely regulating the affairs of the corporation itself as an entirety. It seems more important just now to regulate the operations of the men who manipulate corporations and their stock and bonds, and by indirection fleece the general public and oppress the employees of the company. The immorality lies in the acquisition of unearned fortunes by cunning and fraud. Even when the people are fairly informed concerning the evils to be remedied, the practical difficulties to be encountered in devising remedies to overcome the most powerful and wealthy combinations in the country are very great. Inordinate private fortunes are unhealthy in their tendencies and influence on the body politic. The simple and direct method of dissipating them is by the use of the taxing power.

Legislatures deal with existing conditions. It is idle to denounce penalties against crimes that no one commits, or that are so rare as to be negligible. Laws affecting property and contract rights must be adapted to needs either present or plainly foreseen. Men differ widely in their views on the abstract questions of ethics involved in the distribution of the proceeds of enterprises to which many persons contribute in various ways. One fundamental proposition seems to be commonly overlooked. A just claim to wealth in excess of a fair share of the face of the earth, its natural products and

the fruits of the toil of past generations, must be based on the personal services of the claimant. This of course excludes from view the claims of the helpless and dependent, and applies only to those able to do useful service. Service meriting reward may be rendered in any useful form of mental or physical activity, but it must be personal service of the claimant. In morals there can be no such thing as vicarious earnings. Personal merit affords the only possible basis for a just claim of reward. The ways in which one may be serviceable to his fellow men are numberless, and in the multiplicity and complication of human affairs the value of the service and the designation of the persons who ought to give the compensation for it, are often so uncertain and obscure that no definite rule can be announced. In this situation the best that can be reasonably demanded is a fair approximation to a just and uniform rule. Yet in no country are the laws based on a theory requiring personal merit as a basis of property rights. In the United States unlimited land monopoly is allowed and protected. The only limitations on the amount and kind of land over which one may exercise absoluate dominion are ability to purchase or otherwise acquire title and liability to taxation and the exercise of the power of eminent domain under which it may be purchased for strictly public uses. In nearly or quite all civilized countries the title to land and movables also passes by inheritance or will to designated persons, wholly without regard to merit, needs, amount and capacity or disposition to use properly. A small inheritance tax is sometimes imposed, but this does not materially affect the general proposition. On the other hand a very large part of the people have no land, no money to buy it with and no capital of any kind. Their sole dependence for subsistence is on employment by those who have land or other capital for wages. For a dwelling place they are dependent on the terms imposed by landlords and their ability to get wages enough to satisfy their demands. These conditions exist because the law allows them. Are the laws just in these respects? Monopolies of coal, oil, gas, iron, copper and other mineral products, and of water, waterpower, trans-

portation lines, means of transmitting intelligence, trade and industry, all rest on a similar basis. The law and the power of the state protects them. The courts confirm their titles and enforce their contracts without regard to public interests. Established legal theories and rules are followed without regard to fundamental moral principles. Justice demands more than that the destitute citizen shall have freedom to make such contracts for his services as he can. It requires that it be made possible for him to make just contracts through which he can obtain the fair value of his services. Justice also demands that the product of his service shall go to the one for whose ultimate use it is performed without the addition of any unmerited profit to the employer or exploiter. Monopoly of every kind stands between the producing and consuming classes and extorts that which it has not earned and does not merit. The law-making power is responsible for the existence of every form of monopoly. It actively promotes or passively tolerates every vice that inheres in monopoly. In the final analysis it will be found that every form of special privilege and unjust advantage has its root in the law and endures only because it is protected by the public force. The socialists point out the injustice of the exploitation of labor by those who control the capital. The remedy they propose is a complete reorganization of society. One may readily concede the soundness of their criticisms on the injustices of existing systems without approving the expedients by which they propose to remedy them. It may be that progress toward conditions of ideal justice can be made more rapidly by the use of other expedients for which the people are better prepared by custom and education. The single tax may tend to undermine land monopoly, but will it prevent further exploitation of labor? The value of expedients is and in the nature of things must always be more or less experimental. The ultimate moral purposes to be accomplished by the legislatures will remain approximately constant. Experience abundantly proves the inertia and resisting power of habit and the extreme difficulty of successfully operating a new system for which the multitude are unprepared. On the other hand, no

matter what the form of government or plan of social organization, evils clearly defined and persistently pointed out by those in a position to influence the governing body may always be remedied without disrupting the bonds of social order to which the people are accustomed. Revolution, for which the people are fully educated, may accomplish great reforms suddenly, but revolution for which the people are unprepared is quite as likely to retard as to advance the cause of justice.

The forms in which unmerited revenues are now drawn from accumulated wealth are mainly rent, interest and dividends on corporate stocks. Rent and usury are old forms of revenue and have been declaimed against from very early times. It is only recently that corporate stocks have become conspicuous. Numberless laws have been promulgated against usury, varying in terms all the way from absolute prohibition of all interest to the allowance of all the parties agreed upon. Rent has often been declaimed against as robbery. The defect in the reasoning of those who challenge the rightfulness of claims to interest and rent is mainly in the failure to go back to the right starting point. The necessity for capital in all business enterprises and the universal custom of giving its owner compensation for its use show a general recognition of the merits of economy and prudence in the accumulation and preservation of property. The service of preserving the grain after it is harvested is as useful as that of raising the crop. He who performs this service is entitled to his reward. Economy in use is a merit to be compensated with the savings. But property unjustly acquired, or gained by accident of birth or favor, affords no just basis for an income in any form, except as the possessor earns it by his own efforts combined with it as capital.

Unearned wealth, no matter how it may have been acquired, is usually either soon squandered or invested in land, interest bearing securities or corporate stocks. Modern exotic fortunes are all largely made up of such investments. The incomes of the owners derived from the rents, interest and dividends produced from such investments is then unearned tribute paid to the investors. The unjust burden may not

fall on the ones who make the final payments. It may and often does happen that they in fact profit from holding an intermediate position and that the real burden is passed on to others. This may be illustrated by an investment made in the bonds of a manufacturing company owned by a stock gambler, who acquired his wealth by fraudulent dealings in the stock market. The manufacturing company by use of the capital in a business protected by the government or so overgrown as to become a monopoly, may extort inordinate profits from the general public consuming its products and make profits on the borrowed capital largely in excess of the interest paid, or by monopoly of the labor market may withhold from its employees revenue that justly should go to them as wages. In such cases the burden of the interest is passed on to third persons with the addition of the company's extortions, and both borrower and lender gain unearned revenue. Similarly a railroad company may extort excessive income through its transportation monopoly or withhold fair wages from its employees, and after paying interest on all its invested capital, pay dividends on stocks for which nothing was paid and which therefore represent no investment. The unearned interest on unearned wealth, so invested and used, is thus paid a prosperous company out of funds derived from others. Similar illustrations might be made of the passing on to third persons of the burdens of rent and dividends on stocks. The farther the person who ultimately bears the unjust burden is removed from the ulitmate beneficiary of it the more the injustice is obscured and the greater the difficulty in obtaining redress. The real burden in all such cases rests on the consumer or the laborer or both. The vice does not inhere in rent, interest or dividends as such, but in the lack of moral basis for a demand of any payment in any form to the beneficiary. It is because the property from which they are derived is an unjust acquisition rather than that rent, interest and dividends are essentially unjust in their nature.

The inception of title to unearned wealth everywhere is largely due to governmental favoritism, monopoly, speculative operations in which there is an element of fraud, breach of

confidence or extortion, gambling and trade operations having gambling characteristics, and corporate favoritisms and manipulations. Such gains are all clearly immoral, and if full justice were practicable should be returned to the sources from which they were derived. Great gains not infrequently come from fortunate ventures in mining and legitimate trade and manufacturing, and from great inventions. The point at which such accumulations become unwholesome and detrimental to the public interest is not easy to define. Perhaps it may safely be said that this point is not reached until there is an element of monopoly or oppression attending the possession. So long as the use made of them promotes the general welfare there would seem to be no ground for public interference beyond the imposition of taxes. Ownership of land which the owner does not occupy or improve and for which he merely takes ground rent, partakes of the nature of monopoly. The universal need of an abiding place on the face of the earth and of resort to its natural wealth for subsistence renders land monopoly peculiarly oppressive. The safety and permanence of investments in land make them attractive to people having surplus means. Pride also is gratified by the possession of large estates. These influences operate everywhere and the extention of the power of the wealthy by monopoly of the land goes on more rapidly in the United States than in any other great country because the conditions favor rapid accumulation of wealth and there is full liberty to make unlimited investment of profits in land. Monopoly of particular products and lines of business is more noticeable and therefore more discussed, but it lacks the permanence and fundamental character of land monopoly. Monopoly of money and credits, while not impossible, is more difficult of accomplishment. It is always only partial and temporary, but extremely disasterous in its effects.

It is manifest that if property rights were determined by the rules of pure ethics, monopolistic extortion or any sort of fraud or crime would confer no title. If the law-making power were chargeable with the duty to make provision for righting every wrong, it would be necessary to have inquiry

made into the sources of title to all property acquired through any such immoral means and make full restitution to all who had been injured. While it is not to be expected that any system of governmental control will in practice work out ideal justice in every case, it would seem that in theory at least the rules of law should cover the whole field of ethical principles.

The moral law also has its prohibitions and negations and forbids the doing of positive wrongs. The moral law forbids the legislature to promulgate any law the natural effect of which is to produce unfair conditions for or unjust relations between any of the people. Yet the history of the world is full of instances in which the law itself has directly authorized the grossest possible oppression. Slavery has always required the aid of the state in enforcing the dominion of the masters. The state thus became fully responsible for all the immoralities of slavery. The state by its laws determines how title to the face of the earth may be acquired, transferred and enjoyed. The vices of the feudal system, which virtually made the lords of the manors masters and the tenants on their estates slaves, were the vices of the state and perpetuated by its laws. Modern great corporations are mere creatures of the law, called into being by it, and with no power or vitality beyond that given them by the state. They require the active intervention of the courts and officers of the law to protect them in the exercise of their functions. The great land owner requires the strong arm of the law to dispossess tenants who will not comply with his terms. In free America he may drive everybody from his land who will not pay the rent he demands, and in doing this the state is his servant and executes his commands in accordance with the theory of his absolute dominion over so much of the face of the earth as he has lawful title to. Monopolies of all kinds and sorts are either created or allowed by the state, and are always dependent on its protection. The government then is directly responsible for all the wrongs and immoralities authorized by it or which are necessary incidents of them. It can no more escape responsibility for the injustice which results from its laws of property than from that which inheres in the institution of slavery.

The general run of legislative enactments deals merely with details and incidents of the existing system. Fundamentals are seldom considered unless brought to view by some political upheaval. But in dealing with incidents and details the compass and chart of ethical principles should always be looked to for safe guidance in the right direction. Sound morality is not to be confined in the homes or the promulgation of it left exclusively to religious teachers. The legislature is not only itself morally bound to follow ethical principles in all its enactments, but in order "to promote the general welfare" is also charged with the duty to exert its full powers in the dissemination of such principles and procuring the observance of them. Ethical principles are not necessarily rules of cold, hard and gloomy morality, denying all pleasure and requiring mortification of the flesh without reason. They are the rules that bring to humanity the maximum of love, joy and exuberant life, so ordered that these blessings propagate their kind, continue and multiply in all directions.

It may be said that this is the domain of religion and of parental instruction rather than of governmental direction. True religion of course teaches the immutable laws of the creator, which cannot be other than the living moral law. The most serious objection to religious teaching is that its doctrines are asserted dogmatically, as having divine sanction and admitting no possible errors. Religious establishments are subject to many of the evil influences that affect secular governments. The men who direct their affairs resort to human expedients for their personal gratification and promulgate falsehood and immorality as having divine sanction. The mere claim of divine authority for their teachings results in many places and for long periods of time in precluding inquiry into the truth of them. Fair illustrations of the extreme aberrations of the religious hierarchies are in the sacrifices of the ancient Mexicans, the Druids, the Hindoo sati, the Holy Inquisition of the Church of Rome a few centuries ago with the frightful torture and burning at the stake of innocent men for the fictitious crime of heresy, and the Mo-

hammedan propagation of the word by the sword. Less vicious are the more modern extortions of contributions from needy people to maintain the pomp and magnificense of church establishment, ceremonial and priestly trappings; superstitious awe of beasts, birds and reptiles as in India and ancient Egypt and the worship of idols, immages, relics and symbols. With such forms of darkness religious law-givers have obscured the light and beauty of life. The overshadowing fault of all great religious systems is that they constantly claim divine authority and sanction for falsehood and a divine commission to close the door against all searchers for truth.

The responsibility for the good conduct of each individual rests primarily with himself. The ideal state of society is one in which each person of his own accord adheres strictly to the moral law and discharges all his social duties. Whatever the form of government or the system of laws promulgated by the legislative power, the heart and life of society will still depend on the general average of voluntary individual conduct. Wherever there is a general disposition to be just, helpful and cheerful, there will be little need of legislative rules to supplement the moral law. On the other hand, where avarice, hatred and distrust prevail, no governmental supervision can possibly fill the requirement.

Legislative Expedients

The legitimate field of legislative expedients is of vast dimensions and one in which law-makers may still find ample employment after it ceases to be necessary to direct the morals of the people. Where men combine for the common good, it is necessary to determine the form of the combination and the part to be performed by each participant. The national government of the United States is a combination for certain general purposes. The framers of the constitution dealt mainly, almost exclusively, with questions of expediency in providing instrumentalities to carry out these purposes. They established executive, legislative and judicial agencies to severally perform specific functions. Instead of combining all powers in one man or set of men they divided them so

that each should be a check on the other. They vested the executive power in a president, the legislative power in Congress, and the judicial power in courts. In forming Congress of two houses differently chosen they acted wholly on considerations of expediency. There is no moral question involved in the distribution of the powers of government among the three coördinate branches, but it was deemed wise to do so, mainly because experience had shown that where all the powers were combined, personal interests, ambitions and passions often dictated governmental policy to the public detriment. It was thought that by a division of powers each branch of the government would act as a check on the others to confine them to the performance of the beneficial functions for which they were established. With such a distribution of powers public expediency is deemed more likely to find expression through the public agencies than mere personal expediency. Similar principles were applied in the state constitutions. Acting under these constitutions law-making bodies have established public agencies of various kinds. Most of these are deemed necessary for the public welfare. Some are places created for favorites, and others to promote party, rather than public, ends. Here personal expediency overrides not only public expediency but also the moral law.

As governments slough off their warlike and vindicitive functions and take on more beneficent ones, an ever widening field of possible usefulness is presented. As sentiments of hatred diminish and kindness and mutual confidence increase, the necessity for war passes away and men of all countries join in all kinds of religious, charitable, social and business organizations. The law-making power has much concern with great private combinations. In despotic countries they are viewed with suspicion because they may possibly conceal revolutionary schemes. In the United States great business combinations exert undue influence on Congress, state legislatures and administrative officers. The practical question how the beneficial activities of all such combinations can best be preserved and promoted and their evil tendencies curbed

is one of much difficulty. The measure of liberty to be accorded to all citizens in forming combinations for lawful purposes is a question of expediency to be determined by the legislative power. It is also a question of expediency as to how and to what extent their operations should be supervised by the government.

In reference to the useful functions which the state itself should assume as a political organization there is extreme diversity of opinion, ranging all the way from curtailment of the powers now exercised by the government to the schemes of the socialists and communists who would have state management of most or all industries and common ownership of land and capital employed in industries. Shall the state own and operate railroads, telegraphs, telephones, mines, factories, ships, farms, stores, warehouses, banks, waterworks, gas, light, heat and power plants, build dwellings, carry on the business of insurance, maintain hospitals and provide medical treatment for the sick; in fine what and how much much if any of the businesses now conducted by private persons ought the state to undertake? These questions have provoked many hot discussions, conflicts and some bloodshed. Men sometimes treat them as involving vital questions of morals. They are in fact mere questions of expediency, experimental in their nature, more or less temporary in character, and reasonably certain of kaleidoscopic changes of aspect. Harmonious concert of action for the accomplishment of desirable ends is the great desideratum. Expediency must find the way for it, not partial selfish expediency, but just public expediency. The moral law applies to all people at all times and under all circumstances. Expediency is special, temporary and must be adapted to conditions. In determining what tasks may safely be assigned to a person it is necessary to know his physical, mental and moral strength, his habits of body and mind, his purposes and desires, the influences with which he is surrounded, the education he has received and every other circumstance likely to affect his conduct. It is possible to utilize men of every grade and kind. The difficulty lies in putting each in his appropriate place and keeping him

there. Concert of action among many implies specialization and leadership. How shall the leaders be chosen? In enterprises conducted by the government they are appointed by public authority or elected by the people. In those carried on by private persons the general rule is that those who furnish the capital determine the plan of organization and make the selection of leaders. In coöperative enterprises those who are served by the organization select their agents and direct their work. The United States now exhibits the greatest business combinations under private management that have ever been known. Ancient Peru affords an illustration of the most advanced governmental direction of industry that we have any account of. Under the despotism of the Incas a people completely isolated from all other civilized nations, without knowledge of letters or the use of iron, without horses or cattle or any of the modern mechanical inventions, tilled the soil, built temples and dwellings, roads, bridges and great stone aqueducts, wove fabrics for clothing and decorations, defended themselves against their savage neighbors and lived in plenty and security. The government was one great business organization in which every officer had useful functions to perform for the general good. All were required to marry, and all were furnished homes and land to till. There were no landlords to collect rent, no usurers to extort interest, no promoters taking anticipated profits of labor, no exploiters monopolizing natural resources. Every one had his share of the land assigned to him each year and his share of the products of the shearing of the flocks, and of the mines and the fisheries. There were no rich living from the labors of others, no paupers, no beggars, no prostitutes. With the added advantages of modern inventions what would they have accomplished and how would they have lived? How much of their system could be successfully adapted to modern conditions under free institutions and among people who deny the divinity of all priestly establishments? If the tie of common brotherhood could be recognized by all in its fullness and entirety the difficulty might vanish, but unfortunately we are now very far from it. We are however rapidly breaking

down the walls of prejudice that have so long separated and antagonized the nations with each other. Already there is a faint perception of a universal bond of human fellowship. The telegraph, telephone, printing press, railroad and steamboat, make near neighbors of the most distant people. Business combinations are not confined within a city, county, state or nation, but some of them are world wide. Men of all races and nationalities unite their efforts in carrying them on. The International Postal Union transports and delivers mail in every part of the civilized world at the least possible expense. This is a purely public expedient, adopted and utilized by the governments of all the nations. It conducts the greatest business enterprise ever organized. The railroads are operated by the governments in some countries and by private corporations in others. In Europe the telegraphs are mostly owned by the government. In the United States they are owned by private monopolies. We have transportation companies, manufacturing and mining companies in great number, among which are many which severally employ tens of thousands of men of all races gathered from all the quarters of the globe. We also have ship yards and other great establishments operated by the government. Our great works in our harbors and rivers are carried on by the government, which also maintains lighthouses and life-saving stations. Public roads and bridges other than those used for railroads are built and maintained by the public. It is needless to multiply illustrations in order to show that great businesses may be carried on successfully either by the state, nation or private combinations. It is sometimes assumed that there is a difference in the nature of the businesses which are successfully carried on by public authorities and of those under private management, but is there any fundamental distinction of kind? Is there in the nature of things an essential difference between the business of transporting and delivering packages weighing an ounce and those weighing one or ten pounds? Is there a fundamental difference between the business carried on in a mail car and that in an express car? Is the business of transporting persons and property essentially different in its nature from that of carry-

ing the mails? Is there an essential difference between the business of building ships for war and that of building them for commercial uses? Is there a difference of kind between the business of casting guns, making armor plate and gun carriages and that of making steel rails and railroad cars? In producing and transporting military supplies of all kinds governments undertake and carry on any branch of business that seems necessary to meet the emergency. Under the pressure of war's exigencies they throw to the wind all nice theories concerning such matters and adopt such expedients and methods as seem best calculated at the time to accomplish the desired results. Is there a fundamental difference between the production of instruments of destruction and of those for beneficial use? Manifestly it is not a question of principle or morals but merely of expediency. It is for the law-making power to adopt whatever plan appears to be the best adapted to accomplish the public purposes.

But what are public purposes as distinguished from private ones? Of late a distinction has been drawn between private businesses affected with a public use and those not so affected. Based on this distinction laws have been enacted providing for the regulation of some businesses affected with a public use, and the power to similarly regulate those not so affected has been denied. The specialization of industry makes all the people of a highly civilized state interdependent. All are dependent on the products of agriculture for subsistence. Restriction of production may mean scarcity, high prices or famine. All are dependent on the manufacturers for clothing and household goods. An abundance at low cost is desired by all consumers. Any combination, regulation or restriction on manufacturing activity that reduces production below the public requirements or artificially advances prices above a just compensation for the service is detrimental to the public interest. All are dependent on the mines for supplies of coal, oil and metals. Mining monopolies through which unearned wealth is extorted from consumers are matters of public concern. It follows that the production of mineral wealth is a matter of general interest calling for legislative

care. All are dependent on the railroads as well as the other highways of commerce, and on the telegraph and telephone as well as the mails for means of inter-communication. Supplies of food clothing and fuel are absolutely dependent on transportation facilities. Where then may a line be drawn between one part of these lines of business and the other distinguishing that affected with a public use from that not so affected? Can such a line be drawn elsewhere than between all the productive activities on the one side and the nonproductive and destructive on the other? Is it possible to eliminate the parasitic classes, which now absorb so much of the products of industry, by fully protecting the useful ones against their methods? Could modern society eliminate its drones and barnacles with as great success as ancient Peru?

The great moral purpose to be kept constantly in view by the law-making power is to bring about a constantly nearing approximation to conditions affording substantial justice between all the people, individually and collectively, and the most ample provision for their physical, mental and moral welfare. Elsewhere than in ancient Peru the conduct of most productive enterprises has always been left under private management for private profit. In recent years business combinations of all kinds, but more especially those engaged in transportation, manufacturing, mining and commerce have taken the form of private corporations. Capital, management, skill and labor are made the bases for the distribution of the gains of the common enterprise, with the result that the burdens and benefits are often most unequally distributed. It is the exclusion from these combinations of all altruistic impulses, the lack of human sympathy, that gives to some of them their cold and steely character. The managing power, the board of directors, is almost universally merely a representative of the stockholders, who have contributed the capital. Neither the employees nor the public have any representation in the management, nor any control over its policy. The employer seems to be the natural manager, and corporations have developed along what appear to be natural lines. It is found, however, that corporations performing functions on

which the public are dependent, and which are either natural or artificial monopolies, may become oppressive, and that owners may ignore not only altruism but justice and decency. When such conditions are presented the legislature is confronted with the practical question of finding an efficient remedy. Will it undertake to supervise and reform the existing system or substitute a new one? Can it convert an oppressive, dishonestly managed corporation into a beneficent, honest one by supervising its operations? Can public agencies be established of superior efficiency in place of the private ones? The modern trend of legislation in the United States is along lines of supervision rather than the direct assumption by the government of new business functions. This is attempted in two ways; by general laws designed to regulate charges for service to the public, imposing duties to be performed and forbidding harmful activities. The enforcement of such laws as to most classes of corporations and as to all classes in most cases is left to the courts by the usual methods. These imply a complaint on the part of the United States or a state for a violation of a penal statute, or of a private suitor for the enforcement of a right or the redress of a wrong. Where the controversy is between a powerful corporation and a private citizen of moderate means results are not satisfactory. The great corporation, by reason of the number of cases brought for and against it, is represented by attorneys and officers who become familiar, sometimes too familiar, with the judges. The private citizen is not ordinarily so represented. Under such circumstances favoritism for the corporation is often charged, especially against judges holding by life tenure. On the other hand juries are more likely to incline toward the private citizen, and elective judges are often charged with seeking popular favor at the expense of unpopular corporations. Though the parties to such controversies are theoretically equal before the law, they are not so in fact. Recognizing the necessity for further interference on behalf of the public, Congress has provided for the inspection and supervision of national banks by the Comptroller of the Currency, and the states have adopted a smilar system

of regulating state banks through a bank commissioner. The states also provide a similar supervision of the business of insurance through their insurance departments. More recently Congress has provided the Interstate Commerce Commission for the regulation of the business of common carriers engaged in interstate commerce, and many of the states have similar commissions to supervise such carriers within the state. In a few states the functions of such commissions have been extended over various other public utilities. The functions exercised by these various commissions are usually classed as executive or administrative, but it is found by experience that to be efficient and accomplish satisfactorily the purposes for which they are designed, it is necessary that they should also have other powers generally regarded as legislative and judicial. Numerous acts creating such commissions have been declared unconstitutional on the ground that they combined and confused the powers of the three separate coördinate departments of the government.

The purpose of mentioning these difficulties here is to show the general aspects of the question presented to the law-making power in dealing with great business combinations. The officers and commissions mentioned occupy a position in the governmental systems inferior to the legislative body, inferior to the courts and to the chief executive. The essence of despotism is the combination of all kinds of political power in the same hands without any superior power to prevent abuses. The advantages possible to be derived from the exercise of despotic power are promptness and efficiency. A commission authorized to make rules for the government of great business enterprises and to enforce them summarily is potentially capable of remedying the evils of corporate misconduct. The power merely to make an order which can only be enforced by an executive officer after a trial and judgment of a court of original jurisdiction and a review in an appellate court according to the prevailing system is wholly inefficient for the control of great interests. Courts move altogether too slowly and deliberate quite too long to be efficient in meeting the exigencies of business in this manner. They are however

much more efficient when acting through receivers appointed and removed by them at pleasure. The receiver takes full charge of the business and conducts it in accordance with the orders of the court with the very great advantage of the protection of the court against all outside interference. Courts acting through receivers in fact exercise precisely the same combination of powers deemed unconstitutional in the hands of commissions. If large combined powers are conferred on public agencies the spirit in which such powers will be exercised depends largely on the influences governing the selection of the men chosen for them. It has often happened that the public agents have been chosen by the very interests they were expected to regulate. Under every form of government from absolute despotism to democracy the men directly interested in the exercise of any governmental function are usually the most active and influential in securing the appointment or election of agents to perform such functions. The richer and more powerful the combination of interests to be controlled the greater the influence on the selection of the agents and on their action afterward. It not only may happen but has happened many times that special interests have dictated the policy of one or both branches of Congress and of state legislatures. The law-making power, designed to promote the welfare of all, in fact sometimes promotes the interests of the few at the expense of the many. It is readily apparent that combined powers somewhat despotic in character are potentially most useful, and also susceptible of the greater abuses. Where such powers are to be exercised only in supervising and correcting abuses in one or a few designated lines of business, and where the public agents exercising them are subject to removal by the appointing power at will or after brief terms, the danger of abuse of them is not great. In all cases however they add to the public burdens the salaries and expenses of their offices.

Where the government undertakes to perform new business function through its own agents the element of profit to private investors is eliminated and with it all private management and salaries of private corporate officers. The whole

problem is simplified to the performance of the service and the collection of revenues to pay the expenses of it. The Post Office affords the leading illustration of a continuing great business conducted by the government, and the construction of the Panama Canal of a great public work carried on by public agents at public expense. These functions are exercised by a republic. The pyramids of Egypt, the walls and canals of Babylon and the Chinese wall are instances of vast enterprises carried to completion at public expense under despotisms. The polity of ancient Peru exhibits the possibilities of a despotic government engaged in directing the useful activities of its people as well as its wars. It also shows how a clearly defined general purpose of promoting the general welfare and the systematic inculcation of the principles and knowledge necessary to the accomplishment of it, may overcome most of the evil tendencies of despotism and many of those of popular governments. The great lack in Peru was of private initiative and invention. Freedom to effect voluntary combinations to accomplish lawful purposes is the foundation of modern business progress. The governmental and business organization of the United States and of the leading nations of the east is exceedingly complex, and most complex in the most advanced nations. Does improvement lie in the direction of simplification or of further complications? The moral law, which is always above the legislature commands the elimination of injustice and wrong and the promotion of the welfare of all. The law-makers must choose the expedients for the accomplishment of these ends.

As the moral responsibility for his acts rests primarily with the individual, so the moral responsibility for the acts of men who combine as a corporation rests primarily with them and the agents they appoint. It is a practical question as to how far the state will take cognizance of the misdeeds and shortcomings of private citizens, and the question concerning private corporations is similar if not identical in principle. It is impossible to remedy all evils. Experience and observation indicate the tasks which are most urgent and which the forces within the command of the state are capable of accomplishing.

A consideration of prime importance is, what measure of integrity and capacity can the state provide for the given task. Theories of organization are highly important, but men with the capacity and disposition to carry them out are indispensable. The evils of autocracy arise mainly from the lack of those moral restraints on the conduct of officials which accountability to the people for their acts would impose. The leading evils connected with the dealings of great corporations are mainly due to the same lack of accountability. Their officers, agents and employees usually find their conduct approved if it results in profit to the owners, without regard to its effects on others. In many cases no harm comes from adherence to this principle, because the corporation itself must struggle for existence and establish its moral character, but in the case of the great monopoly the evil may become unendurable.

Specialization implies interdependence as its inseparable concomitant. Where all the food is raised by one part of the people, all the clothing made by another part, fuel provided by another, and transportation by still another, while yet others minister to special wants in endless detail, it is folly for anyone to regard himself as independent of his fellows. There is not merely the moral bond of common brotherhood but also the material bond of common interest. Not only is there separation into so many diverse lines of industry but in each of them there are many distinct parts requiring special training, which only those so trained can fill, and the common purpose of all can only be accomplished by the coöperation of many, neither of whom could well perform the task of the other. Each wheel in the great human machine must revolve in its place and each cog must fit in its slot. In such a state of society some of the liberty of the individual must give way to the common needs. While modern combinations result in subordination and in some instances in oppression approximating slavery, and pride, arrogance, wastefulness and ostentation exceeding that of many petty despots, neither of these evils is a necessary incident of concert of action and interdependence of men. They are mainly due to a disregard

of the moral law by those who rule the business. The law-makers are confronted with the task of eliminating these evils and enforcing the observance of the moral law in the apportionment of the burdens and benefits of common undertakings. Civilization is measured far more by the sum total of combined effort and interdependence than by the achievements of individuals acting separately. As it advances changes in the forms of association and in the activities of the combinations must take place. Militarism and all its wasteful and destructive activities is being and must continue to be sloughed off and conserving and productive ones substituted. Legislation with reference to all such combinations must of necessity change with changing conditions. Finality in the form and use of expedients to accomplish legislative or business purposes is neither attainable nor desirable. It is idle to put forth any formula of words as a sure guide for future conditions. Ethical principles have permanence and should be inviolable; expedients are changeable and should have liberty. The beautiful ideal of a state of "liberty equality and fraternity" is not to be abandoned as utterly worthless because of human imperfections or the savagery of men who have uttered the words without comprehension of their meaning, but the obstacles they interpose to its approximation are to be removed, surmounted or avoided by men to whom it is a guiding light through mazes of difficulty. New and yet untried expedients will continue in the future as they have been in the past to be shorter paths to richer fields. No one man will suggest all of them. The combined judgment of many will continue to be a safer guide in most cases than the separate views of any one.

Judicial Functions

The function of the judiciary is to apply the existing law to specific cases brought to the attention of the court or judicial officer in the prescribed manner. In every well ordered state the rule enforced is assumed to be a pre-existing one. In disposing of a case of controverted right it devolves on the court to, first, determine the basis of fact on which

the controversy arises; second, ascertain what principles of substantive law apply to the question presented by the facts, and third, render such judgment as the law applied to the facts requires. There is very great diversity of methods of doing this, ranging all the way from a summary hearing of the parties before a single judge, followed by an immediate judgment, to the elaborate system of procedure with its long list of technical rules of pleading and procedure and its successive retrials and appeals. Equal diversity has obtained in the constitution of courts and in the treatment of parties and witnesses. Summary methods prevail under despotisms with much disregard of law, and the extreme of prolixity and delay, amounting to substantial incapacity to make final disposition of a complicated case, is not uncommon in a great republic.

The law-making power establishes the courts, fixes their respective jurisdictions and provides how they shall be constituted. In a simple despotism the king is the final judge of all controversies and may exercise his powers in person or through whomsoever he pleases to designate. The first great stride toward liberty is the establishment of a court that is independent of the king, yet bound by the law. A full review of the composition of the diverse courts that have been established in the various countries at different times would be out of place here, but many of them will be found in the succeeding chapters. In English-speaking countries as well as many on the European continent courts of first instance, with power to determine all questions of fact and of law and render final judgment thereon, are made up of one or more judges, having or supposed to have expert knowledge of the law, and a jury of laymen, usually twelve in number. The parties are ordinarily bound to accept the situation and go to trial before the judge assigned to hold the court, but challenges to the jurors are allowed both with and without the assignment of cause therefor. In criminal cases the selection of a jury often causes long delay and great expense, with a net result of great inconvenience and little, if any, good. The aim is to eliminate personal bias and prejudice, which is of course eminently desirable, but the means allowed is ab-

surdly disproportioned to the evil it provides against. Substantially all cases in all courts are conducted by lawyers who are employed and paid by the respective parties. Each of them must have passed the prescribed examination into his legal learning and made the requisite proof of moral character. In the trial of a case he is the champion of his client, and his standing and income are dependent on success in winning cases for those who employ him. Only in prosecutions for public offenses and cases to which the state or some political subdivision of it is a party is an attorney present to represent the public. Every step taken in a cause is under the direction of a lawyer acting either as an advocate or judge, for the judges are all lawyers. While the parties ordinarily have the right to conduct their own cases, they seldom do so if the matter is of much importance. In general all questions of fact are finally determined in the court of first instance having general jurisdiction, or some inferior court. The appellate courts are generally made up of several judges, and rarely have the attendance of a jury. In these courts questions of law only are ordinarily determined. Litigants are by no means sure of a final disposition of their case after the decision of the court of first instance has been reviewed by the highest tribunal to which it can be carried, for in very many of them a new trial in the court of first instance is ordered, and the case is again at the starting point with nothing settled but some proposition of law or procedure. The whole system of courts is required for the discharge of the full judicial functions of the state, but the courts of first instance make final disposition of a great majority of all the causes. The courts of last resort are only called on to decide certain exceptional classes of cases of which they are given original jurisdiction and such as are appealed from the lower courts. In some cases successive appeals from court to court are allowed, so that under certain conditions a case may be heard successively in four or five different grades of courts. It may well be asked which is the better, an arbitrary final decision by one judge finally settling the whole controversy or such a round of inconclusive trials and reviews, with the pos-

sibility that the highest court will send it back to travel the whole road over again? In building the latter system has not the perspective been allowed to obscure the main purpose of the judicial function and the mere incident been given more weight and value than substantial justice?

It is a fundamental principle of jurisprudence that courts do not take notice of any controversy till it is presented in the prescribed manner by a complaining party. In all but a few exceptional cases no action can be taken until notice has been given to the adverse party in the manner provided by law. It is a fundamental principle of justice as well as of law that all parties interested in any matter to be determined shall have fair notice of the claim made against them, of the time and place of every hearing in the case, reasonable time and opportunity to attend, procure and produce evidence and present their versions of the facts, the questions involved and the law applicable thereto. These requirements furnish substantially all the basis there is for codes and rules of procedure. The primitive method is for the complaining party to summon his adversary to go with him before the judge, to there state his grievance and ask for redress, and for the defendant to then make his answer, and the judge to decide the matter after hearing the statements of witnesses or not, as appears necessary. There are no written pleadings, no rules of procedure, no lawyers, little if any delay of the hearing and an immediate consideration and decision of the controversy, so that all concerned may act accordingly and go on with their business. This in substance was the procedure in the early days of Rome where the case was tried in the morning and decision required before sundown. It was adapted to a simple state of society. Much of the formalism and prolixity of modern court procedure is due to the complex nature of modern business and modern theories and rules of rights to property. In a case affecting many widely scattered parties it is not possible to take all of them by the arm and lead them before the judge, nor would it be practicable to make an oral statement covering all the claims made against each of them. It is necessary to write it down, so that it will be

definite and all may know just what the complaint is. The answer of a defendant may be equally full of details, and it is therefore equally necessary that it be written. This shows the need of written statements of claims, but it does not show any necessity for a long jargon of set phrases to express an idea which might be more clearly understood if written in a few common words, nor for senseless repetitions on a theory that each of a number of causes of action must be fully, technically and separately set forth. The technical accuracy of statement so strenuously demanded by most American lawyers is palpably absurd. All that serves any real purpose in the statement is the language that notifies the adverse party of the claim made. All elaboration beyond this is surplusage, and all mere jargon, such as is used to embellish bills in equity, is worse than useless. In England, where this extreme technicality in pleadings originated, a sensible system now prevails, and the rules governing equity cases in the federal courts of the United States have just been greatly simplified and improved but in many of the states the ancient forms are still observed.

When a case is before a court with all parties duly notified of its pendency and fair statements made of the claims and defenses of all parties it would seem natural that the regulation of the details of the investigation into the facts and the application of the law should be left to the court and adapted to the situation presented. Instead of doing so in America there are elaborate codes of procedure restricting the joinder of causes of action and of parties, the defenses and counterclaims of the defendants and the manner of conducting the investigation. Numerous positive rules are declared governing the successive steps in the progress of the case and its incidents and ancillary remedies. These rules are treated by the courts as of the same binding force as statutes of substantive law, not only in the trial courts but in the reviewing courts as well. This often results in the decision of cases on mere lawyers' questions, having no connection with the real controversy between the parties, but which have been injected into the case by the lawyers in their efforts to gain advantage

from the rules of procedure. The theory on which these rules are established is that they tend to a proper trial and a correct decision. The fallacy lies in the assumption that the rules of procedure are so plain and easily followed that they will be helpful in the investigation. A few simple rules regulating the essential steps in the progress of the case are so, but a multiplicity of complex requirements is a snare which it is difficult to avoid. There is the same likelihood of different interpretations of rules of procedure as of rules of substantive law, and every unnecessary positive requirement is sure to result in needless annoyance, delay, expense and injustice. It is not possible to compel right decisions by mere rules of procedure, but it is possible to compel wrong ones, and this is in fact done in an appreciable part of the cases tried in the courts of the United States.

A case being at issue on a disputed question of fact how shall the truth be ascertained? In cases tried by a jury the rule is that the jury answers to the facts and the court to the law, and in other cases the facts are determined either by the judge or a referee appointed by him. Methods of inquiry have been as varied as the human mind can conceive. Some are based on a superstitious belief in divine interposition to protect the innocent and punish the guilty. Such were the ancient English trials by ordeal. There was the fire ordeal performed by a person accused of crime by taking in his hand a piece of red hot iron, or by walking barefoot and blindfold over nine red-hot plowshares laid lengthwise at equal distances. If he escaped unhurt he was adjudged innocent; if hurt guilty. The water ordeal was performed by plunging the bare arm up to the elbow in boiling water, or by throwing the accused into the water. If he was burned in the hot water or floated on the water he was guilty. There was also the ordeal of the corsned, trial by wager of battle and by the defendant waging his law, which he did by swearing to his defense and having his neighbors swear that they believed he told the truth. Similar superstitious tests of truth have been resorted to by many primitive people. In all well organized states both ancient and modern the usual method of ascer-

taining the facts has been by taking the statements of witnesses. There is very great diversity, however, in the methods of taking the testimony, varying all the way from extracting it by torture on the rack under the holy inquisition, or with the bamboo in China, to the mere statement of the witness, uninfluenced by any other consideration than regard for the truth. In most countries a religious oath or admonition of the penalties of perjury is imposed before taking the testimony. There is no country in which all the people have yet attained sufficient moral strength to entirely eliminate the danger of intentional falsehood. Moral delinquency of this kind varies all the way from the deliberate misstatement of a matter of fact to the mere failure to mention a minor circumstance having some bearing on the issue as to which no pointed question compels a definite answer. Nevertheless an overwhelming majority of all the people of European stock are truth tellers by nature and habit, and in all the ordinary affairs of life in or out of court and with or without an oath their statements can be relied on whenever they are called on for information. A far more common and serious obstacle in the way of determining the facts is the unreliability of the testimony of witnesses due to inaccuracy of observation and expression and defects of memory. These cause witnesses to the same occurrence to give very different accounts of it. Every infirmity in the organs of sense, in mental processes and in knowledge of language and power of expression of the witness is liable to leave its mark on his statements. Passing from the infirmities of witnesses to those of jurors and judges we find that the testimony does not produce the same impression on all of them, and that different ones reason to different conclusions from the same premises. Where witnesses contradict each other, one juror will believe one and another the other. The statement of one may be absolutely true, yet made with hesitation, as if in doubt, while the contradicting statement of the opposing witness may be given promptly and positively. By what token can the juror recognize the truth and detect the falsehood?

These multifarious difficulties in arriving at the truth in

judicial investigations have induced the law-makers and courts to adopt an elaborate system of rules of evidence. Some of these absolutely exclude witnesses bearing certain relations to the case or to the parties to it from testifying at all, or limit their testimony to certain exceptional matters. Others require proof of certain facts to be made by a prescribed number of witnesses, or by a certain kind of evidence, as a written document executed in a prescribed manner, a record made in a particular office or a copy of it made by a designated officer and certified to with the required formalities. Generally the title to land must be established by deeds in due form, but in many cases this is impossible and many exceptions and modifications of the general rule are found necessary to prevent the most palpable injustice. Various contracts are required to be in writing in order to be enforced through the courts, on the theory that frauds will be perpetrated in the absence of the requirement, yet to prevent frauds resulting from the requirement numerous exceptions are made. In England and the United States until very recent times persons charged with crimes were allowed to confess guilt and receive their punishment without other proof, but were not permitted to testify at the trial. Torture to extract confessions of guilt has been and still is a favorite method of getting evidence in many places. What is termed "sweating" is a mild form of torture still resorted to without authority of law in many places by over-zealous police officers. The inherent difficulties in obtaining proof of crimes committed in secret tempt the officers to force the truth from those who know the facts. The torture is inflicted before trial on the assumption that the prisoner is guilty but will not admit it. The law now regards a person charged with crime as innocent until he confesses or is convicted, and in many states he is allowed to testify in his own behalf. As civilization and moral standards advance more reliance is placed on the truthfulness and honesty of parties and witnesses and the arbitrary rules, based on distrust of them; are abolished. Parties were formerly excluded from testifying on the theory that their interest in the case would cause them to lie. Wives

were prohibited from testifying for their husbands. These restrictions are still retained in some states, but there is a marked tendency to do away with them and assume that even those most interested in the result of the trial will tell the truth in the great majority of cases. There has also been a corresponding relaxation of the rules relating to the reception of private account books and other private writings as evidence. While there has been and still is ample basis for distrust in particular cases, it may well be doubted whether arbitrary rules excluding witnesses from testifying in any case tend in the right direction. The credibility of witnesses may well be affected by the considerations which have caused their exclusion, but it is grossly unjust to assume that all people will resort to falsehood to further their own interests or that a majority of them will do so. The natural obstacles in the way of the judicial search for truth cannot be removed by closing the doors to any place where it may be found. Arbitrary rules may prohibit its discovery, but cannot promote it.

The controversy may be merely as to the facts, or as to the law, or as to both facts and law. Where the facts only are controverted and the parties are agreed as to the law applicable to them, the verdict of the jury or findings of fact by the court are followed by such judgment as they warrant. Where the parties disagree as to what the rules of substantive law are, or as to which of several acknowledged rules applies to the facts as found or admitted, it is the province of the court to declare what the law is and which of its rules apply to the controversy. Where shall the judge look for a clear statement of the law? In China to the Penal Code, in India to the Code of Manu, in all Mohammedan countries to the Koran, in continental Europe to the compilations of Roman law made under Justinian and the modifications of it made by the law-making power of the particular nation, in England to the acts of Parliament and the reported decisions of the courts construing them or declaring the rules of the common law, and in the United States to the federal and state constitutions, to the acts of Congress and of the state

legislatures, and to the decisions of the courts construing them and declaring the common law. There is not now and never has been in any country a code of written laws so plain in its terms as to be self-explanatory, or which provided rules directly applicable to every question presented to the courts for decision. The Koran, which perhaps has higher authority among Mohammedans than the code of any other people has with them, contains so few and meager rules that the judicial officers are forced to supplement them with others which they deem in accord with the spirit of the Koran. The wisdom of the prophet was not adequate to the future developments of Mohammedan civilization. So it is with every code of laws, no matter how wise the author of it may be or how great his authority. Advancing and receding civilization each present new forms of human relation, activity and combination, new fields of enterprise and new forms of property. Old customs give way to new ones, and old standards of morality are superseded by better ones. Progress means change in the forms and purposes of human activity, and the law, which is merely the expression of legislative will or established custom, always lags behind the advanced thought of any age.

In the United States the courts have to deal with many kinds of law emanating from different sources, and to determine which has controlling force in the case under consideration. The constitution of the United States is the supreme law to all courts, but its field is relatively very small and it affords rules to solve only a very few of the great number of questions to be answered. Acts of Congress passed under its authority rank next. The constitution of the the state in which the court sits is next in authority. Most of the state constitutions cover more ground and are of more frequent application than the Federal Constitution. Acts of the state legislature which do not conflict with either state or national constitution or a valid act of Congress come next and cover a much wider field. While the whole volume of written law contained in constitutions and statutes is much smaller than that of the unwritten common law, it is within the

power of the state legislatures to cover as much or as little of the field by statutes as they see fit. The task of ascertaining what the written law is is often one of great difficulty, owing to different enactments made at different times, under different circumstances and for different purposes, which overlap and conflict as to details. In addition to the constitutional and statutory law there are treaties between nations having the effect of law, and the unwritten principles of international and admiralty law. Below all the foregoing there are municipal ordinances operative as local laws, and the by-laws of corporations and associations binding on their members. While the common law is spoken of as the unwritten law, it is looked for in printed books of reports of decisions of the courts in which its doctrines are discussed in endless detail and numberless cases. These cases are of various grades of authority and persuasive reasoning. Decisions of the Supreme Court of the United States are binding on all courts in their construction of the Constitution of the United States and acts of Congress passed thereunder and as to all matters within its special province, but its answer to any question as to what the rules of the common law are have merely the persuasive force of the opinion of the highest court in the land. Similarly the decisions of the highest court of a state as to the law of the state, written or unwritten, is binding on all inferior tribunals of the state. The leading purpose of the people in providing reviewing courts is to procure and preserve uniformity of construction of statutes and constitutions, and uniform declarations of the rules of the unwritten law. It sometimes happens that the Supreme Court changes its views as to the rules of law and either overrules or ignores its own prior decision. This of course introduces confusion instead of preserving uniformity. When a prior decision is pointedly declared to have been a misstatement of the law and distinctly overruled lawyers and inferior courts may accept the last decision with a fair degree of assurance that the rule last announced will be adhered to in the future, but when a prior decision is merely ignored without comment confusion and uncertainty inevitably follow, for nobody can tell which

precedent will be followed in the next case. Questions sometimes arise which have not been decided by the court of highest authority over the trial court. Resort is then had to the decisions of courts of other states for guidance. It sometimes happens that the court of one state resolves the doubt one way and another the other. Sometimes the courts of different states are about equally divided in number on each side, and sometimes the less number appear to be the best authorities. With all this multiplicity of sources of the law is it strange that courts of first instance, which have to deal with both the facts and the law are sometimes reversed by the reviewing courts? If mere complexity of the laws is an index of civilization, the United States is a highly civilized country. The publication of reports of the decisions of the reviewing courts goes on at the rate of something like two hundred volumes a year, and the number steadily increases. That there are so many is of itself some proof that the law is in an unsettled state. The truth is that the modern tendency to refinement and nice distinction has so obscured many wholesome general principles that the rule itself can no longer be applied with any fair degree of certainty or uniformity and is therefore thrown aside and one or another exception followed. It is manifest that the present system will ultimately fall of its own weight. Much of the public dissatisfaction with the methods of the courts and the delays and expense of litigation is chargeable, to the impossibility of a full consideration of the law in the trial courts. The trial judge can make only a cursory examination of authorities bearing on a nicely balanced question, while the reviewing court proceeds with great deliberation, and feels called on to state and apply the law with the utmost accuracy. Notwithstanding the vast accumulation of recorded precedents, new inventions, new combinations and new forms of contracts are presenting new questions to the courts. Though broad general principles may apply, the habit of seeking for identical precedents has become so fixed that courts hesitate to apply broad principles without the support of precedents of like cases. This extreme nicety leads rather to confusion than to certainty. Ordinarily the gen-

eral principles are better guides and more easily followed than the similar precedents. In theory there is and always has been a rule of law applicable to and decisive of every controversy, else cases might arise which could not be determined. The judge must find a rule, whether it has ever been announced or not. This is true in all countries and at all times.

If every disagreement were submitted to the courts under the existing elaborate system they would be overwhelmed with such a mass of litigation that it would be utterly impossible to dispose of it. As it is the judicial mills are so full in many places that long delays amounting to a substantial denial of justice are inevitable. Fortunately the people themselves adjust most of their differences without resort to the courts. Business is so conducted that but a very small part of the numberless transactions of commerce and employment give rise to any dispute. The parties to them frequently agree on terms and adjustments of their affairs quite different from what the law would impose. The moral law, views of justice and fairness often induce one to give more than the law requires or the other party asks, or to accept less than such amount. As moral standards advance and altruistic impulses increase necessity for the exercise of judicial functions diminishes.

While the courts could do much to overcome the difficulties above outlined by improvement of their own methods, comprehensive reforms can only be effected by the legislative power. Many branches of the law admit of world wide uniformity, while others are of necessity local. The law of the high seas, which no nation owns, must be common to the navigators of all nations. The rules of commerce are susceptible of substantial uniformity, and the law of personal relations, though so long and grossly unjust, ought to be uniformly just throughout the world. Slavery has already met the condemnation of all civilized people, and all other forms of oppressive personal relations must give way to moral progress. Titles to land and rights of occupancy of it must of necessity be dependent in some measure on local conditions of soil, climate, market and pressure of population. The purposes,

forms and extent of industrial and commercial combinations will always depend in some degree on such conditions and also on the habits, capacity and character of the population. There are already beginnings of a common law of the world, the principles of which are recognized by all civilized nations. With an advancing recognition of moral standards it becomes apparent that the relations of nations however distant and dissimilar should be regulated by law, and also that the law should be just. World wide reforms having the effect of amendments of the law of nations are being made through the instrumentality of conferences at the Hague and elsewhere of representatives of the nations, by treaties between different powers, and yet more by the dissemination of the principles of morality. Legislative bodies in all parts of the earth now take some notice of the laws of distant nations and shape their own acts with some reference to the light they get from abroad. The most marked evil tendency resulting from the imitation of foreign examples is in the drift of the peaceful nations of the east toward the vicious militarism of the west, but it seems reasonably certain that this evil will correct itself in the near future, and that the universal law will be a steady approximation toward the moral law.

The evil of an unwieldy body of precedents, similar to that with which we are afflicted in the United States, existed in the Roman Empire in the time of Justinian, and was then met by a general codification. This remedy could be applied with comparative ease under an autocrat, but with legislative powers apportioned between Congress and forty-eight state legislatures the practical difficulties appear almost insurmountable. A start toward uniformity throughout the states has been made through the influence of the American Bar Association and the Commissioners on Uniform State Laws, but anything approximating a general codification of the whole body of the law throughout the Union is not yet even foreshadowed. Manifestly the widest practicable uniformity is eminently desirable. The obstacles to intercourse between residents of different parts of the country interposed by time and distance have been largely eliminated by modern inven-

tions. The obstacles interposed by diverse laws can be eliminated by uniformity. The process by which this may be promoted is foreshadowed by the start already made by the Commissioners, taking one topic at a time and devoting ample time to it. More rapid progress might be made if the Commissioners had more general recognition throughout the states and sufficient financial support to enable them to devote the necessary time to the work. In a period of invention and rapid changes of social, industrial and commercial combinations, a rigid code, purporting to cover the whole field of the law for the future, is neither practicable nor desirable, but it is possible and eminently desirable to codify those branches that admit of complete uniformity, like commercial law, and that wherever moral principles are involved in the law on any subject the closest possible approximation to the just rule should be adopted and given the most ample application.

The states acting separately may make substantial progress in simplifying the laws of local application by codification by topic of these subjects. Of course all uniform state laws, however formulated, would only become effective on their adoption by the state legislature and would appear in the statute books merely as laws of the state. The value of a codification would be dependent in some measure on the degree of permanence attaching to the rules contained in it, but it has the advantage of classification and orderly arrangement, and tends to clearness in case of subsequent amendments. These are matters of great importance in simplifying the labors of the judge. When the rules of substantive law are scattered through numberless volumes under all sorts of classification and headings, he can never know that his investigation has quite covered the whole subject. With a complete codification of any topic he might feel a fair degree of assurance that he had all the law he required before him. After the best possible codification of existing law has been made there will still remain the experimental field of new subjects and radical changes of old ones, of new public enterprises and new private schemes requiring regulation.

All questions of fact and of law which are determined by

the judges are resolved by the opinion of the majority of them, but in most states the determination of a question of fact by a jury of twelve requires the concurrence of all. This is most illogical and productive of great expense, inconvenience and delay in a considerable part of the difficult cases. In criminal cases subjecting a defendant to vindictive punishment it is merciful to require unanimity, but in civil cases the concurrence of three-fourths is ample, and it would be equally safe in criminal cases prosecuted with a view to the welfare of the defendant as well as the public.

In many states new trials of all the issues are granted for reasons affecting only one or more of them. Where this is done the first trial goes for nothing, when logically it should settle all issues as to which there has been a fair and full trial and clear finding.

Successive appeals ought not to be allowed in any case. The evil consequences of them far outweigh the general benefit.

Questions as to the constitutionality of statutes ought to be settled in advance of the private litigation under them, and in a proceeding in which the public is represented. It causes contempt of the legislative authority to require private citizens to determine for themselves when an act of Congress or a state legislature is valid, and, having acted in the belief that it is valid, to be called on to defend it through a series of courts and suffer loss at the end because the court of last resort holds it invalid.

Executive Functions

In the evolution of government from chaotic liberty the first function to be developed is the executive. It is usually exercised in leading war parties, hunting or fishing expeditions, and in such manner as accords with the character, customs and purposes of the tribe. Combined with it are such crude beginnings of legislative and judicial functions as the situation requires, all assumed ordinarily by a single leader. The next function taking separate form is the legislative, usually exercised by a general council of the tribe or the elders or heads

of families in it. Representative legislative bodies chosen by the people are a very late development of advanced civilization. Judicial functions are exercised by the king in person in a small despotism, and in larger ones by persons appointed by him to act in his stead. The Greeks and Romans give us the earliest known well defined division of powers among the three departments of government. This division now obtains throughout Europe as well as America, and is being extended into Asia. The separation of executive, legislative and judicial functions is nowhere complete. In most monarchical countries the chief executive officers under the crown take the initiative in the most important legislation and have a voice in the deliberations of the Parliament, and all laws require the approval of the king. In Great Britain the ministry exercise the executive functions with no substantial interference from the king. They are always in accord with the majority in Parliament, for whenever they cease to be so a new cabinet is formed and the House of Commons is usually dissolved and new members elected. In all countries, where there is a separation of executive and legislative powers, it is necessary that the executive departments report to the legislative the needs of the public service and submit estimates of the moneys required for each and the requirements of men for military, naval and civil service.

In the United States the president and the governors of the states make recommendations respectively to Congress and to the legislatures through written messages, but are not allowed to take any part in their deliberations; nor are any other executive officers entitled to do so. The President has a veto on acts of Congress, but this may be overriden by a vote of two-thirds of each house and the law enacted without his sanction. Similar rules apply to the governors and state legislatures. The influence of the chief executive under the system of political parties which has prevailed from early times depends on whether his party is in the majority in the two houses of Congress, or the legislature of his state. When the executive is in political accord with the majority in both houses his influence is usually very potent in shaping legislation; when

he is not his influence over appropriations of money may still be great through estimates of the public needs, but as to other matters of legislation it may be very small. In this particular the system is lacking in efficiency and ultra conservative.

While judicial power has been taken away from chief executives in all civilized nations, the appointment of the judges is still a function of the chief executive in Europe, and for the federal courts in the United States and the state courts of some of the states. In others they are chosen by the legislature, but in most of the states they are now elected by the people. The judicial function of trying impeachments of presidents and other civil officers of the United States, including judges of the federal courts, is vested in the senate of the United States, and of the governors and other state officers in the state senates. Impeachment by charges preferred by the lower legislative body and tried by the upper is not an efficient method of punishing public officers for misfeasance in office. It may be wise to have so conservative a remedy in the case of the president and vice-president, but as to all other officers it is an impracticable scheme.

The executive head of every country, by whatever name he may be called, is always commander in chief of the army and navy and the representative of the nation in all dealings with foreign nations. All civil as well as military officers, except such as are made elective by the legislature or by popular vote are also appointed by the chief executive. While the law-making power levies the taxes and gives general directions for its appropriation, it is the executive officers who collect the money and use it. By reason of its control of appointments to office, of the expenditure of public funds and its daily contact with the people in the transaction of the public business, the executive department exerts a powerful influence both on the legislative department and public sentiment. Theoretically in the United States it is subject to the direction of the legislative and judicial branches of the government acting within their respective spheres. It is subject to the laws, and executive officers are bound to carry the judgments of the courts into execution. They are liable to trial and

punishment by the courts for their violations of law and duty, and in some instances in some of the states to removal from office by them. The vast executive powers of the general government of the United States are concentrated in the President. The heads of the executive departments are appointed by him and are his advisers, but they hold office during his pleasure only, and he has power to remove them and appoint others at will. The states have a far less forceful executive head. In most of them the chief executive officers other than the governor are also elected by the people, and are not subject to removal by him. The greatly superior efficiency of the federal plan has not yet induced the states to model their executive departments after it.

In the discharge of executive duties it often becomes necessary to determine questions of fact preliminary to the performance of a duty. This the executive officer who is called on to act does summarily in his own way, usually without any formal trial. Perhaps the most important instances occur in matters affecting the friendly relations of the country with a foreign power. The protection of citizens temporarily in foreign states frequently makes it necessary to inquire into transactions occurring in remote parts of the earth. In exercising the pardoning power an inquiry into the character and conduct of the applicant for mercy closely analogous to a judicial trial of a question of fact is necessary, though the proceeding is wholly discretionary with the executive in most states and countries.

The moral progress of the world is exhibited by the steady and rapid evolution of executive departments into agencies for the discharge of useful peaceful functions, and the tendency to slough off the baneful military activities. While inventions of destructive agents and instruments have kept pace with the inventions of useful ones, and while the nations still waste their energies, their substance and their men in needless and vicious armaments and war preparations, the utter immorality of aggressive wars is recognized, and the executives of all advanced states feel the restraining influences of an advancing morality which condemns war.

Checks and Balances of Governmental Powers

Much has been said by writers on political economy in commendation of the plan of restraining each branch of the government within its useful field by placing a countervailing power in another branch, and there can be no doubt of the value of such balances of power. Nevertheless the ultimate effective checks must always remain with the general body of citizens and be kept alive by education and an active public sentiment; else they soon lose all potency. The true theory of all official power is that of agency to do particular things, not of a general agency subject only to a few special limitations. The balancing of powers by constituting different agencies to act as checks on each other has been tried often and in a great variety of ways, but nowhere with ideal results. The Chinese imperial system, so far as all officers under the emperor were concerned, was based on this idea, but corruption and inefficiency were the rule rather than the exception. Rome set tribunes against consuls and massed *plebs* against *patres,* yet the senate continued to rule till overawed by the legions under military leaders. A government of limited powers exercised for short periods by persons taken from and returned to the general mass of citizens is least dangerous to liberty. The objections to it are lack of continuity of purpose and efficiency. In a country where ignorance and immorality prevail these objections are valid. Liberty and order are impossible without self-restraint exercised voluntarily by the great majority of the people. Education is by all odds the most potent factor in maintaining any governmental system. This is more clearly illustrated by the Asiatic governments than by the European, where illiteracy has prevailed until very recent times with the exception of the Greek and Roman periods. A definite system of education in law, religion and social organization, enforced as a divine ordinance, has moulded the character of all Hindoo society for thousands of years. The Mohammedan system has been similarly propagated. The Chinese books and teachers have played an equally important part in preserving the peculiar institutions

of that country and securing obedience to much that appears to Europeans as unqualifiedly bad. Europe and America have also been greatly influenced by the teachings of the Bible, also of Asiatic origin, which have been accepted as religious truth, but not as a guide in the formation of governments, or a system of laws to be administered in the courts. In this it will be seen that the use of the Bible as a sacred book is somewhat anomalous, for the Koran and the Code of Manu are of the highest authority as books of law in all courts where their religious authority is accepted. The morals of the Old Testament are discarded as too low for this age. The Christian conception of universal love for all humanity indicates the ideal social condition, without elaborating the details of the application of it to the particulars of human conduct. Love as a passion is not universal, but partial, responding to influences not always readily comprehended. Though capable of stimulation by education, its mainspring rests in the seat of the emotions of the person. The heart responds to impulses that no one can wholly control. If all could be induced to act as love for each and all would dictate, the destructive and corrective functions of government would be eliminated at once, for there would be nothing left on which to act. Wars would cease, and those who now commit crimes would be wholly absorbed in harmless activities, beneficial to themselves or to others. Government in its sinister, meddlesome and cruel sense might at once be dispensed with. But this would not do away with the necessity for social organization. Great numbers cannot act in concert for their mutual benefit without rules governing the conduct of each and an apportionment of duties. Schools for the instruction of all in the rudiments of letters, science and the arts and special instruction for each to qualify him for his particular part in life will always be necessary. Until the ideal Christian spirit is universal it will continue to be necessary for the people to guard against abuses of governmental powers. The idea of official checks balancing each other is based on the theory of a governmental force above the people. Unless those for whom powers are exercised are capable of approving or condemning the acts of

their agents according to their merits, it is idle to expect one set of officials to protect the people effectively against another. It is quite too easy for the two sets, chosen to watch each other, to combine for their common advantage against the general public. History is full of such combinations in the United States as well as in China.

General Purposes of Government

The central idea of government is an organization through which the combined force of many may be exerted. The objects to be accomplished by the use of this force may be beneficial to all, to a few or to one alone, and they may benefit all or a part, but in unequal degrees. Where the government takes the form of an unlimited monarchy, the ruler has the power to take for himself and his favorities all of the benefits, and to place all of the burdens on the multitude. The monarch may desire the general welfare of his subjects, and may promote it in some ways, but the maintenance of his authority is dependent on suppressing popular impulses in public affairs. The average man magnifies his own merits and importance and minimizes those of others. He also sympathizes most with those near him. So it inevitably comes about in a despotism that the monarch and his favorites engross the benefits of the state's power, and by a law of moral compensation the excessive advantages enjoyed curse the favorites with low moral standards and such consequences as naturally result from them. Where the form of the government is that of an aristocracy, the beneficiaries may be more numerous, though not necessarily so. Where they act in concert the result is much the same as in the case of the despotism, but there are more heads to be gratified, and the rapacity of each is liable to encounter some resistance from the others. The proletariat are still without power to enforce their rights. In popular governments the theory is that powers are delegated to public servants, to be used for the benefit of all, and that the benefits and burdens of government are impartially distributed. An art, however, corresponding to that of the courtiers, develops in the republic, and through specious pre-

texts crafty men employ the powers of the state for their own enrichment in different ways, but with results similar to those of the courtier's fawnings. The form of the government does not eliminate the disposition to be unjust, nor are the balances of powers so adjusted as to enable the many who bear the burdens to effectually curb the rapacity of those who gain unmerited favors from legislatures, courts and administrative officers. Arbitrary laws sanctioning slavery, land monopoly, and special privileges in trade, transportation, manufacturing, mining and supplying various needs of the public, work out systems of favoritism and oppression. These are aside from the direct exercises of the powers of the government for the enrichment of the officials and their friends. Even in the best ordered republic the taxing power is exercised to some extent merely to favor a few persons.

The prudent individual seeks to mark out for himself a line of conduct reaching through some or all of the balance of his life, which he believes will conduce to his future welfare. He does best who follows a course which tends to continually make him stronger, better and happier. Close observance of the moral law and of every precept of it will generally tend to a long life of increasing enjoyment. Neglect of the needs of the body induces weakness and disease, neglect of the mind, ignorance and dependence; idleness and wastefulness poverty; hatred and envy, enmity and suffering. On the other hand the performance of every duty to himself and to others tends to health, prosperity and happiness. The rules by which the individual governs his own conduct are the product of his education, environment and native mental force. He may observe them steadily or spasmodically with corresponding results, but death ends the accessible record of success, failure, pleasure and pain. The state seeks to direct the destinies of many people. Its legitimate object is essentially similar to that of the private person, that is to promote the welfare and increase the happiness of its citizens, but it has no fixed limit of numbers of persons affected or duration of its influence. To accomplish this result it must cause the observance by the people of those rules of conduct which tend to propagate con-

ditions favorable to human happiness, and to eliminate conduct destructive in its tendencies. The state looks not merely to the welfare of persons now living, but of the race in future generations. Its rules therefore must have a wider range of present application and look forward to more remote consequences. Though immoral conduct may appear profitable for short periods and to a limited class, time surely discloses its destructiveness. Bentham's test of utility, given general application to all alike and carried to its remote consequences, is a test of morality. His measurement of utility by the pleasure or pain produced may admit of more doubt, for the dividing line between sensations of pleasure and of pain is often incapable of ascertainment, and disagreeable sensation seem essential to our vital processes. Life, health, strength, knowledge, beauty, abundance of usable things, the love of friends and good will of all, are generally regarded as desirable. There are certain lines of conduct that tend to produce and preserve these blessings. There are others that prove destructive of them. It would seem that the legitimate function of the state is to search out and declare as substantive law what rules of conduct are beneficial in their tendencies, and what are destructive, and to devise governmental machinery designed to induce observance of the former and avoidance of the latter, and that moral improvement and material advancement should continually accrue as the product of legislative wisdom and foresight. To what extent such functions have been recognized and exercised by the governments of the leading nations of the earth is one of the main subjects of our inquiry. It will be found that the organized forces of society, especially in the hands of a single ruler, are often exerted to destroy, rather than to build up, and that all the nations of the earth look to armies and navies as means of gain and preservation, rather than to the cultivation of those firm bonds of friendship which are indispensable to peaceful relations.

The rule of progress is good for evil, kindness to overcome hatred. Viewed merely as a cold and passionless artificial being, the true mission of the state is, and always must be, to keep people from harming each other, and to lead them to

move in concord in the accomplishment of purposes beneficial to all. If all were fully employed in moral pursuits, crime would disappear as a necessary result.

Selfishness has its root in our natures, and care for self is a moral duty. Care for our progeny is both a privilege and a duty, and affords one of the most powerful incentives to the accumulation of wealth and mastery over others. In the struggle to gain these many parents fail to comprehend the relative value of mere inherited wealth and of favorable conditions for their children to live natural useful lives. It is only when we clearly perceive that the welfare of our progeny is inevitably locked with that of the descendants of our neighbors, and that the only safety for any lies in high moral standards, justice to all, and the growth and extension of kindness both as a sentiment and a recognized rule of conduct, essential to human happiness, that it is possible to make the best provision for future generations. Instead of starting life with great wealth and a contempt for useful labor, it is far better for any normal healthy child to be trained to do his part and bear his share of the burdens of life, and taught that the largest and best life is that which accomplishes most for the good of others.

Not to destroy enemies by war, but to destroy enmity by kindness and friendly intercourse; not to punish criminals, but to eliminate crime by inducing right conduct; not to force the unwilling performance of duty, but to lead men to voluntarily follow high moral standards for the joy of well doing; not to enforce obedience to the arbitrary will of rulers, but to induce the acceptance of such direction as is essential to concert of action; not to stifle individual liberty, but to encourage and protect in all worthy efforts and enterprises, are the ideal purposes of governments and laws. How the nations of the earth have been afflicted with ignorance of these fundamental truths, how those in authority have disregarded them, and how the people have suffered by reason thereof, we shall see in our brief review of the rise and fall of states, and the principles by which they have been governed.

CHAPTER I

Unorganized Tribes

In the lowest social state we find individual liberty wholly unrestrained. The weak and despicable Digger Indians, dwelling in rocky and desert places, feeding on the most disgusting fare, though they have chiefs in accordance with the customs of the more vigorous branches of the Utah family, recognize no authority in them, and each individual follows the dictates of his own torpid will.

The lower Californians did not differ greatly from the Diggers in modes of life, though living under more favorable surroundings and exhibiting more providence in the manufacture of weapons and utensils. With well formed and vigorous bodies and not wanting in courage, they lived without habitations, government or laws and paired off at pleasure without a conception of the marriage relation. The Yaghans of Tierra Del Fuego, living in a most inhospitable clime and under circumstances rendering concert of action indispensable to even a small degree of comfort, yet dwell apart, each family by itself, naked and without shelter, recognizing neither chief nor laws and feeding on their own kind.

The Eskimos on the inhospitable shore of the Arctic Ocean, though far superior in industry, intelligence and nearly everything else, except cleanliness, are also said to recognize no authority. Probably this is due to the necessity for living in very small villages, owing to the barrenness of the country and the peculiar climatic conditions under which they live. The long night of winter prevents intercourse with others living at a distance and effectually isolates each group. During the brief but busy summer, hunting and fishing occupy their attention. For this concert of action in great numbers is not advantageous. More can be accomplished by separating than by combining. Isolated from the balance of the

world and having little to excite the cupidity of others, they are not often forced to fight, but they are reputed courageous and vigorous when put to the test.[1]

It appears that life in the hunter or fisher state tends to individuality and the absence of social organization. It is believed that no instance can be cited of a race of people, living exclusively from hunting or fishing and the spontaneous products of the earth, that has passed the stage of simple tribal organization. Though the civilized man can readily perceive the advantages that might accrue to them from concert of action, conditions are not such as to develop it, and probably, if once developed, any form of extensive organization would soon fall in pieces without a marked change in the habits of the people. Among the very lowest promiscuous intercourse is the rule, and the whole burden of rearing the young is cast on the mother. In a great majority of instances, where a permanent relation is recognized as existing between the man and woman, the latter is treated as a slave and forced to bear his burdens as well as her own and those of her offspring.

The natives of Australia appear to have been below the average of the American Indians in most respects. It is said that they did not till the soil at all, their habitations were of the most crude and temporary character, being mostly of bark or brush. In the manufacture of weapons and implements they exhibited little skill or ingenuity, having no knowledge of metals or skill in weaving fabrics. They did not know the use of the bow and arrow, the almost universal weapon of primitive man, yet the boomerang, a most curious invention unknown elsewhere, is their peculiar weapon. In government they do not appear to have ever advanced beyond the tribal stage, with very little power in their chiefs. As with most savages the women are oppressed and enslaved by the men and family ties are very weak.

In attempting a close study of the development of the first

[1] For a more full statement of the various customs cencerning the relations of the sexes see Brissaud's "History of French Private Law." Continental Legal History Series, Vol. 3, p. 1.

steps toward the formation of a government, we are met by a surprising complication of difficulties. Savage tribes can furnish no accurate history of their own development. The moment they are brought into close contact with superior people, the course of their development is affected to a greater or less degree by the extraneous influences to which they are subjected. Habits of life, fashions in dress and modes of warfare are quickly adapted to new conditions. Thus in America those who describe the Comanche Indian place him on horseback, though the horse was first brought here by the white man. Blankets and beads were worn by the natives of the eastern and middle states long before the revolutionary war, and a description of an Indian costume without them was hardly complete, though the material came from Europe. Guns and knives soon supplanted bows and tomahawks. Again the wars and migrations of tribes, the changing conditions and vicissitudes under which they lived, afford no opportunity to study a continuing development of a particular tribe or nation.

Few if any American Indians can now be found whose character, customs and even tribal organizations have not been changed and moulded by the influence of the whites. Those that have remained near their ancestral homes have little left of the character or habits of their wild ancestors. Those that have been removed to western reservations have also felt the effects of the teachings and examples of the whites, often to their destruction. This frequent and extreme subjection to vicissitudes is, however, a characteristic of the savage state, and no one need ever hope for an opportunity to calmly study the development of any savage people, uncontaminated by contact with more civilized people for many consecutive generations. The reason for this is plain. Steady development demands steady conditions. Not only were the Indian tribes subject to destruction at the hands of their enemies, but their indolence and improvidence left them constantly liable to famine, which often depopulated their villages.

The rudimentary society is always domestic in character, but usually it is the rule of the strong male over the female

slave. In all quarters of the globe warlike savages have been accustomed to enslave prisoners whom they did not kill. Yet the custom of adopting even prisoners of war to whom the captor chances to take a liking is not uncommon. This was the settled policy of the Iroquois and a great source of strength. The slavery is generally temporary in character, resulting soon in death or emancipation of the slave. The habits of life of the savage are not such as to admit of the propagation and preservation of a servile race. In our efforts to generalize the earliest appearances of social organization, we are liable to take up a preconceived theory and proceed with a smooth and logical narration of orderly development. But, when we attempt to cite authorities and demonstrate the correctness of our theories from known instances, we are met with innumerable perplexities and apparent contradictions. Observers who are ignorant of the language of the people they attempt to describe often give most unsatisfactory accounts. They report what they see and often fill out their descriptions with what they infer to be true. But as we proceed we shall find that these difficulties attend the study of the development of governments in all forms and stages in a marked degree, and that the human capacity and desire to choose and invent leads to most perplexing want of uniformity in the development of social order. While the earliest form of mastery and rulership of a permanent character appears to be domestic and a personal mastery of one over another, the next step generally has its foundation in war.

Authorities

Bancroft: Native Races of the Pacific States.
Schoolcraft: Indian Tribes of the United States.
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CHAPTER II

Tribal Organizations and Simple Despotisms

Passing from our imperfect view of the most low and repulsive specimens of human beings to those possessing more intelligence and exhibiting tendencies toward social organizations, we find everywhere that customs, superstitions and fashions precede governments and laws. The tribal organizations of hunters and fishers do not possess the true attributes of government, in the sense in which it is used by civilized man, to as great an extent as one of the many great corporations of modern times. The authority of the chiefs is hardly more than advisory. Matters affecting the tribe are usually determined by public assemblies, and war parties are made up of volunteers who submit to neither discipline nor command. Yet everywhere and even among the very lowest, customs, ceremonies and fashions are found to exist, the observance of which is compelled by public sentiment. These are often most cruel and unnatural. Let us examine some of them.

The custom of perforating the lips, nose and ears, of cutting off fingers, making incisions in the flesh and inserting most unsightly ornaments in lips, nose and ears is common with more or less variation among American Indians, African tribes and Polynesians. Thus the Thlinkeet women slit the under lip and gradually enlarge the opening until a large block of wood is inserted from two to six inches in length and from one to four inches in width and half an inch thick. It is so large that when withdrawn the lip falls over on the chin.

The Koniagas and Thlinkeets imprison girls arriving at the age of puberty in huts so small as to keep them continually in a cramped position for six months or even a year. Dances and feasts of various kinds are characteristic of savages everywhere. Love of ornament seems to precede a desire for cloth-

ing. Thus in many parts of the world savages may be found tattooed, painted, adorned with feathers, quills, rings, shells, stone and wooden ornaments, often hideous in appearance to the stranger, but rigidly exacted by custom, while covering for decency or comfort is not thought of. The Indians of North America were remarkably formal and ceremonious in all their negotiations and consultations. Their grand councils are sometimes described as models of decorous procedure. Marriage ceremonies were not generally very formal, and the bond of union often not of great force. Polygamy was generally allowed, but monogamy was the rule. They were undoubtedly far more lax in morals than the whites, yet the difference is still of degree. The Indian lodges among the leading tribes sheltered families where continency and affection were not wholly unknown. Among them there were marked differences as well in moral character as in mental capacity. The curious custom of dividing the tribes by totems was not a mere whim but had its foundation in a sound policy, and the rules relating to marriages based on it tended to check too close in and in breeding, likely to occur where people were divided into such small societies. Funeral rites were often impressive and proportioned to the estimation in which the deceased was held. Medicine men imposed on the ignorant with their charms, incantations, and absurd remedies, yet the medicinal properties of some plants were known and with all their filthiness the natives of the Pacific coast appreciated the value of a hot bath, for which most tribes provided a crude bath-house. Alcholic stimulants seem to have been wholly unknown to them. Their only intoxication was that resulting from war dances, superstition and bloodshed, by which at times they were wrought to a state of frenzy. Tobacco was much used and stupor and sickness often resulted from their gluttony at feasts. Undoubtedly the wild tribes of America exhibited, over an extensive area and under diverse circumstances, the first beginnings of organized societies more completely than any other people. While many variations of manners and customs are to be noted, there was a marked similarity in their crude tribal organizations, clearly traceable

to their habits of life and environments. The Indian was first and mainly a warrior, but to live he must hunt and fish. Though most of the eastern tribes raised a little corn and some few other vegetables, they still relied mainly on game for their subsistence.

Their only conception of title to land was for a hunting ground and temporary occupancy. This title each tribe was called on to maintain against the encroachments of hostile neighbors. With their habits of life, a dense population could not be maintained nor a large city be built. Their property consisted only of weapons, temporary movable lodges and spoils of the chase, supplemented by crude household utensils made from wood or stone. Moneys and revenues they did not know. In seeking to understand their government it is of first importance to know what could be governed. This ordinarily was a village of a few lodges, seldom more than one hundred. The people of the village were mostly related by blood and marriage. Whenever occasion required they could easily come together for consultation. Each was known to the other. Personal prowess in war and in the chase, as well as eloquence and wisdom in council, were quickly discerned and understood by all. There was a strong tendency to community of enjoyment of game taken and crops gathered. Under these circumstances leadership was accorded to him who gained the approbation of his fellows. A chief was a natural leader, chosen by his comrades. As a ruler however he scarcely exercised any of the attributes of sovereign power. He could not levy taxes, but was expected to generously distribute the game he secured. He had no lands yielding rent. He could not make laws for the people or declare war or make peace for them. All such matters were referred to grand councils. His war party as a rule was made up of such as chose to follow him. In battle much more depended on individual craft and bravery than on generalship. Here and there throughout history we learn of leaders who exhibited a capacity for organization and generalship, and who were able to impress on scattered tribes the advantages of combination and concert of action for mutual

protection. These combinations usually fell in pieces at the death of the leader.

The famous Iroquois confederacy is an example of a more enduring and efficient combination, which enabled the six nations to maintain their hold on the rich hunting grounds and well stocked lakes and streams of New York against all hostile tribes. Their superiority over hostile tribes was due to their superior combination and nothing but the irresistible march of the whites was able to destroy them.

The Comanches also evidenced some capacity for organization and maintained a powerful confederacy. Neither of these confederacies however presents much semblance of a government. The levy of taxes and expenditure of the money by public officers, which plays so great a part in all advanced states, was unknown. The members of the tribes were all warriors with no other calling to interfere. A levy of forces was a levy en masse, and public sentiment was always sufficiently powerful to drive every ablebodied man to seek distinction in war. While the women and children were usually left in a place of comparative safety, when war parties were out the organization of society was not greatly changed. All drudgery was done by the women in peace as well as in war, and feasts and famines alternated, whether the males were on the war path or in the lodges.

The ancient Germans as described by Caesar and Tacitus present many points of resemblance to the Indians in customs and environments as well as in social organization, though in a much smaller territory. Tacitus says: "I concur in opinion with those who deem the Germans never to have intermarried with other nations; but to be a race pure, unmixed and stamped with a distinct character. Hence a family likeness pervades the whole though their numbers are so great; eyes stern and blue, ruddy hair, large bodies, powerful in sudden exertions, but impatient of toil and labor, least of all capable of sustaining thirst and heat, cold and hunger they are accustomed by their climate and soil to endure."[1]

"It is well known that none of the German nations inhabit

[1] Tacitus, Germany C 4.

cities or even admit of contiguous settlements. They dwell scattered and separate as a spring, a meadow or a grove chance to invite them. Their villages are laid out, not like ours in rows of adjoining buildings; but everyone surrounding his house with a vacant space either by way of security against fire or through ignorance of the art of building. For indeed they are unacquainted with the use of mortar and tiles, and for every purpose employ rude misshapen timbers, fashioned with no regard to pleasing the eye." They also dug and inhabited caves.[2]

"In the election of kings they have regard to birth; in that of generals to valor. Their kings have not an absolute or unlimited power; and their generals command less through the force of authority than of example. If they are daring, adventurous, and conspicuous in action, they procure obedience from the admiration they inspire. None however but the priests are permitted to judge offenders, to inflict bonds or stripes, so that chastisement appears, not as an act of military discipline, but as the instigation of the god whom they suppose present with warriors."[3] They were great gamblers. "On affairs of small moment the chiefs consult; on those of greater importance the whole community, yet with this circumstance that what is referred to the decision of the people, is first maturely discussed by the chiefs."[4]

The real power seems at all times to have been in the general assembly which listened to orators and leaders and gave weight to the counsels of such as it chose to follow. Prowess in arms was always the main source of distinction and war was the only real business of life. Their scanty clothing was made largely from the skins of wild beasts and that of both men and women was fashioned substantially alike. They were extremely hospitable both to strangers and acquaintances. As with all tribes which have not reached the commercial stage, they were fond of giving and receiving presents. In agriculture they do not appear to have progressed farther than the Creeks, Cherokees or Navajos at

[2] *Id.* C 16. [3] *Id.* C 7. [4] *Id.* C 11.

the time of the advent of the white man, nor in architecture or the manufacture of clothing and household utensils. The description so far given of the Germans in the time of Caesar and Tacitus would apply very well to most of the more advanced and vigorous Indian tribes at the time of their first contact with the whites. Let us note the leading points of difference. The Germans had horses and cattle. They made beer and the tribes near the Rhine also used wine. They drank to excess. They used iron for their weapons. They had fixed customs with reference to the use of land for tillage, but which hardly amounted to an assertion of title even in the tribe. Though subject to the vicissitudes of war and sometimes driven from place to place, they were less migratory than the Indians. They were more cleanly and better fed, having the advantages of milk, cheese and the flesh of their cattle. The most marked and important characteristic of their manners, as described by Tacitus and concurred in by all the early writters, is the purity of their domestic relations, the care taken in rearing their young and preserving their strength. Chastity is seldom characteristic of barbarous races, but, in this particular, their manners were in striking contrast with those then prevailing in Rome. In the development of government it is apparent that the Germans at the time of our first introduction to them were in substantially the same stage as the Comanches, Iroquois and other more advanced tribes of the north at the time of the discovery of America.

The incipient stages of government everywhere exhibit either voluntary association for a common purpose or the despotic rule of the strong. In the former case the authority terminates with the necessity calling it into existence, and in the latter is dependent on the capacity of the master to maintain his supremacy. In either case the authority exercised is arbitrary in character and not exercised in accordance with any established rules.

Among the American Indians the organizations were largely voluntary in character. In Africa despotic tendencies predominate. The savage tribes of Africa are not less given

to bloodshed than the Indians, but possibly a little less inclined to inflict cruel tortures on enemies, equally violent in temper, but rather warmer in attachment, equally warlike, but more inclined to fight in the open and on even terms.

In making provisions for the future, the African tribes are far superior to the Indians. Even the most fierce and independent tribes cultivate the soil to good purpose, raising large variety of vegetables and fruits and also keep cattle, goats, fowls, etc. from which they are supplied with meat, milk, butter, eggs, etc. This is especially true of the stalwart tribes and nations dwelling in the great lake region of equatorial Africa. The Hottentots, often mentioned as of a very low type, tilled the soil and kept their herds. In manufactures workers in iron are found by travelers in the heart of the continent.

The classification often made of the stages of progress of the race, based on the nature of the implements used, will not hold good to any degree whatever as a classification of social development. The stone age, the bronze age, the iron age, are supposed to name the successive stages of human progress, and in the development of the arts doubtless do, but in moral and social development they indicate nothing. Nor are the designations as hunters, shepherds and tillers of the soil more expressive in these respects. Along the great Congo and its tributaries are to be found many tribes which have passed all these stages, having their flocks and herds, their gardens, and fields of grain and fruits, which evidence considerable skill in the manufacture of household implements, boats, nets, etc. and also forge iron, from which they make knives, spears and other weapons, yet morally these people are among the most depraved. They are horrible cannibals. They are thieves and robbers as well as murderers at all times. Domestic virtue is unknown. Some tribes eat the old people when they cease to be capable of taking care of themselves, if we may believe the accounts of travelers. With a great part of them the governmental growth does not extend farther than tribal organization with no substantial power in the chiefs.

Throughout Africa all governments seem to be merely an extension of the relation of master and slave. Though possessed of strong and vigorous bodies, of considerable skill and industry in providing for bodily comforts, of courage as well as cunning in war, they are sadly deficient in social virtue. From the small weak tribe, struggling for existence against its enemies, to the powerful kingdoms like Uganda Unyoro, Dahomey and Abyssinia, all authority is exercised unchecked by law. Whatever the ruler does is in accordance with his individual will. Where the power is conceded the mode of its exercise is never questioned. When the king of Uganda sees fit to depose some one he has elevated to a high position, he sends a favorite with a sufficient following to "eat him up," which means that the obnoxious one is killed and his wives, slaves, cattle and property are confiscated and given to whomsoever the despot wills. The practice of polygamy is limited only by poverty. A great despot like the king of Dahomey may far outclass even the great Solomon in the number of his wives. The mode of administering the greatest of their governments is exceedingly simple. Wherever the king acts directly on his subjects, he rules as an absolute despot, enforcing his commands summarily by seizing property or person and taking life according to his humor. Where he acts through subordinates whom he cannot oversee, the same despotic power and discretion is exercised by the underling, who is only restrained by fear of displeasing the king. The horrible cruelty so often exhibited by these despots would seem such an intolerable evil that anarchy would be preferable. Yet, comparing the conditions of the people in the strong states with those of the scattered tribes, we find that even such a despotism exists because it is better than no government. Scattered villages, unprotected by any strong combination, are surprised and destroyed by some marauding tribe. Peace and plenty for a generation in some spot may be followed by partial or total destruction in a day. This has been the history of wild tribes everywhere from the earliest times of which we have any account. Tribe against tribe in battle to the death from generation to generation has

been the history of the race. The hunters of America, relying mainly on game and spontaneous products, were kept constantly reduced in numbers by fierce wars and frequent famines. The Africans with far better food supplies multiplied faster and developed more industry, yet bloody and devastating wars seem to have been not less frequent with them. The effect of organized government everywhere has been to check tribal wars, to encourage industry, and to increase population. Though a large country be at war, there is peace to all save those in and about the scene of the struggle. The great nation too is not likely to be more frequently at war than the small tribe and the percentage of destruction of those engaged generally increases in inverse ratio to numbers.

The African race throughout all ages has demonstrated its ability to survive and even increase in contact with the other races. Although northern Africa has been subject to the influence of European and Asiatic civilization from the earliest times, it still retains its distinctive characteristics, and the negro type dwelling south of the great desert exhibits scarcely a trace of intermixture with the whites. Along the eastern coast it is true that the Arabs have intermixed and modified the type to some extent, but the predominant characteristics are distinctly African. The civilization of ancient Egypt does not appear to have ever ascended the Nile far beyond the desert, but it is probable that knowledge of agriculture and the art of forging iron has spread over Africa from Egypt and Arabia.

In comparatively recent times European civilization has taken a firm hold in south Africa and is rapidly extending toward the north. To what extent the African will give way and vanish before the Caucasian in the Tropical regions remains to be seen. In America it has been demonstrated that the negro multiplies both while in the condition of a slave to the white and as a free man. Everywhere and under all conditions he exhibits strong attachment to his offspring and, while lecherous, is still warm in domestic and friendly attachments, and often exceedingly kindly in disposition when his passions are dormant. In physical development the black

man can not be classed as clearly inferior to the white. Though some tribes are dwarfed and illformed, the great majority are equal in size and strength to the best developed Caucasians. Why they should have made so little progress in constructing governments and enacting laws is an interesting subject of inquiry. Except where brought in direct contact with some superior race, they seem never to have learned any system of writing and, as we have seen, their only idea of government has been that of arbitrary personal authority, unrestrained by law or settled custom. Though in the region of the great lakes the natives cultivate the land, often to a high degree, Livingston, Stanley and other travelers fail to inform us of any system of laws governing land tenures. The chief or king may decide disputes between conflicting claimants, but he does so according to his own caprice rather than by any settled law. The marvelous fertility of the soil, the extent of unoccupied land and the frequent destruction of communities by war, seem to afford a continual outlet for any increase of numbers. It may be that a close study by a careful observer would disclose more in the nature of settled principles of government among them than the writings of hasty travelers record, but it seems clear that their conceptions of rules of property and laws governing the conduct of individuals toward each other, except where modified by contact with other races, are not in advance if really equal to those of the American Indians.

Intermediate the prevailing tribal organizations of America and the highly developed governmental systems of the Mexicans and Peruvians, were many nations advanced somewhat above the common level of the rude tribes. The Comanches presented an advanced type of the Indians who occupied most of the North American contient, well formed and vigorous in physique, brave and warlike, hospitable in peace, fierce and cruel in war. They were nomads. They held public councils at regular intervals to discuss public matters, make laws and punish crime. The majority ruled. Laws were published by a crier. Justice was administered by a council of the tribe whose sentence was carried into execution by the chiefs.

A system of signals by fire and smoke was used to call their forces together in case of need. In war they were formidable and could bring to the field a force of several thousand. Crimes were punished rigorously and toward each other they were peaceable. Their treatment of women was in accordance with the usual customs of savages. Wives were bought and made drudges for their husbands and polygamy prevailed. No attention was paid to agriculture, but the vast herds of buffaloes on the plains afforded an ample supply of meat. The Navajos, Mojaves and Yumas were more peaceful and industrious in their habits. They cultivated the soil and raised corn, wheat, beans, pumpkins, melons and other vegetables. The Mojaves built substantial dwellings of very peculiar construction, and cylindrical granaries. Some tribes entered their dwellings from the top, having neither doors nor windows. The Navajos were shepherds, and their blankets have become noted. In the far northwest the natives showed a tendency to more settled modes of life and to class distinctions. The Nootkas, Chinnooks and Thlinkeets built large and substantial dwellings of wood, sufficient in size for many families occupying separate apartments. Property in these homes was recognized as vested in those who combined to build them. The villages of the Nootkas were regularly laid out. Something like hereditary rank was recognized, though the head chief had little real power except over his slaves. A sort of nobility existed, based on individual distinction in war or social liberality. Among the Thlinkeets and Haidahs the power of the chiefs is said to have been despotic at times. All the Northwestern tribes held slaves and had notions as to property rights. Though instances may be cited of arbitrary power exercised by Indian chiefs, the prevailing genius was that of liberty and equality. Personal prowess was the source of distinction, and recognized individual merit the commission of leadership. The cunning of the medicine man, working on the ignorance and superstition of the members of the tribe, gave him influence, but little real authority. No priestly class appears to have developed except in the advanced states of Mexico and Peru.

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CHAPTER III

Pacific Islands

The social state of the natives of the Pacific Islands presents a most curious study. Their character as depicted by the early discoverers is contradictory. This however is largely true of all savages. At times they appear as gentle, kindly, hospitable and peaceful, at other times as fierce, treacherous, vicious and murderous. That they were mostly cannibals is beyond doubt, yet they generally lived under conditions affording abundant and varied food supplies. They tilled the soil, raised pigs and fowls and in most parts recognized individual ownership of the soil. Though scattered over numerous islands distant thousands of miles from each other, the people appear to be of one race and their language and customs are surprisingly similar from Hawaii to New Zealand. The ignorance of Europeans of their ideas and superstitious observances of the laws of taboo have doubtless led to many exhibitions of fierceness by the natives, the reason of which has not been understood by Europeans. The violation of a taboo by taking a sacred thing or invading a sacred place aroused the otherwise peaceful islander to murderous frenzy. Kingly authority, class distinctions and slavery appear to have been general in their system, which is spoken of by some as based on castes.

In some respects they are, according to European ideas, to be classed as among the lowest types of mankind. They went naked and ate human flesh. Yet they recognized governmental authority and rights of property. These were upheld by intricate religious or superstitious observances of taboos, which made sacred to the use of the king all things which he touched and, lest the property of the subject should become so, forbade him to use anything but his own. With them, as with all savages in moderate climates, the body was disfigured

for ornament, and the idea of making clothing for comfort does not appear to have suggested itself. Owing to the small size of the islands and the distance of one from another, the authority of a king seldom extended far and the number of people under one soereign was necessarily small in comparison with even the larger African despotisms. Still it was not uncommon for a king to rule a whole group of islands. New Zealand affords a comparatively wide field, but does not seem to have developed a higher type of government. Numerous chiefs having little real power led the people in their wars. Having no money there were no taxes, but there were slaves. Having no knowledge of the use of letters they had no written laws, but their customs and superstitions, taught orally, were quite complicated. There was little basis for commerce, as the products of all the neighboring islands were substantially alike, and the fish of the sea were equally accessible to all. Manufacturing was mostly limited to building huts, boats and making weapons and fishing tackle. The similarity of the people and their customs on so many islands, so remote from each other, is very striking. While on the continents tribes differing radically in language, customs, character and appearance are often found in close proximity to each other, the people of Hawaii and New Zealand, though separated by sixty degrees of latitude, seem clearly of the same race.

As with nearly all the lower races the women bore the heaviest burdens. The taboo prohibited her from partaking of the flesh of pigs and fowls and from feasts of human flesh. Enforced by superstitious fears as well as physical force, the taboo operated as a powerful aid to the authority of the ruler and exercised a wide influence on the conduct of the people. It was in effect a most peculiar system of laws, having little similarity to anything found in continental regions. The taboo of the king or chief rendered not only his person and property sacred but even his name. This was a recognition of his divine right far surpassing that of European kings. The idea of the sanctity of priests, churches and sacred places is similar only in a slight degree to the idea of absolute ex-

clusiveness imposed by the taboo. As applied to the matrimonial relation the wife was taboo to all but her husband. For savages this was quite a close approximation to the idea of the sacredness of the marriage relation.

CHAPTER IV

Mexico

The governmental systems of the inhabitants of the Mexican plateau differed, not merely in degree of development, but radically in character, from the tribal organizations and confederacies of the wild races of the north. The Tlascalans seem to have retained more of the traits and characteristics prevailing among northern tribes than their more numerous neighbors. Prescott speaks of Tlascala as a republic, but, if such, it was of a most peculiar sort. The principal authority was vested in four chiefs, each of whom had his separate district, parcelled out among sub-chiefs, who held by a tenure similar to that of the feudatory vassals of Europe, and were bound to render military service to their chiefs, as well as to supply their tables. The affairs of the general government were settled by a council consisting of the four principal chiefs and the inferior nobles. The domains of the sub-chiefs were parcelled out among their retainers, who were bound to render them like service as that they gave their superiors. The bond of union appears to have been very firm and was well maintained. In the city, order was preserved by a municipal police. Military prowess was the source of greatest distinction, and a rank corresponding with knighthood was conferred on those exhibiting especial merit. The lowest order of people appear to have been held in a condition not unlike the European peasants of feudal times.

The darkest aspect of Aztec life was the bloody and gloomy religion, the cruel rites of which constantly characterized the deity as savage, remorseless and devoid of love or pity. The custom of eating human flesh is only reconcilable with the otherwise high state of civilization attained, as an ordinance of their horrible superstition. Their war god, like the war gods of all people in all times, taught lessons of cruelty and forbade all exhibitions of pity or kindness toward enemies.

The government of the Aztecs was an elective monarchy. The sovereign was selected from the brothers of the deceased monarch or in default of them from his nephews. The choice was made by four of the principal nobles, designated for that purpose by their own order in the preceding reign. This system appears far better calculated to place a meritorious prince on the throne than the prevailing system in modern Europe, which places the crown arbitrarily on the eldest son of the deceased monarch without regard to merit. It also avoided the necessity for a protector ruling in the name of an infant king, for among those eligible there would seldom fail to be an adult. The electors, taken from the leading men of the nation, were familiar with the character of all the princes and in a position to make the best possible selection. This system is doubtless due to the democratic ideas which prevailed among the aborigines of America, and to their settled custom of awarding power and leadership only to such as exhibited capacity for it. The results fully demonstrated its wisdom, for their kings were men of conspicuous ability. The king was not only the chief executive and commander-in-chief of the army, exercising direct authority over the principal nobles, who were required to render him personal service at his palace and in his body guard, but he also exercised the legislative function. This he did in a manner far in advance of the methods of African and many Asiatic despotisms. The laws promulgated were registered and exhibited to the people in picture writings. They were of course adapted to the conditions of the people, and show evidences at the same time of enlightened policy and savage cruelty. Murder and adultery were punished with death. Thieves were either enslaved or put to death. Among capital offences were numbered removing the boundaries of anothers land, altering the established measures, and misconduct of guardians in dealing with the property of their wards. Prodigals and drunkards were severely punished. The marriage relation was clearly comprehended and its sacredness recognized and protected. Divorces could only be obtained by decree of a court having jurisdiction solely of domestic affairs, after a full and patient hearing of the parties.

Slavery existed among them, but in the least objectionable form in which it has existed anywhere. Its subjects were prisoners of war, who however were almost invariably sacrificed rather than enslaved, criminals, public debtors and poor persons who sold themselves or their children. The services to be exacted were limited with precision. The slave was allowed to have his own family and property, even other slaves. His children were free. There was no such thing as hereditary slavery, and sales of slaves were rare. The separation of the judicial power from the executive and legislative evinces a comprehension of the principles of good government hardly to be looked for. Over each of the principal cities and its tributary country there was a supreme judge, appointed by the king, but holding his office for life. He had jurisdiction in both civil and criminal causes. There was an inferior court in each province, composed of three members, having concurrent jurisdiction in civil causes. In criminal cases an appeal lay to the supreme judge. Besides these there were inferior magistrates throughout the country, chosen by the people of the districts and having jurisdiction in minor causes. There were also inferior censors, elected by the people, whose duty it was to watch over a certain number of families and report any infraction of the laws. In Tezcuco a general meeting of all the judges throughout that kingdom, presided over by the king, was held every eighty days at the capital for the determination of causes of first importance. This general court also acted as a grand council of state. For a judge to receive a bribe was punishable with death. The judges were supported from a part of the produce of the crown lands set apart for that purpose. They wore official robes and worked full days. Officers corresponding to sheriffs and bailiffs were in attendance to preserve order, summon parties and witnesses. Lawyers do not appear to have been in favor and are not mentioned in connection with the proceedings of the courts. In criminal causes the accused was allowed to testify. The testimony and proceedings were taken down by the clerk in hieroglyphical painting and delivered to the court.

In the art of levying taxes, as in all other branches of the

science of government, the Aztecs were far in advance of all savages. Besides the revenue from crown lands, services in building the kings palaces and buildings were exacted from laborers dwelling in the adjacent territory. Tribute in kind was required from farmers and manufacturers, and the table of the monarch and his retainers was abundantly supplied by his subjects. His granaries were filled with corn and his warehouses with cotton cloths and feather robes, arms, armor and utensils collected by his tax gathers from all parts of the empire. In fact every variety of product for use or ornament was collected for the king.

Any description of the Mexican government which ignores the priesthood leaves out the most characteristic part. The influence of the priests on the policy, as well as on the manners and morals of the people, was of first importance. The chief priests were not only at the head of a vast religious establishment, numbering thousands of inferior members, but at the same time superintended the educational system of the empire and exercised a most potent influence on the policy of the king. To supply the thousands of human victims, who were sacrificed during each year to their cruel gods, it was necessary to wage war and bring in captives. At the behest of the priests the monarch was often influenced to put the armies into the field. Thus the empire was extended, at the expense of neighboring tribes, and victims were supplied for the sacrificial stone.

At the head of the religious order were two priests chosen by the king and principal nobles. Below them were others of various ranks and functions in all the towns of the empire, forming a very numerous body. Their *teocallis* or temples, in great number and many of them of vast size, were thickly scattered about the cities. On the top of the terraced mounds of earth, on which the temple proper stood, the victim was bound on the sacrificial stone, and in sight of the people far and near the priest cut his breast open with a sharp stone, tore out his throbbing heart, held it bleeding to the sun and then cast it at the feet of the idol. The body of the victim was then given to his captor to be served at a great feast given to his friends.

In some respects the religious societies were similar to those of the Catholic Church. They held and tilled great bodies of land, the surplus products of which over what was consumed by them, were distributed to the poor. The priests heard the confessions of the people and granted absolution for their misdeeds. More important, however, than all this, the religious houses were the repositories of learning. To them was due the credit of developing the art of picture writing, and they took charge of the instruction of the young. By this means their doctrines and superstitions were given a strong and lasting hold on the people, especially the nobility, whose children were trained by them.

In all ages and among all people public ceremonies have played an important part in public affairs and exercised a powerful influence on society. Among the savage tribes of America, feasts, dances and formal councils have afforded the occasion and opportunity for gathering the sentiment of the tribe on public questions, for arousing their passions and starting them on the war path. In imperial Rome the culture and innate savagery of the people were exhibited at the circus. Nero read his verses above the arena whose sands soaked up the blood of martyrs, gladiators and wild beasts. The Mexicans exhibited no less strong contrasts in their public ceremonies. Beautiful flowers in tropical profusion, emblems of peace and innocence, adorned the processions which bore victims to the altars of the gods. Innocent babes, gaily decked with beautiful robes and roses, were carried to their doom by chanting priests. At the same time that observance of these most cruel and savage rites was inculcated, the priests taught lessons of private virtue and integrity, obedience to law, industry and thrift. It may be remarked that even their treatment of prisoners was an improvement on that prevailing among the savage tribes with which they were surrounded. The act of cutting open the breast and tearing out the heart was quickly and dexterously performed, and the suffering of the victim soon ended. Let it not be forgotten also, while we are condemning the Aztecs for their barbarity, that, at the same time, the most Christian nations of Europe were

breaking heretics on the rack, walling them up alive in tombs and applying all the tortures which fiendish ingenuity could devise, for the purpose of preserving intact the authority of the priests and teachers professing to be followers of the meek and lowly Nazarene, who came to bring peace on earth and good will to men. Let us remember that our Puritan ancestors, even at a later day, hung and burned people guilty only of the imaginary crime of witchcraft. Let us bear in mind how heads were lopped off in England and elsewhere for even dreaming the death of the king. Though so abhorrent to our ideas and feelings, their cannibalism seems to have been prompted by fanaticism rather than foul appetite.

The number of festivals observed by the Mexicans was very great. Each god received his due honors, and all religious ceremonies were conducted by the priests and observed by the people with order and decorum. It is curious to note that under the more ancient civilization of the Toltecs human sacrifice was unknown. Not until the ascendency of the Aztecs had the Inquisition begun its bloody career on the European continent.

The domestic regulations of the Aztecs were neither of the best nor of the worst. Polygamy was practiced to some extent, especially among the rich, but was not general. Slavery as we have seen existed but in a mild form. On the other hand marriages were celebrated with much ceremony, continency on the part of both sexes was strongly inculcated, and adultery severely punished. Though children were strictly ruled, especially while under instruction, their parents regarded them with affection. Wives were not slaves to their husbands, but were their companions and shared with them at feasts and entertainments. Divorce implied disgrace and could only be obtained through a court for cause. Guardians were appointed for orphans and were held to the strictest account in the management of their estates. The principal part of the labor of the fields was performed by the men. Only the lighter kinds of work were done by the women, and it is said that in the division of labor the weaker sex was quite as tenderly regarded as in most parts of Europe today.

The educational and material progress made by the Mexicans was such as might naturally be expected from their circumstances. Considerable skill was developed both in agriculture and in manufactures, but trade hardly passed the stage of local barter. Regular markets were held in the cities on every fifth day, which were attended by a great concourse of people. Different quarters were assigned specially to each kind of commodities and, where barter failed, a kind of currency consisting of quills of gold dust, bits of T shaped tin and bags of cacao of a specified number of grains was used. The precious metals as well as tin and copper were wrought with much skill into useful and ornamental vessels and implements of various kinds. The fibre of the maguey and cotton furnished material for the weavers, of which they made good use, and the richest robes were made with feathers. Though their architecture was not of high order, the teocallis and palaces were of great size, and the latter of considerable pretensions for comfort. Post routes were established throughout the empire, with stations at short intervals, and by means of trained messengers dispatches were forwarded with remarkable speed. Picture writing had reached a stage of development that furnished means of communication by writing and orders from the king were so transmitted by his messengers.

The most marked and surprising evidence of scientific progress was in the correctness of their calendar, in which the length of the year was set down with a very close approximation to absolute accuracy, and the equinoxes and solstices were correctly noted.

Domestic animals the Aztecs had not. They were therefore total strangers to the shepherd state. The buffaloes of the prairies were never reduced to subjugation by them. The care with which they made provision for future wants in well stored granaries and warehouses is in marked contrast to the improvidence of northern tribes. In their *pulque,* made from the sap of the maguey, they had an intoxicating drink of which they were excessively fond, but of which only the old people were allowed to partake freely. The diversity of

climate due to difference in elevation afforded a most diversified and prolific flora which they studied with care. Their gardens afforded both useful and beautiful plants in the greatest variety.

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CHAPTER V

Peru

The governmental system of Peru, as it existed prior to the Spanish conquest, is unique in some of its most essential features and worthy of the most careful study. For information with reference to it we have to look to the accounts of its fierce and fanatical conquerors, who probably failed to fully and clearly comprehend the spirit of it.

The native tribes of South America were generally as deficient in organization as those of North America. The Araucanians, inhabiting the country to the south of Peru, exhibited some capacity for concerted action and were a bold and vigorous race, but their institutions bore no resemblance to those of Peru. Why a great and strong government, so peculiar in form, should have developed amidst such surroundings, apparently with nothing to suggest the well digested policy pursued by the Incas from generation to generation, is an unsolved riddle. The tradition of Manco Capac and Mama Oello Huaco, children of the Sun, appearing near Lake Titicaca and proceeding to gather the fierce, warlike and cannibal tribes into communities and teach them the arts of peace and the duty and blessings of mutual helpfulness, is as charming as anything to be found in Greek Mythology, yet fails to account for the origin of the Empire, unless we are ready to concede, as did the Peruvian people, the divine origin of their rulers. In the claim of a divine origin for kings there is nothing new or uncommon.

The power of hereditary despots is universally exercised under claim of a divine commission. Generally this claim has been fortified by an organized priesthood, sedulously teaching the people to view the king with awe and reverence as the representative on earth of the Deity. Inferior officers civil and military have, through various motives, also instilled

into the minds of the multitude an idea of the sacredness of the prince and the divinity of his commission to rule over men. The government of Peru was a monarchy, hereditary in the male line. The Inca stood at the head of both the civil and religious orders. He married a sister of the full blood for his queen, whose issue succeeded to the throne, and also had numerous other wives. All descendants of the Incas constituted the highest order of nobility, and from them all the great offices of state were filled. From a small territory in the vicinity of Cuzco the dominion of the Incas was gradually extended, by peaceful methods wherever possible, but by war when necessary, over adjacent tribes. The conquered people were never exterminated, but became subject to the same regulations as other subjects and received like protection. Their caciques constituted an order of nobility, inferior to that of the blood of the Incas, and exercised some authority over the tribes to which they belonged. They were required to visit the capital and allow their sons to be educated there, so that in the succeeding generations they became imbued with the principles of the government. The members of the family of the Inca are said to have been of a superior type to the mass of subjects. Whether this was due merely to difference in mode of life and opportunities for development or to a diversity of original stock cannot be very satisfactorily answered. Over the religious order stood a high priest or *Villac Vmu* as he was called, inferior only in dignity to the Inca, by whom he was appointed from his near kindred, to hold the office for life. The *Villac Vmu* appointed to all the inferior stations of the order. Those officiating about the temple of the Sun at Cuzco were exclusively of the blood of the Incas, as were also the high priests in each district of the empire, but ministers in provincial temples were selected from the families of the native *curacas*. All members of the Inca nobility were looked up to with veneration as belonging to the holy order. The functions of the priestly order related exclusively to service in the temples and in connection with the very elaborate feasts, festivals and public worship. The Sun was the principal deity worshipped, with a small share

of devotion for the Moon, his sister wife, the stars, the rainbow, thunder and lightning. But the Incas, like the ancient Greeks and Romans, were exceedingly tolerant of other gods, and also had their Pantheon in which were set up the images of the deities of all the conquered tribes of the empire. Following the submission of a tribe worshipping a peculiar god or idol, the image was at once promoted and took its place among the gods at Cuzco, where it received appropriate homage at the expense of the state. Public sacrifices were made at the great festivals, and it is said at times in addition to animals, grain, flowers and sweet scented gums, children and maidens were also sometimes offered on the altar. It is certain, however, that human sacrifices were rare, and it is even disputed by some that any such were made. The "House of the Virgins of the Sun" at Cuzco was filled with fifteen hundred vestal virgins of the blood of the Inca, who kept the sacred fires, started at the annual feast of the Rayini, and wove from the hair of the vicuna the hangings for the temples and the clothing for the household of the Inca. Though called Virgins of the Sun they were really for the Inca, who selected such of them as he pleased for his seraglio. Such as were chosen were kept either at Cuzco or at the different palaces throughout the empire. In case he chose to dispense with any of these, they were returned to their former homes, where they were treated with marked distinction as brides of the Inca. If guilty of any loose conduct while in the House of the Virgins, however, they and all connected with them were punished with death.

The empire of Peru was divided into quarters, to each of which ran one of the four great roads diverging from the capital. Cuzco was likewise divided into four quarters, and the people of each tribe or district residing in the capital lived in the quarter nearest their native place. Each of these four great provinces was placed under a viceroy, who ruled with the aid of one or more councils for the several departments. The viceroys resided some of the time at the capital, where they formed a council of state to the Inca. The people were divided into bodies of ten, and the head of each decade was

responsible for their conduct. Above these were divisions into fifties, hundreds, five hundreds and thousands, with an officer having supervision at the head of each. A further division into departments of ten thousand people was also made, over each of which was placed a governor of the blood of the Inca.

The judicial system was exceedingly simple, and the law's delays found no place in it. There were regular courts in each town and community, having jurisdiction of petty offenses, while those of more serious character were heard by superior judges or governors of districts. The judges were all appointed by the Inca and removed at pleasure. They were obliged to determine every suit in five days from the time it was brought, and there was no appeal. A board of visitors traveled over the kingdom, inquired into the conduct of the magistrates and punished any misconduct. Inferior courts were required to make monthly returns of their proceedings to the superior ones, who in like manner reported to the viceroys.

Theft, adultery and murder were capital offenses, unless mitigating circumstances were found. Blasphemy against the Sun and malediction of the Inca were punished with death, as also was the burning of a bridge. There were few laws relating to property rights as between private citizens, for the reason that the general policy of the empire left no room for much in the line of private interests. To destroy landmarks, burn a neighbor's house or cut off his water supply was a serious offense. In its division of the land and superintendence of all the business of the people is exhibited the most marked peculiarity of the Peruvian polity. The whole territory of the empire was divided into three parts, one for the Sun, one for the Inca and the other for the people. The proportions varied according to circumstances. The lands of the Sun supported the religious establishments, fed the priesthood and supplied all things needed for their elaborate ceremonials. From that of the Inca the royal household and all the needs of the civil and military establishments were supplied. The remainder was divided in equal shares per capita among the people. The division of the soil was re-

newed every year, and the share assigned to each household was increased or diminished according to the number in the family. The only distinction allowed was in favor of the lower order of nobility, who were given a larger allowance. The people first attended to the cultivation of the land of the Sun. Next they tilled the lands of the old, the sick, the widow and orphan and the soldiers away in actual service. They were then allowed to attend to their own, each by himself, with a general obligation to be mutually helpful in case of need. Lastly they cultivated the lands of the Inca, all working together in gala costume and making it a time of jubilee and festivity. The crops belonging to the Sun and the Inca were gathered and placed in granaries provided for the purpose.

The flocks of llamas were exclusively the property of the Sun and Inca and were cared for by shepherds assigned to that task. Great numbers of them were slaughtered for religious festivals. At the proper time they were sheared and their fleeces deposited in the public magazines, from which the wool was distributed among the people according to their needs, and spun and woven by the women, who were educated to that end. Cotton however was raised on the lowlands and used for clothing by the people in the hot districts. The people were also required to weave for the Inca, and officers appointed for the purpose, distributed the material and directed the work. Not only did they see to the proper use of the material furnished for the use of the Inca, but also to that for the people as well, and care was taken that nothing should be wasted or misapplied. The great majority of the people were husbandmen, who supplied their wants from the lands assigned to them. There was need however of hands to work the mines, which all belonged to the Inca, and to manufacture the utensils and ornaments of his palace and the temples. For these a sufficient number were selected and specially instructed in the arts. For the construction of palaces, temples, roads and other public works, laborers were drawn from the various provinces for stated periods of service and maintained at the public expense while so employed. The

distribution of burdens was fair and equal, so that no person was crushed by the public exaction.

An accurate census of the inhabitants was made and returned every year, and registers were kept of all births and deaths. At intervals a general survey of the whole country was made, showing the amount and quality of the land, and the purposes to which it was adapted. This afforded the basis for the division of the land, the apportionment of public work, the levy of soldiers and the distribution of supplies. Distributions among the provinces and districts were determined by superior officers and particulars were attended to by the local authorities. Thus ancient Peru affords probably the only instance on a large scale of a government mainly devoted to the regulation of the business affairs of the people with a view to promoting the general comfort and prosperity of all. The fundamental ideas of their system were, that all should work industriously yet not beyond the limits of endurance, that each should be provided with the necessaries of life, should marry, rear children, live virtuously and honestly. The vast and magnificent public works and the great stores of grain and manufactured stuff found by the conquerors bear testimony to succeessful employment of the people in industrial pursuits and to excellent economy in the use of the products of their labors. The Spaniards reported finding grain enough to last several years in their granaries and vast quantities of woolen and cotton stuff, as well as implements and utensils of various kinds, in their warehouses. The stores of grain from the lands of the Sun and Inca were not wasted, but in time of need were drawn on to supply the wants of the people.

The government was a great business establishment calling for a vast amount of patient attention to details. The nobility, while enjoying superior advantages, were not mere drones nor intriguing politicians. Each had his duties to perform for the public. The government not only directed all warlike undertakings and all works regarded by Europeans as public, but also filled, to some extent, the place of the merchants and operators of mines and factories. In considering

what was accomplished by this system it must be borne in mind that all was done without the aid of steam, electricity or labor-saving machinery of any kind, that the use of iron was unknown, and that they were wholly unacquainted with letters or even with the rudiments of picture writing; yet they kept more accurate records of the people and resources of the empire than were kept by any contemporaneous European nation. This was done by means of the *quipu,* one of their peculiar devices. It was a cord about two feet long composed of different colored threads, tightly twisted, from which smaller threads were suspended like a fringe. The colors denoted different objects or ideas as yellow, gold; white, silver; red, war; white, peace. Knots tied in the threads indicated numbers, and by different combinations of threads and knots numbers to any limit could be expressed. All calculations were made by use of the *quipu* and with great accuracy. Different officers made reports to the government on different subjects. One had charge of the revenues and reported the stores of various kinds placed in the public granaries and warehouses, and the raw material distributed among the laborers. Another made report of births, deaths, marriages, number of men capable to bear arms and other details relating to population. All returns were forwarded annually to Cuzco, where they were inspected and used by the proper officers. These knotted skeins of many colored thread afforded complete statistics of the material resources and business affairs of the entire kingdom. The system has advantages over reports in written or printed words. There is no chance to talk for the purpose of concealing information. The threads and knots had definite and certain meanings, and told their story once and for all.

Along the great highways, which equalled Rome's great roads in construction, were placed at intervals of ten or twelve miles *tambos* for the accommodation of the Inca and those who traveled on public business. Some of these were very large and designed to lodge the army when marching through the country. A complete system of posts was established along all great routes. Small buildings were erected at intervals

of less than five miles, in which were stationed a number of trained runners, called *chasquis,* whose duty it was to carry dispatches and articles for the use of the Inca and his court. By this means urgent messages were carried at the rate of one hundred and fifty miles a day, and the Inca was kept constantly informed of what was taking place in the most remote parts of the empire. The military system and policy were on an equally orderly and advanced plane. Regular drill took place in every village twice or thrice a month. In case of war levies were drawn from each province and divided into companies and battalions under proper officers, and the whole army was led by the Inca or one of his blood. The troops moved rapidly along the great roads and found ample provision for their support at every camping place. Like Rome in her palmy days, Peru steadily extended her dominion by peaceful negotiation, persuasion and inducements to the chiefs and leaders of neighboring people wherever possible, but by arms when other means failed. Thus the empire spread from its original small district about Cuzco northward beyond Quito to about two degrees north latitude and south to about thirty-seven degrees south latitude, and from the Pacific on the West to an unknown boundary on the eastern slope of the Andes. Each conquered district was carefully surveyed and the lands apportioned on the same principles as were applied in other parts of the empire. The people, especially the chiefs, were taught to speak the Quinchua tongue, the language of the court, and for this purpose teachers were sent into the newly acquired province. In case of serious disaffection or continued turbulence on the part of the inhabitants of any district the people, or a considerable portion of them, were transplanted into some distant province, where they were surrounded by subjects of tried fidelity, and their places filled by the displaced population.

While polygamy was allowed to the Inca, who took to himself wives and concubines in great multitude, and also to the great nobles, and while the Inca took one of his own sisters for his queen, the common man was restricted to one wife, to be selected from the community in which he lived, but was

forbidden to take his sister. Marriage was compulsory. On a stated day in each year all those of marriageable ages, males of not less than twenty-four and females of eighteen to twenty, were called together in the great squares of the towns and villages. The Inca was master of ceremonies in the assembly of his own kindred and married the different pairs by taking their hands and placing one within the other and declaring them man and wife. The same ceremony was performed for the common people by the local magistrates. The consent of the parents was required. A dwelling was prepared for each couple by the district, and their share of the land was set off to them. The simple marriage ceremony was followed by general festivities among the friends of the parties, which lasted several days, and as all the weddings for the year took place on the same day, nearly the whole population of the empire joined in the jubilee. It is asserted that there was not a prostitute in the whole empire. What rules obtained with reference to the remarriage of widows and widowers the writer has not been able to ascertain. The general policy seems to have been to promote industry and virtue by providing all with homes and family ties.

The educational system was based on the theory that each should be taught that and that only which pertained to his particular calling. A favorite maxim of Tupac Inca Yupanquin is said to have been that: "Science was not intended for the people; but for those of generous blood. Persons of low degree are only puffed up by it, and rendered vain and arrogant. Neither should such meddle with the affairs of government, for this would bring high offices into disrepute and cause detriment to the state."

The members of the numerous families allied by blood to the Incas were educated by their *amantas* or wise men at seminaries provided for the purpose. They were instructed with especial reference to the stations they were to occupy. They were carefully taught the principles of government and the laws they were to administer. Those who were to assume priestly functions were specially instructed in religious rites. All were taught to speak the court language in its purity and

learned the science of the *quipus,* which at the same time covered the field of mathematics and supplied the place of written records. Historical traditions were transmitted orally, supplemented by the data recorded by means of the *quipus.* By this method a considerable degree of accuracy could be preserved in a tale passed down through many generations. The use of the *quipu* would seem capable of indefinite extension and elaboration, for threads of different colors and lengths knotted and combined in various ways would possess as great capacity for expressing ideas as arbitrary characters marked on paper. The use of them appears less convenient, but it is evident that the possibilities of communication by means of them are unlimited. The number of primary threads for characters could be multiplied indefinitely and moulded to use in the same manner as letters are now used. It seems, however, that the Peruvians had not developed the system to this extent, but used the threads as symbols of things and to a limited extent of abstract ideas.

The education of the lower orders was not wholly neglected. Those engaged in agriculture were instructed in the cultivation of such products as were adapted to the lands to which they were assigned. The varieties of climate due to difference in altitude, ranging from tropical heat along the sea coast to perpetual snow on the mountain tops, afforded a great diversity of products in neighboring districts. Bananas, manioc and other tropical products on the hot lands, Indian corn, maguey, *cuca,* etc., a little higher up, potatoes and *quinoa,* a grain resembling rice, in the cool mountain regions, and still higher pasture lands for the llamas, wild sheep and other wild animals. All the animals, wild as well as domesticated, belonged to the Inca. At the annual great hunts there was a general muster of the people of the district to round up all within the hunted territory. Beasts of prey were killed, but discrimination was used, and only the male deer and the inferior sort of sheep were killed for food. The rest of the sheep were sheared and turned loose again. Of all the people on the American continent the Peruvians alone kept domestic animals, and they only llamas, alapacas

and other animals of the sheep kind. The llamas were used as pack carriers. In tilling the soil the natives had no assistance from draft animals. All was done with human strength. The value of manures was well understood, and extensive use was made of the guano deposits on the islands near the coast. Vast labor was expended in terracing the steep mountain sides and for the purposes of irrigation, aqueducts, which would do credit to any country, were constructed of closely fitted and cemented stone. One traversing the district of Condesuyu extended over four hundred miles. In the execution of these works the usual engineering difficulties were met and successfully overcome, rivers were bridged, mountains tunneled and the waters of the lakes and reservoirs in the highlands stored and distributed along the slopes where moisture was most needed. In spots where there was lack of rainfall and no means of irrigation, pits were dug to a considerable depth to take advantage of the moisture from below, and by rich manuring crops were raised in these cellar like gardens. While the implements of agriculture were of the most primitive kind, and no aid was obtained from draft animals or machinery, the results were satisfactory and Peru was preeminently a land of plenty. These results flowed from the governmental policy and as a result of the education and direction imparted by the orders of the Inca. The comparatively small numbers engaged in mechanical arts were also instructed in their callings and, while the use of iron was unknown, skillful use was made of gold, silver, copper, and tin. Tools nearly equalling steel in hardness were made of copper alloyed with tin. The art of weaving was well advanced, though by primitive methods. In cutting and moving granite and other hard stones they were well skilled. By what process the immense blocks, containing hundreds and even thousands of cubic feet each, were taken from their beds in the quarries, moved long distances and placed in the temples and palaces is unexplained.

Their architecture is said to be wanting in grandure and finish. They constructed no high buildings. Those even of greatest pretensions rarely had a second story. The walls

were massive but without openings other than doors, and the roofs were often thatched. This may not be due altogether to a want of boldness of conception, for the frequency of earthquakes rendered this style best adapted to safety and permanence. In bridging streams and chasms they exhibited both ingenuity and skill. Suspension bridges two hundred feet or more in length were found by the Spaniards and continued in serviceable condition for many years. They were supported by ropes stretched between stone buttresses. Though the products of Peru were sufficiently diverse to afford a basis for much internal commerce, and though gold and silver in great abundance were produced and used in ornamenting the temples and making vessels and implements for use and ornament for the Inca, no such thing as money or any substitute for it was known. Fairs held three times a month in suitable places afforded at the same time a holiday and opportunity for exchanging products by direct barter.

Ancient Peru presents an instance of a thoroughly organized state, standing alone on a continent filled with scattered tribes of savages, but built from material similar to the chaotic mass filling the balance of the land. Its policy was clearly defined and steadily and successfully carried out. It brought order out of chaos. It waged war on its borders, that the area of internal peace might be enlarged. It exacted industry and gave security and plenty in return. It enforced morality and exacted strict obedience to authority and observance of the forms of a religion exceptionally free from gross superstitions and elevated in tone for a people so environed. No other known government ever succeeded so entirely in ordering the private affairs and daily life of its people, and no other dynasty labored so persistently to guard the people from want. Without any aid by suggestion from other growing civilizations, it evolved a system based on fundamental ideas so clear, strong and well enforced as to challenge the wonder and admiration of all.

It has been a source of wonder to some that the wants of the masses could be so well supplied when the burden rested on the toilers, not only of cultivating their own lands and

supplying their own needs, but also of tilling the lands of the Inca and the Sun as well, besides building and maintaining all public works and performing military service. We have no exact data showing the numbers of the nobility, priesthood and inferior officials or of the common people. Probably the ratio of privileged classes to the whole population was somewhat higher than in most of the more advanced nations of modern times. But the ratio of the whole number of officials, priests and soldiers to the total population was much less than in the military states of Europe. Another element of great importance, which seems to be overlooked, is the entire absence in Peru of those classes who live in luxury from rents of land, interest on money and other forms of income from property. In all modern states these constitute the most favored portion of the people, and the cost of their maintenance is greatest. As they render no service in return for their incomes, whatever they consume is a net loss to the producers. Still another and more numerous, though perhaps less costly class, found in all the most advanced modern nations, is the idle poor, who are either unable or unwilling to find employment. The Inca found useful employment for all. The judges administered the law and paid advocates were unknown.

The system of government was so thorough that there was no room for a complicated code of laws. Each was required to do his appointed share of labor and given his due return. His assurance against want in times of misfortune lay in the public storehouses and the law which required his neighbors to till his field, when he was unable to do so. There were no deeds, mortgages, leases or other contracts relating to land, for each had the use but not the ownership of the soil. There were no notes or other obligations for money, for there was no money. There were no slaves nor contracts of hire. All served the Inca and helped each other. There were no taxes to be raised from a sale of crops. The produce of the Inca's lands, mines and flocks supported the government and the lands of the Sun, the priesthood. Neither the tax gatherer, the usurer nor the landlord ever came to seize and sell

the newly ripened harvest. The government was never a debtor, nor yet wanted means to arm and equip soldiers, build palaces, temples, roads, bridges and other public works.

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CHAPTER VI

Egypt

To the records made by themselves only we must look for accounts of the earliest civilization of the Egyptians. Of necessity therefore the first to be known is concerning a people already sufficiently advanced to have developed a written language, except as it may be carried back by traditions passed down from earlier times and subsequently recorded. Though the surroundings of the valley of the Nile suggest conditions under which a race of people might have developed in peace, secure against attacks from external enemies, history fails to reach such a time. Whether the ancient Egyptians, whose descendants still occupy the country, originated in Egypt or elsewhere cannot be answered from any reliable evidence. Like most people, they begin their account of their nation with a mythical line of supernatural rulers, and a time when the gods resided on earth and gave mortals the benefit of their instruction. If the truth be that the human race is the product of evolution from the lower to the higher, the advancement has not been steady and continuous with any people of whom we have a long history. Times of marked intellectual activity as well as of moral advancement have been followed by periods of torpor and degradation. It may therefore well happen, that at one period the people may look back to a prior time as a golden age, when men were wiser and better, and when the gods came nearer to them. Thus everywhere we find people looking to their ancestors for wisdom. The accumulation of knowledge at any period is the product of the past, for which prior generations must be given credit, and there is a tendency to credit it all to some favorite age. Whether the Egyptians were pioneers, in advance of all other people in civilization, cannot be stated with certainty, but that they have left unmistakable proofs of the antiquity of their

advancement, which antedate those of any other people may be safely asserted. Owing to the peculiar climate of the country and the desire to leave enduring monuments, the investigator of today may study at first hands the work of Egyptians who lived many thousands of years ago. He may read on granite monuments, or even on frail papyrus, the inscriptions of Egyptian artists and scribes in the original hieroglyphics as made by themselves long prior to the time of Moses or Joseph. The profound interest with which students of all the sciences to which they are related have in recent years studied these ancient records, and the diligence and success with which their efforts to decipher and interpret them have been rewarded, have added greatly to our knowledge of the past and of the arts, which before were traced only to people nearer to us in time and in blood.

The starting point, from which Egyptian history is written in modern times, is the reign of Menes, who united the upper and lower countries and established his capital at Memphis. The date of his reign is not definitely known, but it could not have been much later than 4000 B.C. and may have been much earlier. From his time a list of successive dynasties is given by ancient writers, and Herodotus tells us, that the priests read to him from a papyrus the names of 330 monarchs, who ruled as his successors to the reign of Moeris. After him came a great monarch, whose name he calls Sesostris. He also says that they told him that in the time of *Men* (Menes), all Egypt except the Thebaic canton was a marsh, none of the land below lake Moeris then showing itself above the surface of the water. There are no records from which a connected account of the successive rulers can be constructed, and it is quite impossible to fix dates in the early reigns with any fair degree of accuracy. How many people were ruled over by Menes and what system of government had prevailed before his time, we do not know, nor can the state of the arts at that time be declared, nor the condition of the valley of the Nile be described further than that it was exceedingly fertile, then as now, and subject to yearly overflow from the river. Whether it then contained forests and waste

lands or was already cleared and cultivated is unknown. How long the people had then been dwellers in the valley of the Nile, whence they came and how they had lived in prior times, are questions that cannot be answered.

The contemporaneous inscriptions do not begin till about the time of what is termed the Fourth Dynasty, if the scholars are correct in their inferences. The three great pyramids of Gizeh, built as enduring tombs of successive Pharaohs, are assigned to this time. These great works evidence a numerous population, without whose labor they could not have been constructed, a strong government, able to command the services of the necessary workers, and also indicate peaceful relations with all other people, for war of any great magnitude would almost certainly have absorbed the attention and energies of the nation to too great a degree to allow such vast works to be carried forward at the same time. These monuments tell us with certainty that great numbers of people worked in concert for their completion, and that the government must have been firmly established and the people accustomed to the exercise of authority. The implements used in their construction prove that the art of metal working was well advanced. The power employed in transporting the material and placing it in position, as shown by the pictures and inscriptions, was mainly the combined strength of great numbers; but Herodotus tells us that machines were used for raising the great stones to their positions, and this seems probable, though we have no description of them. The pictures, which have been preserved, exhibit the evolution of dress from a simple short skirt, not much more to the purpose than a breech clout, to a costume consisting of a shirt, skirt, long over dress, sandals, wig, etc. It is not necessary to mention mere ornaments, for the lowest races all indulge in ornaments according to taste and ability, though clothing be considered a superfluous luxury or not thought of at all. At the time of the building of the great pyramids the evolution in dress was not much past the primary stage and short skirts were in fashion. In agriculture, though the implements used were crude, the variety of crops raised was quite extensive, and

the people were well supplied with cattle, sheep, goats and donkeys, as well as with fowls, especially geese and ducks.

In the earliest times of which we have any record, a division of the country into the upper or south and lower or north was recognized. The political organization of the upper country seems to have been in advance of that of the lower, and the internal development of it probably preceded that of the more marshy delta. While the government of Egypt was at all times monarchical in form, the actual administration was ordinarily in accordance with established rules, which were recognized as limitations on the power of the officials. The people, however, were without substantial guarantee against the oppression of despotic Pharaohs, and the construction of the great pyramids was a heavy burden, mercilessly imposed on his subjects by the king.

According to the earliest accounts, under what is termed the old empire, upper Egypt was divided into provinces, the local government of each of which was hereditary in a noble family. The same family also ordinarily held the office of high priest. In those times the nobility seem to have held a large share of political power, and the central authority to have been less potent than in later times. The division of lower Egypt into provinces or nomes appears to have followed later.

The character of the government was unmilitary. The worship of the gods, maintaining the temples and honoring the dead, occupied a large share of the attention of the government, and required the services of a numerous priesthood, always closely allied to the civil authorities, and who usually combined priestly functions with administrative ones. There were thirty "great men of the south" having unequal districts and powers. A governor of a district was also a judge and ruler of the chief town. It was the fashion to combine a long list of official titles, many of which were often without real significance. As judges they were priests of Ma'at the goddess of truth. Over these thirty chief men of the South was a governor of the south. The lower country was afterward divided into similar nomes and placed under a governor of the north country, but at what date these were established

does not appear, though the title of "governor of the north country" appears in inscriptions of the time of the Middle empire. In each of the small districts into which the country was divided, there was a court of justice, a storehouse for corn and a local militia. The central power was mainely concerned with the revenue and filling the treasure houses. There was a central finance department, which employed numerous superintendents and scribes to attend to the collection and care of the public revenues, most of which were received in kind from the fields, mines and workshops. There was a superintendent of agriculture, who had general charge of matters connected with overflow and irrigation, and also a superintendent of the forests in the border country up the Nile.

The chief judge was the highest official under the king. He was the "leader of the great men of the south and of the north" and "second after the king in the court of the palace," to these were often added a long list of priestly and other titles, some of which indicated real power and substantial duties. Under him were numerous judges of different degrees. Six great courts are spoken of, made up of local judges. Great respect was entertained for law and the judicial offices.

In each province or nome there were officials of high and low degree charged with various public functions. As under most modern governments, there was a constant struggle to gain official preferment, and the main end of all public servants was the gathering of revenues for themselves and those under whom they served. The beneficial service rendered for the multitude was in public works, the administration of justice and protection against external enemies. Of the public works those connected with agriculture and the distribution of water by canals, reservoirs, etc. were highly useful, while the construction of temples and tombs, for which no other people seem to have had so much regard, gratified the pride and accorded with the sentiments of the people.

The monuments and records were made to preserve the memory of the rich and powerful. The inscriptions show the

state and surroundings of the nobility, their storehouses and servants. As the monuments, on which these inscriptions appear, were constructed under the orders of those whose memory they perpetuate or their friends, the purpose they subserve is primarily to attest their importance. What is shown of the condition of the lower orders of society, is merely as incident to the state of the chief. The old empire exhibits a nobility and priesthood with power over the peasants and serfs firmly established, much wealth and luxury for the higher orders, and settled habits of industry enforced on the poor. The middle empire shows an extension of the official system, but no marked change in the organization of society or in the theory of the government. How numerous a class of independent tradesmen or small land owners existed at any period cannot be definitely determined, though there appear to have been some such.

The Twelfth Dynasty, covering the period of about the twentieth and twenty-first centuries B.C., is spoken of as a time of good government, prosperity and advancement in learning. It was the classical age of letters, in which the standard of good writing was established. Afterward followed a period of weakness and decline, at the end of which the country was invaded by the Hyksos or shepherd kings from the northeast. The particulars of their invasion and rulership are not preserved, but it is clear that the ancient Egyptian people were not displaced, nor were the laws and customs of the invaders imposed on the conquered nation. They levied tribute and compelled submission to their power for a time.

The new empire began with Ahmose who drove out the Hyksos and followed them into the south of Palestine. Under his reign began the military age, in which Egyptian arms were carried into remote regions. Palestine and Asia Minor to the Euphrates were overrun by the monarchs of the Eighteenth and Nineteenth dynasties and the country to the south was subdued: Tribute was exacted from the conquered nations, but Egyptian civilization failed to take root and grow on any foreign soil. Contact with distant people had its effect on

the Egyptians, and the isolation in which they had apparently lived during all of the early dynasties was at an end. With varying success they fought the Asiatics on the north and the Ethiopians on the south. Thothmes III crossed the Euphrates and received tribute from many nations. Contact with distant people gave new ideas as well as tribute to the Egyptians. Amenhotep IV attempted to reform the religion and set up the worship of the Sun god as the only living god. He sought not merely to introduce the worship of this deity but also to destroy all the old gods. The change however failed to endure, and under his successors the old worship was restored.

Under Ramses II Egypt seems to have reached the zenith of its power, and of activity in the construction of temples and other great public works. With the departure of the Hyksos and the establishment of the new empire some changes in the organization of the government took place. The ancient nomarchs and local landed aristocracy gave way to royal officials, and landed property became concentrated in the possession of the king and the priesthood. This change is by some attributed to military rewards, incident to the wars against the Hyksos, but in Genesis it is recorded, that through the policy of Joseph in storing up a vast supply of grain during the seven years of plenty and then selling it to the people during the succeeding seven years of famine, Pharoah came to own all the land except that belonging to the temples. With the ownership of all the landed property, from which the king exacted one-fifth for rent, his power became despotic, and there were no strong subjects to check it. The middle order disappeared, leaving the king and his officials at the top and a multitude of slaves at the base of the social structure. Military chiefs and foreign mercenary troops became conspicuous. It was possible for foreigners to hold high positions; thus Joseph was sold by his brethern to Potiphar, who placed him at the head of the household, and afterward Pharaoh raised him to the highest office under the crown. The family of Jacob came into Egypt in great favor, due to the influence of Joseph, but afterward were reduced to hard service under severe taskmasters.

A marked characteristic of the system of government was minuteness of details in official orders and reports. The scribe was always at hand to note down every item of revenue received, every expenditure from the treasury, as well as every public act of the officials. A large proportion of the population consisted of serfs and bondmen, organized by companies under overseers, who drove them to their tasks as mercilessly as is usual with slaveholders. The workmen were divided into companies of artisans and laborers in each different kind of employment, and were treated with rigor and contempt by their superiors. Above them were officials of all degrees from the chief of the company to the governor. The laborers employed in the tombs and on the public works received their rations from the public granaries and storehouses. Records kept by chief workmen are still extant, showing the names of the workmen, the days on which they worked and failed to work and the reasons for failure. Sometimes strikes were caused by delaying or withholding their rations. Herodotus says the people were divided into seven distinct classes. Priests, warriors, cowherds, swineherds, tradesmen, interpreters and boatmen. That interpreters should be mentioned as a class shows that in his time the intercourse with foreigners was very extensive, else there could have been no need of many of them.

The family ordinarily consisted of husband, wife and children. Polygamy was rare, though the rich made concubines of maid servants. Ramses II took three royal consorts. The marriage of sisters was practiced, and seems to have been of increased frequency after the Greek conquest, at least among the kings. Among the lower classes morals were very low, and marriages often informal and broken at pleasure. There was no seclusion of women as under Mohammedan rule. Except among the baser sort, the natural bonds of affection between parents and children appear to have been as strong as elsewhere, and a marked peculiarity of the people was their inordinate reverence for and care of the dead. This did not end with embalming the body and building a costly tomb, but the dead required a distinct department of the government.

Mothers nursed their children for three years, and in their early years kept them nude, but they had dolls and toys to play with. The school boy in ancient times was dressed with a girdle. Children of the upper classes were often sent away from home to school, even at a tender age. The school course included ethics, practical philosophy and manners. The road to political station was through the school, and the statesman must first become a scribe. A generous use of the rod was deemed essential to the proper development of the student. All classes appear to have shared to some extent in learning. Considering the great attention paid to letters by the Egyptians, it seems strange that connected histories have not been preserved to us. Fragments of official documents and correspondence and the inscriptions engraved on enduring monuments furnish the disjointed writings, from which the modern scholar must form his description of Egyptian civilization. They made much progress in astronomy, divided the year into 365 days and determined the direction of the poles with accuracy. In medicine the leading idea seems to have corresponded with that not long since abandoned, that the more filthy and repulsive the substance, the more potent as a medicine. Many and most gross superstitions, too numerous for even a general description, were indulged in by all classes of the people. Something like a picture of the times is exhibited by the record of a celebrated case which came up in the time of Ramses IX (about 1100 B.C.). Under the governor in Thebes, there was a "prince of the town" over the eastern part, and a "prince of the west" or "chief of the police of the necropolis" over the western part, the city of the dead. Complaint was entered by the prince of the town that tombs in the necropolis had been robbed. The court having jurisdiction of the case consisted of "Cha emuese the superintendent of the town and governor" assisted by Nesanni, scribe of Pharoah and Neferckere-em-per-Amun the speaker of Pharaoh. A commission was appointed by the court to examine the tombs and report. This was done, and the report describes circumstantially what pyramids and mummy pits were examined. Out of ten, nine were found

uninjured. As to the other the commissioners reported "The pyramid of the King Sebekemsaf. It was found that the thieves had bored a mine and penetrated into the mummy chamber. They had made their way out of the outer hall of the tomb of Nebamun the superintendent of food under Thothmes III. It was found that the king's burial place had been robbed of the monarch; in the place also where the royal consort Nubch'as was buried the thieves had laid hands on her." "The governor and the prince vassals ordered a thorough examination to be made, and it was proved exactly by what means the thieves had laid hands on this king and on his royal consort."

The examination of the private tombs disclosed that those of two "singers of the high-priestess of Amon Re, King of the gods" had been broken into and other private tombs. "It was found that they had all been broken into by the thieves, they had torn the lords (*i.e.* the bodies), out of their coffins and out of their bandages, they had thrown them on the ground, they had stolen the household stuff which had been buried with them, together with the gold, silver and jewels found in their bandages." The commission so reported, and the prince of the necropolis sent in the names of the supposed thieves, who were immediately arrested. They were "examined," that is "beaten with stick on their hands and feet," until they confessed that they had entered the tomb of the king and taken rich ornaments of gold from the mummies of the king and queen and divided the booty among the eight robbers. To supplement and make good their confession they were required to identify the pyramid they had robbed. The governor and royal scribe commanded them to be taken in their presence to the necropolis, where they identified the tomb of Sebekemsaf as that to which their confession referred. The court thereupon made report to the Pharaoh, who alone could pronounce sentence in the case. Meanwhile the thieves were placed in custody of the high priest of Amon and confined in the prison of the temple! On suspicion of other desecrations a metal worker of bad repute was arrested and "examined." He confessed that he had been in

the tomb of Ese, wife of Ramses II but, when taken to show the scene of his crime, he pointed out the graves of the children of Ramses II, in which no one had been buried. Thereafter, "the princess examined the tombs and the large chambers in the place of the beauties, in which the beautiful royal children, the royal consorts, the royal mothers and fathers of the mothers of the Pharaoh rest. They were found uninjured." Thereupon there was great rejoicing and a "great embassy to the town consisting of the inspectors, the chiefs of the workmen of the necropolis, the officers of the police, the police and all the bondservants of the necropolis of western Thebes."

Three years later, other robberies having occurred, about sixty arrests were made, including many officials of low rank, a scribe of the treasury of Amon, a priest of Amon and one of Chons. They had robbed the outer chambers of the tombs of Ramses II and Sety I and sold the stolen property. A quarrel over the division of the spoils led to the discovery. This capture did not end the thefts, and it was finally determined to abandon the tombs in the desert in order to save the mummies. These were moved from place to place, and finally concealed in a deep rocky pit in the mountains of Der-el-bahri, where they reposed until modern robbers found the pit in 1875, and in 1881 the authorities were informed of it, and the mummies of all the great monarchs of the new empire were brought to light. Great regard for the remains of the dead is not exclusively a trait of the Egyptians, but they were more lavish in their expenditures for the preservation of the bodies of the dead than any other people. As the occurrences above mentioned show, their care did not end with embalming the bodies and building vast tombs for them, but continued in watching and preserving the necropolis from generation to generation.

Under the old empire there were six courts of justice or great houses, at the head of which was a chief judge. Each of the "thirty great men of the south" was a judge and district chief and a member of one of the great houses. The "governor of the south" alone had a seat in all. These great

men had served as scribes and inferior officers of the court before promotion to the full dignity of judges. Besides these there were local judges in the towns. The special god of the judges was Ma'at the goddess of truth. All judges of high rank served as her high priests. During the middle empire this organization of the courts disappeared. While the office of chief judge continued, even under the New Empire, the six great houses were no more. Under the new empire the composition of the courts varied from time to time, including priests and laymen in varying proportions, but courts were held at fixed places where justice was regularly administered. The procedure seems to have been simple. The court being seated the contending parties in civil cases came before it standing. The plaintiff first preferred his complaint orally, the defendant was then required to answer, after which the court gave judgment. The successful party then turned to the other party and stated to him the terms of the judgment, whereupon the loser said, "I do it, indeed I do it, I do it." What process followed in case of failure to perform is not clear.

In criminal cases the governor preferred the accusation as plaintiff, and the defendant then answered to it, thereupon the court seems to have filled the place substantially of a jury and found the prisoner guilty or not guilty, this finding was then forwarded to the Pharaoh, who pronounced sentence.

That the Egyptians had written laws there seems no reasonable doubt, and it was claimed that they were composed by Thoth, the god of wisdom. The ancient law books have not been preserved and their contents come down to us only in fragments. However complete the written laws may have been, they do not appear to have restrained the kings who chose to override them, yet respect for the forms of law seems to have had quite a firm hold. Thus Pepy, in the Sixth Dynasty, established a special court to inquire into the acts of some of his courtiers, and Ramses III created a special court to try members of his household, who had conspired against him. The record of the court of the proceedings against one of the conspirators is a model of brevity.

"Penture formerly bore another name. He was brought before the court, because he had joined with his mother Tey, when she conspired with the women of the harem, and because he acted with hostility against his lord. He was brought before the vassals that they might question him. They found him guilty, they dismissed him to his house; he took his own life." Before this investigation was closed an incident occurred, which reflects severely on the special court organized for the investigation. It was discovered that the accused women of the harem had sought out three members of the commission and, with them and Pai'es, the chief culprit, had "made a beer house," that is, held a revel. But they also were apprehended, and "their punishment was fulfilled by the cutting off of their noses and ears."

While the power of Egypt continued to be great, it was not extended after Ramses II. During the Twenty-fifth Dynasty Egypt was ruled by Ethiopian kings, who however were not strangers to Egyptian civilization, if indeed they were not of Egyptian blood. At intervals after the time of Ramses there were wars with the Assyrians with varying success, till in the year 662 B.C. Egypt became an Assyrian province. Eight years later, however, with the aid of Greek mercenaries they were driven out. Psammetichus founded the Twenty-sixth Dynasty, which endured a little more than a century. During this period there was much intercourse with the Greeks.

In 525 B.C. Cambyses invaded Egypt and reduced it to a Persian province. In the reign of Artaxerxes the Egyptians revolted and were aided by the Athenians, but without success. About 411 B.C. another revolt proved successful and Egypt remained an independent kingdom till about 343 B.C. when it was again overrun by the Persians, who maintained their ascendency till Alexander's conquest. Though under the Ptolemies Egypt was again an independent kingdom, it was under Greek rulership. When the Romans came the rulership passed into their hands, and since their time there has been no such nation as Egypt. Though the land, the river and people are to all appearances substantially the same, the spirit is wanting, and Egypt has been dead for more than two

thousand years. Indeed the peculiar civilization, which still astonishes the world by its enduring monuments, can hardly be said to have existed in full vigor much later than the twelfth century B.C.

With the rise of the Asiatic and European nations, the military spirit of the Egyptians developed for a time, and their power was extended in all directions, yet though the Greeks borrowed their arts and their learning, and the light of their ancient civilization spread into Europe and Asia Minor, they planted no colonies which presented new and advancing types of the mother country. Nor to this day has the civilization peculiar to any other country taken firm root in Egypt. To all appearances the fellah of today is very nearly what his ancestor of three thousand years ago was, but the ruling spirits, who planned the great works and ordered the affairs of Egypt, are no more. The peasant serf is there, oppressed through taxation as severely as his ancestors were under the Pharaohs. He has learned to submit without resistance to the burdens imposed by foreign masters, as his forefathers submitted to the orders of Cheops in building a pyramid. Unlike the Chinese, the Egyptians have never been able to impose the spirit of their civilization on their conquerors, nor on the other hand have the conquerors been able to imbue new life into their subjects and by education develop a new civilization. The greatest marvel is that with the constant influx of Europeans and Asiatics into the rich valley, the type of man dwelling there has been modified to so slight a degree. The valley of the lower Nile is the tomb of a once great people, and the toiling peasants of today are hardly better representatives of the ancient spirit than the mummies, which have been preserved with so much care through the long centuries. Since the Greek conquest the government and laws of Egypt have been such as a foreign ruler has seen fit to impose.

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CHAPTER VII

Chaldea, Babylonia, Judea and Persia

While only a small part of the people of Europe trace their descent from inhabitants of the territory in Asia now dominated by the Turks, religious teachings have caused them to regard some spot in or near this territory as the earliest home, not only of their own progenitors, but also of the whole human race. Egyptian civilization had its influence on Greeks and Romans, yet it has been far less regarded than that of the early people of the valleys of the Euphrates and Tigris and the region bordering on the eastern end of the Mediterranean. It is impossible to accurately measure the extent to which the religion, morals, laws and governments now existing, not only throughout Europe but wherever Europeans dominate, have been moulded by the lessons transmitted to us from those people. Comparative philology teaches the kinship of people long supposed to be altogether foreign to each other, and the Persians, Brahmans of India, Germans and allied people of Europe are all assigned to one race. Nevertheless the influence of the civilization of ancient Chaldea, Babylonia, Persia, Media, Assyria, Palestine, Phoenicia and Greek Asia has not descended to us with the blood of ancestors but mainly by example and teachings. The Biblical account of creation fills a space which substantially all people fill with fanciful and romantic accounts of a beginning. Belief in a particular account usually depends on the educational influences to which the individual is subjected. Records reaching back to the origin of any race of people are of necessity wholly lacking.

The earliest clear evidence of man and his works in the regions named is derived from the ruins of ancient cities. The oldest of these of which we have knowledge are of the Chaldeans, who occupied the lower valley of the Euphrates

and Tigris and neighboring country. According to the Bible, the Israelites derived their origin from the city of Ur in Chaldea. "And Terah took Abram his son and Lot the son of Haran his son's son and Sarai his daughter-in-law, his son Abram's wife, and they went forth with them from Ur of the Chaldees to go unto the land of Canaan, and they came unto Haran and dwelt there".[1]

The first people of whom any accounts are attainable, were familiar with the leading mechanical arts, the use of money, the cultivation of the soil, the use of domestic animals and the art of writing. As in Egypt formal written contracts were common and are found on the clay tablets disclosed by recent excavations. Abraham bought land and paid for it in silver. There were cities and villages, merchants and traders as well as hunters, herdsmen and husbandmen. How much or what part of their arts, if any, were borrowed is not known. The earliest records introduce us to the land of Shinar with its cities of Babel, Erech, Accad and Calneh and out of this country went forth Asshur and builded Nineveh.

From the earliest times throughout the whole region we are considering, with some exceptions hereafter noticed, the character of the governments, of which we have historic account, was military despotism without check or limitation on the power of the kings. Nothing can be more dreary than the recital of the rise and fall of successive dynasties, always tending to reproduce the same evils. Through the ancient tablets and cylinders, the Bible and the writings of historians, we are informed of the names and the military feats of many rulers styled successively, Chaldees, Babylonians, Assyrians, Medes, Persians, Parthians, Scythians, Bactrians, Arabs, Turks and Tartars. With all of them the fundamental idea of government has been similar if not identical, paternal kingly power. While this is clearly apparent, the structure of society at different periods has undoubtedly passed through many changes and modifications. These, owing to the vanity of kings and the lack of independent historians, are difficult to trace. The influence of the priesthood and of the religious

[1] Genesis XI-31.

beliefs of the people has always been very great, and it is to this portion of the earth and neighboring portions of Asia, that we look as the birthplace of all the great religious systems, which have so profoundly impressed mankind, and which are now taught throughout the world. Moses, Zoroaster, Buddha, Christ and Mohammed have successively taught lessons which are accepted by generation after generation as the direct and authoritative expression of divine truth. The profound influence of these various teachings, not only on private morals but on governments, human laws, customs and the structure of society, is to be noticed everywhere. In the earliest times of which we have accounts, we find the people prone to have a special god or gods for each tribe or nation which gained a well defined status as such. The early Hebrews did not deny the existence of other gods besides Jehovah, but maintained his superiority. The Old Testament mentions numerous gods of the people with whom the Israelites contended, as really existing, but unworthy to be followed. The people were taught to be faithful to their own god. It is impossible to assign a date for the earliest general adoption of a belief in a single god, not only supreme in power but without rival or participant in authority. This singleness of spiritual power accorded with the human despotisms, which have flourished in that region and contrasts with the sprightly pantheon of the Greeks, who were experimentalists and jealous of unrestrained authority. With an absolute despot at the head of the government, the distribution of inferior and local authority was on the same principle. Wherever the king delegated his power to a satrap of a district, he ruled as a despot, accountable only to the king. The general purpose of all the different rulers, of whatever particular nation they chanced to come, in extending their dominions, was to collect tribute. There seems to have been very little disposition to interfere with the modes of life of the people or the local governments, so long as the tribute was paid. Egyptian conquest in Asia merely meant tribute from Asia to the Pharaoh, and when Egypt became subject to the Assyrians, and afterward the Persians, Egypt paid tribute to

the king. The taxes were collected by the local authorities, and the satrap accounted to the king for the full sum charged to his districts. Some things relating to the primary organization of society are known, polygamy and slavery were everywhere and at all times allowed. Surplus males were consumed in wars or converted into eunuchs for domestic service. The families and dependents of the rich were very numerous. Abraham's household as described in the Bible is doubtless typical of ancient as of modern patriarchal families. It is not to be understood, however, that all the people were included as members of such establishments. Babylon and Nineveh were very great cities. In order to maintain their vast multitudes of people, agriculture was carried on with great industry and success. Manufacturing flourished, and trade was extended to distant lands. The descriptions we have of the people of Babylon indicate that it had a vast combination of good and evil, like every other great city. That the people were industrious, skillful and intelligent is abundantly proved by history and the ruins still remaining. That they were fond of luxurious living and addicted to many vices hardly differentiates them from the dwellers in modern cities, yet some of their customs certainly appear most abominable.

The recent discovery of the Code of Hammurabi affords us a copy of the written law of Babylon promulgated about 2250 years B.C. (A full summary of its provisions is given in the Appendix.) There is no better index of the state of the civilization of a people than the code of laws under which they live. It indicates their industrial and business activities, their vices, their superstitions and their views of social duty. How long this code remained in force we are not informed. It was probably 1800 years later when Herodotus visited Babylon and many changes had taken place.

He tells us that once in each year in each village the maidens of age to marry were collected all together in one place, while the men stood around them in a circle. The women were then sold for wives separately to the highest bidder. The rich Babylonians had to bid against each other for the

favorite ones, each going to the highest bidder. When all the beauties were sold and the men ceased to bid, the ugly ones were sold to those who would take them with the least marriage portion, which was made up from the prices received from the sale of the loveliest. He mentions this as an excellent custom, but says it had fallen into disuse in his time, and that instead, the poor of the common people raised their daughters to be courtesans. This he attributes to the oppression of the rulers. He relates what he terms a most shameful custom connected with the worship of the Babylonian Venus. "Every woman born in the country must once in her life go and sit down in the precinct of Venus and there consort with a stranger." Seated in the enclosure of the temple with wreaths of strings about her head she must wait till a stranger throws her a coin and says "The goddess Mylitta prosper thee." She must then go with him whoever he be. He adds, that when this religious rite has been performed, no gift however great will prevail with her. This hardly seems a fair statement after reading what is said of the prevalence of prostitution.

It seems reasonably certain that public morals were low at and after the time of which Herodotus wrote, and very probable that they were never high. The Old Testament is filled with narrations of the vile customs of the early Israelites as well as of the people with whom they came in contact, of whom apparently the Egyptians were the best, yet pure domestic life was not wholly unknown. Away from the cities and perhaps also within them the village system prevailed. The people lived under great diversity of conditions.

Xenophon describes an Armenian village with houses underground entered by a well, with passage into them for their cattle, goats, sheep and fowls. There was a head man of the village. Seventeen colts bred as a tribute for the king, and provisions in plenty and considerable variety were found. In his march from the scene of the battle in which Cyrus was killed to Colchis, Xenophon mentions the villages of the Medes, Carducians and Armenians, but nowhere isolated dwellings. The Persians had some idea of established law

beyond mere custom, and of the steady adherence to fixed rules for the determination of rights. Their laws were promulgated by the king recorded by scribes and proclaimed throughout the empire. There were judges appointed by the king. Herodotus says that Cambyses, wishing to marry his sister, a thing contrary to Persian custom,

"Called together the regal judges and put it to them 'whether there was any law which allowed a brother, if he wished, to marry his sister.' Now the royal judges are certain picked men among the Persians, who hold their office for life, or until they are found guilty of some misconduct. By them justice is administered in Persia and they are the interpreters of the old laws, all disputes being referred to their decision. When Cambyses therefore put this question to these judges, they gave him an answer which was at once true and safe, "they did not find any law," they said, "allowing a brother to take his sister to wife, but they found a law that the king of the Persians might do whatever he pleased."

While the Persian system was loose and imposed but little restraint on the satraps, either in the exercise of their authority over the people under them or in organizing a revolt, there were some regulations tending to efficiency and stability of the government. Royal commissioners were sometimes sent to inspect the workings of the government throughout the empire, and a system of posts was maintained by which dispatches were forwarded rapidly. The garrisons in the citadels, as well as the army in general, were under the command of officers appointed by the king and not subject to the satraps. As all histories deal so much with wars and so little with peaceful conditions, we have to infer what took place in times of peace from the conditions described during times of war. In the perspective war occupies a greatly exaggerated space and creates the impression that the people were engaged in little else than fighting, when in fact peace was the rule. The earliest Babylonians were temple builders and devoted to their gods. Strong religious tendencies have ever been characteristic of the people of all the portion of Asia of which we are now treating. The idea of government seems to have

persistently adhered to a single unlimited monarch. With the grosser forms of religious worship and with the corrupted organizations which profess the purer ones, form and ceremonial always fill a great space. These forms, to be impressive, must be marked out and defined by fixed rules, to which the people become accustomed. Revenues to maintain the priesthood and the temples must be derived by a system of tributes, paid really to the priests, but exacted in the name of the deities. The alliance between the sovereign and the priesthood was necessarily close and, during much of the time, the king was the spiritual as well as the temporal head. In ancient Assyria the laws were promulgated in the name of Asshur, the head of their pantheon, as the Jews used the name of Jehovah to give sanction to theirs. The temples of the Assyrian and Babylonian gods required the attendance of a numerous priesthood, withdrawn partly and often entirely both from participation in military operations and ordinary callings. The system of irrigation by the aid of artificial canals, under which the valleys of the Tigris and Euphrates were brought to a high state of cultivation, evidences settled social order for a considerable period prior to the time of Hammurabi. The cities themselves could only come into existence under conditions of order and security to person and property.

Recent researches have thrown much light on ancient Babylonian institutions, and many ancient tablets on which were written deeds and contracts of various kinds have been exhumed and interpreted. Judicial functions were exercised by the priesthood, who also acted in the capacity of notaries and witnesses of written contracts, and the parties took an oath to perform the contract, the whole being attested by the priest and other witnesses. A deed to property seems to have been generally treated as a mortgage, which could be discharged on repayment of the purchase price, unless the vendor expressly renounced the right to redeem, in the deed. Even this did not cut off the right of his heir to recover the land by paying back the price. Sometimes the heirs joined in the deed in order to cut off the right of redemption. Mort-

gages were familiar, the earliest form being that in which the use of land was transferred to the lender for the use of the money, rent being set off against interest. When the money was repaid the land was returned. Mortgages of lands and chattels were common. The business of banking was well developed and seems to have been largely in the hands of the priesthood. Interest was allowed and bottomy bonds, bearing a high rate but under which the lender got nothing in case of loss of the property by shipwreck, were common, as also were contracts of hiring, lease, partnership and other business transactions, and were executed with that freedom which always obtains in a great commercial city.

In religion these people were polytheists, and their pantheon was as well stocked as that of the imaginative Greeks. The personal qualities attributed to their several gods were so similar in many instances as to suggest identity. The genius for city building moved from the valleys of these rivers to the countries bordering on the Euxine and Mediterranean seas and afterward spread wherever the Greeks became dominant. But, so far as we know, the genius for popular government in cities was never developed in Asia, except in the Greek cities near the coast. Among the rural population, dwelling in their villages, tilling the soil and rearing domestic animals, there was a degree of independence. Herodotus speaks of the Medes revolting from the Assyrians and gaining their freedom, after having been subject to the latter for 520 years, and then tells how Duoces by playing the part of an upright judge succeeded in gaining kingly power. Herodotus saw through Greek eyes. Though Medes and Persians were fond of liberty perhaps in their early history, they had no genius for the establishment of any form of government other than that of an arbitrary despotism.

Judea

The Jews afford us through the Bible a later and more complete system of written laws than that of Hammurabi. Some of it was similar to and borrowed from Egypt's older civilization. Some of it was drawn from Babylon. All their

laws, whether prescribing rules of conduct governing the relations between individuals or declaring religious duties and imposing burdens for the support of the priesthood, were promulgated as divine commands. The religious veneration, with which everything found in the Hebrew records has been regarded by the Christian world, renders it difficult to dispassionately attempt to separate the truth of history from the setting of oriental exaggeration in which it is contained. When or by whom the writings passing under the name of the books of Moses were written is unknown. It can be said however, with confidence, that all the Old Testament has come down to us through the Jewish priesthood. Whether the regulations to be found in the five books attributed to Moses were in fact promulgated by him or not, it is clear that there was a concurrence in establishing these laws of both the temporal and the spiritual head of the Israelites. The authority which the people recognized was not Moses nor Aaron, but the unseen God, from whom it was proclaimed that the commands emanated. The purpose of all conscientious legislators is to find and declare the rules which tend to promote the welfare of all. Many of the regulations contained in the laws attributed to Moses would appear to have but little application to a wandering horde, such as the Israelites were in their journey from Egypt to Palestine. It is not recorded that they then acquired any territory for the purpose of permanent occupancy, yet there are very definite laws concerning real property. The people must have been very filthy and immoral, for a large part of the religious observances enjoined tend to cleanliness and orderly conduct. That their wealth consisted largely of cattle, sheep and other live stock is evidenced by the extent of the regulations concerning such property. Pigeons seem to have been extensively bred and were much used in the offerings.

The ten commandments are written as the words of God repeated by Moses. The first four relate solely to matters of religion, but are regarded as authoritative and binding throughout Christendom today, and Sunday is observed as the Sabbath of his law. The fifth is an admonition to respect

parents, more or less regarded. The remaining five are universally regarded as binding moral laws, the violation of either of which is a sin. While these commandments have been held of such high authority by all Christians, the other laws declared by Moses are not so well respected. Slavery even of Hebrews was recognized.

"If thou buy an Hebrew servant, six years he shall serve and in the seventh he shall go free for nothing." If bought with a wife, the wife went free with him, but if given a wife by the master, the wife and her children belonged to the master. "And if the servant shall plainly say I love my master, my wife and my children I will not go out free, then his master shall bring him unto the judges, he shall also bring him to the door or unto the door post; and his master shall bore his ear through with an awl, and he shall serve him forever."

Daughters sold as servants were not given their freedom but, if taken to wife by the master or his son, were to be treated as wives and not sold to a strange nation. Murder of malice was punished with death, but a sanctuary was allowed for excusable homicide. The law of domestic relations inculcated respect for both father and mother. Polygamy was permitted and in some instances almost compulsory. Marriage was encouraged, and a newly married man was exempt from going to war for a year. If brethern dwelt together and one of them died childless, the surviving brother should marry the widow and her first born should succeed in the name of the dead brother. If the survivor refused to marry the widow, she might call him before the elders and have him condemned, and in their presence she shall "Loose his shoe from off his foot, and spit in his face and shall answer and say, So shall it be done unto that man that will not build up his brothers house."

The law of divorce was that, "When a man hath taken a wife and married her, and it come to pass that she find no favor in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement and give it

in her hand and send her out of the house." She may then marry again.[2]

In Numbers chapter v. a provision is made for testing the faithfulness of a woman whose husband is jealous of her, which is similar to and probably suggested the medieval trials by ordeal. The status of women was not wholly dissimilar to that under the English common law. The vows (contracts) of men were binding, but those of unmarried daughters might be annulled by the fathers and of married women by their husbands on the day when made, otherwise they should stand. Widows and divorced women were bound.

The law of inheritance, as first established, seems to have recognized the rights of males only, but on the complaint of the daughters of Zellophehad it was amended as follows: "If a man die and have no son, then ye shall cause his inheritance to pass unto his daughters. And if he have no daughters, then ye shall give his inheritance unto his brethern. And if he have no brethern, then ye shall give his inheritance unto his father's brethern. And if his father have no brethern, then ye shall give his inheritance unto his kinsman that is next to him of his family."[3]

There was a settled policy, well calculated to preserve to each family its inheritance and prevent the crafty from permanently engrossing the land or chattel property. Every fiftieth year was a year of jubilee, when all inheritances of land went back to the vendor. A sale could only be made till the next jubilee, except in walled towns, where a redemption in a year was allowed. A similar principle was thus applied to chattels.

"At the end of every seven years thou shalt make a release. And this is the manner of the release. Everyone that lendeth aught unto his neighbor shall release it, he shall not exact it of his neighbor or of his brother because it is called the Lord's release. Of a foreigner thou mayest exact it again."[4]

"And six years thou shalt sow thy land and shalt gather in

[2] Deut. xxiv. 1-2.
[3] Numbers xxvii.
[4] Deut. xv. 1-2-3.

the fruits thereof. But the seventh year thou shalt let it rest and lie still that the poor of thy people may eat: and what they leave the beasts of the field shall eat. In like manner thou shalt deal with thy vineyard and thy oliveyard."[5]

Usury was strictly forbidden except when taken from strangers, and pledges of raiment must be returned by sundown. For all manner of trespasses the parties should come before the judges and the party condemned should pay double. The protection of servants against the cruelty of masters was exceedingly meager. "And if a man smite his servant or his maid with a rod and he die under his hand, he shall surely be punished. Notwithstanding if he continue a day or two he shall not be punished for he is his money."

If a man put out the eye or tooth of a man or maid servant he or she shall go free. If an ox kill a person the ox must be killed, but, if the ox has been wont to push with his horn in time past, the owner shall be put to death unless he pays his ransom. If the ox kill a servant, the owner of the ox shall pay the master thirty *shekels* of silver. A thief must pay three for one for an ox and four for one for a sheep; and if caught in the act and killed, no blood shall be shed for him. A party caught with stolen property must pay double.

The criminal law was primitive and merciless. The punishments were death, maiming, beating or fine. The following offenses were punished with death: Murder, manstealing, cursing father or mother, adultery (both parties), witchcraft, lying with a beast, idolatry.

"If thy brother the son of thy mother or thy son or thy daughter or the wife of thy bosom or thy friend who is as thine own soul, entice thee secretly saying, Let us go and serve other gods which thou hast not known, thou nor thy fathers," thou shalt not consent "But thou shalt surely kill him, thine hand shalt be first upon him to put him to death and afterward the hand of all the people." The father and mother of a "stubborn and rebellious son" might bring him before the elders at the gate of the city and have him con-

[5] Exodus xxiii. 10 and 11.

demned to be stoned to death. It hardly seems possible that there could be use for such a law.

For offenses deemed of inferior degree the *lex talionis* had full sway, and is nearly identical with the code of Hammurabi.

"Eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe."

Very definite and minute provision was made as to what might be eaten and as to the manner in which animals should be slaughtered for food and the use of the different parts. These were in part sanitary regulations but more to insure the priests their living.

"The priests, the Levites and all the tribe of Levi shall have no part nor inheritance therein with Israel. They shall eat the offerings of the Lord made by fire and his inheritance."[6]

By far the greater space in the law is occupied with regulations relating to religion and religious ceremonies, and great care is taken to insure the maintenance and influence of the priesthood. All the books, especially that of Leviticus, contain very numerous rules relating to burnt offerings, meat offerings, peace offerings, sin offerings, trespass offerings, first fruits and other offerings from which the priests were supported. The priestly dress was regulated. The Levites were assigned cities (villages) with suburbs for their cattle, among which were six cities of refuge for criminals, into which the avenger of blood might not pursue one guilty of homicide, unless committed with premediation. The priesthood was the instrumentality mainly relied on by Moses for the maintenance of his system, which in this respect strongly resembled the Egyptian. The observance of his laws would keep the priests in close contact with all the people substantially all the time, and obedience to all these minute regulations was enjoined as a religious duty.

Among the most remarkable provisions in the laws of Moses are those imposing restrictions on the rulers, and providing for the promulgation and perpetuation of a code of written laws by which the rights of all were to be measured.

[6] Deut. xviii. 9.

The people were permitted to have kings, like as other nations, but with limitations on their powers.

"But he shall not multiply horses to himself nor cause the people to return to Egypt to the end that he should multiply horses, forasmuch as the Lord hath said unto you, Ye shall henceforth return no more that way. Neither shall he multiply wives to himself that his heart turn not away, neither shall he greatly multiply silver and gold. And it shall be when he sitteth upon the throne of his kingdom, that he shall write him a copy of this law in a book, out of that which is before the priests, the Levites. And it shall be with him, and he shall read therein all the days of his life."[7]

"Judges and officers shalt thou make thee in all thy gates, which the Lord thy God giveth thee throughout thy tribes, and they shall judge the people with just judgment. Thou shalt not wrest judgment, thou shalt not respect persons, neither take a gift, for a gift doth blind the eyes of the wise and pervert the words of the righteous."[8]

Appeals from inferior to superior courts were provided for.

"If there arise a matter too hard for thee in judgment, between blood and blood, between plea and plea and between stroke and stroke, being matter of controversy within thy gates, then shalt thou arise and get thee up into the place which the Lord thy God shall choose. And thou shalt come unto the priests, the Levites, and unto the judge that shall be in those days and inquire, and they shall shew thee the sentence of judgment. And thou shalt do according to the sentence which they of that place which the Lord shall choose shall shew thee."[9] In the determination of criminal causes the rule concerning the amount of evidence required was, "One witness shall not rise up against a man for any iniquity or for any sin that he sinneth; at the mouth of two witnesses or at the mouth of three witnesses shall the matter be established."[10]

Although the date of Moses' death is assigned to about the year 1450 B.C. and although the little nation for which he

[7] Deut. xvii. 16 and 19.
[8] Deut. xxi. 18-19.
[9] Deut. xvii. 8-9-10.
[10] Deut. xix. 15.

framed his laws was often at the mercy of its foes, in captivity and finally scattered over the face of the earth as outcasts, his laws are to be found at this day in the households of millions of alien people in apparently complete form. This seems in some measure due to the provisions made by him for their preservation, but more to their religious sanction and the promulgation of the laws as the word of the God who watched over the Israelites as his chosen people and yet more to the spread of Christianity. The people were commanded by Moses after they should pass over Jordan to set up great stones and plaster them and "write upon the stones all the words of this law very plainly." Blessings were called down on all who obeyed and curses on those who disobeyed. "And Moses wrote this law and delivered it unto the priests, the sons of Levi, which bore the ark of the covenant of the Lord, and unto all the elders of Israel and Moses commanded them saying, At the end of every seven years in the solemnity of the year of release in the feast of the tabernacle, when all Israel is come to appear before the Lord thy God in the place which he shall choose, thou shalt read this law before all Israel in their hearing."[11]

In the early days authority was exercised by the priests, and the general in time of war, but there was no king.

"In those days there was no king in Israel, every man did that which was right in his own eyes."[12]

(B.C. 1400.) Afterward when Samuel was chief priest the people wanted a king.

"Then all the elders of Israel gathered themselves together and came to Samuel unto Ramah, and said unto him, Behold thou art old and thy sons walk not in thy ways, now make us a king to judge us like all the nations. But the thing displeased Samuel." He told them the evil consequences of having a king but they insisted.[13]

Saul was then made king. "And all the people shouted and said God save the king." Saul's authority was not fully recognized however, and it was not till David was anointed that

[11] Deut. xxxi. 9-10-11. [12] Judges xxi. 25. [13] 1 Samuel viii.

the kingly authority was established. Under his son Solomon the nation attained its maximum of wealth and power, which, as compared with that of either Egypt, Babylon, Assyria or Persia at its best, was not great. Though the written law of Moses seems to have been preserved intact, it does not appear to have ever been very rigidly observed, nor to have been eminently successful as a religious establishment. Even Solomon, the model of all Hebrew Kings, violated the law by greatly multiplying his riches, and by taking to himself a vast number of wives (700), and concubines (300). In the accumulation of his harem he did not confine himself to selections from the twelve tribes, but gathered from among the heathens, and as a result became tolerant of all the gods and erected places for the worship of other Gods besides Jehovah. Throughout much of the Old Testament there is constant recognition of the existence of Baal and numerous other gods, but Jehovah was the special god of Israel, from whom alone they might hope for help. The Bible records many times when the people generally abandoned the worship of God and adopted that of the gods of other people. The lesson constantly taught is that this was always followed by disaster, and that prosperity only came through strict adherence to the national worship. The history of the Israelites from the time of Moses to the days of Christ, is an alternation of peace and war, adherence to the Mosaic law and abandonment of it, success and adversity, independence and subjection to foreign power, corresponding in all material respects to that of surrounding nations. In morals they do not seem to have been materially above or below the general average of their neighbors. In power and material development they were quite insignificant as compared with the Chaldeans, Babylonians, Assyrians, Persians or Egyptians. Jerusalem at its best was but a village as compared with Babylon or Nineveh. Yet the influence of this small nation on succeeding generations has vastly exceeded that of all the others combined. This influence is due, first to the preservation of the Mosaic law and, second but far more, to the Christian teachings of the new law of love and mutual help.

We regard the present as an age of invention in Europe and America. It is not the first however. While we cannot definitely fix time or place nor speak on the subject with absolute certainty, all we do know indicates that there was, before the days of Moses, a period of great mental activity and invention. The foundations of modern achievements seem to have been laid somewhere in or near the regions treated of in this chapter. The art of smelting iron, copper and many other metals was carried to an advanced state of perfection. Architecture produced immense structures in which the beautiful sought expression in accordance with the taste of the times. The art of weaving fabrics was developed. Hydraulic engineering achieved triumphs little if any short of those boasted by modern engineers, and the rich country of the Tigris and Euphrates, which now lies desolate from lack of the ancient system by which the waters of the rivers were utilized, was them a vast garden, rivaling if not leading in productiveness the most favored portions of the globe in any age. But more valuable than all these was the invention of letters, since changed in form and number by different people, yet affording the foundation of all written language in the western world. Of all the literary people the Chinese alone can claim the invention of another separate and complete system of written characters. Whether any of these inventions were made under the despotic governments of which history informs us cannot be told. Letters do not record the time, place or manner of their own creation.

It seems strange that so little definite history or description of the government of the Phoenicians can be given. They were renowned for manufactures and commerce. Their ships went to all ports of the Mediterranean Sea, but their colonies were mostly on the African side. The accounts of Carthage received from Roman sources are doubtless much colored by their hostility.

The dynasty established as a sequence of Alexander's conquest did not long retain marked Greek characteristics, but soon degenerated and became in fact a typical oriental despotism. The Greeks adopted Persian customs rather than im-

posed their own. There were Greek cities along the coasts where Greek civilization prevailed for many centuries. Following the downfall of Macedonian supremacy came the Roman conquest of the country west of the Euphrates. Toward the east the Persians with varying fortunes and under numerous dynasties have during most of the time maintained their supremacy. But whether the ruler was Persian, Mede, Bactrian, Turk, Mogul or Musselman, he has always been a despot, sometimes a wellmeaning and sometimes an able one, but usually a cruel, idle voluptuary. The advent of Christ had little effect on the political conditions of the country of his birth. Not till the Crusades was an attempt made to assert temporal authority there in his name. The influence of his teachings, though not wholly wasted in Asia, was far less potent than that of Mohammed, whose system was better suited to oriental tastes and character.

The difficulty with all their systems was that no effectual check was provided against the exercise of arbitrary power. Those who are inclined to clamor for speedy justice may read of striking illustrations of it in the book of Daniel, where the story is told of the restributive justice meted out to Daniel's accusers, who were thrown into the lion's den and torn to pieces by the king's command, or in the book of Esther in which is recorded the hanging of Haman on the gallows he erected for Mordecai, and the license given to and used by the Jews by command of Ahasuerus to slaughter their enemies. The king and his satraps were really restrained only by their own feelings or interests and constantly exercised arbitrarily the power to put to death, often in cruel ways, and to seize the property of their subjects.

The theory of the Persian government remained despotic till very recent times, but modern influences have been felt in the land of the ancient despotism. On August 5, 1906 Muzaffar-ud-Din, Shah, issued a rescript undertaking to form a national council—Majlis—representing the whole people. The Majlis was elected and opened by the shah in person on October 7, 1906. Muzaffer died in January 1907 and his son Mohammed Ali Mirza on his accession to the throne pledged

himself to support the constitution. A revolution occasioned by a clash between the shah and the Majlis resulted in the deposition of Ali and the choice of his young son Ahmad Mirza. On November 15, 1909 a newly elected Majlis was opened by the shah.

The Majlis is composed of representatives of the dominant classes and numbers 162 members (sixty from Teheren and 102 from the provinces). Electors must be males, Persian subjects not less than twenty-five years old and of good repute. The executive government is carried on by a cabinet of eight ministers.

CHAPTER VIII

Arabia

Were it not for the marvelous career and lasting influence on a large portion of the human race of one man as a religious teacher and law giver, Arabia would be given but small space in this work. The people were allied on one side with the neighboring Asiatic population and classed as of Semitic stock, and on the other were intermixed with African blood of the Egyptian and Abyssinian stocks. Nevertheless the Arab is of a type quite as well marked as any of his neighbors and has been so for untold centuries. Modes of life and social systems appear to have been moulded by natural conditions. In Yemen, which has ever been rich and fruitful, the people have dwelt in settled communities, cultivated the soil and maintained a strong monarchical government, which is said to have lasted 2500 years before Mohammed, and to have extended its power over most of the south half of the peninsula. In the interior and desert portions, where settled agriculture is impossible, but precarious pasturage affords sustenance for flocks and herds, the wandering tent dwelling Bedouins moved from place to place with their live stock, recognizing no settled government beyond their tribal leaders. Though brought in contact with the ancient civilizations of Egypt, Babylonia and India through its traders, so far as known Arabia developed and preserved its own peculiar types. Our common system of expressing numbers by figures is perhaps the only Arabic invention with which we are familiar, but it may well be that this is not all for which we are indebted to them, so meager and imperfect are the records of past events.

Mohammed grew up under a tribal system which recognized no superior authority. Mecca, though a city of no great size was occupied by clans having no common head.

The Koraish, by which general term the clans in and about Mecca were known, were traders whose caravans brought goods from Syria and Persia, which were sold at the fairs in Mecca. Knowledge of reading and writing was general among them.

Neither the Abyssinian Christians nor the Persian fire worshipers had been able to subjugate Mecca. Mohammed's parents died during his early youth and he grew up in extreme poverty first in his grandfather's, and then his uncle's, family. At twenty-five he entered the service of Khadija, a wealthy widow for whom he traveled to Palestine and Syria. Afterward he married her. He became familiar with the Hebrew scriptures and traditions and with the tenets of the Christians. To the many forms of idolatry which he found prevailing, not only among the followers of ancient Arabic faiths, but also among the Christians of his day, he conceived a most intense aversion. He was a profound believer in the unity of God. Mohammed laid no claim to divinity, not even to direct personal communion with God, but to having received the words of the Koran through the angel Gabriel. He posed merely as the apostle of God. He did not profess to proclaim a new religion, but merely to restore in its purity the ancient Jewish monotheism. He gave the great characters of the Bible recognition as prophets, and while he denied the divinity of Christ, his authority as a prophet and teacher is maintained. The Koran, though regarded by Mohammedans as a wonderful literary production, contains little to admire, when translated into English. Its repetition of the Bible stories, with variations of form, are tedious and uninstructive. The strength of his revelations seems to lie in the vigorous proclamation of the unity and power of God, and in the rewards offered to the true believers of a paradise suited to the sensual desires of the people to whom he spoke, and the hot torments of hell denounced as a punishment to those who refused to accept the Koran. The God he proclaimed was an intensely personal one, who took a keen and active interest in human affairs and rewarded and punished in ample measure. His doctrines tended directly to

the establishment of civil power under religious sanction, and Mohammed stands out in bold relief as the founder of a religious sect, who was at the same time the founder of an empire over subjects unaccustomed to submit to despotic rule. Although the Koran is the law for all Mohammedan countries and is accepted as based on divine authority, it is exceedingly meager in its rules of conduct, and is adapted to such conditions as the prophet was familiar with. The moral tone is superior to most of the Old Testament, but quite inferior to that of the New. As in the laws of Moses, the first and chief concern was to provide for the support and maintenance of the religion. From first to last the worship of the true and living God is enjoined, rewards are promised for the true believers and punishments denounced for the infidels.

The religious teachings and the code of laws put forth by Mohammed can best be studied in the Koran, in which is written the revelations which Mohammed claimed were sent down to him. The following extracts the text will give a clearer idea of Mohammed's system than any summary of or comment on the Koran. The great influence Mohammed has exerted over a large part of the earth through so many centuries, in religion and as a law-giver, render his works of peculiar interest. The fanatical spirit which animated his followers is expressed in the following text: "When ye encounter the unbelievers strike off their heads until ye have made a great slaughter among them, and bind them in bonds; and either give them a free dismission afterwards or exact a ransom until the war shall have laid down its arms."[1] "And as to those who fight in defense of God's true religion, God will not suffer their works to perish; he will guide them and dispose their hearts aright; and he will lead them into Paradise of which he hath told them, God hath preferred those who fight for the faith above those who are still by adding unto them a great reward."[2]

"The description of Paradise which is promised unto the pious, therein are rivers of incorruptible waters and rivers of

[1] Ch. 47. Sales' Koran.
[2] *Id.* Ch. 4, p. 65.

milk the taste whereof changeth not, and rivers of wine, pleasant unto those who drink, and rivers of clarified honey, and therein shall they have plenty of all kinds of fruits, and pardon from their Lord. Shall the men for whom these things are prepared be as he who must dwell for ever in hell fire and will have the boiling water given them to drink which shall burst their bowels." "Verily this present life is only a play and a vain amusement; but if ye believe and fear God He will give you your rewards. He doth not require of you your whole substance, if He should require the whole of you and earnestly press you, ye would become niggardly and it would raise your hatred against His apostles. Behold ye are those who are invited to expend part of your substance for the support of God's true religion; and there are some of you who are niggardly. But whosoever shall be niggardly shall be niggardly toward his own soul."[3]

"These are they who shall approach near unto God, they shall dwell in gardens of delight. . . . Reposing on couches adorned with gold and precious stones, sitting opposite to one another thereon. Youths which shall continue in their bloom forever shall go round about to attend them with goblets and beakers and a cup of flowing wine; their heads shall not ache by drinking the same neither shall their reason be disturbed; and with fruits of the sorts which they shall choose and the flesh of herds of the kinds which they shall desire, and there shall accompany them fair damsels having large black eyes resembling pearls hidden in their shells, as a reward for that which they shall have wrought. They shall not hear therein any vain discourse or any charge of sin but the only salutation Peace, Peace. And the companions of the right hand, . . . shall have their abode among the lote trees free from thorns and trees of mauz loaded regularly with their produce from top to bottom, under an extended shade near a flowing water and amidst fruits in abundance which shall not fail nor shall be forbidden to be gathered; and they shall repose themselves on lofty beds. Verily we have created the damsels

[3] *Id.* Ch. 4.

of paradise by a peculiar creation, and we have made them virgins, beloved by their husbands of equal age with them, for the delight of the companions of the right hand."[4]

"And they who believe not shall have garments of fire fitted unto them; boiling water shall be poured on their heads, their bowels shall be dissolved thereby also their skins shall be beaten with maces of iron."[5]

The duty of giving alms is frequently enjoined, and this generally meant making contributions for the support of the faith. Mohammed himself applied all his receipts to the use of his followers, with no desire to amass wealth, and alms with him really meant charitable contributions, except when used to propagate the word with the sword. The doctrines he taught were not above the comprehension of his followers, and the rewards promised were of the sort most pleasing to them. The punishments denounced against unbelievers were well calculated to terrify, and to these persuasions he added a vigorous policy for organization and extension of his temporal power. The command to pray was peremptory.

"Regularly perform thy prayer at the declension of the sun, at the first darkness of the night and the prayer of day break, for the prayer of day break is borne witness unto by the angels. And watch some part of the night in the same exercise as a work of super-errogation for thee; peradventure thy Lord will raise thee to an honorable station, and say O! Lord cause me to enter with a favorable entry, and cause me to come forth with a favorable coming forth, and grant me from thee an assisting power. And say truth is come and falsehood is vanished; for falsehood is of short continuance."[6]

The domestic customs prevailing in Arabia in the time of Mohammed were substantially like those of ancient Judea, Egypt and Persia and his teachings did not call for radical changes. "And give the orphans when they come of age their substance, and render them not in exchange bad for good, and devour not their substance by adding it to your substance, for this is a great sin. And if ye fear that ye

[4] *Id.* Ch. 56. [5] *Id.* Ch. 22. [6] *Id.* Ch. 17.

shall not act with equity towards orphans of the female sex, take in marriage of such other women as please you, two or three or four and not more. But if ye fear that ye cannot act equitably toward so many, marry one only or the slaves which ye shall have acquired. This will be easier that ye swerve not from righteousness. And give women their dowry freely; but if they voluntarily remit any part of it unto you, enjoy it with satisfaction and advantage. And give not unto those who are weak of understanding the substance which God hath appointed you to preserve for them, but maintain them thereout and clothe them and speak kindly unto them, and examine the orphans until they attain the age of marriage, but, if ye perceive they are able to manage their affairs well, deliver their substance unto them; and waste it not extravagantly or hastily, because they grow up. Let him that is rich abstain entirely from the orphans estate; and let him who is poor take thereof according to that which shall be reasonable. And when ye deliver their substance unto them call witnesses in their presence. . . . God hath thus commanded you concerning your children. A male shall have as much as the share of two females, but if they be females only and above two in number, they shall have two third parts of what the deceased shall leave, and if there be but one she shall have the half, and the parents of the deceased shall have each of them a sixth part of what he shall leave if he have a child, but it he have no child and his parents be his heirs then his mother shall have the third part. And if he have brethern then his mother shall have a sixth part after the legacies which he shall bequeath and his debts be paid. . . . Moreover ye may claim half of what your wives shall leave if they have no issue, but if they have issue, then ye shall have the fourth part of what they shall leave after the legacies which they shall bequeath and the debts be paid. They also shall have the fourth part of what ye shall leave in case ye have no issue, but if ye have issue, then they shall have the eighth part of what ye shall leave after the legacies which ye shall leave and the debts be paid. And if a man's or woman's substance be inherited by distant relation, and he

or she have a brother or sister each of them too shall have a sixth part of the estate. . . . If any of your women be guilty of whoredom produce four witnesses from among you against them, and if they bear witness against them imprison them in separate apartments until death release them or God affordeth them a way to escape. And if two of you commit the like wickedness punish them both, but if they repent and amend, let them both alone; for God is easy to be reconciled, and merciful. Verily repentance will be accepted with God, from those who do evil ignorantly and then repent speedily, unto them will God be turned for God is knowing and wise. But no repentance shall be accepted from those who do evil until the time when death presenteth itself unto one of them and he saith verily, I repent now; . . . O true believer it is not lawful for you to be heirs of women against their will, nor to hinder them from marrying others that ye may take away part of what ye have given them in dowry; unless they have been guilty of a manifest crime; but converse kindly with them. . . . If ye be desirous to exchange a wife for another wife and ye have already given one of them a talent, take not away anything therefrom. . . . Marry not women whom your fathers have had to wife; for this is uncleanness and an abomination and an evil way. Ye are forbidden to marry your mothers and your daughters and your sisters and your aunts, both on the fathers and on the mothers side, and your brothers daughters and your sisters daughters, and your mothers who have given you suck and your foster sisters and your wives mothers and your daughters in law which are under your tuition, born of your wives, . . . and the wives of your sons who proceed from your loins and ye are also forbidden to take to wife two sisters. Ye are also forbidden to take to wife free women who are married, except those women whom your right hand shall possess as slaves. . . . Whoso among you hath not means sufficient that he may marry free women who are believers, let him marry with such of your maid servants whom your right hands possess as are true believers. . . . Serve God and associate no creature with Him, and show kindness unto parents, and relatives

and orphans and the poor, and your neighbor who is kin to you, and also your neighbor who is a stranger, and your familiar companion and the traveller and the captives whom your right hand shall possess."[7]

Husbands were allowed to divorce their wives at will, the only restrictions being as to the time of putting them away, which could not be during pregnancy. "And speak unto the believing women that they restrain their eyes, and preserve their modesty and discover not their ornaments, except what necessarily appeareth thereof, and let them throw their veils over their bosoms and not show their ornaments unless to their husbands or their fathers or their husbands fathers or their sons or their husbands sons or their brothers or their brothers sons or their sisters sons or their women or the captives which their right hands possess, or unto such men as attend them and have no need of women or unto children who distinguish not the nakedness of women."

O true believers enter not any houses besides your own houses until ye have asked leave and have saluted the family thereof . . . and if ye find no person in the houses, yet do not enter them until leave be granted you, and if it be said unto you return back, do ye return back.[8]

The criminal code is not voluminous. The Mosaic *lex talionis* is repeated with leave to remit on payments of alms. "It is not lawful for a believer to kill a believer unless it happen by mistake, and whoso killeth a believer by mistake the penalty shall be the freeing of a believer from slavery and a fine to be paid to the family of the deceased unless they remit it as alms; and if the slain person be of a people at enmity with you and be a true believer, the penalty shall be the freeing of a believer, and if he be of a people in confederacy with you, a fine to be paid to his family, and the freeing of a believer, and he who findeth not wherewith to do this shall fast two months consecutively, as a penance enjoined from God. . . . But whoso killeth a believer designedly his re-

[7] *Id.* Ch. 4, entitled Women.
[8] *Id.* Ch. 24, p. 265.

ward shall be hell, he shall remain there forever."[9] "If a man or woman steal cut off his hand."

"The whore and the whoremonger shall ye scourge with an hundred stripes. And let no compassion toward them prevent you from executing the judgment of God. . . . The whoremonger shall not marry any other than a harlot or an idolatress. And a harlot shall no man take in marriage except a whoremonger or an idolater; and this kind of marriage is forbidden the true believers. But as to those who accuse women of reputation of whoredom and produce not four witnesses of the fact, scourge them with fourscore stripes and receive not their testimony forever, for such are infamous prevaricators, excepting those who shall afterwards repent and amend, for unto such will God be gracious and merciful. They who shall accuse their wives of adultery and shall have no witnesses thereof besides themselves; the testimony which shall be required of one of them shall be that he swear four times by God that he speaketh the truth; and the fifth time that he imprecate the curse of God on him if he be a liar. And it shall avert the punishment from the wife, if she swear four times by God that he is a liar, and if the fifth time she imprecate the wrath of God on her if he speaketh the truth.[10]

"Kill not your children for fear of being brought to want, we will provide for them and for you; verily the killing them is a great sin. Draw not near unto fornication for it is wickedness and an evil way. Neither slay the soul which God hath forbidden you to slay unless for a just cause" (apostasy, adultery or murder) "and whosoever shall be slain unjustly we have given his heir power to demand satisfaction, but let him not exceed the bounds of moderation in putting to death the murderer in too cruel a manner, or by revenging his friend's blood on any other than the person who killed him, since he is assisted by this law, and meddle not with the substance of the orphan, unless it be to improve it until he attain his age of strength, and perform your covenant, for

[9] *Id.* Ch. 5, p. 78.

[10] *Id.* Ch. 24, entitled Light.

the performance of your covenant shall be inquired into hereafter. And give full measure where you measure aught, and weigh with a just balance. This will be better and more easy for determining every man's due. . . . Walk not proudly in the land for thou canst not cleave the earth neither shalt thou equal the mountains in stature. All this is evil and abominable in the sight of thy Lord."[11]

"O true believers let not men laugh other men to scorn who peradventure may be better than themselves; neither let women laugh other women to scorn who possibly may be better than themselves. Neither defame one another, nor call one another by approbrious appellations. An ill name is to be charged with wickedness after having embraced the faith, and whoso repenteth not they will be the unjust doers. O true believers, carefully avoid entertaining a suspicion of another, for some suspicions are a crime. Inquire not too curiously into another man's failings, neither let the one of you speak ill of another in his absence."[12]

"Whatever things are given you they are the provisions of the present life; but the reward which is with God is better and more durable, for those who believe and put their trust in their Lord and who avoid heinous and filthy crimes and when they are angry forgive, and who hearken unto their Lord and are constant at prayer, and whose affairs are directed by consultation among themselves, and who give alms out of what we have bestowed on them, and who when an injury is done them, avenge themselves (and the retaliation of evil ought to be an evil proportionate thereto), but he who forgiveth and is reconciled unto his enemy shall receive his reward from God, for he loveth not the unjust doers."[13]

"Thy Lord hath commanded that ye worship none besides him, and that ye show kindness unto your parents, whether the one of them or both of them attain to old age with thee. Wherefore say not unto them, Fie on you; neither reproach them, but speak respectfully unto them, and submit to behave

[11] *Id.* Ch. 17, entitled The Night Journey.
[12] *Id.* Ch. 49, entitled The Inner Apartments.
[13] *Id.* Ch. 42, entitled Consultation.

humbly towards them out of tender affection and say O Lord have mercy on them both as they nursed me when I was little. . . . And give unto him who is of kin to you his due and also unto the poor and the traveller, and waste not your substance profusely for the profuse are brethern of the devils."[14]

"God will not punish you for an inconsiderate word in your oaths, but he will punish you for what ye solemnly swear with deliberation. And the expiation of such an oath shall be the feeding of ten poor men with such moderate food as ye feed your own families withal, or to clothe them, or to free the neck of a true believer from captivity, but he who shall not find wherewith to perform one of these three things shall fast three days. This is the expiation of your oaths when ye swear inadvertently. Therefore keep your oaths. Thus God declareth unto you his signs that ye may give thanks. O true believers surely wine and lots and images and divining arrows are an abomination of the work of Satan; therefore avoid them that ye may prosper. Satan seeketh to sow dissension and hatred among you by means of wine and lots and to divert you from remembering God and prayer, will ye not therefore abstain from them?"[15]

"Say I find not in that which hath been revealed unto me anything forbidden unto the eater that he eat it not, except it be that which dieth of itself or blood poured forth, or swine flesh for this is an abomination, or that which is profane, having been slain in the name of some other than of God. But whoso shall be compelled by necessity to eat of these things, not lusting nor wilfully transgressing, verily the Lord will be gracious unto him and merciful."[16]

"They who devour usury shall not arise from the dead but as he ariseth whom Satan hath infected by a touch, this shall happen to them because they say, Truly selling is but as usury and yet God hath permitted selling and forbidden usury. He therefore who, when there cometh unto him an admonition from his Lord, abstaineth from usury for the future, shall

[14] *Id.* Ch. 17. [15] *Id.* Ch. 5. [16] *Id.* Ch. 6.

have what is past forgiven him, and his affair belongeth unto God. But whoever returneth to usury, they shall be the companions of hell fire, they shall continue therein forever."[17]

"O true believers, when you bind yourselves one to the other in a debt for a certain time, write it down, and let a writer write between you according to justice, and let not the writer refuse writing, according to what God hath taught him, but let him write and let him who oweth the debt dictate, and let him fear God his Lord and not diminish aught thereof. But if he who oweth the debt be foolish or weak or be not able to dictate himself, let his agent dictate according to equity and call to witness two witnesses of your neighboring men; but if there be not two men, let there be a man and two women of those whom ye shall choose for witnesses, if one of these women should mistake the other will cause her to recollect, and the witnesses shall not refuse whensoever they shall be called. And disdain not to write it down, be it a large debt or be it a small one, until its time of payment; this will be more just in the sight of God, and more right for bearing witness and more easy that ye may not doubt. But if it be a present bargain which ye transact between yourselves, it shall be in you if ye write it not down. And take witnesses when ye sell one to the other, and let no harm be done to the writer nor to the witnesses."[18]

The true believers were commanded to wash before prayers and if where no water could be had, to rub faces and hands with fine clean sand.

"O true believers observe justice when ye bear witness before God, although it be against yourselves or your parents or relations, whether the party be rich or whether he be poor, for God is more worthy than them both; therefore follow not your own lust in bearing testimony so that ye swerve from justice. And whether ye wrest your evidence or decline giving it God is well acquainted with that which ye do."[19]

"God hath appointed the Caaba the holy house an establishment for mankind; and hath ordained the sacred month and

[17] *Id.* Ch. 2. [18] *Id.* Ch. 2. [19] *Id.* Ch. 4.

the offering and the ornaments hung thereon."[20] "But they who shall disbelieve and obstruct the way of God and hinder men from visiting the holy temple of Mecca which we have appointed for a place of worship unto all men; the inhabitant thereof and the stranger have an equal right to visit it; and whosoever shall seek impiously to profane it we will cause him to taste a grievous torment. Call to mind when we gave the site of the Caaba for an abode unto Abraham, saying, Do not associate anything with me and cleanse my house from those who compass it and who stand up and who bow down to worship. And proclaim unto the people a solemn pilgrimage, let them come unto thee on foot and on every lean camel arriving from every distant road, that they may be witnesses of the advantages that accrue to them from visiting the holy place, and may commemorate the name of God on the appointed days in gratitude for the brute cattle he hath bestowed on them."[21]

The foregoing passages cover substantially all of Mohammed's law-giving. The substance of some of these commands is repeated in other places, but the balance of the Koran is filled with sermons and narratives taken from the Bible, and frequent and oft repeated denunciations of the infidels. This meager code did not suffice for the vast empire built up by his successors. To supplement it recourse was had to decisions made by Mohammed, to analogies, traditions and customs constituting the Sunna. Numberless commentators elucidated the text of the Koran, and the decisions of Mohammed were collected and published. Where all these failed to furnish a rule the early Caliphs exercised their own judgment and, as must always happen everywhere in the absence of an established rule or precedent, the opinion of the judge in the particular case necessarily stands for law. Throughout all Mohammedan countries, however, the Koran was ever looked to for the spirit of the whole law, and its commands admitted of no change or modification by any authority whatever. A lengthy treatise on Mohammedan jurisprudence, that of Ibn

[20] *Id.* Ch. 5.

[21] *Id.* Ch. 23, entitled The True Believer.

Hanbal, has the following principal heads. Of Purification (ablution, purification of women, circumcision, etc.). Of Prayer, of Funerals, of Tithe and Almsgiving, of the legal Fasts, of the Pilgrimage to Mecca, of Commercial and other transactions, of Inheritance, of marriage and divorce, of the Faith, of Crimes and Misdemeanors, of Justice, of the Imamate or spiritual power, and of the Caliphate or temporal power.

An American lawyer would be more likely to think he had found a religious commentary than a law book, but with Mohammedans, law and gospel were one.

Mohammed's power was derived from the belief in his divine commission. The scope and limitations of his authority were fixed by revelations of the Koran, from time to time, as the exigencies of state required. In his life he extended his power over Arabia and sought submission from neighboring people, but died when preparing to invade Syria. His successors rapidly extended their power over Egypt, Syria and thence over the north of Africa and all Asia Minor. The first four Caliphs were chosen by the community at Medina. The revenues of the state consisted of the tithe for the poor, which every Moslem was required to pay, a fifth of the spoils of war,—the rest going to the warriors,—the poll tax and land tax on infidels. The Caliph administered the revenues according to his pleasure. The poll tax ranged from about two dollars on the poor to about eight dollars on the rich. The land tax was in the nature of a rent according to the character of the holding. In the early days pensions were paid to the faithful out of the public revenues. With the growth of the empire the necessities of administration caused its division into provinces, first ten, and on the removal of the capital from Damascus to Bagdad, twelve. Each province was governed by a perfect, who stood in the place of the Caliph. The central administration developed into various departments, each under the supervision of a chief. There was a ministry of Finance, Bureau of State property, Exchequer Office, Ministry of War, Court of Appeal, Bureau of freedmen and slaves of the Caliphs, Office of expenditure, Office of Posts,

Office of Correspondence, Office of the Imperial Seal and registration. All power was centered in the Caliph, who was the spiritual as well as the temporal head. The ministers of the various departments were responsible to him. So were the prefects who stood as his representatives in the provinces.

Justice was administered by Cadis appointed by the Caliph, his Vizier or the prefect. To be eligible to this appointment one must be a free male Moslem, of suitable age, sound mind, good morals and learned in the law. The Cadis had general civil and criminal jurisdiction and of guardianships and estates, and over mosques, schools and public buildings. To assist him the Cadi had Notaries, Secretaries and Deputies. From the decision of the Cadi an appeal might be taken to the Court of Appeal, which was presided over by the Caliph in person till the time of Mohtadi, after which a special judge appointed for that purpose presided. In the provinces there were Marshals who kept records of the birth and death of descendants of the family of the Prophet. The Imams officiated at the Mosques.

The practical application of the Koran in the decision of causes by the Cadis and the religious sentiment of the believers combined in calling out innumerable commentaries, seeking to elucidate and make plain whatever was obscure. Judges with a fixed guide for their decisions were a marked improvement over despotism, notwithstanding the meager rules afforded by the Koran. Under the Caliphs a new and better civilization than any which had preceded it developed, and the seats of learning and progress in literature, art and science were within the Moslem world. As the lights grew dim in the crumbling empire of Rome and Constantinople they burned more brightly at Damascus and Bagdad, illuminating the followers of Islam from India to Andalusia. Though the teachings of Mohammed were not so pure and exalted as those of Christ, they were coupled with more practical means for their observance, and on Asiatic and African soil they manifested superior adaptation. In Europe they never took firm root, save among the Moors in Spain and the Turks in the east.

Though at this day it is estimated that near 175,000,000 people are Mohammedans, the empire of the Caliphs is in scattered fragments. The Koran sanctions slavery and polygamy and, while it forbids wine and gaming in this world, it promises a sensual idlers' heaven. Its ideals are neither pure nor exalted and its standard of justice is partial and deficient. While apparently of great use in its time, like all other rigid systems enforced by a religious sanction, it perpetuates its errors and vices, and in the lapse of centuries these seem to overshadow the good and render the whole an obstacle to be removed to make way for something better. But so well is the faith with its rewards and punishment adapted to certain types of men, that neither Christianity nor Buddhism has succeeded in transplanting it.

CHAPTER IX

India

Within the geographical limits of what we call India there are, and in the earliest times of which we have any accounts were, so many people, differing in race, language and social condition from each other, that generalizations become exceedingly difficult and a connected historical statement of the development of their civilization quite impossible. No single race has at any known date occupied the whole territory. No one language has been spoken by all the people. At this day the ethnologist finds there an ample field for the study of the diverse types of men. Connected histories by native writers are almost wholly wanting. The material from which the student must proceed to construct an account of the past is fragmentary. The earliest accounts come through the sacred writings of the Aryan invaders, who entered the country from the northwest. The date of their advent into the Punjab is variously estimated by scholars on data which leave a very wide margin for difference of inference, with no means of definitely settling the point. It seems safe to say that it was more than 1000 B.C. and may have been thousands of years earlier. These invaders found the country already peopled by numerous tribes, some of whom used iron implements and were considerably advanced above the savage state. Of the people occupying those parts of the country remote from the invaders we have no accounts reaching back to so early a time.

From the Vedic hymns are gathered the leading facts relating to the movement of the Indian branch of the great Aryan family from the common home in the mountain region from which the Oxus and Jaxartes flowed. What causes have produced the Brahmin type in India and the Persian, Median and European in the west it is not our purpose to inquire, but

it may be noticed that the race is generally the dominant one wherever found. The earliest songs disclose the clans in Cabul north of Khyber Pass, the later ones show them to have reached the Ganges. They were a very religious people and placed great reliance on the aid of their gods. The *Rîch-Véda* shows the Aryans dwelling along the banks of the Indus, divided into tribes, sometimes warring with each other, sometimes united against the dark skinned aborigines. Each father of a family was also its priest. The chief acted as priest of the tribe, but at the great festivals chose some one specially learned in the rites to conduct the sacrifices. Chiefs were elected. Husband and wife together were rulers of the house, and the marriage relation was held sacred. Caste and the burning of widows were unknown. Before entering India through the Kyber Pass and while still in the mountainous region near Cabul, the Aryans had already discovered or learned many of the arts of civilization. They had blacksmiths, coppersmiths, goldsmiths, carpenters and barbers. They fought in chariots and with horses, they reared cattle, tilled the soil, spun and wove. When and where the art of writing was learned by them is a point on which scholars differ widely. While it is agreed on all hands that the hymns of the *Rĭg Véda* are of very ancient composition, definite dates have not been fixed, and it is claimed that they were not reduced to writing for many centuries after their original composition.

This strong, vigorous and highly religious race of people descended into the valley of the Indus, which they found already occupied by inferior people. Most of the aboriginal tribes found by the Aryans were of a negroid or mongolian type, not more advanced in culture than the American Indians at the time of the discovery of the western continent. There were others mentioned in Sanskrit literature as wealthy and possessed of castles and forts. They adorned their dead with raiment and ornaments of bronze, copper and gold. There are ample evidences of the existence in early times of rude tribes, who used stone implements, but just at what stage of development all the native people had arrived at the time

of the advent of the Aryans, it is impossible to state. That the invaders were superior as warriors, as well as in culture, is evident from the extension of their possessions, which spread from the valley of the Indus to that of the Ganges and ultimately extended over most of the peninsula. The conquests of the Aryans however, were not merely the extension of military power and governmental control over the native population, but the encroachments of a superior race, which either drove out or subjugated the inferior. Race and religious superiority were asserted rather than mere sovereignty, and the invaders came to make the conquered country their home.

The non-Aryan races are said to belong to three principal stocks, the Tibeto-Burman, the Kolarian and Dravidian. The language of the Tibeto-Burman indicates Mongolian and Chinese origin, and it is inferred that they crossed into the country they now inhabit along the skirts of the Himalayas from Central Asia. The Kolarians are also supposed to have entered India from the north and are now found mainly in the north and along the northern edge of the southern tableland. At the present time they appear as scattered tribes, whose common origin is proved by similarity of language and appearance rather than any social connection or tradition of common origin. The Dravidians form a compact mass in southern India, and the dialects classed as Dravidian are spoken by nearly 50,000,000 people. Aside from these principal stocks, the presence of Africans and Arabs in India in very early times is well established, and their blood has been preserved and mixed with the other stocks to a considerable degree. At all periods in its history India seems to have attracted to it people from the north and west, not only for trade, but also for permanent settlement and conquest.

Chaldeans, Assyrians and Egyptians as well as Chinese have known of and traded with the people of India from very early times, yet very little can be learned of the early conditions of the people from accounts derived through these sources. It is impossible to trace the governmental and social state of India through the historical period and ignore

the rise and fall of religion. Nowhere else has the effect of religious teaching on social life been greater or more enduring.

The proud Aryan invaders, whose deeds are related in the Vedic verses, asserted and maintained, not only their own race superiority over the people they subdued, but also the superiority of their gods over the weaker ones of the aborigines. In the early period of the Aryan invasion, when the art of writing was unknown, the battle hymns and sacrificial ceremonials were passed down by oral instruction from father to son. This led to the growth of a priestly order, specially versed in all that pertained to the sacred rituals. Great faith was put in the efficiency of battle hymns that had been chanted and prayers that had been offered before successful battles. By degrees the number of prayers and hymns increased and the priestly order multiplied, till the great ceremonies required superior priests to direct and, under them, those who prepared the sacrificial ground, dressed the altars, slew the victims and poured the libations, those who chanted the Vedic hymns and those who recited other parts of the service. In the course of time a priestly order was thus developed. As the conquests of the invaders were extended by continual wars against the primitive people, the leaders of the army, who were rewarded with such possessions as enabled them to devote all their time to the service of the king, became the military class. The common people who settled down and tilled the soil became the *Vaisyas,* and beneath them were the conquered people who were forced to serve the invaders. In this manner the four fundamental castes, which, with their numerous divisions, subdivisions and new classifications, have given to Indian society its peculiar structure, were founded. The Brahmans have always asserted their superiority over all, but this has not always been conceded by the military caste, and the relative power and influence of these leading castes have fluctuated with the varying conditions due to the rise and fall of dynasties and the strength or weakness of princes and other causes.

The Vaisyas were the lowest caste of the Aryan stock, yet

were ranked as belonging to the "twice born" and were all allowed to be present at the great national sacrifices. The lowest were the once born Súdras, the Dasas of the Véda, whose lives were spared by the conquerors in order that they might live as a servile class. These were not allowed to attend the great sacrifices and feasts. It was their lot to perform the hardest and meanest labor, and from their low estate they could never rise. The system of castes did not fully develop until after the Aryans were well settled along the Ganges. It did not obtain in the early settlements west of the Indus. In the Middle Land, from Delhi to Benares, the Brahmans became a compact body which assumed to dictate to all classes in all matters relating to religion, philosophy and law. They denounced all Aryans who did not submit to their pretensions as lapsed and outcast tribes. The religious thought of the people found its expression in the Védas, which were ultimately compiled and reduced to writing. The Brahmans however were not content with the enforcement of religious rites and the preservation of the ancient faith. They sought to secure their own position and the social system which had been developed by codes of laws.

The earliest of these are the Dharma Sastras, which exhibit the state of the Hindu law at an early date, not fixed with any degree of certainty. They do not purport to be new enactments, but simply compilations of existing law. They recognize and enforce the division into castes in the order stated. Later than this came the great code of Manu which the Brahmans ascribe to the first Aryan man thirty millions of years ago. This was a compilation of the laws which had been established in that portion of India where the Brahmanical order exercised the greatest influence. This so-called code has wielded a more powerful influence and over a far wider field than any native dynasty ever established in India. So strong a hold did the system which it expressed gain on the people of India that its leading tenets have maintained their authority through all the mutations of race and empire, even to the present day. Later than this came a second great code that of Yajnavalka, compiled after the establishment of Bud-

dhism. It is a reiteration of the laws of Manu with some additions relating to legal forms and other matters.

These codes found their sanction in the Védas, which had attained the authority of inspired writings, and the rules declared for the government of all classes of people were mainly extracted from the Vedic *Sanhitas*. While the purpose to exalt the Brahman caste is evident, it was not the gross superiority which comes merely with the possession of wealth and political power, but a far better and more enduring superiority was sought and in fact attained. The Brahmans were made the custodians not merely of the religious ceremonials but of learning as well. Purity of morals and of blood were enjoined, and the leading idea at all times seems to have been to maintain a genuine intellectual and physical superiority over the native races and also over the inferior Aryan castes. The three original Aryan castes Brahmans, Cshattriyas and Vaisyas all observed the same domestic rites at birth, first feeding of rice, investure with the sacred thread, marriage, funerals, etc. The most important of these observances was the *upanayana* or conducting the boy to his teacher. Connected with this was the ceremony of investing with the sacred cord, which was worn over the left shoulder and under the right arm, varying in material according to the class of the wearer. This was the preliminary to his initiation into the study of the Véda, the management of the sacred fire, the knowledge of the rites of purification, and the invocation to the sun, which he must repeat morning and evening.

The steps by which the principles of Brahmanical law were extended and enforced, throughout not only Hindostan but farther India as well, cannot be traced historically, but certain it is that the code of Manu, modified by and adapted to local conditions and customs, forms the basis of the social organization of the many races of India. While the system of castes is often spoken of as the most rigid and inflexible institution ever established, it seems to have been so moulded as to adapt itself to all the varying conditions of that most varied aggregation of people, and in matters of belief the Indian pantheon appears at one time or another to have had

a place for every god and religious ceremonial, a form suited to the prejudice of every clan.

The Brahmanical codes were never dependent for their enforcement on any particular ruler or ordinary governmental agency. Their principles were inculcated into all classes by the teachers, who acted also as judges in controversies arising among the people.

The first powerful attack on the influence of the Brahmans resulted from the teachings of Gautama in the sixth century B.C. He was the son of the chief of the Sakyas, an Aryan clan dwelling about one hundred miles north from Benares, and was himself of the Cshatriya caste. Having abandoned all the privileges of his station and formulated his system of religion, he proceeded to teach it as a mendicant, begging his subsistence wherever he went. He sought to establish no new government or organization of society, but to teach men the way to permanent peace and happiness, to rest in *Nirvana*. He taught the Brahman doctrine of the transmigration of the soul, and that existence must be endured till the soul became pure and free from all evil passions and desires. The purity and loftiness of his doctrines are fairly expressed in the following extract from the Buddhist Scriptures. Answering the question as to what he considered the greatest blessing he said, "1. To serve wise men and not fools, to give honor to whom honor is due, this is the greatest blessing. 2. To dwell in a pleasant land, to have done good deeds in a former birth, to have right desires for one's self, this is the greatest blessing. 3. Much insight and much education, a complete training and pleasant speech, this is the greatest blessing. 4. To succor father and mother, to cherish wife and child, to follow a peaceful calling, this is the greatest blessing. 5. To give alms and live righteously, to help one's relatives and do blameless deeds, this is the greatest blessing. 6. To cease and abstain from sin, to eschew strong drink, not to be weary in well doing, this is the greatest blessing. 7. Reverence and lowliness, contentment and gratitude, the regular hearing of the law, this is the greatest blessing. 8. To be long suffering and meek, to associate with members of the

Sangha, religious talk at due seasons, this is the greatest blessing. 9. Temperance and chastity, a conviction of the four great truths, the hope of *Nirvana,* this is the greatest blessing. 10. A mind unshaken by the things of the world, without anguish or passion and secure, this is the greatest blessing. 11. They that act like this are invincible on every side, on every side they walk in safety and theirs is the greatest blessing."

The teachings of Gautama, though not directly attacking the institution of caste, left no place for it. *Nirvana* was open to the Súdra as well as the Bráhmen. The same course of conduct was enjoined on all and the vanity of all earthly possessions and power was a leading theme in his teachings. He organized a society called the *Sangha,* whose members forsook worldly callings and taught his doctrines. The Buddhist monasteries, afterward so numerous wherever his religion became established, are the successors of this society, though the practices and doctrines of the early time have been much corrupted. The new religion was spreading among the tribes of Northern India at the time of Alexander's invasion 327 B.C. but had not become general.

From the Greek historians we gain the first historical accounts of India as seen through the eyes of Europeans. The impression was of a country of vast wealth and numerous people. The most potent monarch Alexander encountered was Porus, whose dominions appear to have been in the Eastern part of the Punjab. His force is stated at 30,000 infantry, 4,000 cavalry, 200 elephants and 300 war chariots, though the combined forces of the Oxydracae and Malli which Alexander afterward encountered are said to have amounted to 90,000. Alexander's conquests extended only into the Punjab and did not prove permanent. Following the Greek invasion Chandra Gupta founded his empire in what is now the province of Behar with his capital at Patna. Seleucus, who succeeded on the death of Alexandria 323 B.C. to the Empire of the East, was unable to maintain his authority in India and finally concluded an alliance with Chandra Gupta, giving him his daughter in marriage and sending Megasthenes

as an ambassador to reside at his court. Megasthenes wrote a full account of the condition of society in India at that time, and his account of the system of castes corresponds in the main with that obtained later through Indian sources. He divides the people into seven classes, viz. philosophers, husbandmen, shepherds, artisans, soldiers, inspectors and counsellors of the king.

He commented favorably on the absence of slavery, the chastity of the women and the courage of the men. Each village was a little republic, owning the land by a common title, though tilling in separate tracts. The people were truthful, sober and industrious, living peaceably in their communities. India he says was then divided into 118 kingdoms. General descriptions of a country so vast as India must then have been very imperfect. Though the disposition of the people was peaceable, wars between the petty kingdoms occurred, resulting in the rise and fall of rulers and the aggrandisement of one at the expense of another.

The kingdom founded by Chandra Gupta was extended under his grandson Asoka over the whole of Northern India. After a bloody early career, in which among the deeds charged to him is that of ordering the slaughter of all his brothers but one, in the year 257 B.C. he became converted to the Buddhist faith. He was as vigorous in inculcating the new religion as he had been in war, and Buddhist monasteries multiplied all over his dominions. He sent ambassadors to Egypt, Cyrene, Syria and Macedonia. At his death, after a long and prosperous reign, his empire fell to pieces. One of the prominent features of Asoka's reign was the great council of Buddhists, held at his call 244 B.C., at which the canons of the faith were discussed and promulgated in what is termed by northern Buddhists the Lesser Vehicle, in contradistinction to the Greater Vehicle, a more voluminous compilation, engrafting many new practices and articles of faith, which was settled by the fourth and last great council held in the reign of Kanishka, who ruled northwestern India, as well as a considerable district lying to the north and west of it. The Greater Vehicle became the law for the Thibetan and Chinese followers of Buddha.

About 126 B.C. the Tartars are said to have driven the Greeks from Bactria and their settlements from the Punjab. The empire of Kanishka is styled Scythic, and there seems to have been at that period an extensive movement of Scythians into India. They did not meet with a peaceful reception, and the princes and warriors who successfully resisted their encroachments are celebrated by Hindu writers. They appear however to have maintained a part of their conquests and the modern Jats and some tribes of Rajputs are said to be of Scythic stock.

Later came invasions of Huns. To trace the varying fortunes of the natives and their invading enemies is a great and exceedingly difficult task, not contemplated in this work. Recurring periods of bloodshed and the desolations of war interrupted the calm devotions of the faithful followers of the teacher of peace and good works. Notwithstanding the inculcation of the injunction not to kill, the people of India stood their ground and on the whole seem to have had rather the better of the struggle with the ruder people from the northwest. Aryan and non-Aryan people alike were engaged in opposing the invaders, as well as in warring with each other from time to time. In about 630 a Chinese pilgrim found both the northern and southern sects of Buddhists in India and listened to their debates at various places.

Brahmanism continued in spite of the growth of the new religion. It was doubtless materially aided by the frequently recurring wars, when fierce war gods, who were given places in the pantheon, were deemed more serviceable than the passive virtues of Buddha. About the seventh and eighth centuries there seems to have been a revival of Brahmanism, and, at the time of the Mohammedan invasion, Buddhism had nearly disappeared from India.

The first Mohammedan invasion was in 664, only thirty-two years after the death of the Prophet, but it was without permanent results. In 711 Sind was invaded and subjected to the rule of Waldi I, Caliph of Damascus. In 750 the Mohammedans were driven out. No further invasion is mentioned until 977, when the Punjab was made tributary to Sabuktagin

Sultan of Ghazni. His son Mahmud invaded India repeatedly with his armies and fought successfully great battles, as the result of which his authority was extended as far as the Ganges. Khusru, a son of the last of the Ghazni dynasty, having been driven out by the Afghans of Ghor, founded at Lahore a short-lived Mohammedan dynasty, but the Afghan Mussulman waged successful war against his son and took him prisoner. Under Muhammed Ghori the new empire was extended by successive conquests over the entire northern plain as far as the Brahmaputra. At the death of Muhammed the viceroy, through whom he had governed India, proclaimed himself sultan at Delhi. In 1294 Allah-ud-din Khelji raised himself to the throne of Delhi. He extended his dominions to the south and his armies penetrated to the extreme south of the Peninsula. The descendants of Allah-ud-din occupied the throne but five years when in 1321 Gheyas-ud-din Tuglak, said to have been a Turk, established a dynasty which lasted till the invasion of Timur, seventy years later.

The period of the rule of this dynasty was one of magnificence at court, of war and tyranny. Revolts against the sultan in various quarters prepared the way for Timur, who invaded India in 1398 and gained most unenviable fame for his cruel slaughter and enslavement of the people. The city of Delhi and many other towns were sacked, and the people of all ages and sexes indiscriminately slaughtered. Great numbers of captives were taken back to his capital at Samarkand as slaves. He established no permanent government and his invasion was followed by a period of small states without any great authority.

In 1525 Baber, the fifth in descent from Timur, by invitation of the governor of the Punjab, invaded India and founded the great Mughal empire, which however was not generally recognized during his life, but his actual authority extended over only a limited and not clearly defined territory. His son Humayun was driven out of India by Sher Shah, a native of Bengal, who established an extensive though brief authority over Hindostan. Akbar, the son of Humayun, appears the real founder of the Mughal empire, which lasted

till finally overthrown by the British. Humayun died in 1556 when Akbar was fourteen years old.

Under the guardianship of Bairam Kahn he first established his authority in the Punjab and on the upper Ganges about Delhi and Agra. From this basis he extended his dominion over the greater part of India. He was not only a great conqueror but a noted civil governor. He reformed the system of taxation in such manner as to make the burden fall more equitably than before and at the same time produce ample revenue. He established many public schools, was tolerant to all religions, and it is said that though raised a Mohammedan he had no fixed religious belief. In his military system he employed native Rajputs on equal terms with his Mughals. His favorite wife was a Rajput princess. He was superior to all his predecessors in his understanding of the character and prejudices of the people over whom he ruled and he successfully adapted his system to the vast mixed population of his dominions. Under his grandson Shah Jahan the empire reached its period of greatest magnificence of which many noted monuments remain.

The Taj Mahal at Agra, erected as the mausoleum of his favorite wife, is regarded as a model of beauty and purity in architecture never surpassed. Aurangzeb succeeded his father, Shah Jahan, in 1658 and before his death extended the empire over the Deccan and to the extreme south of the peninsula. While his territory was extended, the fibre of his government seems to have weakened, and after his death the empire fell in pieces never again to be reconstructed. Petty sovereigns divided the dominion and exercised authority over its various districts. In 1500 the first permanent lodgement of Europeans in Hindostan was effected by the Portuguese on the Malabar coast. For a century thereafter they enjoyed a monopoly of oriental trade. The Dutch were the first to break this monopoly and were soon followed by the English and French, whose struggle for supremacy will not now be considered.

While it seems altogether natural and proper to speak of India as a single country and to consider its history as an

entirety, the foregoing brief summary of some leading events omits mention of princes without number, who from time to time ruled over more or less of the country. From the earliest times the wealth of India has been proverbial, and it has attracted alike the traders and the armed invaders. The latter have been of two classes, those who came merely to add territory to a foreign empire, and those who came to gain settlements in the country. The Aryan movement is the earliest of which records have been preserved, but they found the country already peopled. When and whence those early people came upon the scene cannot be told.

While the original Aryan invaders do not appear to have ever established a government over the whole country or even over the greater portion of it, they did impose their religion, their laws and customs in nearly all parts of the peninsula. Some of the early tribes, however, never accepted their teachings and their religion has been corrupted with local superstitions to such an extent in many places as hardly to be recognizable. Nor are their laws governing marriage, inheritance and property rights in general uniformly followed. On the contrary local superstitions and customs have produced infinite variety of worship, ceremony and local law.

The practice of burning widows with the dead bodies of their husbands, called suttee, is chargeable to the Brahmans and was followed by people of the highest classes. It was esteemed a virtuous act for the widow to follow her husband and the meaning of the word suttee or *sati* is a virtuous wife. Though this custom is an ancient one it is not sanctioned by the Védas or the code of Manu. It was practiced by other ancient people, notably the Scyths. Some of the Kandh clans practiced human sacrifice in most cruel and revolting manner until very recent times.

The institution of caste has shown the most marked staying qualities, and the original simple divisions of the Aryan invaders into four castes has been followed by more than a thousand different divisions, partaking of the nature if not strictly designated as castes. Very few of the people of all India are wholly exempt from caste distinctions. Some of

the wild hill tribes are said to have no castes, and, of course, Europeans and other new comers into the country cannot be said to have castes. They are nevertheless classed by themselves by the Hindus, and the system of classification is so deeply rooted that, as to the great mass of the people of India, all kinds of people are assigned to some class, and the observance of their own castes by the Hindus operates to a great extent in fixing a caste for all newcomers. The main exception to the prevalence of strict castes is among the Mohammedan population. As they look to the Koran for their law and as Mohammed made no distinction of race, color or condition among his followers, the true believer has no basis for caste distinctions. There are, however, especially among the Mongolian and negroid races, many nominal Mohammedans, who adopt many Hindu customs and observe caste restrictions. Of the whole population nearly three-fourths are classed as Hindus in religion, and nearly three-fourths of the remainder as Mohammedans. The natural tendency for those engaged in a particular profession or business to associate and combine, because of similar tastes and common interests, has supplemented the policy of the early Aryans, which seems to have aimed mainly at the maintenance of the supremacy of the conquering race and of the rank of the Brahmanical order.

Neither in religion nor in law has a uniform system ever prevailed over the whole country. Different modifications of the pantheon of gods have been made to meet the demands of different tribes, till under the general head of Hindus are included all grades and shades of faith and ceremony, from those of the high minded Brahman, who seeks by rigid fasting, meditation and prayer to divest his soul of all evil passions and worldly desires, in order that he may find rest with the divine essence, to the worshippers of the destroyer, who seek by human sacrifices to avert the wrath of wicked gods. The leading features of the caste system seem to be adapted to all races and conditions. Not only do those belonging to the higher castes insist on its rigid maintenance, but those belonging to the inferior ones find that it accords with their wishes and inclinations. The old saying that "birds of a

feather flock together" expresses the natural tendency of those occupying similar social position or engaged in similar pursuits to associate, and in India this natural tendency has been crystalized. The leading advantages of the system would seem to be that it tends to make the low born content with their lot, and that each son is brought up to follow the calling of his father, by which means each profession and calling will be filled by men better educated and qualified than where there is a constant shifting of members of the family from one calling to another. The reality of even this advantage may be debatable. On the other hand to western men the tyranny of the system seems intolerable. Its rigidity prevents spontaneity and progressiveness, and removes all hope from the low born of rising out of his class. The evolution of the race seems to require selection from the whole mass of population, if a maximum of vigor is to be maintained among the leaders. Dynasties of rulers invariably degenerate and either die out or are cast out because of their weakness or vice. Though the village system is regarded by many writers on law and government as primitive and an embryonic government, it prevailed over most of India till the advent of the British, and is still maintained throughout a great part of the country. The details of the system vary, its leading characteristics are a well defined district of land occupied by a community, whose local affairs are regulated by officers usually chosen by the people but sometimes hereditary. In a large percentage of the villages the title to the land was held in common and taxes to the sovereign were paid by the community as a unit from the proceeds of the harvest. The village authorities assigned the land for tillage to the various citizens, and adjudged all controversies between them. The tillage was usually separate, even where the title was in common. In other villages the land was held in severalty, but in dealings with the sovereign power and in the payment of taxes it was regarded as the unit. This system is not patriarchal, though it possibly may have been so in its earliest form.

The kings and rulers seem to have regarded the people as

not entitled to much in return for the taxes paid and services rendered the sovereign. Aside from defending them against outside foes, the government never attempted much in their behalf. In public works there is nothing worthy of mention but palaces, temples and the great roads constructed by the Mughals. Though the people of the higher castes, the twice born, have always enjoyed some advantages of education, it has been given them by the Brahman caste and private teachers, not by the king. The fertility of the soil and the patient industry of the people have led to most excessive and burdensome taxation, to great pomp and luxury in the palaces and to extreme distress among the poor when crops have failed, as they occasionally do. One-third of the gross yield of the land seems to have been regarded as about the right proportion to take, and under the Mughals this was exacted from the villagers and is at this day by the British in many parts from the best lands.

Nowhere else on the face of the earth can be found so dense a population, covering such a vast extent of country, living under an ancient system of laws and yet without a general government, as existed in India at the advent of the British. China during most of its history has had a well organized governmental system, whose authority has been recognized over most or all of its territory. Its people also have been mainly of one race. India exhibits the peculiar spectacle of a vast empire, with endless diversity of races, speaking many different languages, yet recognizing and obeying in its main precepts a code of laws promulgated in the dim past by unknown persons, a code which was never promulgated by a sovereign power having dominion over the ancestors of the people or the land in which they dwell. It owes its authority mainly to the teachings of the Brahmans and to its adoption as the rule of decision by the judges and rulers in past ages, as it has been adopted and followed by the British in recent times. Some analogies to this may be found in the adoption of the principles of the Roman civil law by countries never subject to the empire, and in the adoption of the Koran as the law of all Mohammedans, but in the one case the system was

gradually developed under a strong government ruling a vast empire, and in the other the authority of the law is consequent on religious faith.

The area of the country we have been considering is nearly a million and a half square miles and it now has a population of nearly or quite 250,000,000. Among this vast mass are remnants of what are believed to be the earliest inhabitants of the country, whose lowest type is exhibited by the savage Andaman islanders, wholly devoid of all civilization. Superior to these yet still very low in the scale of humanity are the monkey faced tribes of the south, the Bihls and other predatory hill tribes and the almost numberless fragmentary remnants of races that in past ages may have held extensive districts. Above these are the industrious descendants of Mongolian stocks, the Dravidians, the Indo Chinese, the Afghans, Mughals, Arabs, Persians and the proud descendants of that race which composed the Védas and promulgated the codes. This vast empire is now subject to the government of a little island on the most remote border of the hemisphere. The government of the British will be considered in another place.

Though Great Britain has long maintained its sovereignty over India it has never attempted to impose its system of laws on the people. The ancient stratification of society still persists and the code of Manu is still the basis of the law administered in the courts. This code is so remarkable in its precepts and has so profoundly influenced the vast population of India for thousands of years that it is well worthy the careful study of every investigator in the field of human laws. A summary of its provisions with copious extracts from the more striking parts will be found in the Appendix.

The student who seeks a comprehensive knowledge of the rules actually applied throughout all that vast country, extending from the valley of the Indus to Siam, encounters a most perplexing multiplicity of details. The Code of Manu is recognized as the foundation of the laws of Hindostan and also of Burmah, Siam and Ceylon, yet there is wide divergence in the practical application of it in different places.

As a result of the teachings of Gautama the Code of Manu, though still recognized as the basis of the laws, was greatly modified in those districts where the Buddhist faith prevailed. The Burmese code, called the *Damathat,* gives the primary classification of men as Chiefs, Brahmans, wealthy and poor, and elsewhere the mercantile class is mentioned as a distinct order. In the twenty-third section of the fourth volume of the Burmese code, the Royal family is mentioned as the highest class, and other relations of the King, the great Chiefs, ministers or lords, the lesser lords, lords of lower degree, wealthy class Brahmans, *thoogyees* of villages, governors, land measurers, and those whom the King had advanced, as constituting the next class. The second class and the mercantile are each divided into the great, middle and lesser. The right of the King to raise from the lower to the higher orders is asserted and the rigid rules of inherited castes do not obtain. Though the system evolved by the early Aryan invaders spread over all India as the basis of all the written laws, in the east it has been modified by the influence of Buddhism and the Chinese and in the west by Mohammedanism. Owing to the lack of a single governing force having authority over the whole country no version of the code has at any time found full recognition, even throughout the whole of the Indian peninsula, and the actual administration of the law has at all times been more or less dependent on the will of despotic rulers, having authority over more or less of the country, according to circumstances.

The Burmese code exhibits marked differences in the theory of the distribution of inheritable property. The rules given are very loose and indefinite. On the death of the father the eldest son is given "the riding horse, elephant goblet, betel apparatus, sword, clothes and ornaments, and of the slaves, the betel carrier and two water carriers; and let the mother have her clothes and ornaments, goblet, betel apparatus, and all female slaves. Let the residue be divided into four parts, of which let the eldest son have one and the mother and younger children have three. This is the law when the mother does not marry again; if the mother uses the property for neces-

sary subsistence let her have the right to do so. If the mother takes another husband (a thing prohibited by the code of Manu), the portion of the eldest son, animate and inanimate, shall be noted before witnesses and taken care of; and if he be too young to separate from his parents, and the mother dies, let him have all that has been apportioned to him above and, having divided the portion of the mother into four parts, let the stepfather have one part, and the eldest son three. The original property and debts of the step-father shall not be divided but of the mother's original debts let the step-father pay one-fourth; having valued the house let the step-father have one-fourth." Laws of Menoo, Vol. 10, sec. 5.

On the death of the mother "let the eldest son have one male slave, one pair of good buffaloes, one pair of oxen, one foreign and one Burman goat, with one pay of arable land; with the exception of these things let the father and younger children have all the property animate and inanimate."

In case the father is not possessed of the specific property named, compensation in money is provided for and, if not able to pay, less is to be given according to his means.

On the death of the father the eldest son only is assigned his share. The younger sons must wait till the death of the mother.

When both father and mother die leaving only daughters, the eldest takes all her mothers clothes and ornaments, and all other property is divided into twenty parts, of which the eldest takes one. The balance is then again divided into twenty parts, and the next daughter takes one, and after a third division for a third daughter the balance is divided equally among all.

Where father and mother both die leaving sons only, the eldest takes the clothes and ornaments of the father and the remaining property is divided into tenths of which he takes one. The remainder is divided into tenths of which the second son takes one; the balance is again divided into tenths of which each of the others takes a share, and the remainder is then divided equally among all.

In case there are both sons and daughters the eldest son

takes the father's clothes and ornaments, the eldest daughter the mother's, and the residue is then divided into fifteenths and distributed to each according to age on the above principle till the seventh distribution has been made, and the balance is then divided equally.

After these regulations follow others fixing the rights of step-fathers and step-mothers, and children of the half-blood, of collateral relation, and providing for cases which would seem likely to be rare and exceptional. The tenth volume of the Burmese code, which relates to the law of inheritance, contains eighty-one paragraphs and covers fifty-six pages. Besides these there are various provisions on the same subject in other parts of the code. The right of a woman to own property is generally recognized throughout India, but with varying local regulations.

A compilation of Hindu laws translated from the Sanskrit into Persian and from the Persian into English called the Gentoo Code contains provisions relating to property rights in quite strong contrast with western laws.

"If a man owes money to several creditors, he shall first discharge that debt which was first contracted and so in order." Sec. 5, page 25.

This would seem more just than the law which favors the hard creditors who first attaches his debtor's property.

Gifts made under the impulse of violent fear, anger, lust, grief, by mistake, in jest, by a child or an incompetent person, or when intoxicated may be recovered back. In times of calamity a woman may borrow for necessaries and bind her husband to pay the debt, and the husband may at such a time give away his wife with her consent. The father may also sell or give away his son with his consent.

In cases of partnership capital furnished by one is regarded as equivalent to the labor of another and profits are divided according to agreement where one is made, but, in the absence of an express contract, according to the amount of capital contributed and services rendered.

When robbers go to a distant country and return with their booty this code provides for its division. The magistrate, that

is the ruler of the district, takes one-tenth to one-sixth of the whole, a chief takes four shares, a stout man two, and a common man one.

The contracts of prostitutes are recognized and enforced, and the law protects them from violence or abuse.

The penalties denounced against crime by the Gentoo code are graded all the way from a small fine to crucifixion, the latter punishment being imposed for highway robbery or robbery committed by breaking through a wall. For killing a goat, a horse or a camel, a hand or a foot shall be cut off, but this does not apply to those who make their living by butchery.

In the Burmese code very great prominence is given to domestic relations and penalties for illicit sexual intercourse. The grounds for separation of husband and wife are many, and minute provisions are made for division of the property in cases of separation.

The religion of the Buddhists does not allow capital punishment. This code shows many marks of the influence of the Buddhist religion, and punishments are mainly by fines and the use of the rattan. In no case is the death penalty imposed by the code, though it is in fact sometimes inflicted by despotic rulers, and the evil passions of men sometimes find expression in bloody deeds, notwithstanding the general acceptance of a religion of peace.

Perhaps this code states the immorality of war as pointedly and gives it a more formal sanction than any other authoritative expression of legal principles.

"When there has been a revolution or change of rulers, in a country, there are four cases which may, and four which may not be prosecuted. Of the cases which may not be prosecuted, they are murder, obscene language and assault with wounding, theft, and adultery; these are the four which shall not be prosecuted after a change of kings. The five which may be prosecuted are debt, inheritance, disputes regarding lands the property of convents (church property) hereditary slaves, and deposits; these are the five which may be prosecuted notwithstanding a change of rulers." Vol. 2, Sec. 8, page 43.

No similar provision is contained in the code of Manu.

By this law the abominable crimes incident to war are excused, while the arbitrary and unjust rules of slavery and inheritance continue without regard to the fortunes of war. Though the principles of this section are not generally embodied in the published codes of the Christian states, they are recognized and enforced in practice. Except when committed in violation of military discipline, the grossest crimes of soldiers go unpunished.

Not only have the Indian law-makers evolved an elaborate body of written rules for the determination of the rights of parties, but rules of pleading, evidence, presumption and practice have also been established. By the Gentoo code a person cannot be brought into court when celebrating a marriage, while sick, or engaged in religious duties or as a *vakeel,* attorney, and generally if at work he must be allowed to finish his task. A party may appear in court either in person or by attorney, except in cases of murder, robbery, adultery, eating prohibited food, false abuse, false witness and one other disgusting offence in which the principals must answer in person. When the plaintiff and defendant come before the court the plaintiff shall state his case so "that the words be few and the meaning extensive," and that the first and last parts be well connected and consistent. If he states his case in writing the defendant must then do so. Numerous rules of pleading are given, and mistakes subject the party making them to a fine, but not to the loss of his rights. The defendant must answer within seven days and if he fails to do so judgment may be rendered against him. A person accused of murder, robbery, scandalous abuse of a magistrate, calling a woman unchaste, destruction of valuable goods, criminal conversation with the wife of the father other than the mother of the accused, or brought to answer a matter concerning a cow, a dispute over a slave girl, or drinking wine, must answer at once. In all other causes the defendant may have delay but the accuser shall in no case make delay, except in case of calamity. The Bûrmese version of the code fixes a general statute of limitations, barring claims for money, lands and

slaves held adversely for ten years; but in cases relating to lands and slaves given to pagodas temples and convents, boundary marks between cities or villages and a slave descended in the family from forefathers of the owner, and whose class is unknown, there is no limitation of action. The Gentoo code prescribes eleven years for chattels and twenty-one years for land, where the plaintiff is under no disability, with a longer limitation in cases of trust, extending to sixty years where it relates to land. By this code it is provided:

"When an arbitrator of discernment hears any affair he shall first demand of the plaintiff 'What is your claim?'. The plaintiff shall then relate his claim. Afterward he shall demand of the defendant 'What answer do you return in this case?'. The defendant also shall then repeat his answer. Upon thus having heard the accounts of both plaintiff and defendant, he who thoroughly investigates the nature of the affair is called an arbitrator of discernment, and such an arbitrator as this shall be chosen." Chapter 3, Sec. 1, page 103.

"When two persons upon a quarrel refer to arbitrators those arbitrators at the time of the examination shall observe both the plaintiff and the defendant narrowly and take notice, if either and which of them when he is speaking, hath his voice falter in his throat or his color change or his forehead sweat, or the hair of his body stand erect, or a trembling come over his limbs, or his eyes water, or if, during the trial, he cannot stand still in his place, or frequently licks or moistens his tongue or hath his face grow dry, or in speaking to one point wavers and shuffles off to another, or if any person puts a question to him, is unable to return an answer; from the circumstances of such commotions they shall distinguish the guilty party." Page 119.

Rules of evidence are quite different from those prevailing in the West. One may give false testimony to preserve life, and falsehood employed to procure a marriage, obtain sexual intercourse or benefit a Brahman are excusable. Page 130. Writings may be proved by a comparison of hands. Secondary evidence in the form of heresay from eyewitnesses is allowed.

"A minor until fifteen years of age, one single person, a woman, a man of bad principles, a father, or an enemy, may not be a witness, but if the father and the enemy are men of good disposition and speakers of truth, and men are well acquainted with the goodness of their dispositions and veracity, these two persons may be witnesses." Page 124.

The legal profession of which no mention is made in the code of Manu is not practiced gratuitously as it was in ancient Rome, but the lawyer is a paid advocate whose right to compensation is enforced. Physicians also are protected by the courts, and aided in collecting their pay. The Burmese code provides:

"Oh King! if any one shall call a doctor to prescribe for a sick person, and the doctor for the sake of the pay and to relieve the sick person, shall administer medicine to him; or if the doctor is called to wash the patient's head or avert the evil influence of the stars, and shall go to where he is called, and holding a small knife or stile for writing, shall only lay hold of the banisters or ascend the stairs, and if the sick man before his arrival, shall obtain relief, and on recovery shall ask 'did you use any charm?—did you give me one of your pills?—did you wash my head, or avert the evil influences of the stars?'—and insensible to friendship shall refrain from paying; if the doctor have an affection for him, he may get off paying; but if not he shall pay five *tickals* of silver. If a good doctor reaches the banisters, stairs or door; and a good pleader, though he do not state the case, if he only put up the sleeves of his jacket, or set down preparatory to speak, they shall be paid."

"Any good pleader, though the statement of his case may not have been taken down, if he has only just sat down, or put up the sleeve of his jacket, shall have a right to his pay. There shall be no plea that the case was not noted.

"If the client shall run away or conceal himself, the pleader shall bear the whole amount of the decree. If he produce or hand over the client, he is free, and shall have a right to ten per cent for his pay and security. If a pleader be bad he must take the consequences; if a court messenger commit any

wrong, he must take the consequences; the cause he is engaged in shall not suffer.

"If a pleader shall have gained a cause he has a right to a percentage. If he loses it, he has a right to a reasonable remuneration. If it be a matter of life or death, or redemption for the same, and the client shall not suffer death, or pay the forfeit; the pleader has a right to a fee of thirty *tickals* of silver, the price of his client's body."

"If a man shall say to a doctor 'give me medicine—if I recover, take me as a slave'; if he do recover, and do not wish to become the slave of the doctor, he shall have a right to the legal price of his body, thirty *tickals* of silver." Vol. 2, secs. 19 and 20, page 49.

In Burmah trial by ordeal is allowable, but in a far more mild form than that which once obtained in Europe.

"Oh, excellent king! the decisions by ordeal are as follows: 1st., each of the parties are made to take one *tickals* weight of water in their mouth, and light candles of equal length; this is called the trial by fire: 2d. the trial by water, both parties are made to go under water: 3d, both parties are made to chew one *tickal's* weight of rice; 4th, both parties to dip into molten lead. Of these four, in the trial by fire, let the person whose light goes out first be the loser if before the light goes out, one shall cough out the water from his mouth, in consequence of some portion having gotten into the trachea, let him lose; if the lights go out together, and neither cough out the water, let them spit out the water, and on weighing it, the person whose water weighs least, loses. In the trial by water, let the person who first comes up lose. In the trial by chewing rice, let each be made to chew one *tickal's* weight, and if before the cup with which time is measured sinks, the rice of one be all finished, or swallowed) and one not, let the one whose rice is not finished lose; if they be finished together, let them wash out their mouths in a cup, and let him in whose water there is the greatest portion of rice lose, and let him whose water is the cleanest win. As regards dipping into (molten) lead let the person who is burned lose, and he who is not burned win. Thus the recluse said." Vol. 9, sec. 16, page 254.

Witchcraft was recognized and dreaded and is defined, detected and punished in accordance with the provisions of the next section which gives some idea of the superstitions which prevail in that country.

"Oh, excellent king! as regards the seven kinds of witches, or wizards; there is the witch who is so by reason of his condition; the two who are so by reason of medicine; the four who are hereditarily so by reason of the Nat of their parents, taking up his abode in the person continually, these are the seven. Of these seven the witch called *hmau-wen,* or *kaway myouk,* is the greatest; next below him is the *hneet-padat,* the next is *ieng-ta-lien* or *goung-pyan,* the next *zauganee,* the next *tha-tsong,* the next *kyay-tsong,* and the next *let-touk-tsong.*

"Of these kinds of wizards, the *atha-tsong, kyay-tsong* and *let-tsong* are those who at night eat flowers and parched grain within the enclosure around their own houses, fire issuing from their mouths. Of these the *kyay-tsong* and the *let-tsong,* become witches by taking certain medicines; the *atha-tsong* are so constitutionally, they do not bewitch people. If they are thrown into water seven cubits deep, they can sink so as to leave one, two or three knots of the rope above water. These are not proper objects to be banished from the village or district but the person who accuses them is not to be held in fault, he had a right to accuse them. It shall not be said that they sank in the water or that they floated. The statement of both parties, accuser and accused, is true; they are and they are not witches; let them therefore bear the expenses equally.

"Besides these; the *kaway* cannot sink in the water, and the *kneet-padat,* though with great exertion, he can get under the water, he can only sink two knots (or cubits), five are left above water; the *ieng-ta-lien* and the *zau-ganee* are the same. These four are wizards by reason of the Nat, who has been worshipped by the ancestors in succession, taking up his abode in their bodies. They eat the food put out for them in the small flat bamboo frames used for winnowing grain, and in little baskets; they bewitch people so as to cause their death,

and then eat them; they also dig up the human bodies from the grave and eat them. Of these (the last), three cannot bewitch a person across a running stream, and even in the same village or district, they cannot bewitch a person seven houses distant. If these float, they must be banished the district. The *kaway* can bewitch a person even if a stream intervene, so this witch must be banished beyond several streams, to free the village from his influence. In these seven matters, these are truly the traditionary rules from the beginning of the world for trying any man or woman who practices witchcraft. In accordance with them, let the guardians of the law, the king, nobles, *thoogyees,* and heads of villages, after having arranged all the preliminary steps in strict conformity with the ceremonial prescribed for the trial of the seven kinds of wizards by the ancient teachers, select a piece of still water where there is no current, and in which there are no stumps of trees, rocks, or inequalities, and throw them into it. All matters connected with witchcraft are only made clear by the ordeal of water. As regards the doctors *tamee, yooaytan,* and other things, they are uncertain, and not to be depended on, whether the witch has bewitched another, and the fact is discovered, or the witch or wizard of themselves confess that they are so. The four witches above mentioned, even if people are afraid to associate with them, should be admonished by the three gems (god, the law, and the priests), and warned to desist (from these evil practises) and they should be called on to declare in the presence of the gems that they will observe the (five) moral duties and will renounce their bad habits, and to swear by the three gems that they will in future practice good works. This is the way good kings, embryo Boodahs, decide, and if the king passes sentence in like manner, the rains will be abundant, the rivers full, and the country flourishing and quiet. Thus the son of the king of Brahmahs, the recluse called Menoo said."

The race which developed so complete a system of laws and of the administration and application of them to all forms of controversies has utterly failed to construct a form of government adapted to wide dominion or designed to check

the abuses of rulers. All the great empires of India of which we have any account have been established by foreign conquerors.

The authority of the king was in most instances established by military force. He might be a member of either the Bráhman or Cshttriya caste but very rarely of an inferior one. The superiority of the Brahmans has been perpetuated by education rather than by military force or political combination. The Brahmans learned and conducted the religious rites and ceremonies and claimed to stand next to the gods. They were the teachers and expositors of the laws and to them were referred all questions of right. Their enduring ascendency is clearly traceable to education and the recognized law of inheritance, not merely of property, but also of caste, of personal status, as a superior order.

The Brahmans from very early times have been readers and writers. The mass of literature produced in the past is very great. Just when and how the various provisions found in the codes first came to be adopted there is no available means for determining.

The religious conceptions of the people have tended to individuality and segregation rather than extended combinations. The idea has prevailed that a man may purify and elevate his own soul by separation from his fellow men, through meditation and religious studies and observances. Testing moral worth by the good done to others and the value of social combinations by the advantages of mutual help, seems to have been generally discountenanced. Perhaps it may be difficult to establish a charge of general lack of fraternal feeling among the people, but it seems clear that there has not been great capacity for organizing and combining to accomplish common ends. The common mistake of rating the relation of the individual to an imaginary personal god as of more importance than his relation to his fellow man and of assuming that there can be merit in conduct which does not tend to the well being either of the individual himself or some other person, has prevailed there, yet possibly not more generally than in other parts of the world.

To abstain from all crimes and vice is the observance of a part of the moral law, but the more important and more difficult task is to promote the welfare of the individual, his family and all others whom he can aid. The first may be termed passive morality, the second active. Passive morality affords peace and repose, active morality leads to a full and glorious life of enjoyment and satisfaction. In India as well as in Europe the most extended combinations of the strength and vigor of men have been formed for vicious purposes. The activities of war have generally appeared greater than those of peace, though exerted for immoral ends. Thousands of years of combinations of men to destroy each other have not yet taught them to make equally great combinations for mutual aid.

The relative value of the civilization of any country cannot be safely gauged by the conditions existing at some selected point of time. If estimated in the eleventh century, Europe must have been condemned as the country of robbers and murderers, or if during the thirty years war as one in which the people generally had gone mad over religious meditations and discussions.

The people of the United States of America from 1861 to 1865 must have been condemned as a great family of fratricides, who deliberately sought each other's destruction without just cause on either side.

Measured by the conditions prevailing throughout the last one, two or three thousand years, it may well be claimed that the civilization of India has been superior to that of Europe. There have been more people, and they have been less at war with each other and better supplied with enjoyable things than the Europeans as a whole. It is only within the past hundred years that population has multiplied rapidly in Europe and the general scale of comfort among the masses materially advanced. All this gain comes from diminished efforts to destroy each other and more numerous and extensive combinations for mutual profit and advantage. It is strange indeed that men are so slow to perceive how quickly and bountifully obedience to the command to love and help one another is rewarded.

If all men knew that they must remain on earth through successive incarnations and must find heaven or paradise here and not elsewhere, possibly there would be more disposition manifested to make the world better during this life in order to prepare it for the next. Whether the souls of this generation shall return and inhabit the earth in the next or not is a matter of belief rather than of knowledge, but certain it is that our children and their descendants must abide in it till the race becomes extinct. No legacy can be passed down to posterity of such inestimable value as a well learned lesson of peace, concord and mutual aid. The boundaries of the moral law will be found coterminous with those of the true relations of man to man and to the living beings on earth. British rule in India has not yet revolutionized the educational system. The policy of giving free and universal instruction to the young does not prevail in the British Isles and very naturally would not be carried into India. The British have however made progress in introducing those great exponents of modern civilization, the railroad, telegraph, printing press and post office. Through these practical lessons of coöperation are taught and local animosities are diminished by commercial intercourse and social contact. The eradication of caste prejudices is a task of great difficulty and can only be effected by radical changes in the educational system and religious teachings. The British maintain their rulership largely by taking advantage of local animosities and caste distinctions through which the natives are deterred from combining, and the government employs one to curb another. Increased intercourse with each other and with the outside world must in time produce their logical effects on the people, but the inertia of such a mass is very great and can only be overcome in a long period of time or by an exceptional wave of enlightenment, such as comes to any people only once in many centuries. India has had its experiences of this kind in the past and may again in the future.

NOTE.—The extracts from the code of Manu are taken from the translation of Sir William Jones edited by G. C. Houghton and published by Cox & Baylis, London in 1825. Those from the Burmese Code are from a translation published by the Baptist Mission at Philadelphia in 1848.

CHAPTER X

China

In the study of any subject allowance must be made for perspective in order to gain a just comprehension of it. China is not merely geographically at the antipode to western Europe and America, but it is equally remote and dissimilar in its civilization. First consider what the Chinese Empire is geographically. In area it covers about 4,200,000 square miles, about 421,000 square miles more than all Europe. China proper has an area of about 1,312,326 or about 389,000 square miles less than Europe, exclusive of Russia. In climate it includes all varieties from the tropical district of Kwang Tung, to the regions of perpetual snow in the mountains of Thibet and Mongolia. In soil it has all gradations from the inexhaustible fertility of the rich loess lands of Chili, Shan-Si, Shen-Si, Kan-suh and Ho-nan to the barren rocks and sandy deserts of Gobi, and the equally barren peaks of the Thian-Shan and Kuen-Lun. Its surface shows every variety of formation from level plain to craggy mountain, and the most varied flora from the dense growth and endless variety of the tropics to the poverty and barrenness of the regions of perpetual frost. Its majestic rivers are but slightly inferior to the Mississippi, the Amazon and the Nile. Its fauna is rich and varied in species and numbers. But in nothing else is it so marked as in the numbers of its people and its unique civilization. The latest estimates accredit the empire with 400,000,000 or about 45,000,000 more than all Europe contains. While the empire includes many tribes not of Chinese stock, and differing more or less in type from the Chinese, the great bulk of the population is distinctly of one race, speaking one language, with no more difference of dialect than is found in England, France or Germany. This vast empire is now, and for many centuries has been, ruled by one

government, while Europe with its boasted superiority is divided at this day into nineteen separate and independent nations. Not only do the people of one of these nations speak a language different from that of nearly every other, but several of the nations include people speaking many different tongues. The United Kingdom of Great Britain and Ireland, with a population about equal to that of the province of Kiang-Su, includes English, Welsh, Scotch and Irish. Russia includes Laps, Finns, Russians, Poles, Slavs, and Cossacks, differing widely from each other in language, customs and race characteristics.

China proper is divided into eighteen provinces, but all are under one government and one system of laws. The political map of Europe, ever since history began, has been subject to frequent and great changes. The nineteenth century has seen nations rise and fall and boundaries of nations expand and contract from one decade to another, to such an extent as to render a map twenty years old utterly unreliable.

While China has had its internal wars and has at times been subjected to a divided rulership, it still has maintained its integrity as a nation through thousands of years. It has been conquered by Tartars without revolutionizing its customs and laws, and with but slight effect on the great Chinese mass. Through all changes and vicissitudes the civilization to be found in China has been distinctly Chinese. Long before letters were introduced into Greece, the Chinese had their unique system of characters. The name of the inventor and date of the invention are given in one tradition as Fuh-hi 3200 B.C. and in another as Tsang-ki 2700 B.C., either date however is sufficiently remote to precede the time when Cadmus carried the alphabet into Greece by over 1500 years. That much progress in agriculture and the arts had been made long before the Greek tribes migrated from Asia Minor into Greece, is amply proved by the historical records of the Chinese, which extend back in credible and definite form at least as far as the reign of Yaou 2356 B.C. The first weaving of silk is ascribed to Si-ling-shi wife of the Emperor Hwang-ti about 2600 B.C.

For early records of China, we look only to China. No neighboring nation can furnish us contemporary side lights. Of all the people of eastern Asia the Chinese first invented a written language and first became historians. Whether in authentic writings they antedate the Egyptians is a question on which archeologists may differ, but certain it is that their early histories are far more numerous and copious than those of any other people on earth. It is surmised by some, that the progenitors of the race migrated into China from the vicinity of the Caspian Sea, but the writer does not know on what evidence, for no ancient Chinese record is referred to as proving it, and there are no older or other records on the subject.

The Chinese like the Egyptians, were first found in the country they now inhabit. Their civilization has grown and continued to abide where it now exists. It has until very recent times received no marked impulse from without except the Buddhist religious teachings. No conquering horde has ever swept over the provinces of China and supplanted the ancient race with its own people. The Tartar conquest begun by Jenghiz Kahn and completed under Kublai, while bloody and destructive in the paths of the invading armies, failed to destroy or supplant the ancient stock. The subsequent Manchu conquest was a change of rulers, but slightly affecting the great multitude. Throughout all ages China has been secure against outside foes, except such as entered from the North. The barren inaccessible heights of the Himalayas on the south have ever interposed an impassible barrier against invasion from that direction. The barren steppes of Thibet and Mongolia could only be reached from the west after crossing the mountain ranges of central Asia. Only from the north has it been found practicable to lead in an invading army, and that cold and inhospitable country has not frequently poured out hosts of such magnitude as to overrun the densely peopled provinces of China, and never sufficient to drive out the people.

Like all other people, in their accounts of the origin and early history of their race, the Chinese narrate what is evidently fabulous and imaginary. Records cannot antedate the

art of making them, and traditions receive an accretion of the marvelous as they are passed down from generation to generation, till the real basis of truth is covered up and indiscernible. The period of 2,267,000 + years, given by Chinese writers as having elapsed between the creation of man and the time of Confucius, is entitled to no more and no less credit than any other attempt at fixing the date of man's advent on earth. Nor could anything be more whimsical than an attempt to blend and harmonize authentic Chinese history with the Mosaic account of creation.

The earliest accounts and traditions locate the Chinese along the Yellow River in and about the province of Shan-si, and while Chinese writers mention numerous long dynasties anterior to his time, Fuh-hi appears to be about the first ruler whose existence at some date appears fairly certain. The date of his accession to the throne is variously estimated from 2852 to 3322 B.C. He and his seven successors are said to have reigned 747 years, giving an average of 93⅜ years to each. While such periods are shorter than the lives of Biblical patriarchs, they are equally improbable and afford no data for computing the time of events. To Tuh-hi is attributed the *Yih-King,* or Book of Changes, which stands at the head as the most ancient of the Five Classics. The work appears to us rather whimsical, being made up of essays on important themes, illustrated by a combination of whole and broken lines treated as different principles, placed one above the other in various orders, and which are regarded as symbolical of the subjects discussed. Perhaps, however, as symbols these linear combinations may have meant more to the Chinese than they do to us.

The early reigns are sometimes spoken of as though the sovereign occupied the same relation to the people as in later years, yet it is said that the successors of Hwang-ti were elected by the people. The reign of Yao 2356 B.C. is taken as the starting point of authentic history. In his reign there was a great flood causing a permanent overflow of much land. This was remedied by works carried on under Yu, who afterward succeeded to the throne. Little appears to be recorded

concerning the condition of the people or the constitution of the government. The ruler is always treated as the subject of the theme and matters of real interest are mentioned only incidentally. It is evident, however, that in the earliest times of which any accounts are preserved, the Chinese tilled the soil, had domestic animals and wove. Yu established markets and fairs to accommodate trade. In his time the Empire is said to have extended from twenty-three to forty north latitude and six degrees west and ten degrees east from Peking; this includes the greater part of China proper. The reigns of Shun and Yu have been immortalized by Confucius and possibly he has depicted their characters in accordance with what a ruler should be, rather than with what these rulers really were.

From the time of Yu the throne became hereditary, but the system prevailing appears to have been similar to the feudal system of Europe in later times. If the character of the rule of Yu is correctly given in the answer of Kaogao, as given in the *Shu King* he acted on most enlightened maxims. "Your virtue O! Emperor is faultless. You condescend to your ministers with a liberal ease, you rule the multitude with a generous forebearance. Your punishments do not extend to the criminal's heirs, but your rewards reach to after generations. You pardon inadvertent faults however great, and punish deliberate crime however small. In cases of doubtful crimes you deal with them lightly, of doubtful merit you prefer the highest estimate. Rather than put to death the guiltless, you will run the risk of irregularity and laxity. This life loving virtue has penetrated the minds of the people, and this is why they do not render themselves liable to be punished by your officers."

The historic accounts of the early rulers of China are essentially the same as those of monarchs everywhere who are subject to no efficient restraints. There were wise and able founders of dynasties, who ruled for the good of the people, followed by degenerate offspring who were dissolute, cruel and oppressive. No instance is recorded in history of a long succession of hereditary monarchs who have maintained a high standard either of capacity or virtue. It is hardly worth while

at this time to moralize on the causes of the degeneracy of ruling houses. The fact that it invariably takes place is the matter of prime importance.

The Shang dynasty founded 1766 B.C. ended 1122 B.C. and was followed by the Chau. The reign of its founder Wu Wang is looked to as a kind of golden age in Chinese history, yet he committed the blunder of divinding the empire into seventy-two petty feudal states, leaving himself only a small portion of territory and power. The number of these states was at one time as high as 125 and in the time of Confucius fifty-two. The effect of this division was unceasing internecine wars, which would have rendered the whole an easy prey to a powerful outside foe. In 936 B.C. the Tartars made their first incursions of which we have any account, which were continued from time to time thereafter. At the birth of Confucius 557 B.C. the empire was in this unhappy condition. Though the Chau dynasty covers a period of weakness in the central power and, as has always happened under a feudal system, of strife and bloodshed among feudatories, it yet endured longest of any in the history of the empire, covering a period of 873 years down to 249 B.C. It was during this dynasty that those men appeared on earth who have exercised such marked influence on Chinese thought, habits, culture and society. Gautama, Confucius, Mencius and Lao Tze, have each left distinct and enduring imprints of their teachings, Gautama, deified as the incarnation of Buddha by his devotees, taught men to do good deeds and live pure lives in order that they might be happy in a future state of existence. Though a native of northern India, his disciples spread his doctrines into China in an early day, and his followers soon became very numerous and have so continued to the present time.

Confucius was a teacher of earthly wisdom rather than the founder of a religious sect. He claimed no higher sanction for his doctrines than reason and the tests of experience. He sought to establish justice and promote the happiness of men on earth. One of the means to these ends was a strong government honestly and faithfully administered. Another was

education of the young in correct principles. In character he was much like Socrates, but more practical in his methods. He was not averse to assuming responsibility and putting his maxims into practical operation. Far more than any other man, he has moulded Chinese customs and character down to the present time. The antiquity of Chinese literature is well shown by the works of Confucius. His *Shu King,* or Book of History, consists of ancient public documents from the time of Yao 2356 B.C. to King Hiang 627 B.C. These include imperial ordinances, plans drawn up by ministers for the guidance of the emperor, imperial proclamations, vows of the monarch before Shang-ti when going out to battle, and mandates, announcements, speeches, etc. by ministers of state. These were edited by Confucius with his comments. Confucius gathered the learning of the past and inculcated the study of the wisdom of the ancients. He was far more a compiler than an author. Of the five classics, though all bear marks of his labors, only the *Chun Tsiu* or Spring and Autumn Record was originally written by him. The *Shi King* or Book of Odes is a collection of odes and songs originally gathered from all the provinces by the emperor Wang Wau, numbering three thousand, most of which were lost however before the time of Confucius. These odes were used in connection with public and religious services. Only 311 of them are now extant.

Not the least important in its practical effect on after generations is the *Li-ki* or Book of Rites. No other people are so fond of ceremony as the Chinese. How far back in antiquity this fondness extended we are not informed, but a ritual is attributed to Duke Chau, 1130 B.C., on which much that is observed at the present day appears to be founded. Though filled with ceremonial, the book of Rites also teaches the principles governing the conduct of members of the family toward each other, of citizens toward officials, of officials toward citizens and each other. No other of the classical books appears to have exercised so profound an influence on succeeding generations. Not only has it established a vast multiplicity of forms and ceremonies to be observed each day, but

it has profoundly impressed on all generations its fundamental principles, respect, amounting very nearly to religious veneration, for parents and rulers and politeness to everyone. With these classical books the name of Confucius is inseparably connected. Neither of them is a law book in the sense in which the term is used in the west, nor yet are they religious compilations in a western sense, but many of the rules they contain are more generally obeyed than any act of Congress or Parliament, and many of the moral precepts they teach are oftener repeated, and as generally accepted, as any of the truths contained in the Bible are in Europe or America.

The secret of the remarkable influence of these "Five Classics," as they are termed, seems to lie in their consonance with Chinese tastes and character. No other people have half the respect for what is ancient that they do. Though put in form by Confucius, the material was already in existence, and he professed merely to compile the wisdom of the past. The age in which Confucius lived was one of weakness in the central government and of war and contention among the inferior rulers. Robbers and maurauders appear to have been numerous. He sought to permanently remedy the evils resulting from these conditions.

The Chau dynasty ended with the accession to the throne of Chwang-si-ong Wang. After but three days reign he died leaving the empire to his thirteen-year-old son Chi Hwangti. By the extermination of the imperial house he established his power, and by conquest of the petty states extended the boundaries of the empire to include most of China. He divided the country into thirty-six provinces over which he placed governors, whose conduct he supervised. From his time the essential features of the present governmental system seem to date. He finally overthrew the feudal system and firmly established the central power. Nor was he possessed of the spirit of reverence for the wisdom of the past which has since been so general. The title he assumed of First Emperor and his destruction of all records written anterior to his reign, evidence his vanity and desire to be regarded in history as the founder of the empire. He prob-

ably was the first to rule all China. Although his order to burn all ancient writings was carried out and nearly 500 of the literati were burned alive to complete the infamy, not all the copies were found by the vandals and so much was preserved in the memories of scholars, that the classics were again reproduced by the generation then living. The peculiar system of education then and now prevailing in China resulted in literal memorizing by the scholars of the texts of these works. Copies of some of the classics are also said to have been found more than a century later, concealed in the walls of Confucius' house. The destruction and reproduction of these works indicate the prevalence of education at the time.

Though detached portions of the great wall along the northern border of the empire had been built by the states for their security against Tartar incursions, it was in the reign of Hwangti that the work of joining these together into one complete and continuous defense was undertaken, and successfully carried out soon after his death. No other evidence remains which so surely proves the vast extent of the empire and the numbers and industry of the people as this great work. The construction of a wall 1500 miles long, twenty-five feet thick at base and fifteen at top from fifteen to thirty in height, with detached towers at intervals, could not have been accomplished without the coöperation of a vast multitude of workers, within the period of ten years in which it was built. The pyramids of Egypt are diminutive in comparison with this great structure.

Chi Hwangti died 210 B.C. His weak and debauched son was unable to curb the turbulent leaders and was soon deposed. After five years of civil war, Liu Pang overthrew his rival and was proclaimed emperor. This was followed by the Han dynasty which continued till A.D. 221. The founder Liu Pang is accredited with having instituted the system of competitive examinations for office, though by some authorities the perfection of the system in its present form is fixed at A.D. 600. His successor appointed a commission to restore as far as possible the texts of the literary works destroyed by order of Hwangti. A period of comparative peace and pros-

perity followed, but about the beginning of the Christian era a rebellion broke out followed by disorders which resulted in the establishment of the eastern Han dynasty. A.D. 65 Buddhism was introduced into China and about the same year an embassy was sent into Turkestan, soon followed by an acknowledgment of sovereignty of the emperor over Shen-Shen, Khotan, Kuche and Kashgar. Their allegiance, however, soon fell off.

A.D. 220-221-222 the empire was partitioned between three rival warriors into three kingdoms, the southern of which included modern Tonquin. This partition was followed by a long period of war and turmoil, during which power was wielded only by such as demonstrated their ability to maintain it. In 284 an embassy from the Roman Emperor Theodosius was sent into China. This appears to have been the first case of official intercourse between China and Europe. In 419 the eastern Tsin dynasty came to an end and the empire stood divided between the northern and southern. Disorders continued until 590 when Yang Keen established the Suy dynasty. He restored comparative peace and prosperity to the country, though he fought and defeated the Tartars and Coreans. He caused a survey to be made of his dominions and divided them into *chau, kuen,* and *hien* with corresponding officers, and this arrangement is still retained. At the close of his reign, which lasted sixteen years, one of his sons forced the heir to strangle himself and usurped the throne. He waged successful war against the Tartars and increased the imperial library to 54,000 volumes. The burdens he imposed on the people, in carrying on his wars and schemes of internal improvements, caused a rebellion which terminated in his assassination.

In 617 the heir to the throne having been poisoned, Li Yuen, a great general, proclaimed himself emperor under the name of Tai-tsung founder of the Tang dynasty. During his reign China was without doubt the most civilized and peaceful country on earth. With the crumbling of the Roman Empire, Europe had settled into a period of ignorance and brutality from which it did not emerge for many centuries. Chang Kwan the son and successor of Li Yuen is spoken of as the

most accomplished prince in Chinese history. He established schools and perfected the system of literary examinations. He ordered a complete edition to be published of the Classics, and paid special honors to the memory of Confucius. He promulgated a code for the direction of the judges. He had a just appreciation of the responsibilities and dangers of a sovereign and an anecdote is related that, when sailing on the river Wei, he said to his sons. "See my children the waves which float our fragile bark are able to submerge it in an instant. Know assuredly that the people are like the waves, and the Emperor like the fragile bark."

In his reign the boundaries of the empire were greatly extended toward the west, including Kuche, Khoten, Khorasan, Kashgar and the Turkish tribes as far as the Caspian Sea, over each of which was placed a military governor. Ambassadors were sent to the imperial court from Persia and Rome. In 635 a Roman priest was received and the emperor built him a church. On the death of Chang Kwan, posthumously styled Tai Tsung and the accession of Kaou-tsung, his wife, Woo How, became the real master of the emperor and at the death of her husband she set aside the heir and seized the throne. She ruled with vigor and her armies were victorious. The usual round of vigor on the throne, followed by vice, external wars and internal rebellions, followed at last by a division of the empire into many petty warring states, filled out the balance of the Tang and five other brief dynasties succeeding it. In 960 General Chaou Kwang-yin was proclaimed emperor by the army, which at that time seems to have held all power, as did the Praetorian guard at Rome in earlier times. In the tenth and eleventh centuries there were wars with the Tartars and Khitans, resulting at times in the payment of tribute by China to the Khitans.

Abbe Huc relates that in the eleventh century under the Sung dynasty there were socialists in China and that there was much radical political discussion. At the head of the reformers was Wangngan-Chi, a man of remarkable talents, great learning and energy. Instead of showing profound devotion to the wisdom of the ancients, he attacked the existing

order of things unsparingly. He charmed the emperor Chiu-tsoung with his brilliant presentation of his doctrines and gained great influence over him. In the sketch taken from the work of M. Abel Remusat his teachings are thus summarized:

"The first and most essential duty of a government is to love the people and to procure them the real advantages of life, which are plenty and pleasure. To accomplish this object it would suffice to inspire everyone with the unvarying principles of rectitude, but, as all might not observe them, the state should explain the manner of following these precepts, and enforce obedience by wise and inflexible laws. In order to prevent the oppression of man by man the state should take possession of all the resources of the empire and become the sole master and employer. The state should take the entire management of commerce, industry and agriculture, into its hands with the view of succoring the working classes and preventing their being ground to the dust by the rich."

Tribunals were to be established to fix the prices of provisions and merchandise and taxes to be imposed exclusively on the rich for a certain number of years. Aged paupers and unemployed working men were to be relieved from the treasury. The state was to be the only proprietor of the land, which should be assigned to the farmers by public authorities, who should also distribute seed, to be returned after harvest. The leading opponent of these doctrines was Sse-ma-kouang, who employed modern arguments in opposition to these schemes. Wangngan-Chi was given full authority to put his reforms in operation and maintained his ascendency throughout the reign of Cheu-tsoung. He added his own commentaries to the classical books, and reformed the examinations for literary grades to correspond with his own views. This brought down on him the hostility of the literati as well as of all the privileged classes, and on the death of the emperor he was deposed and his rival put in power. At the death of Sse-ma-Kouang great honors were done his memory. Later there was a revulsion of sentiment and his tomb was dese-

crated and great honors were paid to the memory of Wang-ngan-Chi. While according to Huc Chinese historians record the ill success of these schemes, the institutions of China seem to bear some marks of his doctrines at this day as will appear more fully when we enter on a consideration of the existing system. On the other hand it is said that the reign of Chiu-tsoung, lasting forty-one years, is the brightest period of the dynasty. Certain it is that the discussion carried on at this time produced a profound impression on Chinese polity.

Between 1127 and 1163 the Kins pushed their conquests till they overran the northern provinces of Chi-li, Shen-se, Shan-se and Ho-nan and even advanced to the Yang-tsze-Kiang. At this time the power of the Mongols was growing. The invasion of China under Jenghiz Kahn commenced in 1212. He first attacked the Kins and overran most of the country occupied by them. He was succeeded by his son Ogdai who completed the overthrow of the Kin dynasty. Among the Mongols codes of laws were unknown, but Ogdai found it necessary to promulgate a code and divide his new and populous dominions into ten departments. Ogdai was followed after two brief intervening reigns by Mangu, who extended his conquests to the south as far as Cochin China. On his death in 1259 he was succeeded by the illustrious Kublai, who completed the subjugation of the empire and ruled from the Yellow Sea to the Dnieper and from the Arctic almost to the Strait of Malacca. This was the first foreign dynasty ever established over all China.

The ambassadors sent by the Emperor Theodosius, A.D. 284 do not seem to have given any extended report of what they saw in China. In the Arab "Chain of Chronicles" is contained an account of a visit to the Chinese court by Ibn-Vahab in the ninth century. The description of what he saw, though meager, corresponds with other accounts of the state of the empire at that time. To Marco Polo we are indebted for the first full and satisfactory account of China and its civilization. His visit was during the reign of Kublai, whose empire was then the most extensive ever established in Asia, so far as is known. His description of the court and life of

Kublai exhibits a combination of the customs of the Tartar nomad and the ceremonious Chinese courtier. During December, January and February, the emperor resided in the palace at Kambalu. This palace is described as a complete square, a mile on each side. This is but the outer wall and edifices; within are others affording accommodations of all sorts for the people and their stores of goods, etc. and gardens with game preserves, and fish ponds. The inner palace he says "is the greatest that ever was seen. The floor rises ten palms above the ground and the roof is exceedingly lofty. The walls of the chambers and stairs are all covered with gold and silver and adorned with pictures of dragons, horses and other races of animals. The hall is so spacious that 6,000 can sit down to banquet, and the number of apartments is incredible. The roof is externally painted with red, blue, green and other colors and is so varnished that it shines like crystal and is seen to a great distance around. It is also very strong and durably built."

The city is described as very large with broad, straight and regular streets inclosed by a wall with twelve gates at each of which 1,000 men kept guard. Around the city were twelve very populous suburbs containing many stately edifices. The guard of the great Kahn consisted of 12,000 horsemen. The festivals held on the Kahn's birthday and the beginning of the new year were celebrated with great magnificence and the making of presents. On the latter day the presents from those holding land and offices, he states, included vast quantities of gold, silver, precious stones and merchandise, 5,000 camels, 100,000 white horses and 5,000 elephants, all of which were exhibited in a grand procession. For hunting he kept leopards, lynxes or stag-wolves and lions, as well as dogs. On his great hunts he was attended by two parties of 10,000 men each with 5,000 dogs. Besides these he had great numbers of gerfalcons, vultures and falcons for hunting. At the expiration of the three winter months, the great Kahn sallied forth with a vast retinue. At a place named Choccia he pitched his tents, 10,000 in number. That in which he held court was of sufficient size for 1,000 knights, but he resided in another.

The inside of this was lined with the finest furs. No one was permitted to take game from March to October, nor to keep dogs or falcons within twenty days' journey from his residence. At Shandu in Tartary he had a very large palace, which he occupied while hunting in that region and as a residence in June, July and August. The great number of horses, dogs and other animals and the custom of moving from place to place and dwelling in tents and movable palaces, accords with the inherited tastes and habits of the Tartar, while the elaborate ceremonials at the capital and elsewhere show the influence of Chinese customs on the Kahn. The description of the cities and country visited by Marco clearly shows how fully the great Chinese mass retained its habits, manners and customs, and how little effect the Tartar conquest had on Chinese civilization throughout the empire. The Tartar hordes were able to overcome the Chinese armies, but the countless multitude of busy farmers, manufacturers and traders plodded along the same as before, using the old language, literature and customs. Marco describes separately thirty-five different cities. He devotes the most space to Kin-sai, modern Hang Chau, which he says was without doubt the largest city in the world. The magnificence of its streets, stone bridges, buildings, canal, lake, boats, markets and shops, as well as on the great multitude of people and endless quantities of all the necessaries of life, he details at length. In all the cities he visited he was astonished at the numbers of people and the abundance of the provisions for their comfort. Peace and plenty were the rule through the empire, with but few exceptions.

Marco's description of the system of government and of the laws is very incomplete. He says there were twelve very great barons, who held command over all things in the thirty-four provinces. They all resided in the city of Kambalu, managed all the provincial affairs according to their will and appointed the lords of the provinces. For every province there was an agent and a number of writers or notaries. The twelve barons, called *scieng* in the Tartar language, ordered the army to move wherever they willed, subject to the direc-

tion of the great Kahn. These are probably the same officers he refers to as a council of twelve persons, having power to dispose of the lands, governments and all things belonging to the state, though not necessarily so. That arbitrary power was exercised by the Kahn and his chief officers on occasion is clearly manifest from the account he gives of the corruption and oppression exercised by a Saracen named Achmac. He gained so great influence over the Kahn that no one dared to oppose him. "Any charged by him with a capital offence, whatever means he might employ to justify himself and refute the accusation, could not find an advocate, for none dared to oppose the purpose of Achmac. Thus he unjustly caused the death of many, and was also enabled to indulge his unlawful propensities. Whenever he saw a woman who pleased him, he contrived either to add her to the number of his wives or to lead her into a criminal intimacy." This sway continued twenty-two years. Finally the Kataians formed a plot against him and killed him in the palace. For this the ringleaders were summarily executed. On the return of Kublai, who was absent from Kambalu at the time, he inquired into the cause of the trouble and, finding Achmac's seven sons equally guilty with their father, who had conferred high offices on them, he caused them to be flayed alive.

The facilities for communication with remote provinces were exceptionally fine. Great routes were established along which, at intervals of from twenty-five to forty miles, commodious inns, well provided with comforts, were established, in connection with which horses in great abundance were constantly kept. Public officials and messengers were lodged at these inns and furnished relays of horses. Of these inns there were more than 10,000 and of horses kept in connection with them more than 200,000. At intervals between these stations were others of foot runners, three miles apart, who carried letters and packages from station to station at the rate of 100 miles a day, while horsemen made from 200 to 300 miles in twenty-four hours. Similar inns and couriers on foot and on horseback are still maintained in some parts. The paternal care of the great Kahn over his people Marco praises in this language.

"He sends his messengers through all his kingdoms and provinces, to know if any of his subjects have had their crops injured through bad weather or any other disaster, and if such injury has happened he does not exact from them any tribute for the season or year, nay he gives them corn out of his own stores to subsist upon and to sow their fields. This he does in summer, in winter he inquires if there has been a mortality among the cattle and in that case grants similar exemption and aid. When there is a great abundance of grain he causes magazines to be formed, to contain wheat, rice, millet or barley, and care to be taken that it be not lost or spoiled: then when a scarcity occurs this grain is drawn forth and sold for a third or fourth of the current price." The monetary system Marco thus describes,

"With regard to the money of Kambalu, the great Kahn may be called a perfect alchymist, for he makes it himself. He orders people to collect the bark of a certain tree whose leaves are eaten by the worms that spin silk. The thin rind, between the bark and the interior wood, is taken and from it cards are formed like those of paper, all black. He then causes them to be cut in pieces and each is declared worth respectively half a livre, a whole one, a silver grosso of Venice and so on to the value of ten bezants. All these cards are stamped with his seal, and so many are fabricated that they would buy all the treasuries in the world. He makes all his payments in them and circulates them through the kingdom and provinces over which he holds dominion, and none dares to refuse them under pain of death. All the nations under his sway receive and pay this money for their merchandise, gold, silver, precious stones and whatever they transport, buy or sell. The merchants often bring to him goods worth 400,000 bezants and he pays them all in these cards, which they willingly accept, because they can make purchases with them throughout the whole empire. He frequently commands those who have gold, silver, cloths of silk and gold, or other precious commodities to bring them to him. Then he calls twelve men skillful in these matters, and commands them to look at the articles and fix their price. Whatever they name

is paid in these cards, which the merchant cordially receives. In this manner the great sire possesses all the gold, silver, pearls and precious stones in his dominions. When any of the cards are torn or spoiled the owner carries them to the place where they were issued and receives fresh ones with a deduction of three per cent. If a man wishes gold or silver to make plate, girdles or other ornaments, he goes to the office, carrying a sufficient number of cards, and gives them in payment for the quantity which he requires. This is the reason why the great Kahn has more treasure than any other lord in the world, nay all the princes in the world together have not an equal amount." This currency went out of use on the expulsion of the Mongols. The new dynasty issued notes at first but discontinued them about 1455.

Kublai was tolerant of all religions and employed Saracens, Christians and Buddhists as well as idolators of all kinds and unbelievers. His domestic establishment was on a grand scale. He had four wives, each of whom ranked as an empress and had 300 maidens with eunuchs and other attendants. Besides these he had his concubines. By his wives he had twenty-two sons and by his concubines twenty-five. How many daughters is not stated. Marco speaks of the manufacture of beautiful porcelain, describes how all the people burn black stones instead of wood, and drink wine made from rice and many good spices. In Kin-sai each householder had written on his door the name of all the members of his household, which he revised when a birth or death occurred. This is still required. What most impressed Marco was the peace, good order, abundance of wealth and patient industry of the people. He also highly praises the integrity of the merchants of Kin-sai. Perhaps the most lasting monument to the energy and public policy of Kublai is the grand canal which he extended and greatly improved.

After the death of the great Kahn the Mongol dynasty was continued under Timur his grandson, and Wu Tsung, Ching Tsung last of the line came to the throne at thirteen, a weak debauchee. Hung Wu, a plebeian and former Buddhist priest, headed a revolt, which resulted in the expulsion of the Mon-

gols and his elevation to the throne as the founder of the Ming Dynasty. He established his capital at Nanking and reigned thirty years. He named his grandson as his successor, but his son Yung-loh after five years seized the crown and moved the capital back to Peking in 1403. He promulgated a code of laws, framed under his direction, which is the basis of the existing system of today. In 1616 the Manchu Tartars invaded China and defeated the force sent against them. Rebellions followed in the provinces, by taking advantage of which and judiciously combining with one or other of the factions, the Manchus finally gained complete ascendency and in 1644 Shun-che was proclaimed emperor and founder of the Tsing dynasty, which continued in power till the revolution of 1912. The whole empire was not reduced at once, but by a policy combining vigor in war with humane treatment of those who submitted, all opposition to the new dynasty was gradually overcome.

A strange exhibition of power was that by which the people were required to adopt the Tartar mode of shaving the front of the head and braiding the hair in a long cue. To introduce and enforce a fashion by command even of a despot, is something rarely attempted and much more rarely enforced and maintained. This mode of wearing the hair, now a distinctive mark of the Chinaman, thus appears to be a Manchu fashion forcibly imposed on the Chinese. It is said that many preferred to lose their heads rather than submit to this badge of subjection.

Kang-hi, son and successor of Shun-che, ascended the imperial throne in 1661 when only eight years old. He was a contemporary of Louis XIV, who became sovereign of France the same year. The reign of Kang-hi was long and illustrious, lasting sixty-one years. He extended the boundaries of the empire and devoted his energies with indefatigable diligence to the improvement of the system of government. His son Yung-ching succeeded him in 1722 and ruled sixteen years with great satisfaction to his subjects. He was succeeded by Kien-hung his son who ruled mainly in peace for sixty years. In his reign intercourse with western nations was established

and embassies were received from Russia, England and Holland.

The first three Manchu sovereigns thus ruled the empire with prudence and vigor for one hundred and thirty-five years, with few wars either at home or abroad, and none seriously threatening the integrity of the empire. Subsequent reigns have been less fortunate and rebellions and foreign wars have become more frequent. The government during the last century has been, for the most part, without vigor, and the universal law which ultimately brings ruin on every hereditary dynasty has just brought this to the end. The decay of despotic power does not necessarily indicate retrogression on the part of the nation but is often, nay usually, the forerunner of distinct advancement. Weakness on the part of the government always induces disorders, but these are often prompted by a desire for better conditions. In spite of all the vices and imperfections of its rulers, the peculiar civilization of the Chinese has been preserved and the almost incredible number of its people has continued to increase. The accounts of the military operations of its rulers and of rebel leaders, are calculated to convey erroneous impressions as to the military qualities and army service of the people in general. In western countries great wars have usually called out a very large proportion of the whole number of males of military age. Not so in China. The greatest army ever raised in the whole empire probably never exceeded one out of a hundred of the whole population. During the greatest wars and the most serious rebellions, trade, agriculture and manufacture, except in the immediate locality of the strife, have gone on without very serious interruption. Thus the character of the Chinese people and of Chinese civilization has been essentially unmilitary ever since the consolidation of the vast empire.

All authorities agree that the fundamental idea of the Chinese government was patriarchal. The emperor was regarded on the one hand as the son of Heaven, deriving his power directly from the Supreme Being, and on the other, as the father and mother of the people, responsible for their

conduct as well as their welfare. He was the supreme legislative, judicial and executive power. The theory of the origin of his power is not essentially different from that of other monarchs who rule by right divine. The Chinese, however, ingrafted a very important qualification on the doctrine. So long as the emperor ruled well, he was under the immediate protection of Heaven, but when he did ill it was an indication that the favor of Heaven had been withdrawn from him. The attributes of the princely man, taught in the classics as the words of Confucius, are much more lofty than can often be found on a throne. In the "Invariable Centre" it is said:

"It is only the man supremely holy, who by the faculty of knowing thoroughly and comprehending perfectly the primitive laws of living beings, is worthy of possessing supreme authority and commanding men, who by possessing a soul grand, firm, constant and imperturbable is capable of making justice and equity reign—who by his faculty of being always honest, simple, upright, grave and just, is capable of attracting respect and veneration—who by his faculty of being clothed with the ornaments of the mind and talents procured by assiduous study and by the enlightenment that is given by an exact investigation of the most hidden things and the most subtle principles, is capable of discerning with accuracy the true from the false and good from evil."

Mencius, who stands second only to Confucius in the estimation of the learned Chinese, said,

"When the prince is guilty of great errors the minister should reprove him: if after doing so again and again he does not listen, he ought to dethrone him and put another in his place."

In the *Ta-hio* or Grand Study the leading principles of government are thus stated by Confucius,

"The ancient princes who desired to develop in their states the luminous principle of reason that we have received from Heaven, endeavored first to govern well their kingdoms; those who desired to govern well their kingdoms, endeavored first to keep good order in their families; those who desired to keep good order in their families endeavored first to correct

themselves, those who desired to correct themselves endeavored first to give uprightness to their souls, those who desired to give uprightness to their souls endeavored first to render their intentions pure and sincere, those who desired to render their intentions pure and sincere endeavored to perfect as much as possible their moral knowledge and examine thoroughly their principles of action."

"All men the most elevated in rank as well as the most humble and obscure are equally bound to perform their duty. The correction and amelioration of one's self, or self-improvement is the basis of all progress, and of all moral development." Where is there anything better than this in any language? The Grand Study concludes,

"If those who govern states only think of amassing riches for their personal use, they will infallibly attract toward them depraved men. These depraved men will make the sovereign believe that they are good and virtuous, and these depraved men will govern the kingdom. But the administration of the unworthy ministers call down the chastisement of Heaven and excite the vengeance of the people. When matters have reached this point what ministers, were they ever so good and virtuous, could avert misfortune? Therefore those who govern kingdoms ought never to make their private fortune out of the public revenues, but their only riches should be justice and equity."

As the teachings of Christ have failed to make all of his professed followers in the west live according to the golden rule, so also the teachings of Confucius, studied in every school in the empire, and a profound knowledge of which is a prerequisite to appointment to office, have yet failed to make ideal rulers of men corrupt by nature, yet that his doctrines have wielded a powerful influence for good cannot be doubted. The recognition of the classical books as authority on moral and political questions operated as a limitation on the despotic powers of the emperor in much the same way that the unwritten British constitution limits the power of the king, lords and commons. The vast and complicated machinery of a government, ruling so many millions of peo-

ple, also necessitated system and order, which could not be maintained under a government responding solely to the arbitrary will of a despot. The checks and balances of the system, though designed mainly to restrain subordinate officers within the legitimate bounds of their authority, operated also to limit the powers of the emperor, in whom theoretically all power was vested.

Under the Manchu dynasty the succession to the throne was hereditary in the male line. The particular person was designated by the sovereign, but kept concealed until after his death. The person designated ceased to be known by his personal name from the time of his accession to the throne and was given a new name which is rather the name of his reign than of himself. The deceased emperor was given a posthumous name by which he is known in history. When by revolutions a new dynasty was established, it received a name which is continued till a new family accedes to power.

The imperial clan consisted of two classes. First the *Tsung-shih,* lineal descendants of Tien-Mings' father, Hien-tsu who assumed the title of emperor in 1616. Second the collateral branches including the children of his uncles and brothers who were collectively called Gioro. In the *Tsung-shih* there were twelve degrees of rank. They were for the most part shut out from useful employments and received small allowancs. The titular nobility of the empire were not a rich and powerful body, but without power, land, wealth, or influence. The near kinsmen of the emperor received liberal allowances, while the lowest orders were given mere pittances. The imperial clan governed Manchuria and individuals were given such appointments in the empire as the emperor saw fit. Besides these there were five ancient orders of nobility, the titles of which cannot be accurately translated. The descendants of Confucius received especial honor.

The government of the Imperial court was under the general supervision of a board styled the *Nui-wu-fu* composed of a president and six assessors under whom were seven subordinate departments. These officers attended the emperor and empress at sacrifice and oversaw the households of the em-

peror's sons, as well as directed the care and supplies of the palace and imperial guard. The seven departments had duties distributed as follows: to one the supply of food and raiment, to the second, regulation of the emperor's body guard, the third regulated domestic etiquette and brought the inmates of the harem, led by the empress, to do homage to the emperor, the fourth selected ladies to fill the harem and collected the revenue from crown lands, the fifth attended to repairs of the palace and cleaning of the city streets for the use of the royal family, the sixth had charge of the emperor's herds and flocks and the seventh was a court for the punishment of crimes in and about the palace. The work of the imperial household was performed by about 2,000 eunuchs. There was but one empress, but the emperor was entitled to seven legal concubines and actually kept as many illegal ones as he pleased. Every third year he looked over the Manchu daughters and chose such as he liked for concubines. They were restored to liberty at twenty-five, unless they had borne children to the emperor.

The empress dowager was the most important subject in the palace and was paid special honor by the emperor. The government of the empire was carried on through the instrumentality of a very complex official system. First and closest to the emperor were two councils, the *Nui-Koh* or cabinet which consists of four principals and two assistants, half Manchus and half Chinese. Their duties were to "deliberate on the government of the empire, proclaim abroad the imperial pleasure, regulate the canons of state, together with the whole administration of the great balance of power, thus aiding the emperor in directing the affairs of state."

Subordinate to these were six grades of officers numbering in all over 200, more than half Manchus. Under the six chancellors were ten assistants and some of these were constantly absent in the provinces. The principal business of this cabinet was to receive imperial edicts and rescripts, present memorials, lay before the emperor the affairs of the empire, procure his instructions thereon and forward them to the proper office to be copied and promulgated. The papers in

matters for consideration were arranged and slips of suggested answers were attached when they were presented to the emperor for his decision. Daylight in the morning was the hour for commencing his work. Each document was first read by one of the Manchu *hioh-sz,* who then handed it to a Chinese *hioh-sz* who passed it to the emperor. By a stroke of the vermilion pencil he indicated the answer to be made. Appointments to office, removals, degradations, orders relating to taxes, the army, the provinces, etc., were thus rapidly made.

The members of this cabinet separately also had other duties to perform in connection with bureaus to which they were attached and in presiding on state occasions. They were also keepers of the twenty-five great seals of the government, each of which was of special design and for particular uses. Subordinate officers attached to the cabinet translated documents into the various languages found in the empire.

The *Kiun-ki-Chu,* council of state, was organized about 1730 and was for a time the most influential body under the emperor. The numbers of this council, usually about four, varied at the pleasure of the emperor by whom they were selected. Its duties were "to write imperial edicts and decisions, and determine such things as are of importance to the army and nation in order to aid the sovereign in regulating the machinery of affairs." They assembled in the palace between five and six in the morning. The emperor's commands were written down by them and, if public, transmitted to the inner council to be promulgated, but, if the matter required secrecy or haste, a dispatch was forthwith made up and sent to the Board of War to be forwarded. In all important trials or consultations, this council was called in and acted either separately or in connection with the appropriate court. Lists of officers entitled to promotion were kept by it and names to fill vacancies furnished the emperor.

The duties of these supreme councils were general, covered all departments of the government and served to connect the head of the empire with all subordinate bodies at the capital

and in the provinces. Under such a system, very much depended on the personal character of the emperor. The *King Poo* commonly called the Peking Gazette was compiled from the papers presented before the General Council. Every morning ample extracts from the papers decided upon by the emperor, including orders and rescripts, were placarded on boards in a court of the palace. Couriers were dispatched to all parts of the country with copies of these papers for local officials. Certain persons were also permitted to print these documents, but without comment or change, and circulate them to their customers. This was the Gazette and was simply a record of official acts. It was very generally read by educated people and kept them informed of the proceedings of the government. In the provinces, abridged editions were made for readers not able to take the complete one.

Under these two principal councils were the *Luh-Pu* or six boards, of ancient origin. At the head of each board were two presidents and four vice-presidents alternately Manchus and Chinese, and over those of Revenue, War and Punishments were also superintendents who were frequently members of the Cabinet. Sometimes the president of one board was superintendent of another. There were three subordinate grades of officers in each board and a great number of clerks for details. The organization of the departments was very complete and systematic.

(1) The *Li Pu* or Board of Civil Office, "has the government and direction of all the various officers in the civil service of the empire and thereby it assists the emperor to rule all the people" and their duties included "whatever appertains to the plans of selecting rank and gradation, to the rules determining degradation and promotion, to the ordinances granting investures and rewards, and the laws for fixing schedules and furloughs that the civil service may be supplied." Civilians were presented to the emperor and all civil and literary officers were distributed by it, but the cabinet and General Council had advisory oversight of the high appointments. The board was divided into four bureaus. The first attended to distinctions, promotions and exchange of offices. The sec-

ond investigated the merits and demerits of officers and their worthiness to be advanced or degraded and prescribed furloughs. The third regulated retirements from office for mourning or filial duties, and supervised the registration of official names. The fourth regulated the distribution of titles, patents and posthumous honors. Posthumous honors were highly regarded by the Chinese and theirs was the only government that ennobled dead ancestors for the merits of their descendants. While nominal titles for the living might be bought, the dead received honor only on the basis of their own merits or those of their offspring.

(2) The *Hu Pu* or Board of Revenue, "directs the territorial government of the empire and keeps the lists of population in order to aid the emperor in nourishing all the people; whatever appertains to the regulations for levying and collecting duties and taxes, to the plans for distributing salaries and allowances, to the rates for receipts and disbursements at the granaries and treasuries and to the rights for transporting by land and water, are reported to this board, that sufficient supplies for the country may be provided." It also obtains the measurement of all lands in the empire, and apportions taxes and conscriptions according to population, etc. One minor office of this board prepared lists of all Manchu girls fit for selection as inmates of the imperial harem. There were fourteen subordinate departments to attend to the receipt of the revenue from each of the provinces, each of which corresponded with the treasury department in its respective province. Some of the revenue was paid in money, some in grain and merchandise and this required a vast force to handle it. This board was also a court of appeals on certain cases respecting property and superintended the mint in each province.

(3) The Board of Rites, "examines and directs concerning the performance of the five kinds of ritual observances and makes proclamations thereof to the whole empire, thus aiding the emperor in guiding all people. Whatever appertains to the ordinances for regulating precedence and literary distinctions, to the canons for maintaining religious

honor and fidelity, to the orders respecting intercourse and tribute and to the forms of giving banquets and granting bounties, are reported to this board in order to promote national education." The five classes of rites were defined to be, those of a propitious and those of a felicitous nature, military and hospitable rites and those of an infilicitous nature. A subordinate department of this bureau regulated the etiquette to be observed at court on all occasions and in the performance of official duties, also styles of dress, caps, etc., the figure, size, color and nature of the fabrics and ornaments worn, carriages and accoutrements and number of followers and insigna of rank of those taking part in public affairs. It also regulated the ceremonial of personal intercourse between persons of the various ranks, minutely defining the number of bows and degree of attention which each should pay to the other when meeting officially. It also directed the form of official correspondence and regulated the literary examinations, number of graduates, distinction of classes, forms of selection and privilege of successful candidates and the establishment of government schools. Another office superintended the religious rites to be observed. A third called "host and guest" office looked after tribute and tribute bearers and attended to foreign embassies, supplied provisions and interpreters and regulated the mode of intercourse with foreign states. The fourth supplied the food for banquets. The details of the duties of this Board filled fourteen volumes of the Statutes. The ancient Book of Rites is the foundation of ceremonies and the standard to be followed. Confucius said "Truly nothing is without its ceremonies" and careful observance of the rites is regarded by the Chinese as the certain test of refinement and gentility. Connected with this board was a Board of Music, whose duties were to study the principles of harmony and melody, to compose musical pieces and form musical instruments and suit them to the various occasions where they were required. Official music, however, was not highly regarded by foreigners.

(4) The *Ping Pu* or Board of War "has the duty of aiding the sovereign to protect the people by the direction of all

military affairs in the metropolis and provinces and to regulate the hinge of the state upon the reports received from the various departments regarding deprivation of, or appointment to Office, succession to, or creation of hereditary military rank: postal or courier arrangements, examination and selection of the deserving and accuracy of returns." The navy was also under this Board. The management of the post was under a special department and dispatches were transmitted by an efficient system. The board of war discharged its duties through four bureaus. It had no control over the household or city troops, nor of the Bannermen distributed throughout the empire.

(5) The *Hing Pu* or Board of Punishments, "has the government and direction of punishments throughout the empire for the purpose of aiding the sovereign in correcting all people. Whatever appertains to measures of applying the laws with leniency or severity, to the task of hearing evidence and giving decisions, to the right of granting pardons, reprieves or otherwise and to the rate of fines and interest are all reported to this Board, to aid in giving dignity to national manners." This Board had both civil and criminal jurisdiction. Its officers met with those of the Censorate and *Tali Sz* and the three formed the *San Foh Sz,* or Three Law Chambers, which decided on capital cases brought before them. In the autumn, these three united with members from six other courts, forming collectively a Court of Errors to review the decisions of provincial judges before reporting them to the emperor. They were required to conform their decisions to the laws and were not vested with any arbitrary powers. Subordinates of this Board recorded the emperor's decisions on appeals from the provinces at the autumnal sitting, when the entire list was presented for the emperor's final decision, and saw that these sentences were transmitted to the provincial judges. Another office superintended the publication of the code, with all the changes and additions. A third oversaw jails and jailers. A fourth received fines taken in commutation of punishment, and a fifth registered receipts and expenditures.

(6) The *Kung Pu* or Board of Works, "has the government and direction of the public works throughout the empire, together with the current expenses of the same, for the purpose of aiding the emperor to keep all the people in a state of repose. Whatever appertains to plans for buildings of wood or earth, to the forms of useful instruments, to the laws for stopping up or opening channels, and to the ordinances for constructing the mausolea and temples, are reported to this Board in order to perfect national works." The work of the bureaus in this department presents a singular combination of duties. One bureau supervised the condition of city walls, palaces, temples, altars and other public structures, sat as a prize office, furnished tents for the emperor's journeys, supplied timber for ships, and pottery and glassware for the court. Another attended to the manufacture of military stores and utensils used by the army, sorted the pearls from the fisheries, regulated weights and measures, furnished death warrants to governors and generals, and had charge of arsenals, stores, camp equipage and other things appertaining to the army. A third had charge of all water ways and dikes, repaired and dug canals, erected bridges, oversaw the banks of rivers by deputies stationed along their courses, built vessels of war, collected tolls, mended roads, dug sewers in Peking and cleaned out its gutters, preserved ice, made bookcases for public records and looked after the silks collected as taxes. The fourth attended chiefly to the condition of the imperial mausolea, the erection of the sepulchers and tablets of meritorious officers, buried at public expense, and the adornment of temples and palaces, and superintended all workmen employed by the Board. The mint was under the direction of two of the vice-presidents and the manufacture of gun powder was intrusted to two ministers.

The *Li Fan Yuen* commonly called the Colonial Office had the government and direction of the external foreigners, ordered their emoluments and honors, appointed their visits to court and regulated their punishments, in order to display the majesty and goodness of the state. This branch of gov-

ernment superintended all the tribes of Mongolia, Cobdo, Ili and Koko-nor. These are called "external foreigners," to distinguish them from the tribes of Sz-chuen and Formosa who are termed "internal foreigners." There are also the "internal barbarians, comprising the unsubdued mountaineers of Kweichan, and the "external barbarians" including the people of all foreign countries. The Colonial Office regulated the government of the nomads and restricted their wanderings. Its officers were all Manchus and Mongols. Besides the usual secretaries there were six departments. The first two had jurisdiction over the minor tribes of Mongolia, appointed the local officers, collected taxes, alloted lands to Chinese settlers, opened roads, paid salaries, arranged marriage retinues, visits to court, presents made by the princes and review of the troops. The third and fourth had similar but less effectual control over the princes, lamas and tribes of outer Mongolia. The fifth department directed the actions, restrained the powers, levied the taxes and ordered the tributary visits of the Mohammedan begs in the Thian-shan, Nan Lu. The sixth regulated the penal discipline of the tributary tribes. Salaries were paid the Mongolian princes according to an established scale. A *tsin wang* received $2,600 and twenty-five pieces of silk per year, a *Kiun-wang* $1,666 and fifteen pieces of silk and so down to the lowest in rank who got $133 and four pieces of silk. The organization of these nomadic tribes partakes of both the feudal and tribal system. The Chinese policy was to reduce the power of the chiefs and make the people independent owners and cultivators of the soil.

The *Tu-chah Yuen* or Censorate, "All examining Court" was entrusted with the "care of manners and customs, the investigation of all public offices within and without the capital, the discrimination between the good and bad performance of their business, and between the depravity and uprightness of the officers employed in them; taking the lead of other censors and uttering each his sentiments and reproofs, in order to cause officers to be diligent in attention to their daily duties and to render the government of the empire stable."

The Censorate when joined with the Board of Punishments, and Court of Appeals, formed a high court for the revision of criminal cases and appeals from the provinces; and in connection with the Six Boards and the court of Representation and Appeal, made one of the *Kin King* or "Nine Courts" which deliberated on important affairs of state. The officers were two censors and four deputy censors, besides whom the governors, lieutenant governors and governors of rivers and inland navigation were ex-officio deputy censors. A class of censors was placed over each of the Six Boards whose duties were to supervise all their acts, to receive all public documents from the Cabinet and, after classifying them, transmit them to the several courts to which they belonged, and to make a semi-monthly examination of the papers entered on the archives of each court. All criminal cases in the provinces were under the oversight of the censors at the capital, and also the department which superintended the affairs of the metropolis, revised its municipal acts, settled the quarrels, and repressed the crimes of its inhabitants. Theoretically the Censors had the right and rested under the duty of expressing their opinions and criticising all official dereliction coming under their observation, from the emperor down, but to do so required exceptional courage and uprightness, seldom found among politicians anywhere and especially rare under a despotism. Instances of righteous and fearless performance of this duty are not wanting however. Sung, a censor, sent in a memorial remonstrating with the Emperor Kiaking upon his attachment to play actors and strong drink, which degraded him in the eyes of the people and disabled him from performing his duties. The Emperor highly irritated called him to his presence and on his confessing the authorship of the memorial asked him what punishment he deserved. He answered "quartering" being told to select some other he said "Let me be beheaded" and on the third command chose to be strangled. He was ordered to retire and the next day the Emperor appointed him governor of Ili, thus removing him from the capital. Another censor, during the Tang dynasty, when the emperor desired to in-

spect the archives of the historical office to learn what had been recorded concerning him, under the excuse that he wanted to know his faults so that he might correct them, answered "It is true your Majesty has committed a number of errors, and it has been the painful duty of our employment to take notice of them; a duty which further obliges us to inform posterity of the conversation which your Majesty has this day very improperly held with us." The usual mode of advising the Emperor was by a written remonstrance or memorial. Many of these were inserted in the Peking Gazette for public information. The *Tung-ching Sz,* or Court of Transmission, consisted of six officers, who received memorials from the provincial authorities and appeals from their judgments by the people, which they presented to the Cabinet. Attached to this court was an office for attending at the palace gate, to await the beating of a drum, which, according to ancient custom, was placed there that suitors by striking it might obtain a hearing. This was also the channel through which the people could appeal directly to the Emperor, and instances occur where men and women traveled from remote provinces to present their petitions to the "one man."

The *Ta-li Sz* or Court of Judicature and Revision had the duty of supervising all the criminal courts in the empire and formed the nearest approach to a Supreme Court of any in the government. When the crime involved life, this and the preceding united with the censors to form one court, and if the judges were not unanimous in their decisions they must report their reasons to the Emperor to decide the case. The *Hanlin Yuen* or Imperial Academy was entrusted "with the duty of drawing up governmental documents, histories and other works; its chief officers take the lead of the various classes, and excite their exertions to advance in learning in order to prepare them for employments and fit them for attending upon the sovereign." Its chief officers were two presidents or senior members who attended on the Emperor, superintended the studies of graduates and furnished semi-annual lists of persons to be speakers at the celestial feasts, where the essays of the Emperor were translated from or

into Manchu and read before him. Subordinate to the two seniors were four grades of officers, five in each grade, with an unlimited number of senior graduates, each forming a sort of college, whose duties were to prepare all works published under governmental sanction. Subordinate to the *Hanlin Yuen* was an office consisting of twenty two select members, who in rotation attended on the Emperor and recorded his words and actions. There was also an additional office for the preparation of national histories. The members of the *Hanlin,* being at the head of the literary graduates, formed the body from which most important offices were filled.

There was also the *Kwoh-tsz Kien* or National College for teaching graduates of the lower degrees and the *Kin Tien* or Imperial Astronomical College, whose duties were defined "to direct the ascertainment of times and the movements of the heavenly bodies in order to attain conformity with the celestial periods and to regulate the notation of time among men; all things relating to divination and the selection of days are under its charge." The preparation of the almanac, designating the lucky and unlucky days and other absurdities inserted in it, were under their charge.

The various departments of the general government were so arranged as to hold a check on each other. There were two presidents over each board, not merely to assist, but to watch each other and oversee the vice-presidents. The president of one board was sometimes the vice-president of another and by means of the censors brought under the cognizance of several officers, whose mutual jealousies and ambitions placed some check on each other and afforded some guarantee of fidelity.

Having given thus a general view of the organization of the government at the capital we proceed to a consideration of the government of the provinces. The highest officers in the provinces were the *tsung-tuh,* viceroys, and the *futai* or *fuyuen,* governors. The *tsung-tuh* ruled over two provinces or else filled two high offices in one, while the *futai* was over one province, either independent or subordinate to a *tsung-tuh.* The viceroy stood as the representative of the Emperor

in the territory. The *futai* filled a similar capacity but inferior to the *tsung-tuh* when there was one. The departments of the civil government were five *viz.,* administration, literary, gabel, commissariat, and excise, the first being also divided into the territorial and financial and the judicial branches. At the head of the first branch was the *pu-ching sz,* usually called the treasurer, over the second the *ngan-chah sz* or criminal judge, presided. These two officers acted together in important business and the trial of important cases. The literary department was under the direction of an officer, selected by the Imperial Academy called a *hioh-ching.* The gabel and commissariat were usually supervised by officers called *tao* or *tao-tai,* sometimes termed intendants of circuit, who had other functions also. The excise was under *Kientuh* or superintendents. The collection of the revenue being difficult, was mainly entrusted to local magistrates. The military government of a province included both sea and land forces. It was under a *tituh* or commander-in-chief of which rank there were sixteen. In five provinces the *futai* was commander-in-chief and in Kan-suh there were two. Above the *tituh,* in point of rank but not of power, were garrisons of Manchu Bannermen under a *tsiang-kuin* or general, appointed and directed by the captains general in Peking. The three officers *tsungtuh, futai* and *tsiang kuin,* if there were one, formed a supreme council and united in deliberating on a measure, calling in the subordinate in whose department it belonged. In these courts civilians took precedence of military officers. The authority of the viceroy extended to life and death, to making temporary appointments to fill vacant offices in the province, to ordering troops to any part of it and taking such measures as were necessary for the security and peace of the province under him. The *futai* also had power of life and death and jurisdiction of appeals in criminal cases and oversaw the conduct of civilians under him.

Next in rank to the *pu-ching sz,* treasurer, and *ngan-chah sz,* criminal judge, who always resided at the provincial capital, were the intendants of circuit who were located in the circuits consisting of two or three prefectures united for this

purpose. They were deputies of the two highest functionaries, whom they were appointed to assist and relieve in the discharge of their duties. Some were appointed to supervise the proceedings of the prefects and district magistrates, others stationed at important posts to protect them, and those connected with foreign trade at open ports had no territorial jurisdiction. Below these were the prefects or chief magistrates of departments called *chifu, chichau,* and *ting tungchi* according as they were placed over *fu, chau* or *ting* departments. These officers received their orders through the intendants, were responsible for their full execution and expected to know all that took place in their jurisdictions.

Departments were divided into *ting, chau* and *hien* having each their separate officers who reported to the head of the department over them. They were called *ting chi, chi-chau* and *chi-hien.*

The parts of districts called *sz* were placed under the control of *siun-kien,* circuit restrainers or hundreders who formed the last in the regular series of descending rank. The prefects sometimes had deputies directly under them, as the governor had his intendants, when the importance of their departments required it. Besides these there were many other deputies and assistants charged with particular duties in the collection of taxes, oversight of the police, care of water ways, etc. Besides the officers above mentioned there were a great number of clerks, registrars and secretaries connected with every officer of high rank and a multitude of petty subordinates, with some duties to perform, but largely kept to emphasize the importance of their superiors. All above the *chi-hien* were allowed private secretaries. The *ngan-chah-sz* had jailers under their control, as had also the more important prefects.

The *hioh-ching* or literary chancellor, in rank but not in power, stood next the governor. Under him were head teachers of different degrees of authority, residing in the chief towns of the departments and districts. These had some degree of supervision over the studies of students and the colleges in the chief towns. The chancellor had exclusive

authority to confer the lower literary degrees, and he made an annual circuit of the province for that purpose, holding examinations in the chief towns of each department to which all students residing within its limits could come.

The gabel or salt department was under the control of a special officer called a "commissioner for the transport of salt." Above these commissioners were eight directors of the salt monopoly, stationed at the depots in Chi-li and Shang-tung, who also performed other duties. The revenue department was unusually large, owing to the collection of so much in produce and merchandise. The transportation of grain along the Yangtsz River was under the control of a *tsung tuh,* who oversaw the disposal and directed the collection of it in eight of the provinces adjacent to the river. In each of twelve provinces there was a *liang-chu tao* or commissioner to collect grain and in the other six the duty was performed by the *pu-ching sz.* The supervision of the subordinates of this department rested with the prefects and district magistrates. The number of provincial officers of the different grades above referred to were given as follows:

8 Governors General or viceroys, six governing two provinces each.
15 Governors.
19 Commissioners of Finance.
18 Commissioners of Justice.
4 Directors of Salt Gabel.
9 Collectors.
13 Commissioners of Grain.
64 Intendants of Circuit.
182 Prefects.
68 Prefects of Inferior Departments.
18 Independent Subprefects.
180 Dependent Subprefects.
139 Deputy Subprefects.
141 District Magistrates of the Fifth Class.
1232 District Magistrates of the Seventh Class.[1]

[1] The Middle Kingdom.

The military section of the provincial government was under a *ti-tuh* or general who resided at a central post and in conjunction with the viceroy and governor directed the movement of troops. The native troops in each province were distinct from the Manchu and were divided somewhat after the plan of the ancient Roman legion, cohort, maniple and century, over each of which were appropriate officers. The governor, major general, and Banner commandant had commands independent of each other. Naval officers had the same names as those in the army and changes and promotions were made from one arm of the service to the other. The general officers had power to send special messengers invested with full powers to every part of their jurisdiction.

The Emperor sent commissioners, called *Kiu-chai,* to all parts of the empire, ostensibly on particular business, but required to take general observations of what was going on. In considering the extent of the jurisdiction and vast power reposed in these various officers, it must be borne in mind that each viceroy had under him more people than are to be found in any but the greatest countries of Europe, that he stood as the representative of the Emperor and of the supreme legislative, executive, and judicial power, and that he constantly exercised, in person and through his subordinates, more or less of all these functions. The Emperor, with his great army of assistants at Peking, watched over and directed not only the affairs of the eighteen home provinces, but also the outer dependencies. It is exceedingly difficult for one, accustomed only to study western governments and laws, to gain a clear conception of this vast governmental system, which owed none of its principles, forms or policies to the suggestion of other nations. The government like the people was indigenous and to be understood must be viewed in connection with its environments.

No officer was allowed to marry in the jurisdiction under him nor to own land in it, nor have a near relative holding office under him; and one was seldom continued in the same station for more than three years. Manchus and Chinese were mingled together and were expected to watch and mutually

check each other. Members of the imperial clan were required to attend the meetings of the boards at the capital and observe and report what they deemed amiss to the Emperor. A triennial catalogue of merits and demerits of all officials in the empire was made out by the Board of Civil Office and submitted to the Emperor. This catalogue was made up from reports, made by all provincial officers on the conduct of those under them, forwarded by the governors. The points were arranged under six heads, diligence, efficiency, superficiality, talents, superannuated and deceased. On this basis the officers were advanced or degraded. Officers were required to accuse themselves, when guilty of crime committed by either themselves or their subordinates, and request punishment. The names and standing of all officers were published quarterly by permission of the government in the Red Book, in four twelvemo volumes, and officers of the army and Bannermen in two others. This publication was begun about 1580 and gives the name, native province, race, title and salary of the officers. The record of most officials is one of ups and downs, very few being able to steadily advance. Except the preferences given to the imperial clan, Chinese officials came up from the great multitude. No matter how humble his birth, any subject was eligible to the highest office under the emperor. Theoretically education was the test of qualification. Practically the favor of the appointing power was of first importance and personal influence often outweighed merit.

The orders of the court were usually transmitted in manuscript. General proclamations were printed on yellow paper in the Manchu and Chinese languages with a border of dragons. Orders and regulations issued by governors and other principal officers to the people of the provinces were also published. Standing laws and local regulations were often carved on tablets of black marble and placed in the streets where all could read them. Commands of the government were usually printed in large characters and copies were posted at the doors of the offices and in public places in the streets, with the seal of the officer authenticating them. Important edicts were also often printed in pamphlet form.

Persons eligible to office were divided into nine literary ranks, the lowest including village magistrates, deputy treasurers, jailers, etc. Policemen, local interpreters, clerks and attendants were not regarded as of any rank and were mostly residents of the locality where employed. Titular rank was sold by the government, but this did not open the road to official position, though offices were purchased corruptly and instances occurred where offices were sold by the government. The principal advantage of the honorary title was that it saved the possessor from the bamboo, where others would suffer.

Besides the officials holding by appointment under the Emperor, there were village headmen, chosen by the people themselves, who had more or less important duties to perform according to circumstances. They decided petty disputes, supervised local police, regulated festivals, markets and streets, collected taxes, etc. They were under surveillance of their supervisors and an appeal lay from the headmen to the district magistrate. Meetings of the headmen of many villages to consult on matters of mutual interest were sometimes held and they held something of a check, as representatives of the people, on the oppressions and extortions of the higher officials and their menial dependents. The existence of clans, which is most marked in the southern provinces, is a source of much disorder and crime. There are about four hundred clans in the empire, many of which are scattered throughout different parts, thus in effect greatly multiplying the number. The clans are most active and turbulent in the southern provinces, especially Kwang tung and Fukien. By uniting to shield members guilty of crime, great difficulties are often interposed to the administration of justice. False witnesses and sometimes hired substitutes, confessing crime to shield the guilty, are produced and paid by the clan. In some places the clan becomes little more than a nest of bandits and even develops into the terrible *Kouan Kouen* of whom the Abb Huc says, "To give and receive wounds with composure; to kill others with the most perfect coolness and to have no fear for yourself, this is the sublime ideal of the

Kouan Kouen." In the cities the householders on each street are required to unite in policing the street and maintaining order, and for this purpose they select a headman who has supervision. The citizens also form voluntary guilds to further mutual interests, each having its assembly hall, where they assemble for about the same purposes as do European guilds. Popular assemblies are sometimes held on a more comprehensive scale and in Canton there is a building, called the Free Discussion Hall, where political matters are openly discussed and the gatherings often wield great influence. Secret societies, some of them ramifying throughout a large part of the empire, are numerous, though the policy of the government was to suppress them. City charters appear to have been a thing unknown and the people of cities were subject to substantially the same governmental system that prevailed throughout the empire. China is peculiarly free from class distinctions. There is no hereditary aristocracy corresponding to that of Europe, the clan of the Emperor and descendants of Confucius alone receiving substantial recognition.

Caste in the sense in which it exists in India is unknown. There are prejudices against members of certain aboriginal tribes in the interior and boat people on the coast. Aliens slaves, criminals, executioners, police runners, actors, jugglers, beggars, vagrants and vile persons, were not eligible for the literary examinations, nor their descendants until for three generations they had followed some useful employment. The democratic part of the system was in the village organization, which was thoroughly so. All citizens were electors and eligible to office. The village collectively was responsible for the taxes and the headmen, usually the elders, were generally of high character and worthy of the confidence reposed in them. These village organizations included considerable numbers of people, in some instances several thousands. In the election of headmen, the people divided by clans, rather than parties representing different principles, and most of the wrongs attributed to these local governments are chargeable to clan enmity.

Slavery exists in China, but only to a very limited degree as to males, the numbers of whom are so few as to be hardly appreciable. Women are sold, but usually for concubines. Polygamy is allowed, but not much practiced except by the rich. The chief fundamental defect in the organization of Chinese society unquestionably is the low estimation in which women are held and their oppression by the males. The wife is the slave of her husband, with whom she is not permitted to eat, or attend public worship. The birth of a son is followed by great rejoicing but the birth of a daughter is considered a calamity. The girl is the servant of her brothers as well as her parents, and until recent times in obedience to the merciless demands of fashion, was required at an early age, to endure the barbarous process of foot binding, by which she was rendered a cripple for life. This seems to have been even more the work of the women than of the men, the mothers like those of western lands prizing above all things the appearance which fashion demanded. The respect for parents and for age, so strongly inculcated in all the teachings, tends in some measure to alleviate the condition of women in the closing years of life. The fact, however, is abundantly established that the Chinese, as a nation, deny absolutely the equality of the sexes and remain blind to the blighting influence on society, and on each succeeding generation, which the degradation and ill treatment of mothers have. Though Chinese philosophers have perceived and taught the value of home instruction and of the mother's influence on her offspring, they have utterly failed to carry the lesson to its logical conclusion and enjoin such care, education and considerate treatment of the mother as will enable her to properly discharge these duties. Herein lies the greatest defect in the social system of the empire.

A general survey of the workings of the Chinese government will show that it drew far less from the people by taxation than any other great government, population considered, and the number of officials employed was very much less. The complaints of the people were not so much against regular taxation as the extortion of petty officials and hangers on

of the courts. It was the corruption and extortions of officials high and low that bore heavily on those who found need of resorting to governmental protection or were called on to answer for their doings.

China is the least military of all the great governments, except the United States of America. Its standing army includes less than one million men of whom very many are but nominal soldiers. This is less than one out of four hundred of its population. Any first class European power, Great Britain excepted, can muster a larger force than this of trained soldiers, though not all in actual service. Chinese soldiers are generally regarded with contempt by Europeans and while, as individuals, the Chinese frequently exhibit as much physical courage as Europeans, their character, habits and traditions are essentially unmilitary.

In its government we find that the primary structure was democratic in character, resembling the tribal organizations of primitive people, which usually accord some degree of distinction and respect to the elders. At the head of the vast official machine was the Emperor, theoretically the great patriarch of the whole, vested with full power, which he was expected to exercise as a father, according to established principles and customs and for the good of his immense family. The theory of the government did not admit of anything like a clear separation of it into legislative, executive and judicial departments, nevertheless these functions were in practice separately exercised to a considereble extent. The principles declared in the classical books require that the government be rather one of laws than of the arbitrary will of men, and the Book of Rites indicates the relations of the various grades of officials to each other and to the people. However arbitrarily they may have exercised their powers in practice, the army of officials who administered the government had no commission to rule according to their pleasure. Their powers and duties were well marked out and a well devised and constant system of surveillance and espionage to keep them to their duties was maintained.

China has long had its code of written laws termed the

penal code, though it relates to what are called civil cases with us as well as to criminal ones. An extended summary of this code as it existed a century ago, before western influences had been sufficient to produce any material effect on Chinese sentiments, will be found in the Appendix.

Steamboats, railroads, and telegraphs have reduced the distance between China and the west; other western inventions and scientific teachings have introduced new ideas into the ancient realm; battleships and great guns have demonstrated the destructive forces of the "foreign devils," and China can no longer be a world to itself. The new learning of the west has been acquired by many Chinese scholars, and books and periodicals of all kinds have disseminated it throughout the empire. Though Chinese statesmen and merchants came in contact with foreign people ever since the opening of trade between Europe and India and China but little effect on the multitude was produced until very recent times. Kwang-su, an infant, ascended the throne in January, 1875 with the dowager empresses Tsz'e Hsi and Tsz'e An as guardians. Tsz'e An died in 1881 and from that time till 1898 the sovereign power was wielded by Tsz'e Hsi. Kwang-su then assumed authority for a brief period but was deposed by the dowager who resumed authority. The war with Japan, the acquisition of the Philippine Islands by the United States, the construction of the Siberian railway by Russia, the boxer uprising in 1900 and the intervention of the foreign powers and the war between Japan and Russia, combined with increasing knowledge of western arts, inventions and ideas to produce a public sentiment among the educated classes in favor of sweeping reforms in governmental methods. In 1905 an Imperial Commission to study the administrative systems of other countries was appointed with a view to the possible establishment of representative government in China. This Commission visited Japan, America and Europe. On September 1, 1906 an edict for the future establishment of a parliamentary form of government at no fixed date was promulgated. August 27, 1908 a decree issued in the name of Kwang-su announced the convocation of a parliament in

the ninth year from that date. Reform of the educational system to include modern sciences as well as the Chinese classics began in 1902. Kwang-su died in November, 1908 and his death was followed by that of the dowager empress on the fifteenth of that month. Pu-Yi, the infant nephew of Kwang-su, succeeded to the throne. On October 14, 1909, Provincial Assemblies elected in the provinces met. In February, 1910 a decree approving schemes of the Commission for constitutional reforms with local representative governments in the prefectures and departments and reforms of the judiciary was promulgated. The appointment in May 1911 of an Executive Council composed of eight royal princes, four Manchus and only five Chinese, and the assertion by the regent that "the right to name officials belongs to the Emperor alone" and the manifestation of reactionary tendencies by the court, precipitated a revolution which resulted in the abdication of the little Pu-Yi and the dowager Empress on February 12, 1912 and the establishment of the Republic of China. While the change from the theory of an absolute paternal despotism to a republic seems so very great, China was not wholly unprepared for it. The indispensable prerequisite of a written language read and comprehended by a large part of the people, coupled with general education in the principles of government as declared in the classical books and long familiarity with local self-government in the villages and communities, and the meetings of the head men of a number of villages for consultation and concerted action had prepared the people in some measure for republican institutions.

Nothing is more common than to regard with contempt that which is not understood. Europeans and Americans generally look upon Chinese civilization as containing nothing worthy of adoption or even of serious consideration. The Chinese are now manifesting a willingness to learn from the western barbarians, whom they so long despised.

The prominent, glaring faults of the Chinese are their treatment of women, slavery, polygamy, binding the feet, torture to extort confessions of crime, and cruel punishments. These are so repugnant to Europeans that it is often assumed

that not great virtues can be associated with conduct so vicious.

Europe viewed from the standpoint of China, exhibits many comparatively petty states, constantly burdened with the support of great armies and often warring with each other, speaking different languages as do the inferior tribes within the Chinese empire. They are shocked at the disrespect exhibited toward parents in America, even more than in Europe; at the want of respect for one another indicated by the absence of ceremonious greetings, at the absurd fashions in clothing, the absurd burdens of woolens and linens in summer worn by the men, and the indecent and harmful exposure of their persons by the women at great functions in winter; at the multitudes of idle rich and idle poor found everywhere; at the injustice and bad policy of laws which fix the fines of rich and poor at the same sum of money; at the want of discrimination in punishments and the actual exemption of the nobility in Europe and the very rich in America from accountability for their conduct, and many other European and American peculiarities.

To the American or European who considers the Chinese Penal Code, probably the first matter that will challenge his attention is the want of a civil code. Europeans and Americans from the earliest historical times have classified their causes in court as civil and criminal, and this division is regarded as natural and indispensable. Is it really either natural or indispensable? The fundamental idea of the Chinese was that the Emperor occupied the relation of a father to all the people; that the duty rested on him to restrain all his multitude of children from doing wrong, and also to compel them to do right. How should this be done? As a father would enforce obedience and right conduct by his children. For petty offences and omissions of duty a mild whipping; for those more serious more strokes. When whipping appeared inadequate, banishment, and for the most heinous crimes, death. The Chinese deem punishment due to him who defrauds his neighbor as well as to him who steals from him; to him who unlawfully detains another's property as well as to him who stealthily takes it. To fail to pay a debt or per-

form a contract or duty is a misdeed to be corrected with the bamboo. Misdeeds are graded and classified in the Penal Code of China far more logically and naturally than in Europe or America. The turpitude of the misdeed depends on the value of the property of another which has been unlawfully taken, retained or misappropriated; the nature of the injury to the person; the intent of the wrongdoer, and the relationship of the parties. In Europe and America an arbitrary line is drawn between crimes and civil wrongs. Many frauds and misdeeds of the greatest magnitude are not classed as crimes, and some really meritorious acts are punished. Larceny and embezzlement, which, in the nature of things have many grades of moral turpitude, are ordinarily divided arbitrarily into two classes based on value or kind of property. The Chinese make a much more logical classification and punish petty pilfering with but a few blows, and larceny of a large sum with death. To steal food to satisfy hunger is but a slight fault, to deliberately take a large sum of money or property of great value from another exhibits moral turpitude and is punished accordingly. It is regarded as a much more serious offense for a son to strike his father or mother than a stranger. It is a less offense for a member of a family to appropriate a part of the property of another member of it to his use than to take from a stranger. In dealing with principals and accessories in crime, the one who plans and directs is regarded as the principal, whether he actually takes part in the perpetration of the offense or not. This also is more logical than the rules of the common law of England and the United States.

In the infliction of punishment regard is had to the ability of the culprit to endure it. Both the old and the young are treated more leniently than the strong mature men. Women are allowed special consideration in this particular and retain the upper garment while a man is required to strip. Where commutation is allowed in lieu of the bamboo, the amount of the payment depends on the ability of the culprit to pay, and the rich and powerful must pay ten times as much as the poor and humble. When it is considered that in the west the

rich nearly always escape, and when convicted and actually punished are treated with far more consideration than the poor, the superiority of the Chinese code in this particular appears very marked.

While the laws with reference to marriage and divorce do not commend themselves to the Western mind, in one particular the divorce law is superior to ours. It recognizes misconduct as a ground for a divorce, but it also recognizes good conduct as a defence. Clearly, good conduct should be weighed as well as bad. Western people are disposed to ridicule Chinese regulations with reference to mourning, yet these accord perfectly with the central idea of paternal authority on which both the governmental and domestic systems were based. Doubtless the profound respect for parents manifested by the Chinese is largely due to the law relating to mourning, which makes the loss of father or mother a calamity, not merely in and of itself, but also by reason of the legal consequences which follow. In the West the heir of a great estate is far too often forgetful of his loss and over conscious of his gain.

In no other country is industry and thrift so general, and nowhere else is there so small a percentage of idlers living on the industry of others. This also is due in some measure at least to the policy of the law. Speculators are not allowed to hold great tracts of land without use. The owner must make his land productive and the village authorities must see that he does so.

Acts of Parliament covering limited fields and the recognized methods of carrying on public affairs constitute the so-called British constitution. In China the classical books defined the relations of the people and their rulers, and the official system through which the people were governed, with its explicit rules and the elaborate penal code, constituted their constitution. It is true that they had not the theoretical separation of executive, legislative and judicial departments, but on the other hand they had a more complete system of changing officials from place to place and having each watch and report on the conduct of others than can be found in any other country.

Though classed as a despotism by Europeans, China had encouraged learning through many centuries, while European kings discouraged it. In theory education and merit were the sole means of gaining official station and of retaining it when once acquired. Knowledge of the laws was exacted of all officials. Those who wielded the powers of government were not above the law, but themselves liable to punishment for its violation. A Western judge is not liable to punishment for a wrong judgment but in China all the court officials as well as the judge were subject to punishment for disregarding the law.

Until very recent times the rulers of Europe refused to give information to their subjects of the doings at their courts. The Emperors of China have long made public their official acts, and through the Peking Gazette all might keep informed of the acts and orders of the government.

The people of China have from a very early day enjoyed, not only a large measure of liberty of individual action, but of association and combination as well. The Empire includes all varieties of climate, soil, and productions. Perpetual winter reigns on the peaks of the Thian Shan and Kuen Lun, while the most southern provinces extend into the tropics. The people have never relied on any other country for the necessaries or even luxuries of life. Foreign commerce has always been limited, yet the internal commerce of China is and long has been second to that of no country in the world. It has never been the policy of the rulers of China to interfere with the useful activities of the people, nor has the government for any long period attempted to supervise or direct them. Industry, thrift and the performance of obligations have been enjoined and enforced. The average Chinaman, whether at home or abroad, looks to China as the only really civilized country in the world, and the best place on Earth in which to live. Is it quite certain that he is altogether wrong?

It is easy to point out moral blemishes in the Chinese. It is equally easy to see them in Europeans and Americans. It is not easy to judge justly of the relative merits and demerits of the different people or of their institutions and laws.

China combined democratic local self-government under written laws with an autocratic central power acting through a most carefully devised arrangement of bureaus and departments designed to afford mutual checks on each other. Under this system one-fourth of all the people on the globe lived. They have known less of the horrors of war than any other equal number of people on Earth no matter how selected. They are subject to less annoying restrictions in the transaction of their daily business than the people of most states of Europe. The morality inculcated by their classical books and the Buddhist teachers is as pure and lofty as that found in the teachings followed by the people of the West.

As the study of a foreign language is one of the best means for learning ones mother tongue, so the study of the code of laws most dissimilar to that of our own country is an excellent method of finding out the defects and absurdities of the system to which the student is accustomed. The extreme dissimilarity of the institutions of China and those of Europe and America give especial value to the study of its ancient moral teachings, laws, customs and government.

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CHAPTER XI

Japan

So far as the history of Japan has come down to us it is the history of a single dynasty. No other country is now ruled by a family so long in power or to speak more accurately, theoretically in power. Starting with Jimmu Tenno, whose reign commenced about 660 B.C., the mikados have traced their descent from him and have been recognized as the sovereigns of the empire. That there were people on the island prior to his time and that many events of great historic interest transpired long before, does not admit of doubt, but, as the Japanese had no written records till the sixth century of our era, even the history of the early rulers is founded on tradition and starts with the supernatural and mythical. According to the legend, Ningo-no-Mikoto, grandson of the sun goddess Ameterasu-o-mi-Kami, settled in the south part of the island of Kiushiu. His son, Jimmu Tenno, proceeded northward and landed on the principal island from the Bay of Ozaka. Thence he advanced into the country, subduing the neighboring provinces, and established his residence near the town of Nara in the year 660 B.C. It is surmized that the Ainos, now found only in the extreme north of the empire, were the aborigines, and that Jimmu Tenno was the leader of a superior race, which invaded the country from the south. The character of the inhabitants of the island at the date of his advent must, however, remain a matter of conjecture rather than of established fact until some record not yet made public is discovered.

The fundamental theory of the government, promulgated and maintained through all the generations, is that of a ruler divinely descended and commissioned to govern the people according to his sovereign will. Jimmu Tenno is credited with introducing the culture of cereals, hemp, garlic and ginger.

His early successors would seem to have had exceptionally long reigns, as the tenth Mikado, Sujin Tenno, ruled from 97 to 30 B.C. This would allow more than an average of sixty years to each mikado. Though some progress was made in agriculture and the authority of the Mikado was so extended as to extort tribute from Corea in 32 B.C., a low state of civilization may be inferred from the existence of a custom by which on the death of the Mikado or one of his near relatives his servants were buried alive with him. A law prohibiting this custom was promulgated in the year A.D. 2. Such a custom implies the prevalence of the most unmitigated slavery and abject submission to despotic power. It is evident that the dominion of the early rulers did not extend over all the islands, for not until the reign of Kuko Tenno, A.D. 71 to 130, was the great Kuwanto subdued, and an invasion from Kiushiu caused the subjugation of that island, which, though the landing place of the father of the first Mikado, would seem never to have been subject to his immediate successors. Though Japanese writers seem to accept the accounts of the administrations of the early rulers as historic facts, there are so many elements of improbability connected with them that they hardly afford a safe basis for deductions. Little is known of the number of people on the islands or their condition prior to the introduction of letters. It seems reasonably certain however, that the early mikados ruled over a rather sparsely settled country, and that their dominions were confined to a portion only of the islands. Despotism of the most absolute character is the earliest form of government of which an account is preserved. Though the Japanese maintain that the abolition of the shogunate and the restoration of power to the Mikado but reinstate the reigning house in the authority which of right it always had, the actual power has in the course of centuries not merely passed into other hands, who have administered it for long periods, but the system of government and the organization of society have undergone radical changes. In studying these changes let us bear in mind that we are dealing with a people whose homogenity has continued without material change for more than 2,000 years.

There was not at any time after Jimmu an invading conqueror, nor is any account preserved of the influx of a servile race. The present population of the islands have descended from its early inhabitants with but slight and occasional intermixture of foreign blood, never enough to materially affect the great mass. Whence the early ideas of government were derived is unimportant. They were essentially despotic.

In 202 the Empress Jingu Kogo invaded Corea and placed it under tribute. This was followed by an embassy from China and the introduction into Japan of the teachings of Buddha and Confucius, and the language, literature and laws of the Chinese. It was several centuries however before this produced marked affect, for it is said that the introduction of Buddhism is generally regarded as dating from 522, and that the Japanese had no written language till that century. The king of Kudara in Corea sent the Mikado bonzes, statues of Buddha, prayer books and other religious paraphernalia. As he still adhered to the Shinto religion he asked for apothecaries, soothsayers and almanac makers instead, for which he exchanged munitions of war.

About the year 600 the Empress Suiko introduced into her court the manners of the Chinese, with whom at that time there was considerable intercourse. How great a change this effected cannot be definitely stated, but it did not materially alter the form or character of the government. During her reign the Buddhist religion gained adherents rapidly, and its influence tended to improve society and bring about peaceful conditions. The early practice of burying living slaves and wives with the bodies of their deceased lords seems to have continued, notwithstanding the early prohibition of it, until the reign of the thirtieth Mikado, when a strict injunction against it was issued.

In the time of the thirty-eighth emperor, the three chief offices of *Sa-Dai-Jin, U-Dai-Jin* and *Nai-Dai-Jin* were created. Tenji also established the office of *Dai-Jo-Dai-Jin* (great minister of the great government), and conferred it on his eldest son. His friend Nakatomi he made *Nai-Dai-Jin* and allowed him to adopt the family name of Fujiwara. This family

played a most important part in the rulership of the empire for several centuries. Prior to this time, except during periods of internal strife involving the succession, the government was administered directly by the Mikado. He led the armies of peasant soldiers, who disbanded and returned to their peaceful callings when war was over. On the introduction of Chinese customs a court nobility grew up around the mikado, which in time deprived him of all real authority. In the early centuries and down to the time of Tenji Tenno in the last half of the sixth century there were no considerable cities, and the Mikados shifted their residence though always within the Gakmai or home province.

Kuwammu Tenno, fiftieth Mikado, established his residence at Kioto, which remained the capitol of the empire till recent times. He caused many improvements to be made, and constructed canals and dams to regulate the water courses, built temples and palaces, established schools and encouraged the Buddhist teachers. The relation of the Fujiwara to the Mikado and the important special privileges they enjoyed afforded them the means of greatly increasing their power. The office of *Kuwambaku,* or regent, was made hereditary in the Fujiwaras, and from the daughters of the house the Mikados took their wives. With the advent of weak princes early in the ninth century the practice commenced of inducing or forcing the Mikado to abdicate in favor of an infant member of the family and thus permit a Fujiwara to rule as regent. This was carried to such an extreme that all real power was taken from the Mikados and exercised by the regents. The power of the Fujiwaras at court continued till the close of the eleventh century.

The growing influence and importance of the noble houses of the Taira and Minamoto were contemporaneous with increasing military tendencies. Members of these families were at the head of the armies, resisting invasions and suppressing insurrections. The Fujiwaras had ruled through court intrigues. The Taira and Minamoto hewed their way with the sword. With the beginning of the twelfth century feudalism rapidly developed. The power of the central despotism

had vanished, and the real force of government was wielded by lords who directed the arms of the Samurai in the provinces. So marked was the tendency to militarism that even the priests of that most peaceful of all religions, Buddhism, appeared at the capitol in arms to enforce their demands. The struggle for political supremacy, carried on by the rival houses of Taira and Minamoto, devastated the country for centuries and was more enduring than any known war for the succession to a throne. Theoretically the right of the Mikado to rule was always recognized. By the success of one or the other faction no right was established, no claim of sovereignty denied. The struggle was for actual dominion, to be exercised in the name of the Mikado, but in spite of his feeble will. The successes of the Minamoto and their allies under Yoritomo near the close of the twelfth century resulted in his taking the title and office of *Sei-i Shogun,* which from that time became hereditary in the Minamoto family, and its possessor wielded the real power of the government. Yoritomo established a council of state, who were distributed over the provinces to share as military officers the power of the civil governors. He systematized the feudal system and is called its founder. He made his headquarters at Kama Kura near the site of modern Yokohama, where he died in 1199. Yoritomo is credited with improving the administration by establishing a court of justice, levying a uniform tax and forbidding priests to be warriors. Though wielding the actual power, he always went through the form of obtaining the sanction of the Mikado.

On the death of Yoritomo his son Yoriiye succeeded as *Shogun,* but being weak and dissolute, he at once fell under the influence of his mother's family. At her instance a family council with her father, Hojo Tokimasa, at the head was formed. This council assumed the real power and administered the government in the name of the Shogun and Mikado, who were allowed to live in idleness and dissipation. The regency of the house of Hojo continued till 1334. The *shikken,* as the head of the house was styled, took care that the shogunate should never pass into strong hands but should

always be held by an infant or a weakling. Though the Hojos are given a hard name in history, under their rule the country was generally at peace and growing in prosperity. The intrigues and murders at court were perhaps of less consequence than the increased security of the common people, but this security could hardly have been of an exalted character under the growing power of the military class.

While incursions into Japan from Corea are recorded, none of them were in such force as to seriously threaten the independence of the empire. In 1275 the forces of the great Kublai Khan took possession of Tsushima and Iki and attempted to land in Kiushiu, but were driven off. Again in 1281 a far larger army was landed in Kuishiu, but the Japanese under Hojo Tokimmie met and routed them, and their fleet was destroyed by a typhoon. To one familiar with the struggle for supreme power in western nations it seems exceeding strange that through all the centuries care was always taken to preserve the succession and nominal rule of the Mikado, and that after the power of the Shogun was established the same system was followed in reference to his office. The overthrow of the Hojo in 1134 was followed by an attempt on the part of the Mikado, Go-Daigo, to resume the active exercise of power and by the Ashikaga to rule as Shogun. In order to accomplish this an attempt to depose the Mikado by a forced abdication in favor of the Ashikaga's choice was made and resulted in a long internal struggle, each side drawing to its support the retainers of its partisans. For fifty-six years there were two rival dynasties, one of the north and the other of the south. During the wars of this period the country was devastated, and the condition of the people rendered correspondingly miserable. Piracy developed on the coast, and Japanese corsairs ravaged the coasts of China and Corea. After the settlements of their differences by agreement of the rival claimants in 1392 the country enjoyed a brief respite, but the spirit of faction and the love of strife attending the increase of the local and personal power of the country nobility soon plunged the country into civil war again. The *samurai* followed the daimio to whom they were at-

tached, no matter what the nature of the quarrel. The condition of Japan seems to have been essentially the same as that of Europe during feudal times, when each local ruler fought his equals and murdered and pillaged the defenceless. The priests contributed nothing for the betterment of conditions, but by their intrigues and licentiousness aggravated the miseries of the times. Kioto cased to be a place of safety, and the old court nobility—the *Kugé*—were forced to find shelter in the castles of the *Daimios* in the provinces.

The Shogunate of the Ashikaga terminated in 1573, and a vacancy ensued until 1603, when Tokugawa Iyeyasu was invested with the office. The first European to reach Japan was the Portugese Mendez Pinto in 1542. He introduced firearms and the Christian religion. With the firearms they were greatly pleased, but the progress of Christianity was slow and followed by bitter persecution. The religion of the west cannot be said to have ever exercised a marked influence on Japanese society, and the wonderful awakening of recent times has been, not to the religion, but to the arts and civilization of the west.

After the conclusion at Sekigahara of the bloody wars which resulted in the elevation of Iyeyasu to the supreme power as Shogun, he proceeded to complete the system of feudal tenures and to parcel out the provinces among his supporters. He also took measures to eradicate Christianity. Under his administration the feudal system reached its height with the Shogun as its head, instead of the Mikado. His great success in attaining his two main objects, the perpetuation of the supreme power in his family and the peace of the country, is attested by the fact that his successors ruled substantially in peace for the ensuing 268 years.

In Japan, as in feudal Europe, the real power of the nobility was based on military organization and a theory of title to land. Without attempting any radical change of theory, Iyeyasu moulded the system to secure his own power. There were thirty-six leading families besides his own who took the name of *Matsudaira* and ninety of the *Kokushiu*, smaller landlords, whose revenue ranged from 10,000 to

100,000 *koku* of rice per year. These families held theoretically as feudatories under the Mikado, but actually in their own right. To secure his own power Iyeyasu seized the lands of his enemies by force and parcelled them out among his own retainers. The system of sub-infeudation under the great *daimios* prevailed in Japan as well as in Europe. A peculiarity of the Japanese system was that the estate of a *daimio* could neither be enlarged or diminished in any way without the express consent of the Shogun. Iyeyasu's retainers, called *hatamotos* or flag-supporters, ranked below the *daimios,* and had each a small train of from three to thirty retainers. They numbered about 80,000 in the empire and constituted the military basis of his power by which he held the Mikado practically as a captive, though nominally his sovereign. Below these were the private soldiers, also belonging to the *Samurai* or military class and under the command of the Shogun. Iyeyasu observed the policy of separating the great *daimios,* who had been or were suspected of being hostile to him, by assigning them disconnected tracts of land between which he placed his own tried vassals. The *Daimios* and *Samurai,* like the feudal lords of Europe, despised work and all who labored. Many of them were dissolute and given to brawling and robbery.

The head of the family held not only the title to the land but had full power over all its members. The wife belonged to the family of her husband. The practice of adoption was common, when there was danger of a failure of male heirs to fill the military tenancy, in which case the land would escheat to the lord. As in Europe the lords allowed the tillers of the soil only a meager subsistence. The idle, criminal soldiery took the lion's share and gave no return for it. The essential elements of the governmental system were ownership and hereditary tenure of the land enforced by military organization. In Iyeyasu's time the Mikado was unable to direct the military force and therefore shorn of actual power, though always recognized as the rightful ruler and the source of all titles of honor, which men prized as highly in Japan as anywhere in Europe. The rule of the Tokugawa from the time

of Iyeyasu to 1854 was distinguished by a settled policy of isolation from the outside world and military rulership at home. The feudal lords with the *Shogun* at their head and the *Samurai* at their command maintained peace at home, while population multiplied. The intercourse with the Dutch, the only European nation favored with a commercial treaty, was carried on under the most humiliating restrictions and confined to the places designated by the government. Intercourse with China seems to have been more favored. Though the military class was strongly fortified in the possession of all the advantages of the Japanese system, the agitation which resulted in the wonderful modern awakening to new ideas came from the scholars and thinkers among the nobility and *Samurai.* The extreme poverty and ignorance of the *Hinin*—common people—afforded them no opportunity for education, interchange of thought, or combination. The nobility and *Samurai* during the centuries of peace became more students than warriors, and their researches into the early history and religion of the country resulted in the rapid development of a sentiment in favor of the abolition of the shogunate and a return to the ancient form of government with the Mikado as the real head.

The advent of admiral Perry with a demand for a treaty of commerce with the United States in 1854 resulted in opening new ports for trade by the *Shogun.* This was quickly followed by treaties with other governments. The opponents of the *Bakufu,* or *Shogun* government, violently opposed the new treaties and used this action of the government as an argument in favor of the overthrow of the power of the Shogun and restoration of the Mikado to his ancient authority. Though apparently reactionary in these teachings and purposes, they have been real leaders in the wonderful awakening which has followed. Not only has the Mikado been restored to his ancient authority, but he has been far more active in promoting intercourse with the outside world and causing the youth of Japan to be instructed in the learning of the west than the *Bakufu* had been. As a result of the destruction of the power of the *Shogun* the whole system of

which he was a representative, and which held such complete dominion for two centuries and a half, has been swept away and a reconstruction of the social system has followed. The power of the great *Daimios,* amounting almost to sovereignty in their provinces, has been completely broken, and the military order has been abolished. At the time of this revolution the whole population numbered about 34,000,000, of whom about 2,000,000 belonged to the *Samurai.* At the head of the nobility stood the *Shogun* with a large army of retainers and great estates. Next came the *Daimios,* great landowners, with their military feudatories. Of *Daimios* in 1862 there were 255, classified as follows, three *Sanke,* descended from the three youngest sons of Iyeyasu, on whom he conferred great fiefs. Next thirty-six *Kokushiu* then seventy-five *Tozama* and lastly 141 *Fudai.* These were ranked according to their revenues measured in *Koku* of rice, a measure equal to a trifle less than five bushels. The revenues of the different *Daimios* ranged from not less than 10,000 to more than 1,000,000 *Koku* of rice. Next came the *Hatamoto,* immediate vassals of the Shogun, with incomes ranging from 500 to 9,999 *Koku,* having from three to thirty vassals each and filling many offices of state. They numbered about 80,000 families. Then the *Gokenin.* The *Samurai* were exempt from taxes and privileged to wear swords. The common people were divided into *Hiakusho,* peasants, *Shokonin*—handcrafts men—and *Akindo*—shopkeepers. Outside and still below these were the *Etas* (unclean) and *Hinin*—paupers. The above classification does not include the Mikado and the *Kugé,* or old court nobility, higher in rank but wanting in actual power and revenue. Of the *Kugé* 155 families were recognized. Though regarded as superior in rank even to the *Shogun,* under the feudal system they lost both their incomes and estates, and at the time of the revolution many of them were abjectly poor.

After the fall of the Shogunate the *Daimios,* partly of their own accord and partly on compulsion, surrendered their authority to the Mikado. They were mostly retained as governors for a brief period, but the old provinces were soon

broken up and divided into *Ken,* governmental districts. On giving up their possessions the *Daimios* and *Samurai* were to receive one-tenth the revenue, and were relieved of the support of their *Samurai* and *Yashiki* with which they had before been burdened. The *Samurai* were first excused from wearing swords and afterward forbidden to wear them. Their incomes were greatly reduced and they suffered most of any class from the change. Society then became divided and classified as follows:

1. The Mikado.
2. The imperial family.
3. The *Kuwa Zoku*—the nobility including both former *Kugé* and *Daimios.*
4. *Shikoku,* respectable families, old *Samurai.*
5. Common people.

The government after the restoration was in its principles essentially the ancient one, with the power theoretically in the Mikado but actually exercised of necessity through the instrumentality of ministers and bureaus. The great council of state consisted of three ministers, at whose sitting the Mikado presided, and this was the supreme legislative and administrative authority.

Ten departments of government were established, over each of which a minister presided, namely, Foreign Affairs, Interior, Finance, War, Marine, Education, Worship (afterward abolished), Public Works, Justice and Imperial Household. The country was divided into three *Fu*—chief towns—seventy-two *Ken*—districts—A *Han*—the Riukiu Islands—and the colony of Yezo. Over each *Ken* there is a governor.

The restoration of the Mikado was soon followed by a demand for popular representation in the government and a constitution limiting the powers of the various departments. In 1878 provision was made for local assemblies in the provinces. The qualifications for electors were that they should be males of the age of twenty years and pay a land tax of five dollars—voting to be by ballot. These assemblies proved so satisfactory that on February 11, 1889 the Mikado promul-

gated a constitution to take effect the following year on the convening of the Diet for which it provided.

The most important provisions of the constitution are as follows:

"The Empire of Japan shall be reigned over and governed by a line of Emperors unbroken for ages eternal."

The succession shall be to imperial male descendants according to the imperial house law.

The emperor exercises legislative power with the concurrence of the Imperial Diet, which he convenes and dissolves. In cases of urgency, when the Diet is not in session, Imperial ordinances may be promulgated to have effect until the next session of the Diet.

The emperor determines the organization of the administration, appoints and removes civil and military officers and fixes their salaries. He commands the army and navy, declares war, makes peace and concludes treaties. He confers titles, ranks and marks of honor, grants pardons and commutes punishments.

The second chapter provides that the conditions necessary for being a Japanese subject shall be determined by law, that subjects may be appointed to civil and military offices equally, are amenable to service in the army and navy, are at liberty to change their abode within legal limits, shall not be arrested, detained, tried or punished unless according to law by judges determined by law, that houses shall not be entered or searched without consent except in cases provided by law, that the rights of property of Japanese subjects shall be inviolate and that within limits not prejudicial to peace and order they shall enjoy freedom of religious belief, that within limits of law they shall enjoy freedom of speech, press and public meetings. All these provisions apply to the army and navy, except as modified by the laws and rules governing them.

The Imperial Diet established by the constitution consists of an upper and lower house. The House of Peers is composed of members of the Imperial family, of the orders of nobility and persons nominated thereto by the emperor. The House of Representatives is composed of members elected by the

people according to law. Every law requires the consent of the Imperial Diet.

Proposed laws may be initiated by the Emperor or either house. The Diet shall be convened every year and sessions shall last three months, but may be prolonged by Imperial order, and may be convoked in extra session by Imperial order. Sessions of both houses shall begin and end together. When the House is dissolved the peers must be prorogued. After dissolution of the House of Representatives a new House must be convoked within five months. No debate or vote can be had in either house unless one third of all the members are present, and a majority decides. Deliberations must be public, unless secret sessions are demanded by the Government. Each house may enact rules for its government, and members shall not be held to answer elsewhere for expressions or votes given in the House. During a session members are privileged from arrest, except for flagrant offenses, unless with the consent of the House.

The Ministers of State and Delegates of the Government may at any time take seats and speak in either house. Ministers of State shall give their advice to the Emperor and be responsible for it. All laws and ordinances require the counter-signature of a Minister of State.

A Privy council, whose powers are not defined, is recognized, to deliberate with the Emperor on important matters of State. "The Judicature shall be exercised by the courts of law according to law in the name of the Emperor. The organization of the courts of law shall be determined by law."

Judges shall be appointed from qualified persons and hold office during good behavior. Trials shall be public unless exceptional circumstances demand secrecy. New taxes or changes in old ones can only be made by law, and national loans must have the consent of the Diet.

Projects for amending the constitution may be submitted by Imperial Order, but must have two thirds of the members present and receive the vote of two-thirds of those present. The Diet cannot modify the Imperial House law, the constitution cannot be modified by the Imperial House law, and no modification of either can be introduced during a Regency.

The changes in the form of the government afford some indication of the real progress made by the Japanese people in the last half century. It is unique. A nation which had lived in what may, as compared with the lot of other nations, be fairly designated as profound peace for two hundred and fifty years, suddenly became thoroughly dissatisfied with its internal system and external relations. The tottering *Shogun* government opened the ports to foreigners. Its enemies took advantage of the prevailing prejudice against foreigners and Christians to overthrow the *Shogun*. This accomplished and the Mikado restored, not only were the old treaties ratified, but new and more liberal ones were made. The whole military class was destroyed, as a class, yet following that destruction the military spirit has been aroused, and marvelous advancement in the organization of army and navy followed, civil wars accompanying the change were quickly terminated, and whatever the impulse prompting the action of either party, the result is a determined effort to produce a better form of government and improved social and economic conditions.

No people on earth have manifested such a willingness to learn and profit from the instruction of foreign people as the Japanese during the last fifty years. Not only have they established numerous schools throughout the empire, in which foreign as well as native teachers are employed, but many of the flower of Japanese youths have been educated in the leading universities of Europe and America. Nor has the purpose been merely to gain knowledge beneficial to the government or the ruling class, but on the contrary everything useful to the pepole as well as tending to the strength and standing of the nation has been eagerly sought after. The recent wars with China and Russia clearly demonstrate the marked progress made in the art of war, while the arts of peace have been cultivated with avidity, and national pride and military spirit have become correspondingly active. The progress has been strictly Japanese. It has not been induced by any influx of a dominating superior race nor by any foreign directing hand. The people of Japan, living under a form of government which in theory was an extreme representative of despotism,

have reached out after wisdom wherever they could find it, have taken home the lessons they have learned and assimilated foreign ideas to Japanese conditions with marvelous rapidity. Under an absolute despotism the spirit of progress has developed with such strength as to rule the rulers.

The labors of progressive Japanese have been recognized and their counsel followed more readily than those of reformers in republican America. Of all the nations of the earth the Japanese have in the last half century been the most progressive, yet the multitude of common people are still extremely poor, and the problems confronting the government and people are now no less complicated and perplexing than heretofore. The basis of this progress it must be clearly apparent did not lie in the genius of their government. Nor can it be attributed to the effect of the teachings of Christians, for in no country has less progress been made. Indeed one of the forms of agitation preceding the new development was for a restoration of the ancient religion, Kami worship or Shintoism. Much of the learning and customs of the Japanese was borrowed from China. The teachings of Confucius had long been studied, and the form of government and organization of society were moulded to a great extent by them. Buddhism had many followers. The constant inculcation in the minds of the children of the duty of obedience to parents till their death and of worshipful submission to the paternal authority of the Emperor, which furnished the foundation of Chinese civilization, seems to have developed happier domestic conditions in the islands than on the continent. Notwithstanding the effort to return to the ancient religion and the ancient form of government, rapid changes followed, resulting in the admission of light on all questions, the emergence of the Mikado from that seclusion in which he had been regarded more as an object of religious veneration than a ruler to be obeyed, to be seen, known, advised and consulted with by his subjects, and in breaking down the barriers which excluded Christianity.

Though there were some violent dissensions in the early years of constitutional government in Japan the trend toward

settled conditions of order has been continuous. During the first twelve sessions of the diet, extending over a period of eight years, there were twelve dissolutions, but during the next thirteen sessions, extending over a period of eleven years there were but two. During the first eight years there were six changes of cabinets; while during the next eleven years there were but five.

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CHAPTER XII

Turkey

The Turkish race, that now dominates the country which was the seat of the early germs of western civilization, made its first appearance, so far as is known to history, in central Asia, where Chinese accounts locate it about 180 B.C. In the time of Justinian the Turks established a large empire with their chief seat in the vicinity of the Altai Mountains. The mode of life of the people was mainly nomadic, and the dominion established was not enduring. In course of time the tribes became scattered, and under pressure from Mongol enemies early in the thirteenth century one of them passed through Persia into Armenia. Having aided the Seljuk emperor in a battle with the Mongols, it was allowed to settle on the Byzantine frontier. On the fall of the Seljuk Empire Osman, chief of this particular tribe, succeeded in extending his power over kindred tribes scattered throughout Asia Minor, and in 1301 began to coin money and to have the public prayers read in his name as monarch. From his accession to power the modern Turkish empire dates. Like most founders of despotisms he was a man of capacity and morals superior to most of his contemporaries, and devoted his energies with singular disinterestedness to the establishment of order and justice, as well as to military operations against his enemies. He combined with the religious zeal of the devout Moslem and its characteristic military spirit great generosity and love of justice. He was devoid of avarice, and on his death his wealth was found to include only two or three suits of clothes, a few weapons, some horses and a flock of sheep. His administration of justice was so far superior to that of the Greek emperor that the subjects of the latter went to him for protection. For a century the Ottoman Empire was vigorously administered and its boundaries extended by the descend-

ants of Osman, till the reign of Bayazid I, when the Tartar hosts under Timur overran the empire, annihilated Bayazid's army and took him prisoner in 1403. Timur withdrew and Muhamed, son of Bayazid, who died in captivity, restored the empire. In 1453 Muhamed II besieged and took Constantinople and put an end to the Roman Empire of the east, which had dwindled to a mere shadow. In 1481 a Turkish army crossed the Adriatic into Italy and stormed Otranto, which however they were not able to hold. Under his successor, Bayazid II, the Turks won their first great naval victory off Sapienza over the Venetians. The empire continued to grow until the reign of Suleyman I, under whom it reached its greatest extent and power, but also met with the best organized and most determined resistance. From Constantinople the Sultan ruled in Europe almost to the gates of Vienna; in Asia beyond the Tigris, and in Africa from Egypt to Algiers.

Starting with Osman in 1301 and continuing till the death of Suleyman in 1566 the Turks had a succession of remarkably vigorous and successful rulers. The degeneration and decay, which usually manifests itself so quickly in the progeny of absolute monarchs, did not appear, but Suleyman is given the character of one of the best and most accomplished rulers of his age, and for forty-six years his vast dominions felt the vigor of his untiring energy. Although his reign was sullied by his execution of his brother-in-law, whom he had made grand vizier, and by other arbitrary executions, and by great barbarities committed by his army during the siege of Vienna, such things were characteristic of that age. The Turkish Empire then included all the principal seats except Rome of that ancient civilization which we have inherited. Chaldea, Babylon, Nineveh, Egypt, Phoenicia, Greece, Carthage, Palestine, Constantinople all Asia Minor and most of the Greek islands were subject or tributary to the Sultan. The ruler was descended from a barbarous tribe of central Asia through the male line, intermixed with more polished races through the females. He ruled entirely in accordance with the theory of government established by Mohammed and the Caliphs. He

was absolute in the sense that his orders must be obeyed, and that he could not be called to account for any act by any constitutional authority. The Sultans have in fact at all times exercised arbitrary power, and have put to death without trial such persons as they chose, when they could find instruments to execute their will. In the administration of the government, however, the theory is not arbitrary power but divine law as declared in the Koran. All questions in courts of justice are to be determined by the law declared by the Prophet, when such can be found, and in cases where the Koran furnishes no rule, the precedents established by the Prophet and the early Caliphs are of great authority.

The feudal system, which was already declining in western Europe in the time of Osman, never gained much hold in the territory included in the Turkish empire. As a result of the Crusades it was established and maintained at Jerusalem during the dominion of the Franks, but expired after they were driven out. The spirit of the Koran, following that of the new testament in this respect, is one of equality, and no order of nobility existed in the empire. Equality however referred only to free males. Slavery was recognized, and women were regarded as inferiors. Polygamy has always been allowed, but in fact is only practiced by a very small number of the people. The teachings of the Koran constantly magnify the value of the future life and the future joys of the true believers who are saved and the frightful torments of the damned. The heaven offered is a sensual one, fitted to the low instincts of the Arabs of his time. Mohammed taught his followers to despise the things of this world, and while he made comparatively little effort to perfect a governmental system, what he did in that line was enjoined as a religious duty and became at once binding as a civil and religious duty. Herein lies a marked contrast between the teachings of Jesus and those of Mohammed. Jesus announced the moral law and the necessity for its observance in order to gain future happiness, but made no attempt to promulgate a code of civil law. Throughout the whole history of the Turkish empire the religious influence has been of prime importance in mould-

ing public sentiment and private character. At the time of Suleyman's reign Turkey was at least one of the most advanced nations in agriculture, manufactures, internal commerce and in its schools and administration of the laws. Its theory of government and code of laws were however unprogressive, and while the government of today may not be distinctly worse than that under Suleyman, it appears to be so by comparison with the Christian nations.

From the reign of Suleyman the fortunes of the Turks began to wane. His son and successor Selim II was a weak debauchee, the first of the line who shrank from the dangers of war and preferred the pleasures of the palace. Murad III who succeeded him had all the vices and weaknesses of his father, and the administration fell into the hands of corrupt favorites. The Janissaries, to whom as the first regular standing army of Europe was due much of the credit of the victories under preceding reigns, manifested a disposition similar to that of the old Praetorian guard of the Romans. They mutinied on several occasions and compelled compliance with their demands. Here followed a succession of weaklings and in 1622 Osman, who sought to free himself from the Janissaries, was deposed and soon after murdered by his vizier whom he had deposed.

Murad IV, who ascended the throne in 1623, had the old time vigor of the Osmanlis. He caused the leaders of the mutinous Janissaries to be beheaded, and proceeded to purge the administration of its corrupt elements by causing all such as he deemed necessary to be put to death. He was a reformer, who carried out his reforms by the methods of the despot. His successor Ibrahim again exhibited the weakness and folly of a princely debauchee. After his time there were examples of vigorous administration by able grand viziers, but the Sultans were generally weak. Mahumed II—1808-1839—exhibited more vigor and in 1828 destroyed the rebellious Janissaries, who had so often disturbed the peace of the capital and dictated terms to the Sultan and his ministers. With the growth of the power of Russia that of Turkey has correspondingly waned. The evils of its despotic system and

the blighting influence of its narrow fanaticism have prevented that development and progress which has been so general in Europe, and instead of its position as the first power in the time of Suleyman, it is now looked upon as one of the weakest and worst governed nations of Europe. Nevertheless modern ideas are permeating the empire. In 1876 a liberal constitution was promulgated, but not given effect. On July 24, 1908, after a bloodless revolution the constitution of 1876 was restored. Turkey's European possessions have been repeatedly curtailed and in 1912 Italy had forcibly taken a part of her African possessions, and the allied Balkan states and Greece have waged successful war and inflicted crushing defeats on her, further curtailing her hold on Europe.

Prior to the revolution of 1908 the governmental system of Turkey was a theocratic despotism, hereditary in the family of Osman. The Sultan is still the spiritual head of the Moslem world, but under the new constitution his temporal power is that of a constitutional monarch. A ministry responsible to the Turkish parliament, instead of to the Sultan, has been established. The grand vizier, named by the Sultan, presides over the council of ministers, which is made up of the Sheik-ul Islam and the ministers of home and foreign affairs, war, finance, marine, commerce and public works, justice, public instruction, *evkof,* grand master of ordnance and president of the council of state. The Sheik-ul Islam is the head of the Ulema and representative of the Moslem Hierarchy, being nominated by the Sultan with the approval of the Ulema, the general body of doctors of Mohammedan law. The importance of the religious establishment is disclosed by the vast possessions of the mosques and the fact that all the Moslem schools are connected with the mosques, and the government through the minister of public instruction and board of censors exercises a censorship over all the books used and branches taught in the schools. This censorship has at times also been extended to the Christian schools in Armenia and elsewhere, and the use of books inculcating doctrines deemed dangerous has been suppressed. The minister of *evkof* is at the head of the department having charge of

property held by the mosques either for religious uses or in trust in whole or in part for uses declared by the donors. It is estimated that between one-third and one-half of all the property in the empire is held by the mosques. The administration of the mosque revenues and the execution of the various trusts on which much of the property is held render the department of *evkof* one of the most important of the government. For administrative purposes the empire is divided into *vilayets* (provinces), over which a *vali* (governor), is appointed. These are divided into *sanjaks* or *mutessariks,* which are subdivided into *kazas,* which are again subdivided into *nahies.* The chief officers under the *valis* are styled respectively *mutessarifliks, kaimakams* and *mudirs.* The *valis* and *mutessarifs* bear the title of *pasha,* and all but the *mudirs* are appointed from Constantinople. These are named by the *valis.* All these officers exercise both judicial and executive functions and, except the *mudirs,* are mostly chosen from a place other than that where they rule. Each of them has a council, composed of members of the different communities, with whom he advises as to matters of detail. The character of the local administration is directly dependent on the character and capacity of the *vali,* who is a local autocrat. The collection of the revenue is farmed out to the highest bidder, a system always productive of oppression and dishonesty. The authority of the different officials is without definite limitations and naturally is irregularly and oppressively exercised. No efficient system of checking the accounts of officials who handle the public revenue exists, and the Turkish officials are generally rated as corrupt and avaricious. The Moslem population is of course wholly subject to the official system above outlined, but foreigners settled in the country are by treaty stipulations exempted from the jurisdiction of the local courts, and cases between themselves are heard before the consuls of their respective governments. Cases between a Turk and a forigner are heard before a mixed court. Before the revolution military service was compulsory only on Moslems. It is now compulsory on all Ottomans. There are many schools maintained in the Christian communities of the Greeks, Ar-

menians and Syrians, some of which afford a good range of studies when not restricted by the censorship, which the fanatical Moslems at times exercise.

Under the early caliphs the schools were not merely for the purpose of propagating a knowledge of the Koran, but there was an unrestrained desire for improvement in the knowledge and use of language and of the sciences. Much was borrowed from Greeks and Romans, and while the superiority of the Koran over all other theological teachings was maintained, the search after truth outside its covers was stimulated rather than suppressed, but from the tenth century the orthodox Sunnites, who still maintain their ascendency in Turkey, have most successfully inculcated profound reverence for the established faith and stifled all tendencies to freedom of thought and original investigation. The principal school of Turkey is the University of Constantinople. Most of the students are said to come from the poorer classes, and enter this school after having received primary instruction in the local schools sufficient to enable them to read, write, count, and repeat the Koran. They are first taught classical Arabic grammar and then the dogmas of Islam. The Koran, traditions of the Prophet and the Sunna are expounded by the teachers, and the pupil is given some instruction in the principles of government as administered in the courts. On conclusion of his course the scholar goes out with his certificate to find a place as a teacher, preacher, *cadi* or *mufti* or in some other governmental post. The great corporation of the *Ulema,* of which he has become a part, is usually able to find him a place without difficulty, for there are not nearly enough graduates to fill all the positions. The purely religious offices of *imam* or *khatib* are not given exclusively to students and do not confer a place in the hierarchy or special social status, but the *cadi,* local judge, receives his appointment from the government and is a person of importance. In every place of any importance there is at least one *cadi,* who tries and decides all causes. From his decision an appeal lies to the *mufti,* who reviews the questions of law only. These officers are to some extent independent of the central authority, and the spirit of

religious zeal and common interest, added to the great local influence gained by them by reason of their superior learning and judicial functions, renders the *Ulema* a power which no Sultan has ever been able to ignore. It was a powerful factor in the revolution of 1908.

CHAPTER XIII

Greece

We know the Greeks better than any other ancient people besides the Hebrews, mainly because more of their literature and of the records of their doings have come down to us than from any other. Their language was the vehicle through which we received the new testament, and their culture has been preserved and transmitted to us in many ways. Though few in numbers at all times and operating in a limited field, their intellectual activities were such that their works are still worthy of close study and full of instruction. In governments and laws they furnish experiments on a small scale of many schemes of social organization. Unlike their oriental neighbors, they adhered to no beaten path but were full of originality and invention. No religious creed enjoined loyalty to a particular form of government or imposed its laws on them. No ruler, prior to Alexander, was able to establish his authority over all.

Though much of tradition and more of fable concerning the early inhabitants of Greece have come down to us, it is sufficient for our purpose to know that in the earliest times, concerning which we have any light, there were movements of people from northern Asia Minor into Greece and that Phoenician traders settled on the coast. While Homer writes of kings, and the Greek traditions name early kingdoms, the extent of each was so small that the name seems illy fitted. The characteristics of the early organizations are analogous to those of tribes rather than states. The king was a chief, whose authority was fixed partly by custom and partly by personal capacity to lead.

The most marked peculiarity of the development of the early Greek societies was the tendency to segregation and to build cities. Not only in Greece proper but throughout the

Greek islands, the coast settlements in Asia Minor and on the continent of Europe, each settlement developed its city of more or less size, with so much adjacent land as was necessary for its support, and maintained its petty government, independent of every other city or state. Though the form of government was in the earliest times usually monarchical, most of the petty kings were content to rule over single cities and rarely attempted conquests beyond the lands used by their people. The desire to hold other cities by force seems to have been almost unknown, though there were instances of the exaction of tribute. The island of Crete may be mentioned as an exception. The authority of Minos and other of its kings is said to have extended over the whole island, and the romantic tale of Theseus relates that Athens was forced to pay tribute to Minos until Theseus liberated it. How much of history and how much of fable is contained in accounts of these persons it is impossible to determine.

In the early Greek communities the king consulted the elders in matters of public interest, and matters of first importance were submitted to and decided by a popular assembly. Polygamy was not allowed, but slavery existed from the earliest times till the subjugation by the Romans. As our accounts of the first Greeks come through themselves, it necessarily follows that the record starts with a people considerably advanced in knowledge and the arts. That much of their culture was borrowed is conceded, and credit is given the Phoenicians for their alphabet.

Sparta

The most peculiar and enduring government was that developed at Sparta. The early Dorian settlements in the middle valley of the Eurotas in Laconia, forming a cluster of villages, developed into the Spartan state. When these settlements were first made and just what comprised the kingdom of Agamemnon, whose fame may rest far more on the vivid imagination of Homer than on historic facts, is unknown. The historic period is generally regarded as dating from the time of Lycurgus, about 900 B.C. The elements

making up the Spartan state were, 1, The Citizens, who were Dorians, 2, The Perioeci, who dwelt about the city in Laconia and were landholders, but given no voice in the government, and 3, The Helots, who were serfs of the state, bound to the soil and compelled to till it for the Spartan owners, to whom they were forced to yield a large share of the entire produce. These were allowed to have families, could not be sold out of the country and fought in the wars.

At the head of the state, though with little real power, were two hereditary kings, who commanded the armies in war. The council of elders (*gerousia* or senate), was made up of twenty-eight members, elected by the people from amongst the citizens over sixty years of age, who then held for life, and the two kings, making in all thirty. The senate formulated public measures and submitted them to the general assembly of the people for approval or rejection. It was also the great court of justice. The institution of the Ephors is said to have been established after the time of Lycurgus. They were five in number, elected annually by the people, and had authority to call all public officers, even the kings, to an account. It was they who had power to make war or peace, and in time they came to be the chief power in the state. The main design of the people was to restrain the power of the kings through the *Ephors.*

The central idea of all the Spartan institutions was military. A Spartan citizen had nothing to do with any trade or industrial occupation. The Perioeci and Helots performed all the labor of the state. The Spartan was raised a soldier, and from childhood subjected to exercises and training calculated to develop physical strength and endurance as well as courage and military discipline. Girls, who were to be the mothers of soldiers, were trained similarly and exercised in running, wrestling, boxing and throwing quoits and darts. The military spirit was inculcated in the females, and they became the censors of the actions of the soldiers. There was great freedom of association of males and females among the young, and nowhere else among Greeks were women treated with such high respect.

A peculiar feature of Spartan life was the public mess, to which all contributed and which all were bound to attend, not excepting the kings. The members were distributed to tables in parties of fifteen, selected by ballot. The fare was plain and partaken of by all alike. Especial attention was paid to the organization of the army as well as to the development of the individual soldiers. The sole aim of Spartan policy being to develop its military power, the moral tone was necessarily low. At birth the boys were inspected by the elders of their tribe and, if found deformed or puny, were exposed so that they perished. The strong and sound were regarded, not as subject to the guidance of their parents, but of the state. They were early accustomed to hardships of every kind for the purpose not merely of giving them strength and endurance, but also courage and self-reliance. At the age of seven they were assigned to classes and subjected to constant and severe discipline. Education did not lead to literature, art or any useful calling, but to war alone. It is most remarkable that, with no application to any useful labor, the Spartans through so many years should have maintained their physical vigor. Athletic exercises were doubtless very beneficial in the main, but the violent strains to which youths were subjected often resulted in crippling or even killing them. They were also subjected to cruel beating as a religious rite, often resulting in death. This was said to be for the purpose of inuring them to pain. In war the duty of the soldier was to conquer or die. No circumstances whatever were recognized as allowing surrender or retreat, and one who escaped from a lost battle was disgraced and treated by the whole community, men, women and children as infamous forever after. While the Helots and Perioeci tilled the soil, tended the flocks and performed all useful labor, the ruling class were always dwelling in a military camp under strict and constant discipline. Some attention was paid to oratory and the use of language, brevity and point being the excellences mainly sought. As the lands were parcelled out among the people, and no one was allowed to engage in any business by which wealth could be accumulated, there was of necessity a

remarkable equality of condition, though the kings were allowed much larger possessions than the rest. The Spartans extended their power in the Peloponnesus at an early time, but did not follow a policy of conquest. The purpose of their military system was defensive rather than offensive. Not till after their people had become corrupted, during the Persian wars, did they rule over subjugated communities by means of Spartan governors and garrisons. This was soon followed by the rise of the Macedonian power under Philip, which terminated the independence of Sparta as well as the other Greek states. For more than 500 years this state maintained its unique character and the integrity of its institutions.

Its long continuance is clearly attributable to the intense devotion of the citizens to the preservation of the state. Patriotism here was in fullest bloom. Each individual deemed the state entitled to all his efforts while living and to the sacrifice of his life when necessary. Nowhere else has the spirit of self-sacrifice been so constantly maintained or at so high a pitch, yet this devotion was not prompted by love of man nor of all the people composing the state, nor of the Spartan citizens as individuals. It was devotion to that body of men of which the individual was a part. To foster this spirit parents rejoiced in the death of sons who fell bravely fighting, and mourned over and reviled those who fled in safety. The spirit constantly cultivated was one of hardness, but long singularly free from avarice and selfishness. The Helots were cruelly treated, even to systematic assassination. The natural affections were stifled to permit the destruction of weak offspring. The system was rigid. It admitted of no great expansion and aimed at no intellectual elevation, no development of science or philosophy. Its one sublime ideal of devotion to the public was confined to the narrow limits of Sparta and not only wanting in love for others, but its highest purpose was the overthrow of enemies in battle.

In order to preserve the integrity of his system, Lycurgus, Sparta's great law-giver, prohibited foreign travel, except in the interest of the state, and excluded all foreigners, and foreign commerce as well, from the city. To maintain equality

he perpetuated poverty. Children were regarded as children of the state, and the boys were raised together under a training which inculcated craft and courage. Their clothing was scanty, and at the age of twelve they were deprived of all but a single upper garment a year. For beds they were allowed to gather reeds, and slept together in companies. The command of the companies was given to a youth who had been two years out of his class, chosen by an inspector. A principal business of the elders was watching the conduct of the boys and giving them instruction. Modesty in the modern sense was not esteemed a virtue. At certain festivals and games the young of both sexes appeared in scanty costume in the presence of each other and of the elders, but all were required to conduct themselves with strict decency and decorum in all respects. The marriage custom was a forcible carrying off of the bride, and the newly married pair were not allowed to remain together, but only to meet each other by stealth. It was deemed honorable for a feeble husband to allow his wife to have children by a man of superior qualities. It was believed that this tended to the production of better offspring. Marriage was so far compulsory that an old bachelor was in disgrace, while the father of children was honored.

Three fundamental laws declared by Lycurgus are mentioned. 1. Not to resort to written laws. 2. Not to employ in housebuilding any other tools than the axe and saw. 3. Not to undertake military expeditions often against the same enemy.

Capital offenses were tried before the senate, others by the ephors separately or all together. There being no written laws, judgment was given in accordance with the sentiments of the judge as to the merits of the particular case. The simplicity of the Spartan society and the absence of all commerce with the outside world afforded no basis for an elaborate system of laws.

As to the land tenure, although Plutarch states that Lycurgus divided the land into 9,000 shares for Spartan citizens and 30,000 shares throughout Laconia for the other inhabi-

tants, modern critics discredit the statement. Nor can any very definite statement of the law of inheritance be made. There were inequalities of possessions among the people and recognized titles to land. It was from the produce of their estates alone that the Spartan citizens furnished their quotas to the public tables. Whenever one became too poor to contribute his share, he lost his citizenship.

The military organization started with the *enomoty,* consisting of from twenty-five to thirty-six men of about the same age under a leader. Two to four of these were combined into a *Pentecosty,* of which two to four formed a *Lochus* and the *Mora* contained 400 to 900 men. The military superiority acquired by the Spartans through their system not only secured their independence, but gained for them a predominating influence among all the petty Greek states, which they retained until the Persian war. There was a constant tendency however, for the number of citizens to diminish, so that in the time of Aristotle there were only about 1000. This is attributed to the gradual concentration of the title to the land in a few hands. No other Greek state maintained the integrity of its social organization so long, but, like every other rigid system which contained no provision for changing conditions, in time it lost its early spirit and at the same time shut out the invigorating influences of contact with the outer world and that spontaneous growth, which can only come rapidly under conditions which invite new inspirations. Advancement comes with new ideals, and to continue the ideals must advance as the people move up. Mere permanency of institutions or conditions evidences stagnation, rather than a full and glorious life of progress.

Athens

The history of Athens appears mythical and uncertain till a later date than that ascribed to the establishment of the Spartan system. The early Ionian people of Attica were divided into four tribes and these again into *Phratries* and *Gentes.* Each *gens* was composed of a number of households not, it is said, necessarily all related to each other by blood, but

bound together by religious ties, proximity of possessions and mutual dependence in protecting common interests. These divisions were mainly religious and social. Besides these each tribe was divided politically into three *Trettys,* and each *Tretty* included four *Naukraries.* Prior to the time of Theseus there was no central authority in Attica, each small town maintaining its independence. Theseus, who has been invested by Greek imagination with heroic virtues and mythical adventures, appears to be a genuine historic character and to have first established the ascendency of Athens over Attica and, if any credit can be given to the tale of his adventures in Crete, he relieved the people from the payment of tribute to King Minos. There is so little reliable history of Athens prior to about 750 B.C. that nothing can be safely built on it. Codrus is said to have been the last who was permitted to be called king, his successors being styled *archons* and holding office for life till Alkmaeon, when the term of office was reduced to two years. This continued for seventy years, when the office was made annual, with nine *archons* among whom the powers were distributed. Down to 714 B.C. the *archons* were all descendants of Medon and Codrus, but after that date any of the *eupatrids* or nobles became eligible. At the expiration of his term of office the *archon* whose administration was approved became a life member of the senate of the *Areopagus.* The functions of this body were both judicial and political. The *archons* were not of equal authority. At the head was the *Archon Eponymous,* who determined all disputes relative to the family and relations in the *gens* and *phratry,* and was guardian of widows and orphans. He was styled the *Archon,* and from his name the year was designated in their chronology. The *Archon Basileus* heard complaints respecting offenses against religion and also of homicides. The *Polemarch* was the general and judge of disputes between citizens and non-citizens. Each of these conducted certain religious festivals. The remaining six, styled *Thesmothetae,* had general jurisdiction of other matters of dispute. In 624 B.C., Draco, then one of the *archons,* was directed to put the laws in writing, so that they might be

shown and known beforehand. The famed Draconian code was not new laws made by him, but old ones reduced to writing. Its severity has often been remarked, but so little of it has been preserved that its contents cannot be given or even summarized. It was in his time that the judges, called *Ephetae,* made up of fifty-one elders of leading *gentes,* were established with power to judge in certain cases of homicide. They sat in three different places, according to the nature of the charge and defense, and were permitted to pass a sentence less than death according to the justification or excuse, whereas it is said that the *Areopagus* could only condemn to death. Peculiar religious ideas connected with the different places seem to have produced this system. The constitution of such a variety of courts for trial of homicides would seem to indicate a great number of such offenses. About 612 B.C. Cylon seized the Acropolis and attempted to establish himself as tyrant, but failed miserably and many of his followers were slain, some at the sanctuaries.

At the time of Solon the record becomes more clear, and we have a more satisfactory account of the Athenian state. Plutarch tells us that in Solon's time there were great disorders in the state. Cylon's attempted usurpation and the slaughter of his followers in the sanctuaries left bitter factions and aroused superstitious fears. But more deep-seated were the troubles arising from the conditions of the people and their different views of government. He says, "The inhabitants of the mountainous part were, it seems, for a democracy; those of the plain for an oligarchy; and those of the sea coasts contending for a mixed kind of government, hindered the other two from gaining their point. At the same time the inequality between the poor and the rich occasioned the greatest discord, and the state was in so dangerous a situation that there seemed to be no way to quell the seditions or to save it from ruin but changing it to a monarchy." Of the poor debtors some were made slaves, some sold to foreigners, others sold their children. The greater number determined to resist this oppression. Solon was of the eupatrid order and had gained great reputation and the confidence of all classes

as a soldier and a citizen. He was made *archon* in 594 B.C. and given authority to reform the laws and remodel the government. He repealed the penal laws of Draco, except those concerning homicide, because of their severity, idleness and petty larceny having been punishable with death. A more difficult question to deal with was that of the oppression of the poor by rich creditors through harsh laws harshly enforced by the wealthy class, who held all judicial offices. Not only were most of the small estates mortgaged, which was done by setting up a stone on the land inscribed with the name of the mortgagee and the amount of the debt, but the creditor might take the body of his debtor as security and in default of payment enslave or sell him. Against this system and the merciless and unjust enforcement of it the poor clamored for relief.

The difficulties experienced by the eupatrids in maintaining order and enforcing the rights of creditors seems to have induced them to accord Solon the ample power he was given to reform the laws, he being one of their own order. The poor also clamored for an equal division of the lands. This Solon denied them, but he gave sweeping relief to the debtors. He released all mortgages and removed all the mortgage pillars from the land. He discharged all debtors, whose bodies were pledged as security, from their debts, released the debtors who had been enslaved, and even bought back others who had been sold out of the country. He prohibited debtors from thereafter pledging their persons as security, and also forbade them from pledging or selling their children or unmarried sisters. For the relief of the other debtors, for whom no such security was given, he provided that the *minae,* which before went for seventy-three *drachmas,* should go for 100 thereafter, thereby relieving debtors by increasing the legal value of the coins. Citizens who had been disfranchised, except those condemned by the *areopagus* or *ephetae* or in the *prytaneum* for murder robbery or treason, were restored to their former privileges.

It was in remodelling the official system that Solon's work produced the most lasting though not the greatest immediate

effect. He began by a new classification of the citizens based on incomes. Those having annual incomes of 500 measures in wet and dry goods, took first rank and were called *Pentacosiomedimini.* Those having between 300 and 500 measures were put in the second class or equestrian order. Those having 200 to 300 constituted the third class, and all whose incomes were less were placed in the fourth class. The first class alone were eligible to the archonship and military commands. The second were the horsemen, the third the heavy armed infantry. These three classes were subject to direct taxes on the value of their possessions by a graduated system of valuation, having the effect to increase the rate according to the size of the estate. The fourth class were not subject to direct taxation, and were not eligible to office, but they were given what in time proved to be a most important right, that of sitting and voting in the general assembly. They chose the *archons* from the first class and on the expiration of their terms passed judgment on their conduct, and might debar them from taking seats in the senate of the *Areopagus.*

He also established a senate of 400 members, made up of 100 elected by the people from each of the four tribes. All citizens, except those of the poorest class, were eligible to the senate. The senate considered and formulated matters to be submitted to the general assembly, convoked and superintended its meetings and executed its decrees. The old senate of the *Areopagus,* made up of past *archons* whose conduct was approved, was retained and given enlarged powers over the execution of the laws and the punishment of men of idle and dissolute habits. The laws of Solon were inscribed on wooden tables, which might be turned round in the oblong cases that contained them. Plutarch says some of them were still preserved in the *Prytanium* in his time. Solon forbade the exportation of all agricultural produce except olive oil. The *archons* were required to solemnly curse such as violated the law. He allowed only such immigrants to become citizens as came to reside at Athens permanently and for the purpose of carrying on some useful calling. If a father failed to teach his son a trade or profession, the son was under no legal

obligation to support him in old age. As the people of Attica had to resort to wells for water, he provided that, where there was a public well, all within four furlongs should make use of it, but if the distance was greater they must dig for themselves. If after digging ten fathoms they found no water, they might fill a vessel of six gallons twice a day at a neighbor's well. He that planted a tree on his ground was to place it five feet from the line, and if a fig or olive, nine, because of the length of its roots. He that dug a pit or a ditch was required to dig it as far from his neighbor's land as it was deep. Bees were required to be kept three hundred feet from those of a neighbor. Plutarch says, "The most peculiar and surprising of the laws is that which declares the man infamous who stands neuter in time of sedition. It seems he would not have us be indifferent and unaffected with the fate of the public, when our own concerns are upon a safe bottom, nor when we are in health be insensible to the distempers and griefs of our country. He would have us espouse the better and juster cause and hazard everything in defense of it, rather than wait in safety to see which side the victory will incline to."[1] In all marriages except those of heiresses he prohibited the giving of dowries and allowed the bride to bring with her only three suits of clothes and a little household stuff. This included an earthen pan for parching barley, which symbolized her assumption of the charge of the household. The bride and groom were directed to be shut up together and to eat of the same quince. One of the laws forbade men to speak ill of the dead. He also forbade reviling the living in a temple, a court of justice, the general assembly or at the public games. Offenses of this kind were punished by a mulct of three *drachmas* to the person injured and two to the public. He introduced the making of wills, but restricted the right to those dying without children. He restricted extravagance at funerals and prohibited women from tearing themselves, and no hired mourner was allowed to utter lamentable notes or do anything else to excite sorrow. All citizens were required to attend the public entertainments,

[1] 1 Plutarch, p, 185.

but prohibited from going too often. The victor at the Isthmian games was allowed a reward of 100 *drachmas* and at the Olympian 500 *drachmas*. There was a reward of five *drachmas* for catching a he wolf and one for a she wolf, the former being the price of an ox and the latter of a sheep. The full text of Solon's code is not preserved. The fragments above mentioned indicate something of its general tenor. After his laws were promulgated, the senate and *archons* were sworn to observe the laws under penalty of a golden statue as large as life, to be erected at Delphi. This seems to have been the only sanction they received. Having completed his labors, Solon found it too severe a task to defend, construe and explain his own work, and thereupon obtained leave of absence for ten years, during which the laws were to remain unchanged.

Solon's system appears to have been insufficient to prevent internal discord, for after his return the people again divided into much the same factions as before, the mountaineers under Pisistratus, the rich of the plains under Lycurgus and those of the sea coast under Megacles. Pisistratus, under the pretense that he had been assaulted, obtained leave to keep a body guard of fifty armed with clubs. This Solon opposed but without success. Thereafter Pisistratus seized the Acropolis and succeeded in establishing his authority. His dynasty, established 560 B.C., continued fifty years, with two intervals however, during which he was driven into exile. Accounts of his reign and that of his sons are meagre, but concur in asserting that he ruled largely through the forms which Solon had established and with mildness. After Hipparchus, son of Pisistratus, was killed by Harmodius and Aristogiton, the reign of Hippias his brother was harsh and cruel.

For favors received from the Alkmoenids, who had been driven into exile by Pisistratus, in rebuilding the temple, the Delphic oracle played on the superstitious reverence of the Spartans, and in answer to every consultation said, that "Athens must be liberated." The Spartan reverence for the deity supposed to preside at the temple at length caused them to send an army to Athens to drive out the tyrant. The first

expedition proved unsuccessful, but the second accomplished the object and finally expelled the tyrant. This circumstance strongly illustrates the peculiar notions of the Greeks of that day. By this expedition the Spartans merely performed what they deemed the religious duty of liberating their great rival from a tyrant, from which they derived no material advantages, but suffered some losses of men. After the expulsion of the Pisistratids the institutions of Solon, which had not been destroyed but used by them as means for the execution of their purposes, were restored to vitality with modifications introduced by Cleisthenes, who allied himself with the classes which had formerly been excluded wholly or partially from sharing in the exercise of public functions. He extended the right of citizenship, which had been confined to the four Ionic tribes, so as to include all freemen. In order to accomplish this he resorted to a new division into tribes, which disregarded the ancient *gentes* and *phratries*. He divided the whole population of Attica into ten new tribes, each of which included a certain number of *demes* or cantons, in which the proprietors and residents were enrolled. The *demes* assigned to each tribe were not all contiguous, and so a tribe did not occupy a compact territory. This scattering of the members of a tribe and inclusion of all classes of people without regard to the ancient *gentes* tended strongly to unify them. The ancient *gentes* and *phratries* remained as family and religious associations, but without political significance. City *demes* and country were included in the same tribe, and jealousy between city and country thereby avoided. Each *deme* had its local interests, but the tribe as a whole had no interest distinct from that of the state, being merely an aggregate of *demes* for political, military and religious purposes. Each tribe had a chapel, sacred rites and festivals and a common fund for these purposes. The *deme* was the primary political aggregation. It had its *demarch* who kept the register of enrolled citizens, its collective property, its public meetings and religious ceremonies, and its taxes, levied and administered by itself. The registry of citizens was corrected at the public assembly by inscribing the names of the sons of citizens who

had attained the age of eighteen. Sometimes names were expunged from the register, in which case an appeal could be taken. Under the new arrangement the public assembly was greatly increased in numbers, and the membership of the senate was increased from 400 to 500, made up of fifty from each of the ten tribes, chosen annually. About this time the practice began of choosing the senators by lot. The military organization was changed so that ten *strategi,* generals, one from each tribe, were chosen. This did not deprive the *polemarch* of the old constitution of all his power, but the power and influence of the *strategi* steadily increased. A board of ten *Apodektae,* one from each tribe, managed the exchequer. With the revival of popular government the senate at once became a most important body, exercising a general supervision of the affairs of the city. The political year was divided into ten portions called *Prytanies;* the fifty senators of each tribe remaining in constant attendance on the senate by turns during one *prytany.* Each *prytany* was divided into five periods of seven days, and the fifty senators of each tribe into five bodies of ten each. Each body of ten presided in the senate for a period of seven days, choosing by lot one of their number each day for the chairman, who was called *epistates,* and during his day of office held the keys of the Acropolis, the treasury and the city seal. Senators not of the *prytany* might attend all sessions, but were not required to do so, except that one from each tribe was requisite to a valid meeting. The general assembly was convoked either by the senate or the *strategi.* In later times there were four regular sessions during each *prytany* at which the *prytanies* presided, the *epistates* putting all questions to vote.

The exact distribution of judicial power in the time of Cleisthenes cannot be stated, but the whole body of citizens above thirty years of age was convoked to try persons charged with certain public crimes and, when so assembled, bore the name of *Heliosa* or *Heliasts.* Afterward 6,000 citizens over thirty years of age were annually selected by lot, 600 from each tribe. Five thousand of these were distributed into panels or *decuries* of 500 each, the remaining 1,000 being

reserved to fill vacancies. When there were causes ripe for trial, the *Thesmothets* or six inferior *archons* determined by lot, which *decuries* should try and what magistrate should preside. Sometimes two *decuries* sat together. In time the *archons* came to be chosen by lot, and any citizen was eligible, subject however to an examination into his status as a citizen and his moral and religious qualifications. By this time the archons had become shorn of much of their power, their principal functions being to hold preliminary examinations, preside at trials and to pass sentence for petty offenses. The *strategi,* however, were chosen, not by chance, but by preference of the citizens manifested by a show of hands. The date of the adoption of universal eligibility to office is fixed as after the battle of Plataea.

The modifications of the constitution of Solon in the time of Cleisthenes stopped short of that full democracy which developed later. The *archons* still retained much judicial power, and the *polemarch* was still a general. They were then elected, not chosen by lot. The fourth class of the census were still excluded from the principal offices. The senate of the Areopagus still retained some of its power, but the popular bodies of the senate of 500 and the general assembly became the dominant forces of the state.

A peculiar institution, ascribed to Cleisthenes, was the ostracism, designed to get rid of the contentions of leaders of rival factions. Before a vote of ostracism could be taken a case was presented to the senate and general assembly. In the sixth *prytany* of the year these bodies debated and determined whether the public welfare required a vote to be taken. If they decided in the affirmative, a day was named, the *agora* was enclosed with a railing with ten entrances for the citizens of each tribe, and ten vessels were provided to receive the votes, which consisted of a shell or potsherd with the name of the person whom the voter desired to banish written on it. At the end of the day the votes were counted, and any person against whom there were 6,000 votes was ostracized. He was allowed ten days to settle his affairs and then required to leave Attica for ten years, but he retained all his property and

suffered no penalty, nor was he deemed disgraced. It was in fact a great distinction to be regarded of so much importance as to require ostracism.

The spread of the Persian empire over Asia Minor brought Greeks and Persians in contact in Ionia and elsewhere, and the demand for submission, which had been enforced on the Greek cities of Asia, was extended to the islands and to Greece. The vast resources of the Persian king and the prestige of the success of Persian arms were such as to cause the king of Macedon and many of the Greek cities, notably Thebes, and when the final conflict came, Thessaly, to submit to the Persian king and reinforce his army. Democratic Athens in its resistance of the foreign despot exhibited in full measure the vigor of a free people fighting for their independence. The battle of Marathon, fought about twenty years after the expulsion of the Pistratids, put an end to the first invasion. Under the leadership of Themistocles the Athenians turned their attention to the sea and began to build ships. The policy of Athens in many particulars stood in strong contrast to that of Sparta. The government of Sparta was nominally monarchial, but in fact, an oligarchy, that of Athens a democracy. The Spartans excluded all foreign commerce, the Athenians invited it. The Spartans made war on land their principal business, the Athenians sought material prosperity through peaceful channels, but without neglecting their defense on land and sea. When the invasion under Xerxes came ten years later, the Athenians were prepared with both a fleet and an army. Rather than submit they left Attica and took their families to Troezen, Aegina and Salamis. The fortunate circumstances of the destruction of many of the Persian vessels by storms made Greek victory possible on the water. Nothing better illustrates the peculiarities of the Greeks than their conduct during this war. Want of concert of action and the celebration of religious festivals, deemed of more importance than defense of their country, left Leonidas with his little band to confront the whole Persian host at Thermopylae, and this when the situation was fully understood. The defense made illustrates the extreme of Greek courage and devotion.

The Pan-Hellenic congress, convened on call of Sparta and Athens on the isthmus of Corinth for the purpose of obtaining a union of all the Greeks against the Persians, exhibited strongly the want of harmony among the different cities and their utter inability to unite even in a case of such extreme necessity. Not only did the distant cities in Crete and Sicily fail to respond, but Argos remained neutral, and Thebes and many other cities espoused the Persian side. The dissensions among the leaders, prior to the naval battle of Salamis, would have prevented the great victory that followed but for the artifice of Themistocles, which induced the Persians to hem the Greeks in in the Bay of Salamis and thus prevent the ships of the different cities from scattering. The characteristic wrangling and dissension among the leaders while considering the course to be pursued, was followed by the no less characteristic skill, bravery and determination with which the great battle was won. The battle of Plataea found Greek confronting Greek, but with a marked difference of spirit. Those in the Persian army were hardly a source of strength to it, except perhaps the Thebans, but the spirit of those who defended their country was worthy of all admiration.

Though Athens had been burned and Attica laid waste, the people returned victorious, with a purpose and a system that soon made Athens the leading city of the Greek world. The development of Athens was not unilateral but multiform. Each citizen was not merely invited but required to take an interest in public affairs and assume his share of responsibility for the public welfare. All avenues for advancement were open to each citizen. After the battle of Salamis the fourth and most numerous order of citizens, who under the constitution of Solon were ineligible to office, were admitted to the same privileges as the other three classes. The contact of Greeks with Persians exposed the former, not merely to the force of the great despotism, but to the insidious influences of the corrupt system. The leading citizens in the Greek cities were approached by Persian agents with offers of bribes, in some cases of money, in others of establishment in power under Persian protection, and it is a melancholy fact that, even

after the great victories of Salamis and Plataea, Themistocles, to whom more than to any one else was due the naval victory, and Pausanius, the Spartan commander-in-chief at the great battle, were corrupted by Persian bribes and died in disgrace. Miltiades, the commander at Marathon, fell in a somewhat different manner. Having induced the Athenians to place him in charge of an expedition, he diverted it to an attack on the people of the island of Paros for his own personal ends. He was repulsed and in his attempt to get away received injuries which disabled him. On his return to Athens he was brought to trial for his misconduct and condemned to pay a fine of fifty talents; the jurors refusing to pass the death sentence because of his great services. That the Athenians were able to condemn and punish such a man at such a time indicates most superior integrity in their institutions. The corruption of Themistocles led to his ostracism about nine years after the great victory. At Sparta the treason of Pausanius, who had long been in corrupt and treasonable correspondence with the Persian king, was not readily believed by the *ephors,* and it was only after the clearest proof of his treason, that an attempt was made to bring him to trial. When the *ephors* attempted to arrest him he took sanctuary in the temple of Athene Chalcioecus, where he was confined till at the point of starvation, when he was removed to die where he would not desecrate the temple. Notwithstanding the Spartan contempt of money Pausanius received much Persian gold and was ruined by it.

Prior to and during the Persian invasion Sparta had been allowed first place in joint undertakings of the Greek cities, and a Spartan general commanded at Plataea and a Spartan admiral at Salamis, notwithstanding the great superiority of the Athenian fleet. After the Persians retired and the Greeks followed them to Cyprus and Byzantium the Spartan Pausanius was still in command. The traitorous correspondence of Pausanius with Xerxes occasioned his recall to Sparta for trial, and in his absence command of the Greek forces passed to the Athenians. This led to the formation of a confederacy with Athens at its head, for the protection of the Greek cities

against Persia about 477 B.C. The leading spirit in the formation of this confederacy was the Athenean Aristides. The terms and purposes of the confederacy and its general policy were determined by a synod of representatives of the cities, which convened at the temple of Apollo at Delos. As the head of this confederacy Athens at once took a prominence never before attained. It was a confederacy, designed not merely to protect the cities on the mainland of Greece and the islands of the Aegean sea, but also those on the coast of Asia Minor and Thrace as well. From this time till the breaking out of the Peloponnesian war the power and commerce of Athens grew rapidly. The yearly contributions of the allies in time were largely changed from ships and men to payments of money, which Athens received. The voluntary character of these contributions also disappeared, little by little, and payment by the delinquents was compelled by Athens by force.

In the time of Pericles great modifications of the governmental system were made, and the *archons* and various other magistrates were chosen by lot. The senate of the Areopagus had exclusive judicial power, not clearly defined, and also exercised censorship over the habits of the citizens and supervision over the proceedings of the public assembly to prevent infringements of the established law. These powers were based on a foundation of long usage and liable to great abuse. They were greatly curtailed, leaving only power to try certain cases of homicide and to impose small fines for minor offences. The main judicial power was transferred to the popular *dikasts* in both civil and criminal causes. A very common method of trial was by arbitration, and a number of public arbitrators were annually appointed, to whom or others chosen by the parties, all private disputes were submitted in the first instance. If dissatisfied with their decision either party might carry the case before a *dikast*. The regular number of a panel seems to have been 500, but for important causes more were sometimes taken, and it seems that less sometimes sat. These jurors during and after the time of Pericles were paid a small sum per diem out of the public treasury while serving. At about the same time the indi-

vidual magistrates and the Senate of 500 were deprived of all judicial attributes except to assess small fines, and the laws of Solon were brought down from the Acropolis to the neighborhood of the market. The final and efficient judicial power was thus vested in a numerous body of common citizens, and this was done mainly for the purpose of obviating the bribery to which single or a small number of officials might be subjected: the Greeks of that time exhibiting a marked weakness of character when tempted by money.

A general power of supervision over the magistrates and over the general assembly was vested in seven magistrates called *Nemophylakes,* who sat along with the presidents of the senate and assembly, and whose duty it was to interpose whenever any step was taken or proposition made contrary to law. It was the duty of the *Thesmothetae* annually to examine the existing laws and make note of any that conflicted and in the first *prytany* of the Attic year on the eleventh day an assembly was held, at which the first business was to go through the laws *seriatim* and submit them for approval or rejection. If a law was condemned by a vote of the assembly, or if any citizen had a new law to propose, the third assembly of the *prytany* appointed 500 to 1,000 *Nomothetae* from among the 6,000 dikasts to consider the proposed change. Previous notice was required to be given by a citizen having a new law to propose, in order that the time necessary for the sitting of the *Nomothetae* might be measured according to the number of matters to be submitted to their consideration. Public paid advocates were named to defend the existing law, and the mover of a repeal was required to make out his case before the *Nomothetae.* The power to enact laws, except a decree applicable to a single case, was thus taken away from the general assembly. A very peculiar provision was that by which the author of a new law was liable to indictment, trial and punishment, where the new enactment contradicted a law already in existence without expressly repealing it, or where it was otherwise defective or mischievous. If the dikastry before whom the author was tried found him guilty, it had the effect of repeal-

ing the new law. The punishment inflicted in this, like some other classes of cases, was variable. The prosecutor might propose a sentence and the accused might also propose one. The dikastry then adopted either one or the other without change. If the accused was acquitted, the accuser was liable to a fine of 1,000 *drachmas,* unless one-fifth of the *dikasts* voted for conviction. The author of the law could not be punished if the prosecution was instituted after the expiration of a year, but the law itself might be condemned and thus repealed. Publicity, opportunity to produce evidence and to be fully heard in argument were characteristic of Athenian trials. The number of the jury and modes of trial are generally regarded as affording undue weight to oratory, but no ancient system is known to us which on the whole worked so fairly. Freedom of speech on all matters of public interest is a strong proof of the vigor of the democracy.

The internal system as perfected in the time of Pericles continued without great change until the Macedonian conquest, but the situation of the members of the Athenian defensive league gradually changed, so that in time all but a few of the strongest were regarded as Athenian dependencies. They were compelled to pay their yearly tribute, which was kept at Athens instead of Delphos. The synod, which at first determined the course to be pursued in matters affecting the public interest, ceased to exercise any authority, and all questions were determined at Athens. Toward her new colonies, as well as the weaker members of the confederacy, Athens or their citizens with citizens of Athens were brought before assumed imperial powers. Disputes between her dependencies the Athenian *dikasts* for trial. While this in theory opened to all the same forum that the Athenian citizens were bound to resort to in contests with each other, in practice it must have imposed hardships on suitors residing at a great distance as well on the score of expense as of want of familiarity with procedure and inability to prove the facts. The excellence of the domestic institutions of the head of the confederacy could not render palatable arbitrary dictation to the dependencies. Hostitlity against Athens grew up in the subject cities and

increased in strength as the fear of a Persian despotism grew less. The wonderful growth of the democratic city under the leadership of Pericles, its commerce, its ships, its wealth in public treasuries and buildings and its brilliance in all lines of culture and intellectual development, excited the jealousy of rival cities and discontent among its dependencies. With the growth of Athens and its allied cities, which maintained systems of government democratic in their essential features, the Spartan leadership was also extended among the oligarchical cities. Though at all periods there were frequent wars and much fighting among the independent cities, the numbers involved in the conflict were not so great as to prevent the increase of population and wealth until the breaking out of the Peloponnesian war. Sparta and her allies on one side and Athens and hers on the other, in 431 B.C., entered on a struggle for mastery, which involved substantially all the Greeks of the mainland, the islands and the coast of Asia. The struggle became so fierce that each party in turn sought aid from the Persians, and leaders on both sides were corrupted by Persian bribes. The simplicity of manners of the Spartans gave way when brought in frequent contact with the orientals, and their generals were found no more proof against bribery than those of other cities. The social system, however, remained throughout the struggle substantially unchanged. The Athenian democracy, notwithstanding the unwise and most disasterous expedition to Sicily, manifested most wonderful energy and resourcefulness, and the integrity of its institutions was maintained till 411 B.C. when a conspiracy of the oligarchical elements resulted in the rulership of a senate of 400 for a few months. This being soon overturned, the democratic institutions were again restored, and under them the people manifested renewed vigor and devotion to the public welfare. The surrender of the city in 404 B.C. was followed by the establishment of an oligarchy of thirty, the spirit of whose rule was in marked contrast to that of the democracy. Though in the trial of the generals after the battle of Aegospotami there was a departure from legal forms, and the generals were condemned to death without a

regular trial, they still had a hearing before the assembly and were condemned by a vote of the people by tribes. The thirty, however, ordered summary executions without trial, and proceeded to get rid of such of the people as they feared. Their tyranny was in striking contrast to the formal, free and orderly administration of established laws by the magistrates and dikasts. Though their authority was established with the sanction of the victor in the long and desperate struggle, its exercise was so utterly at variance with the prejudices and feelings of the people, even of their own partisans, that in the following year they were driven out under the leadership of the returning exiles, and the democracy was restored. While the Peloponnesian war was waged on the part of Sparta to destroy the power of a hated rival, it must ever stand to the credit of the victor that, instead of the destruction of the city after its surrender, after the destruction of its walls, the city was left uninjured, notwithstanding the demand of some of the allies that it be destroyed and its people scattered. The course of Sparta in this respect was in strict accord with the principle of the Delphic Amphictyonic league, which tended to mitigate the horrors of war among different Greek cities and prohibited the destruction of a conquered city. This league, religious in character, seems to have succeeded in promulgating, and enforcing in a great number of instances, humane principles mitigating the horrors of war. It was only in holy wars, waged against members of the league charged with some sacrilege, that these humane principles were cast aside and barbaric destruction inflicted without restraint.

From the close of the Peloponnesian war to the rise of the Macedonian power was a period of frequent wars and varying combinations. Thebes, the ancient enemy of Athens and frequent ally of Sparta, under the lead of Epaminondas finally terminated the power of Sparta at the battle of Leuctra. The Persian practice of hiring mercenary troops became prevalent with Greek cities, which now relied on money rather than on the devotion of their citizens for offensive and defensive operations. War, instead of being the exercise of patriotic

devotion, became a profession, and mercenary bands, fighting for whomever would pay, became numerous. The ancient spirit, so much admired in subsequent ages, decayed. Greece was still the land of culture, but not of incorruptible heroes.

In this condition the arts and arms of Philip easily placed him at the head of the Hellenic world. Though neither he nor his son Alexander claimed despotic powers over the Greek cities, both were typical tyrants, recognizing no restraints. At the convention of deputies held at Corinth 330 B.C. Alexander was appointed commander of the Greeks for the purpose of prosecuting war against Persia. By the terms of the agreement then made the freedom and autonomy of each Greek city was recognized, and its existing constitution was guaranteed. Violence of one against another was prohibited and freedom of commerce guaranteed. Sparta of all the leading cities appears to have been the only one which did not join. Though this convention effectually bound the cities to Alexander, it utterly failed to place effectual restraint on him, for it provided for the admission into the cities of Macedonian troops, ostensibly to enforce obedience to the terms of the agreement. Protests against his tyrannies were unavailing. The revolt of Thebes was followed by its capture and the massacre of its people, including women and children, and the destruction of the city. The severity of the treatment was in accordance with the wishes of the Greek auxiliaries of Alexander's army. With the ascendency of Alexander the independence of Greek cities ended, and the peculiar political conditions under which the people had progressed so rapidly in intellectual development, in literature, philosophy, arts and sciences came to an end, but Greek culture endured and was diffused over Asia by the armies of Alexander and his successors, and over Europe under the subsequent empire of Rome.

No equal number of people in an equal period of time have left so many evidences of intellectual activity as the Greeks from the foundation of Sparta to the time of Alexander. At this day the names of illustrious Greeks of this period are familiar in greater number to the people of Europe and Amer-

ica than those of any other country at any time, with the exception, perhaps, of Rome when at its zenith of power. But the intellectual activity of Greece was far more diverse and extended over a far wider range than that of Rome.

The Greeks developed the idea of determining controversies by laws declared in advance of the fact and by an impartial tribunal acting on evidence adduced at a public trial with the right to a full hearing in argument on the facts and the law. Individuality and self-reliance were the leading characteristics of the people. Religion and government, though not wholly disconnected, were not merged or confused. The same gods were worshipped by the Greeks of many cities, wholly independent of each other, and the bonds of common religion were always much wider than those of any governmental system. Though the religious sentiment was strong, it was in the main disconnected from political sentiment, and the laws passed were based on views of justice and policy rather than on religious sanction.

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CHAPTER XIV

Rome

The most ancient people of Italy of whom we have any information were in substantially the same stage of development as the earliest Greeks known to us. They tended flocks and herds and cultivated the soil. They had implements of iron and woven clothing. The relations of the members of a family were clearly defined, and the social organization developed from the germ of the household. Written history does not begin till centuries after the foundation of Rome, and what is known of the earliest days of the city comes through tradition and the evidence of the works which endured till letters were introduced. The mythical tale of Romulus and Remus no longer finds believers, and the easy and definite description of the foundation of the city is now impossible. At the time of the first settlements from which the city developed, we fail to find evidences of any social organization which included large numbers of people or extended over a considerable district. Apparently there was no government more comprehensive than that of a clan, and the authority exercised was paternal in character. Rome grew from the clans settled on and about the Palatine hill. The city took more distinct form and character when the walls were constructed on this hill. A discussion of the combination of Latin, Sabine and Etruscan elements to form the city would serve no purpose here. We must start with a considerable aggregation of people, including those following urban pursuits as well as herdsmen and cultivators of the soil.

The social organization of the clans did not disappear with the growth of the city, but the early structure formed the basis in this as in most states of that which followed. Though the monogamous family with the rights and duties of each member clearly defined is the product of an advanced social

stage, it not only existed at Rome in the earliest days, but was the most clearly marked feature of society, and furnished the basis of the governmental system. The free family was the social unit. It consisted of a father, who was his own master, a wife whom he had wedded by the priestly ceremony of *confarreatio,* their sons and sons' sons and their lawfully wedded wives and unmarried daughters. It did not include the children of a daughter, for if she were married they belonged to the family of her husband, and if not they had no place in the family. All the property of the family, including the slaves, belonged to the man at its head. The power of the father in his household was absolute and continued till death. He could punish wife and descendants even with death. The women of the family were not in fact treated as slaves, however, but within the household were its mistresses. Sons with families might be allowed to manage a separate property, but in law it belonged to the father. A father might even sell his son as a slave to a foreigner. As a Roman he could not be a slave in law to a Roman, though he might be so in effect. While the father was under no legal restraint in dealing with his family, he was subject to religious anathema in case of gross abuse of his authority. From the family the gens or clan developed, and these were distinguished one from the other only by ability to trace definitely the relationship. Those whose descent could be definitely traced to a common ancestor belonged to the family. Those who merely bore the family name but could not give the chain of descent belonged to the gens. Attached to the patrician houses there was a class of dependents, called clients, who sought the protection of the house. The relation of the client was intermediate between that of the slave and the free man. He was in the power of the patron, who affarded him ground to till or other means of livelihood, appeared for him in any litigation and obtained redress for wrongs committed against him. These *clientes* were regarded as part of the *familia* and were legally subject to the will of the father, who might, if he chose, exercise the same absolute power over them and their property as over the rest of the family. The father

was the religious head of the household and conducted the family rites. While the sons in patrician families were in all personal affairs subject to the absolute power of the father, they were citizens of the state and as such had equal political privileges and duties.

Outside the patrician families were the *plebs,* who were protected by the state but had no share in public affairs. The Roman people included three original tribes, the Romnes, Tities and Luceres, and these were divided into thirty *curiae.* The *curia* was the primary association with its common *sacra,* priests, festivals, chapel and hearth. The tribal division does not appear of special importance in the constitution of the state, but the *curiae* formed the basis of the system. Just when and how they first developed is unknown, but the first view discloses them as including not merely persons related by blood or marriage, but persons not belonging to the gentile families, with membership based largely on occupancy of contiguous lands included within the territory of the *curiae.* There was great liberality in the admission of citizens of friendly communities, who might be granted the right of citizenship by the *comitia* on renouncing membership of their native city, otherwise they were regarded rather as guests under protection of the community.

At the head of the earliest Rome was the king, who stood as father of the city with powers corresponding to those exercised by the father over the gentile family. He was the leader in war and in peace, and the religious head of the state. His powers, like those of the patrician, were absolute in theory, yet restrained by custom and public sentiment. He was chosen from among the fathers and held office for life. He consulted the gods for the public and named the priests and priestesses. He made treaties of peace which bound the community. He alone had the right to address the citizens in their public assemblies, or to name others to do so. He kept the keys to the public treasury, and near his dwelling was the blazing hearth of Vesta and the storehouse of the community. He was judge of the people in all causes civil and criminal and imposed such penalties as he saw fit. From

a sentence of death he might allow an appeal to the people for pardon, but was not bound to do so. He had the right to levy taxes and call out the military force. While he might appoint subordinate officers and even a viceroy to rule in his absence, all such served subject to his pleasure. He might nominate his successor, who was confirmed by the freemen in a public assembly convoked for the purpose. In case of the death of the king without naming a successor the senators, (*patres*), met and named an *interrex* from their number, who ruled not more than five days. He then named a successor according to an order of succession fixed by lot for a like term. This second *interrex* might then name a successor for life. The king thus named was then accepted in the public assembly by the citizens old enough to bear arms and afterward confirmed by the senate. When the people were assembled at the summons of the king to decide on any public matter, they met in the *comitium* at the north end of the *forum* and were presided over by the king or *interrex* who put the questions. Each *curia* voted separately, a majority determining its vote, and a majority of the *curiae* decided the question. While they had no power to pass laws or restrain the power of the king, the disposition of property by will or the renunciation of family or gentile *sacra* could only take place in the public assembly, and adoption into the family required their assent as well as presence. The senate was made up of fathers of the gentile houses, but did not include all of them. The general theory of the organization of the state was that each of the tribes was divided into ten *curiae*, that a *curia* included ten clans or one hundred households, and that each household furnished a foot soldier, each clan a horseman and a senator. The ten *curiae* of each tribe furnished one hundred senators, or three hundred in all. While the number of clans and households is thus definitely stated, they could not in the nature of things remain constant, and the numbers given may not be accurate for any date, but the *curiae* were definite divisions of the state and continued as political units. Each *curia* had its warden (*curio*), and its priest (*flamen curialis*). Vacancies in the senate were filled

by appointment of the king. The powers of the primitive senate are not readily comprehended. As the heads of their families they were the chief men of the state, each ruling his own family, slaves and clients. Collectively their governmental functions appear very limited, except in the matter of providing a king, yet they held a veto on changes in the constitution of the state proposed to the assembly by the king and adopted by it. Though there was no written constitution, the senate in a negative manner by its veto might declare what the fundamental law was. In theory the king was absolute, yet the organization of society was such that despotic powers were denied him. The citizens were by no means slaves to the king, but rather his equals, from whose number he had been chosen. He held his office under no claim of divine right but of regular selection. The vigor of the unwritten constitution was due to the spirit and moral influence of the monogamous Roman families, and the need of the king for the counsel and support of the citizens in the assembly and the senators in council. The king had his subordinates to execute his commands, but the military power of the state rested in the body of citizens, who were soldiers only on emergency, and the senate might veto a war of aggression. Though in theory the powers of the senate in its earliest days were exceedingly limited, the influence of such a body of men must always have been great, and subsequent history demonstrates how that influence developed into recognized authority.

In dealing with the earliest constitution of Rome we are forced to rely much on inferences deduced from the state of society at later periods, when we have a clearer and more authentic view of it, and on traditions passed down from earlier times. The division of the people into the patrician families with their clients and slaves and *plebs,* who were yet not citizens nor slaves, is explained on the theory that the patricians were of the stock of the earliest founders of the community and that others, brought in from conquered districts or voluntarily settling in the city, were protected by the state though given no share in public affairs. The ranks of the *plebs* were also augmented by manumitted slaves and

clients and their descendants, who became detached from the households of their patrons. As in the earliest times the warriors were taken from the citizens only, the numbers of the *plebs,* who were allowed to have families and acquire property, increased much more rapidly than those of the patrician stock. Though in our day great stress is laid on the efficacy of written constitutions and formal legislative enactments, the early history of Rome exhibits in a striking manner how accepted principles may govern effectually without any written constitution or laws, and how a government may be in form and theory despotic, yet effectually curbed in many ways. The real living law is that which is generally observed and enforced, rather than that which, though promulgated by the recognized law-making power, is yet disregarded in actual practice.

The rules which the Romans recognized as authoritative were classified under the heads of *fas,* which was conceived to be the laws promulgated by the gods, *jus,* which signified established human customs and regulations, and *boni mores,* which expressed the general public sentiment with reference to personal conduct. *Fas,* which was accepted as the will of the gods, regulated religious ceremonials, which constituted a most important element in both public and domestic life. It went much farther, however, and furnished precepts regarded as binding, not merely on the people of the state in their intercourse with each other, but on all mankind. It forbade war without the prescribed ceremonial, through which the gods were supposed to be consulted. It enjoined faith to be kept with enemies, when under sanction of an oath, and hospitality to foreigners. It punished murder; the sale of a wife by her husband; the resistance by children of the authority of their parents; incestuous connections; false oaths and broken vows; and the displacement of boundaries and landmarks. All these were regarded as offenses against the sacred ordinances of the gods. For minor offences expiation was allowed, but for the graver ones the heavy penalty of excommunication was imposed. The outlaw—*homo sacer*—was an outcast with whom it was pollution to associate, who could

take no part in public affairs, civil or religious, and whom any one might kill with impunity. *Jus* was based mainly on long established customs, recognized as binding, and in the early days only to a small extent on rules proposed by the king and adopted by the people in the assembly of the *curiae*. *Boni mores* related to the demeanor and obedience of inferiors to superiors, chastity, fidelity to engagements and the like, and were enforced by the *pater familias*, the elders of the *gens* and the king.

With the early Romans marriage was a solemn religious duty. The happiness of the dead in a future state was believed to depend on the due observance of funeral obsequies and other rites for the good of their souls, which could only be performed by descendants of the deceased. The choice of the man was limited to a woman with whom he had a right of intermarriage. The wife of a patrician must be either the daughter of a patrician or a woman of an allied community. In taking her as his wife he detached her from her family and its household gods, to become a part of his family and under the hand of the head of the household. This must be done with the approval of the gods, consulted through *auspicia*. The ceremony was a religious one, conducted by the high priest in presence of ten witnesses representing the ten *curiae* of the bridegroom's tribe, and was called *confarreatio*. By this ceremony she and all her property passed *in manum*, under the hand of the head of her husband's home, and thenceforth she and all that came with her were his property. The religious feelings of the heads of Roman families were such that the theory of the despotic rights of the father was productive of little if any evil. The father was dependent on the son for those religious offices which were so highly esteemed, and mutual dependence as well as natural affection seem to have made the early Roman families high types of domestic circles. In case of the unfortunate failure of issue or loss of all sons, threatening the extinction of the family, the father might provide for its perpetuation by adrogation or adoption. By the former the *pater familias* of another household was transferred to become the son of the adrogator

and thereby permitted his own family to be nominally extinguished. This could only be done with the approval of the pontiffs and the sanction of the *curiae*. The adrogatee and all his family and property passed under the power of the adrogator. In case of the adoption of the son of another *pater familias* the form was more simple, requiring the consent of the father of the adopted son. The *plebs* contracted marriages by consent, but were incapable of the religious ceremony of *confarreatio* with its legal consequences, nor were they allowed to perpetuate their families by adrogation and probably not by adoption.

In the earliest times there was private tenure of land, but there were also public lands belonging to the state. To what extent lands were held in common by the clans, if at all, cannot be stated. The *plebs* were allowed to acquire and hold land as well as the patricians. The law of inheritance gave the property of the deceased to his children and widow equally, sons and daughters sharing alike, except that a daughter, married and thus a member of her husband's family, had no share. This equality was materially modified however by the guardianship under which the widow and unmarried daughters passed, exercised by their nearest male relation; thus the sons became guardians of their mother and sisters. In default of widow and children the inheritance went to the *gens*. The succession might be changed by a testament, executed in the assembly of the *curiae,* or in the presence of comrades on the eve of battle. Among the *plebs* the inheritance passed to the children, but in the earliest times not to collateral relations, and they were without legal capacity to make a will.

In the earliest days money was not in use, and there was hardly such a thing as the law of contracts in the modern sense. As in most primitive communities, possession and ownership were usually concomitant, and for invasion of his possession the owner usually asserted his rights in person. The dividing line between private wrongs and public offenses was not clearly drawn. The tendency was to confuse them and treat all matters brought before the judge as of a crimi-

nal character. Nor was the punishment of crime exclusively the province of the king or judge. In case of murder it was the kinsman of the person murdered who avenged his death. So too the husband or father might kill wife or daughter and her paramour caught in adultery on the spot, but if he delayed till his blood cooled he could then proceed only in his domestic tribunal.

The early procedure was simple: the accused on trial for a criminal offence or the parties to a private suit came before the king at the judgment platform. He was attended by his *lictores* (messengers). The facts were ascertained by the confessions of parties and the testimony of witnesses without the use of torture, except on slaves. Among capital offences were treason, violent sedition, parricide, wilful murder, sodomy, violation of a maiden, arson, perjury, carrying away the harvest by witchcraft and unlawfully cutting the corn in the sacred fields by night. The king might hear and pronounce judgment alone or on consultation with advising senators, or might depute the power to others. There were trackers of murder, *quaestores parricidii,* whose duty it was to arrest murderers. The mode of inflicting the death sentence was by throwing down from the capitol hill, hanging, burning or drowning. Pardon could only be granted by the people on an appeal to them, which the king was at liberty to allow or refuse. The culprit's life was spared, if on his way to execution he accidentally met one of the vestal virgins. For minor offences fines of cattle were imposed or the culprit was scourged. For serious injuries the wronged party was entitled to retaliation, eye for eye, etc. For thefts and other injuries to person or property compensation was usually awarded.

Under Servius Tullius important changes were made in the organization of the state. These, though induced mainly by military considerations, had a most important influence in later years on the civil institutions, and on the relations of the *plebs* and patricians. A census was taken, registering the citizens with the numbers in their families, and showing the value of their lands and holdings. This census was revised

periodically. Transfers of lands to be recognized were required to be made publicly under certain forms or by surrender in a court before the supreme magistrate. This form of conveyance was called *mancipium* and continued in use till the time of Justinian. All freeholders from seventeen to sixty years old, whether patricians or *plebs,* were equally liable to military duty and were divided into centuries, classes and tribes without reference to the old divisions. The century of one hundred men became the unit, and the centuries were arranged in classes, the front rank including the wealthier and therefore best armed class, the second and third of the grades below and the fourth and fifth made up of the poorer citizens, who served as light armed troops. The cavalry was similarly dealt with and drawn from the most opulent citizens. Old men, unmarried women and boys holding land, were required to contribute equipments and fodder for certain ones. Non-freeholders had to supply workmen and musicians for the army, as well as substitutes, who marched with the army and took the places made vacant in the ranks by illness, death or other cause. For the purpose of making the levy the city and its suburbs were divided into four parts, superseding the old triple division. Each quarter contributed equally one-fourth part of the whole and of each of its military subdivisions, so that each legion and century was made up from all four parts. The whole military population was divided into a first and second levy, the first or juniors including those from the seventeenth to the forty-sixth year, who were usually the active force, while the seniors acted as home guards. The military unit was the legion of 3,000 men in six ranks, to which were attached 1,200 unarmed *velites.* The normal force consisted of 16,800 men in the infantry and 1,800 horse. From the time of this reorganization it was the centuries whose consent the king asked before waging a war of aggression, instead of the assembled patricians, and the centuries who authorized the testaments of soldiers before going into battle. Political power thus came to be exercised by the *plebs* as a natural sequence of their assuming the burden of military service. At the time of these changes the

population and territory of the city had been increased, and included probably not less than 100,000 people. From the earliest days the leading characteristic of the Roman state was its military spirit and superior organization for war. Another regulation of Servius, which continued in effect till the time of Justinian, was that which prescribed the mode of transferring the title to lands, houses, rights of way, aqueducts, slaves and domestic beasts of burden, which were styled *res mancipi.* The transfer was required to be made in presence of five citizens as witnesses and a *libripens* holding a pair of scales. The vendee, with one hand on the thing purchased or a symbol of it, declared it his by purchase with a piece of money which he held in the other hand, and with which he struck the scales and then handed it to the seller as symbolical of the price paid. The actual weighing out of the copper before coined money was used, or payment of the whole price in later times, does not seem to have required the presence of witnesses. This mode of transfer, called mancipation, was primarily established in connection with the census, in order that the ownership of property might be definitely established and the classification of citizens based on it secured against errors. Other forms of property classed as *res nec mancipi* could be sold and title given by delivery, but a full title to *res mancipi* could only be given by this formal transfer or surrender in court. A similar formality was soon adapted to other forms of contract including emancipation, coemption and plebian alienation *mortis causa.*

While the date of the foundation of Rome is generally fixed about 753 B.C. there seems but little on which to base any definite statement about it. The kingly form of government continued till the reign of Tarquin the Proud, who was expelled with all his clan by the Roman people because of his tyrannies. This occurred about the close of the sixth century B.C. The wars waged by him to recover the throne ended with the battle of Lake Regillus, which is said to have occurred in the year 497 B.C. and to be the first authentic date in Roman history. However this may be, the fact of expulsion is undoubted, and that the people had become so thoroughly

disgusted with kingly rule that they swore that no king should ever again rule in Rome. The title of king was retained for the high priest, *rex sacrorum,* who succeeded only to some of the religious functions of the former kings. In place of a single king two consuls were chosen, to hold office jointly for a single year. They were elected by the citizens in the assembly, *comitia,* of the centuries from among the patricians, formally invested with authority by a vote of the *curiae* and confirmed by the senate. Under the new constitution laws were first proposed to the *comitia* of the centuries, and, if adopted, were in like manner approved by the *curiae* and the senate. The consuls succeeded to the temporal power of the kings, and each of them possessed these rights in full and became a check on the other. While the plebeians thus became admitted to a share in naming the consuls and making the laws, the actual direction of affairs was still in the hands of the patricians, who presided in the *comitia,* and from whose ranks the consuls must be taken. The right of appeal from capital sentences and sentences to corporal punishment otherwise than by martial law was no longer left optional, as under the kings, but was made absolute. While the consuls succeeded to the judicial powers of the kings, they were subject to restrictions. Causes were commenced before the consuls, but in civil cases and murders prosecuted by the *quaestors* the consul was required to commit to trial before deputies appointed by him.

The consuls did not succeed to the power of nominating the priests but the college of priests filled vacancies in their own ranks and also named the vestals and single priests and named a president, the *Pontifex maximus.* In extraordinary emergencies either consul had power to name a dictator, who exercised the full power of both consuls, but his powers ceased at the end of the consulate and could not continue for a period of over six months. In war he commanded the infantry and was bound to name a master of the horse, who held for a like term.

The king, holding for life, had been above accountability for any of his acts, but the consuls after the expiration of

their terms of office were subject to trial for offences committed against the law as other citizens. The old privilege of the king, to have his fields cultivated by task work of the citizens and protected dwellers in the city, ceased on the termination of life tenure. With the change in the constitution the power of the citizens enrolled for military service was further increased, and the assembly of the centuries became the most potent political body in the state. A change also took place in the *curiae,* which thereafter included all freemen of the city, slaves and citizens of other communities who stood in the situation of guest of the city being the only classes excluded.

The senate retained in the main its former powers and composition, but was no longer made up exclusively from the patrician order. Plebeians were admitted under the name *conscripti,* not however with full rights as senators. The consuls while in office had no vote in the senate. They filled vacancies whether from among the *patres* or the plebeian *conscripti,* the whole number of both still remaining 300. It became the custom to revise the roll on taking the census, which occurred every fourth year. The patricians still retained the exclusive eligibility to the consulate and civil magistracies, as well as the priesthood, and the privilege of joint use of the public pastures. The practice, commonly followed under the regal constitution, of consulting the senate on matters to be proposed in the assembly, became a settled custom, and the senate also gained a most important power by taking away from the consuls the control of the public treasury and putting it in charge of two subordinate magistrates nominated by the consuls. The expenditure of the public moneys could only be made with the consent of the senate. On the whole the position of the senate was strengthened at the expense of the executive head, but the plebeians also gained advantages. The development should not be looked at from the narrow standpoint of advantage to one class or the other. Rome was a growing power, and the elements of which it was composed were asserting their strength, not merely in the interests of their respective classes, but for the advance-

ment of the whole. Among the regulations favorable to the poor were reductions of the port dues on grain and intervention of the state to secure corn and salt for the multitude at reasonable prices through state monopoly. A singular regulation with reference to fines was that which prohibited a magistrate from fining the same man on the same day to the extent of more than two sheep or thirty oxen without granting leave to appeal; thus apparently placing the poor shepherd and the rich herdsman somewhat on an equality in this particular.

In the collection and disposition of the public funds the system of farming the revenue was adopted, by which a collector payed a fixed sum to the state and collected in his own interest from the people. Public works were also carried on through contractors, who made large profits on the labor employed. The use of the public lands for grazing purposes was claimed by the patricians as their right, to a share in which however some wealthy *plebs* were admitted. This had been subject to the payment of a moderate tax, but the collection of this by the patrician quaestors was gradually omitted. When new domains were acquired, it had been the custom to assign the tillable land to the poorer people, retaining the rest for pasture. A system grew up of allowing an occupant to take possession for an undefined term, subject to the payment of one-tenth the grain and one-fifth the oil and wine. This system of occupation was allowed indefinite extension, and naturally inured entirely to the benefit of the ruling classes, and the collection of the state's share was also soon neglected. The wealthy citizens became farmers on a large scale. Small land owners, who were heavily burdened with taxation, fell in debt and under the power of their creditors, which was greatly abused. On their return from a successful war under the dictatorship of Marcus Valerius the poor landholders, who constituted the strength of the army, demanded mitigation of the rigor with which creditors enforced their demands and other reforms in the government, and refused to disband until their rights were secured. The senate at first refused. The army under leadership of the

military tribunes went into camp between the Tiber and the Aino and threatened to establish there a city of their own. An agreement was finally made granting temporary relief to the debtors and providing for some of the poor farmers in colonies that were established, but the most important concession was that which placed by the side of the two patrician consuls two plebian tribunes, elected by the plebians assembled in curies. The tribunes were given the power to nullify the commands of the consuls by a protest properly tendered. The tribunes also were given jurisdiction to try and determine criminal causes, and in case of an appeal from their decision the right to defend it before the people. They also had the important power of assembling and addressing the people and submitting resolutions for their adoption. The tribunes could not prevent the other magistrates from pronouncing sentence, the senate from adopting a decree, or the centuries from giving their votes, but they could discharge the debtor from arrest and exempt the citizen from enforced military service. That the aid of the tribunes might be always accessible, they were prohibited from spending a night out of the city and required to leave their doors open day and night. They could summon any citizen before them for trial, even a consul in office. Their process was served by two *aediles* appointed to attend them, and they were aided by ten men for lawsuits, whose precise powers cannot be stated. An appeal from the judgment of a tribune went, not to the whole body of citizens, but to the whole body of plebians, who met and voted by curies. Only against a dictator were the tribunes powerless to interpose. As might readily be foreseen this arrangement invited conflict of authority and tended to violence when partisan spirit was high. The tribune Gnaeus Gemicius, who had called the two consuls to account, was found murdered in his bed on the day fixed for the impeachment. This circumstance led to the passage of the Publilian law, which provided for a plebian assembly of tribes and the plebiscitum. The *plebs* had theretofore adopted resolutions by curies, voting man by man without distinction of estate, and, as the clients of the patricians were entitled to vote in these, the

influence of the patrician clans was often controlling. The Roman territory was now divided into twenty-one districts designated as tribes, but with fixed territorial boundaries. In the tribes the voters were the plebeian freeholders only, each of whom had one vote, no matter what the extent of his holding. Thus the patricians and residents who were not freeholders were excluded. The enactments of these meetings, when previously approved by the senate, had the force of law and were of equal validity with those adopted by the centuries. After much contention and many proposals of reform, about the year 454 B.C. a Decemvirate was established in place of the consuls, to which plebians as well as patricians were eligible, and the tribunate was suspended for the time. An embassy was sent to Greece to obtain the laws of Solon, and after their return the decemvirs were chosen, all of whom were patricians. The purpose of the decemvirate was to establish a written code of laws for the protection of the people against arbitrary and discretionary power. As this code was not completed within the term of the first members, a second set was chosen, including some plebeians. The product of the labors of these officials was the first ten of the famed XII tables of the Roman law. Others were chosen the following year, who added the other two, all of which were duly ratified by the people and engraved on tables of copper and affixed in the Forum to the rostra in front of the senate house. This famous code is preserved to us only in fragments, gathered here and there from the writings of men of later times. A summary of them is given in the Appendix.

How much or how important the omitted parts of this famous code may be it is impossible to tell, but enough is preserved to show the crude and barbarous customs of the time and also the earnest effort for better and more humane regulations. For punishments, death, bodily injury and fines, for the collection of debts the person of the debtor was seized, and he stood on the level of a criminal. Slavery was recognized, yet at the same time among citizens special privileges were prohibited. Publicity and impartiality in all trials were enjoined. The truth was to be ascertained from witness

and without torture. There is a tinge of superstition here and there but little sanction for priestly tyranny. Taken as a whole it exhibits the germs of the system of written laws, which has since prevailed throughout Europe, commingled with the crudities and barbarities of a small warlike community, constantly struggling with its neighbors for existence. The decemvirate, having completed its labors in the enactment of the code, was not gotten rid of without strife and turmoil. Consuls and tribunes were again chosen, and it was decreed that thereafter every magistrate, even a dictator, should allow an appeal in capital cases. The tribunes were admitted to share in the discussions of the senate, and any resolution of the senate or assembly might be arrested by them. Soon after 445 B.C. the Canuleian law broke down the strict social division, which had been maintained between the orders, and declared marriages between patricians and plebeians lawful as true Roman marriages and that the children should take the rank of the father. It was further provided that in place of the consuls six military tribunes should be chosen with the powers and for the terms of consuls. As under the military system all citizens liable to military service were eligible to military commands, this in effect opened the consular office to all plebians liable to service. This was not a permanent arrangement, but year by year there was a struggle to determine whether consuls or tribunes should be chosen, usually resulting in favor of the latter. In 435 B.C. the making up of the census, which had theretofore been the province of the consuls, was entrusted to two censors, nominated from the patricians by the centuries for a period of not more than eighteen months. To them was confided the power to fill vacancies in the senate and even to remove the names of unworthy ones from the lists of senators and *equites*. There were four *quaestors* in charge of the public money, two for the city nominated by the consuls, and two for the army by the tribes, but all taken from the patricians. In 421 B.C. the nomination of the city *quaestors* passed to the assembly of the tribes, the consul merely superintending the election, and plebeians became eligible. Granting eligibility was not equiv-

alent to conferring the office, and the patricians still continued to fill most of the magistracies. The wealthy *plebs* struggled to advance their own political privileges quite as much as to better the condition of the poor. There were not only patricians and *plebs,* but among the *plebs* there were the freeholders and the *proletarii,* and beneath all the slaves, who were without political rights and for whose welfare as a class no party ever labored. During the struggle between patricians and *plebs* the division was not so much between rich and poor or between freeholder and non-freeholder, as between patrician privilege on the one hand and plebian freeholders on the other, but the plebeian leaders gave some heed to the cries for relief coming from the small farmers and laborers. In 378 B.C. the tribunes Gaius Licinius and Lucius Sextius submitted a proposal, first to abolish the consular tribunate and to thenceforth require that at least one consul should be a *pleb;* second to open to the plebians admission to the priestly college of custodians of oracles and to increase the membership to ten; third to allow no citizen to maintain on the common pasture more than one hundred oxen and five hundred sheep, or to hold more than five hundred *jugera* (about three hundred acres) of the domain lands; fourth to oblige landlords to employ in the fields free laborers in proportion to their slaves; fifth that debtors should be allowed a deduction of the interest which had been paid from the principal of their debts and terms for the payment of the balance. After eleven years the senate yielded and these proposals were adopted. Following these reforms the judicial power was detached from the consuls and vested in a special officer, the *praetor,* and the supervision of the markets, the police duties connected therewith and the celebration of the city festival, were conferred on two newly created *aediles,* called by way of distinction from the plebeian *aediles, aediles curules.* These offices were soon opened to *plebs* and patricians alternately, and within a few years *plebs* were made eligible to the dictatorship and office of master of the horse and to both censorships, and the patricians by law excluded from one censorship. Through these various offices the *plebs* not only gained

admission to the senate, but those who had filled the offices of consul, *praetor* and *curule aedile* were summoned to give their opinions on matters before the senate in the order named, whether *plebs* or patricians, and the other senators merely voted on the division. Afterward the priestly colleges of *pontifices* and *augurs* were opened to the *plebs*. The senate lost its veto power on laws passed by the assembly, and at length it was provided that decrees of the *plebs* should have equal force with those of the whole people. This happened about 286 B.C. and witnessed the termination of the main contention between *plebs* and patricians. It had previously been enacted (339 B.C.) that the senate should give its sanction to all laws before submission to the people, which in a brief time practically deprived the senate of its veto.

The Roman government as thus constituted, and as it continued without substantial change till the time of the Caesars, vested the law-making power in three popular bodies, either one of which exercised its powers without action by the other, and each of which included in its membership a large proportion of the members of the other bodies. These were the *comitia* of the centuries which corresponded with the soldiery acting in their civil capacity, the *concilium plebis,* made up of the whole body of the *plebs,* voting by tribes, and the *comitia tributa* of the whole body of the people, also voting by tribes. The membership of the *comitia* of the centuries was based on a property qualification, that of the other bodies was not. This body at first could be convened and presided over only by a consul, but afterward the censors had power to convoke it for matters relating to the census and the *praetor* for state trials. The procedure in the passage of a law by the *comitia* of the centuries by which the XII tables were enacted was, first publication of the proposed law two weeks before the day appointed for the vote, during which time meetings were sometimes held for its discussion; second, on the appointed day the *auspicia* were taken by the presiding magistrate, assisted by an *augur* which, if favorable, were followed by summoning the people by blast of the trumpet to attend prayer and sacrifice offered by the president, pontiffs and augurs. A

final discussion might then follow, at the conclusion of which the citizens marched to the Campus Martius where the call was read and, if no portent from heaven intervened, the question was then put, "Is it your pleasure *Quirites* to hold this as law." The vote was taken by centuries, those of the knights and freeholders of full valuation being taken first. If these were unanimous the vote went no farther, as they constituted a majority. Prior to the Publilian law the consent of the senate was still necessary, but afterward it was not. In the *concilium plebis* it was not necessary to consult the gods by taking the *auspicia.* It could be convened and presided over by a tribune or an *aedile,* and its resolutions required no confirmation by the senate.

The *comitia tributa* was convened by a patrician magistrate, and before it could proceed the *auspicia* had to be taken and its enactments required confirmation by the senate. When so confirmed they bound the whole people, while those of the *concilium plebis* bound *plebs* only until after the Hortensian law. The struggle of the classes, through which the governmental system was evolved, was contemporaneous with the struggle with external foes through which the number of the people, the possessions and power of the state steadily advanced. From a kingly government of a small community, based on the idea of absolute paternal authority, a populous state was formed with the power of making laws definitely lodged in the mass of the people; with the idea of written law to settle private rights and direct the action of officials clearly comprehended and adhered to, and with a distribution of powers among executive, administrative and judicial officers designed to render one a check on another. Publicity in trials and the right of appeal were shields against the arbitrary exercise of power; but more than this the brief terms of officers, in whom the powers most subject to abuse were confided, made systematic tyranny impossible, though it could not prevent instances of it. That this security might not be impaired by successive elections, it was ordained 342 B.C., that the same person should not again administer the office until after an interval of ten years. This rule was not rigidly

enforced, however, but in extraordinary emergencies was disregarded.

The long struggle between classes resulted in overthrowing the exclusive privileges of the patricians and in wresting the power to make laws from the representatives of that order, but instead of weakening the influence of the senate, it greatly strengthened it. A senate made up of the heads of patrician houses only would, in a state rapidly increasing in population from the elements absorbed by the plebeians, not only have become less representative and therefore less influential, but would inevitably have lost its vigor by reason of its exclusiveness. The opening of the senatorial list, not only to plebeians who were elected to the principal offices, but also to such citizens of distinction as the censors might name, made of the senate a body which included the most vigorous and influential men to be found in the state. Distinction in public service, as well as family and wealth, gave access to a seat in it. It was the only select political body in which affairs of state were discussed and policies formulated. Substantially all important public measures, aside from those which were the subject of dispute between patricians and *plebs,* were first aired and formulated in the Senate. It was the senate that proposed general policies for the advancement of the power of Rome. It supervised the administration of affairs at home and in the colonies and subject communities. It determined all questions relating to war, peace, alliances, the founding of colonies, the allotment of lands, the erection of buildings and the system of finance. It issued annually general instructions to the magistrates, fixing the number of troops and amount of money at the disposal of each. The treasurers could make no payment to a magistrate other than a consul except on the order of the senate. Even the power of the tribunes was finally turned to strengthen the position of the senate, after they were admitted to seats in it and to take part in its deliberations. Though the senate was not strictly an elective body, and though its members continued for life, its ranks were constantly recruited from consuls, praetors, aediles and other magistrates, whose merits had

been recognized by the people, and who took their seats by virtue of that recognition. The Senate under the kings was an assembly of elders, whom the kings were accustomed to consult rather for the inherent value of their counsel than on account of any obligation to follow it, and though we nowhere find any enactment formally conferring powers on the senate after the expulsion of the Tarquins, it little by little assumed and exercised, as its prerogatives, those powers which were not lodged elsewhere. The people were its superiors so far as the power to pass laws was concerned, but the field actually covered by their enactments was narrow as compared with the vast range of subjects of which the senate took cognizance. Even where a law of the people existed, the senate sometimes swept it aside for the time being, if it stood in its way. Thus the political head of Rome from the end of the monarchy till the establishment of the empire was the senate. Under its guidance the leadership of Rome was first extended over Latium, then step by step over Italy and afterward over all the countries comprising its vast empire.

The struggles of Rome with the other Latin communities began in its infancy, when it was not marked out as first in power. In time it conquered Alba, which had theretofore been the chief town of the Latins. The earliest union of other Latin communities with Rome was not as subjects nor as an integral part of a single state, but as allies on something like equal terms, and at length with the confederated Latins as one party to the compact and Rome as the other. The citizens of each community were accorded equality of right to acquire land and chattels, to trade and marry in any other. This relation, formed during the existence of the monarchy, continued under the republic. With the growth of Rome the relative importance of the smaller communities diminished and all leadership centered in Rome, which gathered to itself the urban elements, the trades and industries which naturally centered in a city. The limits of the city were extended as a necessary consequence of its increase in population, and the number of tribes increased from four covering the ancient wards of the city, to twenty-one spreading over rural districts.

By the terms of the compact between the confederacy and Rome they shared equally in lands acquired by conquest, and thus the boundaries of each were contemporaneously extended, but about 384 B.C. the limits of the confederacy, which then included thirty voting members, were closed, and a policy, thereafter steadily pursued, was inaugurated, by which new communities were prohibited from alliance and intercourse with each other and bound as closely as possible to Rome. Roman citizenship was conferred on those in new settlements or acquisitions in preference to the priviliges enjoyed by the Latin communities.

The leadership of Rome, which at first carried with it no dominion over the allies, little by little was converted into rulership, so far as all matters relating to external policy were concerned. The creation of new communities allied to the Latin confederacy would have stood in the way of the extension of the dominion of Rome. From the settlements on the Roman hills proceeded other neighboring settlements, to whose members the full rights of Roman citizens were accorded. By treaties or decrees the right of full citizenship was conferred on subjugated towns and new settlements more distant from the city. Revolts of some Latin towns were punished by taking from them their separate organizations and incorporating them as integral parts of the Roman state. There were other communities on which were conferred Roman citizenship without the right of suffrage. They were entitled to all the legal rights and protection of other citizens, and alike subject to military service, but merely could not vote or hold office. Other people, attached to Rome as a result of war, were granted rights and ruled in such manner as might be determined by treaty or by the Romans. There were thus, during the extension of the power of Rome over Italy, four classes of communities: 1. Roman with full Roman citizenship; 2. Latins with municipal freedom and governments corresponding in form to that of Rome, but in all matters of foreign policy, of peace and war, under the guidance of Rome, and prohibited from all alliances within or without; 3. communities whose members were citizens *sine suffragio,* included

in the census, but neither entitled to vote or hold office; 4. non-Latin communities with varying rights depending on treaties or Roman decrees. The third of these classes disappeared about the time of Hannibal's wars, being either granted full citizenship or entirely deprived of it. In after time the Roman franchise was more and more sparingly conferred. With the extension of Roman power throughout Italy there was neither direct administration of local affairs by officers appointed at Rome, except prefects named by the praetor for Roman colonies, nor representation of the different cities and states in the central government at Rome. Neither did Rome exercise the power of direct taxation in the conquered districts, but the institutions of the various communities were moulded into accord with those of Rome, and local government was administered by local authority. Those persons and communities enjoying full citizenship might exercise it as members of the tribes and centuries at Rome, but not through any system of representation. The struggle between the different orders, through which the *plebs* gained the power to make laws, had no permanent effect tending to improve the situation of the poor and middle classes. The differentiation of rich from poor went on during the period of Rome's great successes with constantly increasing speed. The poison of slavery, fostered and perpetuated by successful wars through which the slave market was constantly supplied, lay at the foundation of the industrial and commercial system. The burdens of war fell mainly on the small farmers. The privileged classes extended their possessions and pastured their herds and flocks on the public lands wrested from newly subjugated people. The earnings of slaves bought more slaves for the rich, while competition with slave labor and the extortions of usurers, who multiplied with great rapidity, placed the small farmer or tradesman between the upper and nether millstone. From the multitude of ruined farmers and traders and their descendants, recruited by freedmen, there was developed that vast mass of poor and dependent citizens, for whose benefit the senate deemed it wise to provide cheap bread and amusements. The gains of the common people in the

system of government were theoretical, while the aristocracy seized, exercised and retained an increased measure of power. With the extension of the field of operation of the armies changes in the military system were inevitable. Whereas, in the early days an army was made up of the citizens commanded by a consul, going forth to fight some near enemy during a brief campaign and then returning to the ordinary peaceful avocations, distant campaigns required longer terms of service and rendered it impracticable to recall and disband the army within the year of service of the consul. It therefore became the practice to extend the command of the consuls engaged in distant wars beyond the year, and, in place of a citizen soldiery equipped at their individual expense, it became necessary to have paid legions. With the multiplication of distant provinces, requiring the presence of armies to protect the frontier and repress insurrections, proconsuls were appointed and continued in command for such periods as the senate determined. For the administration of the law districts were established, to each of which a prefect was sent, who was a judicial officer at the head of the civil administration of the law. Strictly local affairs were everywhere subject to municipal authority in the cities and Roman colonies, and local customs were not disturbed, except for strong reasons. Alliances were formed with native rulers, wherever the interests of Rome could be advanced thereby, and the settled foreign policy was expressed by the maxim, "divide and rule." To this end republican Rome did not hesitate to ally itself with kings and arbitrary rulers, wherever such alliances appeared useful in its struggle with an aristocracy like that of Carthage. With the extension of Roman power the possessions of the patricians and wealthy plebeians were extended, and their estates spread, not only over newly acquired districts in Italy, but into distant provinces. The money lenders also followed in the wake of the armies, wherever the authority of praetor and prefect could be depended on to enforce the payment of usury. With the administration of government in distant provinces inhabited by alien people, that high sense of public duty and strictness of integrity for which the

early Romans were distinguished disappeared, and officials returned to Rome with vast wealth extorted from them. These evils became so great, that in 149 B.C. a special court was established for the trial of cases of official extortion in the provinces, the jurisdiction of which was subsequently extended to cases of treason and bribery. The ancient system of serving the state in all public stations without pay, though still continued at home, thus had engrafted on it a most corrupt and corrupting system of public service in the provinces.

Under the constitution above described, with the theoretical power of lawmaking and election of officers in the hands of the common people, but the actual direction of affairs in the senate, the power of Rome was extended throughout Italy, the Punic wars were waged and Carthage destroyed in 146 B.C. As incident to the struggle with Carthage Sicily and Spain were reduced to Roman provinces, and on its final destruction its territory was also ruled directly from Rome. Toward the east Rome did not at first seek to establish a political dominion, but sought alliances and commercial relations. The encouragement given the Carthaginians under Hannibal by the king of Macedon led to war, first with Philip and afterward with his son Perseus, resulting in his total defeat and capture by Aemilius Paulus 168 B.C., but Macedon was not reduced to a Roman province till 146 B.C. The first appearance of the Romans in Greece was as friends and allies against Macedon, and on the first overthrow of the Macedonian power the Greeks were liberated to their great delight, but their internal dissensions soon led to the establishment of the usual provincial system.

With the rapid extension of Roman power on the three continents came a correspondingly rapid development of social disorders. The Roman republic had been developed as a municipal system for the protection and well being of a comparatively small state. Its first extensions of influence were over other cities, similarly organized, to which substantial equality was accorded; but with the rapid extension of empire Rome as a central power dictated to the known world. It was no longer an association of freemen, differing somewhat

in rank, but closely allied in interest and sentiment, but a city containing a vast mixed population, drawn from many nations, most of whom were poor, ignorant and brutal, and a numerous aristocracy of great wealth, despising all labor and laborers. Avarice and greed of power became the ruling passions of the nobility. The proconsuls and prefects, who returned after the exercise of ill-defined and unrestrained powers in the provinces, despised the rabble of the city, and were impatient of the authority of the senate. Ill-gotten gains were lavished, when occasion required, to corrupt the multitude, and mercenary legions ceased to have the feelings or the interests of the ancient citizen soldiery, but followed their favorite leaders without regard to law or justice. Moral debasement of Roman society preceded the disorders which resulted in the overthrow of the republic. The efforts of the Gracchi to curb the power of the rich and afford relief to the multitude, were not productive of permanent results, and cost them their lives. Marius, though one of the common people and six times chosen consul by them, was a soldier, and at last he swept away the ancient system of organization of the legions and substituted voluntary enlistment for compulsory levy. The revolt of the Italians resulting in the social war, which occurred 90 B.C., was the beginning of those disorders which finally resulted in the empire. The legions under Sulla and the grant of the Roman franchise to citizens of allied communities domiciled in Italy overcame the resistance in the provinces, but Sulla returned to Rome at the head of his legions, and for the first time in the history of the city public measures were dictated and carried by military power. The substitution of violence for the ancient peaceful vote evidenced the decay of patriotism, and soon after Sulla's departure for Asia at the head of his legions the new citizens, who sought to exercise the franchises bestowed on them, were attacked in the forum by an armed force, acting under orders of the consul Octavius, and great numbers of them slain. In place of the government of law there had come the sway of military power.

From the ascendency of Sulla to that of Caesar the military

leaders ruled in fact, using constitutional forms only as a means of acquiring arbitrary powers. In the early period of the development of military rule the leaders sought independent commands in the great provinces, by which they became in fact dictators over vast territories, supported in the exercise of unlimited powers by Roman troops. Having become accustomed to the exercise of unrestrained power abroad, they did not brook constitutional restraints at home. Sulla gained the command in Asia by the aid at Rome of the legions he commanded in the Social war. After his departure Cinna and Marius returned with their armed followers to wreak vengeance on their enemies and overawe the senate. Sulla on his return from Asia crushed his adversaries and barbarously murdered great numbers. The outbreak in 73 B.C. under Spartacus and the conspiring of Catiline were but evidences of the decay of constitutional government. The senate, though led by so brilliant an orator as Cicero, had lost its moral ascendency, and adopted the low expedient of calling on one usurper to put down another. Pompey's power and ambition developed in the command of Spain, followed by a dictatorship over the Mediterranean Sea and its coasts for the extirpation of piracy. The alliance of Caesar, Crassus and Pompey resulted in the confirmation of Pompey's power in Asia and a five years' lease of power to Caesar in Gaul and Illyricum. In 55 B.C. Caesar's command was renewed for another five years. Pompey received Spain and Africa and Crassus, Syria. On his return in 49 and the flight of Pompey Caesar assumed the whole power. The government had been in a stage of transition for half a century, but it was not of the kind that had gone on during the prior history of the state. There was comparatively little agitation of theories of government, of rights of classes, or of official powers. Military leaders sought great commands, and having gained them perpetuated and extended their power by the use of the legions under them. It was a mere exercise of usurped authority, backed by military force accustomed to obey the leaders' commands. There was no independent and vigorous force in the state, competent to formulate and maintain anything like a

just public sentiment of controlling influence. The senate divided into factions attached to the contending military leaders. The great multitude, being without property, were incapable of steady, united effort to accomplish any reform beneficial to themselves, and were in fact too brutal and ignorant to appreciate justice or virtue. The one conspicuous and appalling fact, which accounts for all the political evils from which Rome suffered, was the general and all pervading moral debasement of the people. Among the wealthy classes gross sensuality was the rule. The marriage bond, which in the early days had been regarded as of peculiar sanctity, was treated as a mere matter of convenience, and we read of all sorts of divorces and exchanges of wives among the patricians. The strength of the social system of Rome had centered around the family *lares et penates,* and the close tie which held husband and wife, parent and child, together. Laxity of the bond which holds man and wife together and laxity of morals are inseparable. Without purity and integrity in the homes there is no basis for virtue in the state. Slavery, in itself utterly immoral, is naturally productive of allied evils. The great houses of Rome rested on the support of slaves. Labor in all its forms was regarded as fit for slaves only. To earn money by any useful employment was to incur disgrace and social ostracism. In their amusements the Romans exhibited in strong light their moral depravity. The savage games and gladiatorial contests educated the multitude to brutality. The great mass of paupers, who yet were not slaves, were raised under a system which rendered it not only disgraceful to work but of very little profit. To fight in the arena or in the legions offered the best rewards. As it had departed step by step from the path of virtue, the republic had lost its vitality. Freedom cannot possibly exist without justice. In looking for the cause of the overthrow of the Roman republic various phases of the situation are given special prominence by different ones, but the plain fact is apparent, that moral degradation was all sufficient to produce every disorder.

Caesar appears to have been not worse, but rather better,

than the average of his contemporaries. After he crossed the Rubicon he proceeded to restore order without resorting to the butchery of Pompey's followers or confiscation of their property. In this he showed his superiority to Sulla and Marius. He did not ostensibly change the constitution, but he in fact seized full sway and ruled nominally as a constitutional dictator, but without limitation of time. The style of perpetual dictator implied a suspension of all limitations on his power during life. While he sought to restore prosperity and relieve individual distress by allotments of lands to his old soldiers, by the colonization of Carthage and Corinth, by stimulating settlements and improvements in the decaying towns and on the public lands of Italy, by draining the Fucine Lake and the Pomptine Marshes and other like works, he yet dissolved the popular political clubs and guilds, curtailed the free distribution of corn, and abolished the popular element of the judiciary. He assumed the title *"imperator"* and ruled through his *"legates,"* admitting no check or negative of his commands by any authority. In form the old system continued and officers exercised their functions as of old. The senate met, deliberated and resolved, the assembly passed laws and elected magistrates. There were consuls, praetors, tribunes, aediles, and quaestors as of yore, but there was one supreme will, to which all opposition must yield, that of Caesar. He transformed the senate by raising its numbers to nine hundred and including in its list his old soldiers, sons of freedmen, and even Gauls. He finally severed all authority over the provinces from the Roman *comitia* and exercised his absolute power through his appointees. At Rome, as in the provinces, the officials chosen by the people were limited to the exercise of municipal authority. He established in Italy a uniform system of municipal government, which his successors extended throughout the empire. His brief rule from 49 to 44 B.C. was long enough to give definite form to the changed system of Roman government, and to confer on him the title of founder of the empire, although a period of civil war and turmoil and the division of the empire among the triumvirs intervened before the government became settled under Augustus.

Octavius after the overthrow of Anthony at Actium proceeded to so reconstruct the government as to retain all ultimate authority in his own hands, while preserving the forms of the republic. He did not lay claim to authority derived from a source above or outside the people. On the contrary he took his extraordinary powers by grant of the people and under names and forms familiar to the republic. On the restoration of peace in 28 he resigned the dictatorial powers, which he had held through the civil war, and handed over the republic to the control of the senate and people. The senate, assembly and magistrates resumed their functions. By decree of the senate Octavius was granted the proconsulor authority over all the provinces in which there was any military force, the supreme command of all the land and naval forces of the empire, with full power to recruit, pay and dismiss soldiers, equip fleets, wage war and make treaties. This authority was given at first for ten years. The power did not differ in character from that which had long before been habitually conferred on proconsuls in limited territories for shorter periods. In 23 the governors of all the provinces were subordinated to him, and he was exempted from the ancient law requiring a proconsul to lay down his power on entering Rome, and was allowed to bring into the city his prefects and praetorian guards and exercise his proconsular powers from the city. This grant of power was formally renewed for subsequent periods of five and ten years. In Rome the proconsuls *imperium* carried preëminence and the right to take his seat between the consuls, to be attended by lictors, wear the laurel wreath, *paludamentum,* general's cloak and sword of the *imperator.* The senate conferred on him the title Augustus, and he was popularly termed *princeps.* To complete the measure of his power he was also made a tribune of the *plebs* by decree of the senate and vote of the assembly. This gave him the right of absolute veto on the acts of every administrative officer, and to convoke the assembly and senate and propose to them new laws. The fundamental change which had come over the views of the Roman people with reference to all governmental matters was, that in place of looking either to

the aristocratic senate or the popular assembly as the source of power, all eyes were turned to the proconsul. The senate and assembly became mere instruments for the ratification of his will. Under Sulla, Cinna, Marius and Caesar it had been shown, that whomever the legions obeyed was master also of the civil power and could command the votes of the popular assembly as well as of the senate.

Augustus reorganized the army, enlisting soldiers for long periods of service, twelve to sixteen years, with regular pay. Of these he kept the praetorian guard, his household troops and picked veterans, numbering in all 12,000 to 15,000, at Rome. The whole army consisted of twenty-five legions, each made up of 6,100 foot and 726 horse, recruited both from citizens and subjects of the provinces. Aside from these auxiliaries from allied nations and dependencies were employed, numbering about as many more.

Under Augustus the ancient system of municipal government was preserved in form at Rome, but throughout all the provinces his absolute *imperium* was under no check or limitation. The actual administration of this absolute power was carried on in accordance with a regular system, and, theoretically at least, justice was administered in accordance with laws. The municipal system modelled after that of Rome, had in republican times prevailed in all the Roman colonies, and under the empire it was extended to the provincial cities generally, each city having officers corresponding to the consuls and senate, who regulated local affairs and decided small cases. Each senate sent two of its members to Rome to represent its interests there.

For the purpose of levying the taxes Augustus caused a great map of the empire to be made. The lands were classified and rates of taxation fixed according to the quality of the soil and nature of the products. From some provinces a share of the product was taken in kind, while from others payment in money was required. The Romans were skilled in the art of levying taxes, and not only land and capitation taxes, but various forms of excise taxes and import duties were levied, and the products of the mines as well as of the

fields were made to swell the revenue. Under Augustus the senate was allowed to retain control over the *aerarium,* or treasury of the city, but the emperor's treasury, called the *fiscus,* received the taxes from the provinces and was subject to his sole authority. In a short time the *aerarium* fell under the control of the emperors. The army and the treasury upheld and perpetuated his power. To rule so many people and so vast a territory and make his will effectual, general rules of conduct must be announced and enforced through the praetors and other officers. The vastness of the tyrant's power compelled its exercise in accordance with fixed principles rather than caprice, and this necessity promoted the development of that great system of settled principles, based on the consensus of opinion of successive generations, which furnishes the foundation of the modern jurisprudence of most European and American states.

During the republic, except when a dictator held absolute power in an emergency and for a brief period, the functions and powers of all public officials were limited by law, and different offices were designed to afford a check on each other. The fundamental change effected by the Caesars superimposed a military head, who was not accountable to the people or the senate. Augustus did not attempt to break up the ancient civil system, but rather to reconstruct and strengthen it. Instead of abolishing minor offices he increased the number. The senate was allowed to continue to deliberate and exercise its former functions in all matters which did not interfere with his supremacy or policy. The evils of this system had been manifested under the temporary grants of dictatorial powers during the civil wars, and became more apparent under succeeding rulers. Unrestrained power in the hands of bad men is always abused. Not only does the tyrant gratify his own personal malice and ruin or destroy his particular enemies, but those whom he uses as his instruments for such purposes are also, as a rule, allowed to treat their enemies in a similar manner. By far the greater number of victims under the worst of the emperors owed their misfortunes to the malice of favorites and subordinates, who used the authority of the emperor to further individual ends.

The idea of government by law was never wholly abandoned under even the worst emperors. While he was subject to no supervision or control, he still in theory was subject to the laws. This adherence to laws rendered order, tranquillity and prosperity possible under the best of the emperors, and greatly mitigated the evils under the worst of them. The habit of recurrence to a recognized standard of right or of conduct tended to steadily diminish the number of personal feuds, and to encourage commerce and agriculture. The element of arbitrary power was looked upon as a great blessing when wielded by virtuous rulers, but the poison of the system became manifest under every weak or vicious one. Against a tyrant there was no protection, and the Roman people no longer strove to improve their governmental system, or to study great social questions.

In the administration of the law the judges were expected to decide causes in accordance with settled rules. Wherever a legislative enactment covered the case they were of course bound by it, but, in the absence of such a positive law, a system of rules was evolved by those who made a special study of the law, and who were looked to as authority on doubtful points. The judges who actually administered the law were not regarded as authoritative expositors of it. In cases of doubt they applied to the learned *juris consults,* licensed by the emperor to give written expositions of the law, for an opinion. This was given in writing and was generally regarded as binding, except that where two *juris consults* gave opposing opinions the judge was free to decide according to his own views. The emperor exercised judicial functions in cases brought before him either originally or by appeal or removal from an inferior court. Imperial decrees and rescripts in cases decided by him came to have the effect of laws. The emperor in theory merely declared the preëxisting law, but when the question was new the declaration had the effect of the enactment of a law. These were formulated under the advice and with the assistance of the most learned lawyers, who proceeded step by step to build up a great system of jurisprudence. Though the governmental system became rigid, unprogressive

and therefore moribund, with the final establishment of the empire the development of the system of laws went on in the most rational manner. To the Romans the credit is due of systematically developing rules of conduct and governing property rights from an intelligent consideration of the needs of society. They did not attempt at one stroke to cover the whole field by a code of laws which should not admit of change or modification, but proceeded to consider the questions as they arose from time to time, and formulated their principles from what accorded with their conceptions of right. Under the republic it had been deemed unjust or impracticable to measure the rights of strangers trading with citizens or with each other, by the Roman *jus civile,* and so what was styled *jus gentium* or private international law was evolved by the praetors. About 242 B.C. a second praetor was appointed, called *praetor peregrinus,* whose principal duty was to hear causes to which foreigners were parties, and in the exercise of his jurisdiction he applied the *jus gentium* in those cases where Roman civil law was not within the contemplation of the parties and its application would be productive of manifest hardship. The Roman system under the republic exhibited a marked tendency to adapt itself to the public needs and to change with changing conditions, and herein lies the secret of its remarkable development. Under the republic the praetors were accustomed, on taking office, to publish on their *albums* (white boards in the forum), edicts making known the relief they would afford in certain classes of cases. These edicts might be continued by the successor or not, but many of them were repeatedly proclaimed and came to have practically the force of settled law. With the development of commerce the customs of merchants, based on the necessities of the conditions under which their business was transacted, were recognized by the praetors, and these customs in course of time ripened into laws. It was this facility for dealing with new conditions and adapting means to ends that rendered continued Roman supremacy possible. The rulers at Rome had to deal with people varying in civilization and culture from the rude tribes on all the frontiers of the three continents

to the highly polished Greeks. For the first time in the world's history there were united under a single authority the dwellers in the earliest seats of civilization in Egypt and western Asia, the Phoenician colonies of Africa, Sicily and Spain, Greece and all the Greek islands and colonies, the rude tribes of Spain, Gaul, Germany, Britain and Thrace, as well as the varied population of Italy. Rome from its earliest conquests had been accustomed to accord local self-government to subjugated communities, and throughout the development of all its vast empire and after the fall of the republic it continued to leave the regulation of purely local affairs to the people interested, but the central authority had to deal with the relations of all these varied peoples with Rome and the Romans, and with such other portions of the empire as they were permitted to have dealings with. The *jus civile* was the law adapted to the conditions, customs and prejudices of Romans, but not to those of strange people.

In the development of the *jus gentium* the Romans sought rules which could be safely applied under all conditions and between all people. It would be inaccurate to say that they strove to do ideal justice in each case, or that they searched for rules founded solely on moral principles, but a search after general rules which can safely be applied under all circumstances necessarily leads in the direction of truth, justice and morality. The *jus gentium* of the Roman jurists, though developed in a manner somewhat similar to the common law of England, differed from it in this, that the *jus gentium* was based on the needs of the newly acquired foreign subjects, while the common law is based on domestic customs and needs. Both however have for their foundation the presumed existence of principles of recognized force, though not promulgated by legislative authority. While the intellectual activity of the Greeks exhibited more brilliant results along most lines than that of the Romans, in the science of law the Romans are clearly entitled to the first rank. While the system of government established by Caesar early manifested its imperfections and its utter lack of any mainspring urging it in the direction of improvement, the *juris consults,* en-

couraged and efficiently backed in their efforts by the best of the emperors, by degrees evolved a system of laws commending itself to such sense of justice as has generally obtained among the great mass of mankind. Roman jurists early found that a complex civilization presents complex problems, and that the law must deal intelligently with these and with all of them, however numerous. They proceeded laboriously to formulate rules of general application, by which every controversy might be determined. In their search after these principles they were inevitably led to a consideration of *jus naturale,* which embodied the idea of natural rights existing without legislative sanction. Augustus adhered to the ancient system of legislation in the principal reforms he proposed, and caused his law to be adopted by vote of the *comitia* of the tribes. He made a most commendable, though not entirely successful, effort to reform public morals by encouraging marriage and the rearing of children. One of the provisions of his law excluded unmarried persons within certain ages from taking property by will, and limited childless persons to one-half the amount given. Another class of legislation, deemed of great importance, regulated the manumission of slaves and determined the status of freedmen according to circumstances prescribed in the law, as citizens, as capable of becoming such or, owing to bad character, forbidden to reside within one hundred miles of Rome or ever to become a citizen. A third class of enactments regulated procedure in private causes.

From the time of Tiberius the *comitia* was no longer consulted, and under succeeding emperors imperial rescripts and decrees gradually superseded legislation by assembly and senate. Rome witnessed the growth of the law of contracts from primitive conditions in the early days of barter of chattels and tribal and patriarchal tenure of lands through successive stages to that freedom of contract so essential to commercial activity. In the early stages the formalities required in the transfer of property in order to furnish a basis for the action of the courts were incompatible with anything like commercial activity, but step by step the law of contracts developed, till

the intent of the parties was given effect by the courts with little needless formality. The law of inheritance was through all ages a leading subject of jurisprudence, and here, as in the law of contracts, there was a steady tendency to greater freedom in the disposition of property according to the will of the owner. Contemporaneous with the vast increase of the army new rights were accorded to soldiers in the disposition of their estates by testament. As to property acquired by military services the soldier son was allowed full power of testementary disposition, freed from the *patria potestas* of the head of the family. With this change came also a recognition of the right of owners generally to dispose of property by will and the growth of trusts created by will. The great heads of legislation and judicial cognizance were domestic relations *i.e.,* family and slaves, inheritances, contracts, land tenure.

For the protection of invaded rights there was an effort under the empire to improve remedies and adapt means to ends without any radical change of the system. The ordinary suit was instituted by application to the praetor. Under the old system the parties themselves formulated the issues to be tried in accordance with statutory or traditional forms, and the issue so made was sent to the *judex* for trial. This was changed so that the issue was framed by the praetor. The plaintiff usually stated the case and indicated on the *album* the remedy he thought suitable, and the defendant entered his plea indicating matter of defense in law, and reserving his right to traverse the facts. Thereupon the praetor considered the legal exceptions to the case stated by the plaintiff, and made up a written and signed appointment to a judge, instructing him what to try and authorizing him to condemn or acquit the defendant. The form in which the issues were framed in an ordinary action to recover a debt was exceedingly simple like this "Caius be judge. Should it appear that M. A. ought to pay ten thousand *sesterces* to J. C. in that sun condemn M. A. to J. C.; should it not so appear acquit him"! Modifications of this form allowed the recovery of the value of chattels or an equitable accounting of profits or the like.

One form for the trial of a suit for land was, that the plaintiff required the defendant to give him a stipulation to pay a nominal sum in case the land should be found to belong to the plaintiff and to give surety for its transfer in that event. The question sent to the judge to be tried was whether the sum should be paid. If the plaintiff recovered and the defendant did not deliver the property, recourse was had on the sureties. Besides the set forms adapted to certain classes of actions the praetors formulated a great number, suited to special cases, generally styled *actiones in factum.* They also by interdict gave relief similar to that granted by injunction under our practice. The development of remedies was very similar to that in England. In the early times a few set forms of action afforded all the relief allowed; later these by fiction were allowed to cover cases not within the letter, and then new forms of procedure were devised to meet new conditions. Causes presenting novel questions and of especial difficulty were retained for trial and disposition by the praetor or taken cognizance of by a consul. The *judices* to whom the praetors referred causes were not officials, but citizens selected to hear and determine the particular cases. In the time of Diocletian the system of referring causes to *judices* fell into disfavor and was soon discontinued altogether; governors, prefects and praeters being required to hear the cause to the end, and the old procedure by which the plaintiff himself brought the defendant into court was abandoned.

The government of Rome, though in its essence a despotism, did not discard all the forms of a republic till the time of Diocletian. Though for centuries the obsequious senate had ratified the edicts of the emperors and given a formal sanction to his will, Diocletion ignored it altogether. He associated with himself the harsh and vigorous soldier Maximian, as joint ruler with the style Augustus, and later two other associates, as inferiors under the style Caesares; all subordinate to Diocletian as senior Augustus. He threw off all pretense of constitutional government and openly assumed autocratic powers, and to the title *"imperator"* added that of *"dominus,"* and required those approaching him to make those

servile prostrations which were customary in the courts of the east. He infused vigor into the administration of the local government, but it was everywhere despotic vigor, emanating from the central authority. The government ceased to be administered from Rome as the seat of power; Nicomedia in the east and Milan in the west became the favorite residences respectively of Diocletian and Maximian. In his reign the government reached its climax of absolute power and rigidity, though the scheme of a quadruple division of power did not endure. While administrative changes occurred from time to time thereafter, the government remained despotic, unprogressive and moribund. The Roman republic was dead. The Roman empire ceased to be ruled either from Rome as a capital or by Romans, for Diocletian was the son of slave parents, and his mother was a Dalmatian. At the head of the civil administration were four prefects, under whom were the *vicarii* over the twelve dioceses, and governors of the 116 provinces with their hosts of minor officials, all under strict subordination and accountability to the central authority.

The reign of Constantine, beginning in 323, witnessed the establishment of the capitol of the eastern empire at Constantinople and the adoption of the Christian religion as the religion of the empire, but the theory of government remained unchanged. For the beneficial effects of Christianity we have to look elsewhere than to the governmental machinery. Though writings embodying the principles of the law multiplied, not only in the form of enactments by the *comitia* and senate and later in rescripts and edicts of the praetors and emperors, but also in extended commentaries by *juris consults,* it was not till the reign of Diocletian that the first efforts at codification were made. The Gregorian Code was a collection of imperial rescripts made near the end of the third century, to which Hermogenianus added a supplement about 365. These codes received the sanction of Theodosius and Valentinian. Under Theodosius a compilation was made and published A.D. 438 in sixteen books, covering the whole field of the law. Other less noted compilations among which may be mentioned one by order of Theodoric king of the

Ostrogoths, called the *Edictum Theodoric,* and another by order of Alaric II king of the Visigoths, styled *Lex Romana Visigothorum.*

The work however which stands as the product of all legal development under the empire is that accomplished by Trbonian and his associates. As we have seen, during the years of development the law gained written expression from time to time in edicts, rescripts and opinions of the *juris consults.* These in the time of Justinian had become so numerous as to fill nearly two thousand volumes. Justinian was not merely a compiler, but himself made various reforms in the body of the law. The first compilation made under his order was called the code, including the statute law and rescripts of the Gregorian and Hermogenian codes. This was followed by his fifty decisions, the Institutes, the Digest of writings of the jurists, a revised code and a series of Novels. Taken together they purport to cover the whole field of the law, civil, criminal, public, private, secular and ecclesiastical. The most that can be attempted here in reviewing this great work is a very general outline of its scope and leading provisions. This is rendered most difficult by the want of systematic and orderly arrangement, which alone saves modern publications from chaotic worthlessness.

Of the compilations of Justinian the Institutes were designed as a textbook for the schools, but the Digest and second or revised code were declared of equal authority. A condensed summary of the Institutes will be found in the Appendix. It is noticeable that the compiler and final authoritative promulgator of this vast product of Roman jurists, should have been a barbarian, born in Illyricum, ruling in Constantinople after the final extinction of the western empire and the overthrow of Rome as a center of political power. The vast accumulation of legal lore filling so many volumes was reduced to reasonable limits, freed from many uncertainties, improved in many particulars and promulgated as of controlling authority in all courts in the empire. It is even more remarkable that the perfection of this great body of law should have been effected after the disintegration of the empire was

well advanced, and at a time when letters were neglected and the authority of courts was being broken by the inroads of the barbarians and the disruption of the Roman system throughout the empire. Having reached its culmination the Roman law ceased to develop or have uniform operation, but gave way to the customs and laws of the barbarians wherever they supplanted Roman civilization. It was still resorted to in those parts of the empire which escaped the inroads of the barbarians, and as learning revived regained its force with modifications resulting from changed customs and conditions. Justinian, like many another lawgiver, aimed at completeness and finality in his work, and forbade the use of any other books or authorities, or any comments or interpretations of his works. He like others was oblivious to the truth that an absolutely fixed and rigid system of government or of laws is impossible. Anything like a clear comprehension of a system of laws necessitates an understanding of the material and social conditions to which it is applied. If we had no extrinsic evidence, the laws themselves exhibit the importance of the Roman theory of the family and of the institution of slavery. From the earliest days of Rome slavery had been a recognized institution, and it held its place until the empire broke into fragments. In the early days the number of slaves was relatively inconsiderable, but as new territories were added and the rich citizens enlarged their estates, they increased the numbers of their slaves, till in the time of the Caesars the nobles owned them by hundreds and even by thousands. With this great increase in slave holding came a corresponding decrease of the prosperity of the poorer class of citizens, who throughout the agricultural districts gradually ceased to be independent landowners and became tenants of the wealthy proprietors. In course of time this tenancy became on harder and harder terms, till the *coloni*, as they were termed, became virtually serfs attached to the soil, bound to cultivate the land on terms affording but a bare subsistence. Agricultural slaves were to a great extent assigned to the cultivation of particular tracts of land, which they were permitted to occupy with their families, and thus the actual conditions under which

the *coloni* and the slaves lived were often very similar. In the days of greater activity slaves were employed by their masters, not only on all kinds of works, but in all trades and callings, and opportunities for the acquisition of property and of freedom were afforded to some. The proud Roman patrician despised all useful labor and entrusted every employment to his slaves. Under the republic their numbers were sufficient to make servile revolts serious, and the insurrection under the leadership of Spartacus was only subdued after a desperate and bloody war. The emperors aimed at the establishment of social order and the protection of property rights. The moral claims of the slave to liberty and the pursuit of happiness were wholly obscured by the master's right to property. The great province of law and government was first to firmly establish the power of the emperor and those acting under him, and next to maintain the rights of property, that is the dominion of the master over his slaves and his lands. The ancient Roman idea of a single head of the family with full sway over all his children under the power and their families, accorded well with the spirit of a slave holding community. We have seen how largely slavery entered into the legal system of Justinian, and how fully it was recognized, though declared to be contrary to natural justice. With the reign of Justinian the empire in the west witnessed its last vigorous assertion of supremacy in Italy, though it nominally maintained a semblance of authority in central Italy till 755. The perfected despotism had become crystalized under Diocletian, leaving no chance for development or betterment from the wisdom of the multitude. The lawyers and lawmakers continued to change, amend and improve the laws till the time of Justinian, when they were compiled by his direction, and though greatly improved and rendered far easier of access than when scattered through so many volumes, they rapidly passed out of view and became unsuited to the changed conditions. The social decay resulting from an organization of society under which the great multitude were slaves, without education, opportunity for observation except of their immediate surroundings, or hope of better conditions, with an

indolent debauched nobility supported as drones, invited the frequent inroads of the more free and vigorous races of the north. The various Germanic tribes, the Goths, Vandals, Lombards, Huns and Franks in wave after wave swept down on Gaul, Spain, Africa and Italy, until the Roman system gave way, and a new composite of northern manners and Roman customs ushered in the so-called dark ages, when learning was for the priest alone, and war was the business of every freeman. With the growth of the feudal system, with its lord paramount at the top and its serf bound to the soil at the bottom, the slavery of the Romans disappeared. It may be interesting for scholars to trace the stages by which the slaves and *coloni* of the Romans and the humbler followers of the Frankish leaders were transformed into the lowest round of the feudal ladder, but the transformation was not the result of conscious law-making. The decay always incident to despotism, idleness and corruption in the palace, a multitude of officials, ever bent on extorting more and more from every producer of wealth, weakness and inefficiency in those who lived in idleness on the fruits of the labors of others, at last culminated in conditions but little removed from anarchy. The various leaders attracted followers according to their abilities, to whom they parcelled out the lands on a strictly military tenure, the lord pledged to protect the vassal in his possession and the vassal bound to fight in all the lord's wars. The slave, the *colonus* and the indigent became the serf, ceorl and villein of the feudal chief. The eastern empire lingered on as an uninteresting despotism till the fall of Constantinople in 1453. At Rome the spiritual power of the popes gained an ascendency over Europe, which made the eternal city once more the seat of power.

From the fragments of the western empire, through numberless vicissitudes have developed the modern European states. Until within modern times these, with exceptions hereafter noticed, were mostly governed by rulers claiming power as absolute as that exercised by the later Roman emperors. The rules of feudal tenure took the place of the land laws of the Romans and gave to title to lands a prominence in

the system of laws which it never had under the Romans. With the latter the slave was a more prominent object than the land he tilled. Under the feudal system land tenure was the basis of the relations of all orders of society, and the land and its produce, after the decay of the industrial arts, became almost the sole wealth of the people. The rank of the lord paramount depended on the extent of his holdings and the number of retainers who did him homage.

Though so large a part of the Roman law became obsolete by this change, it still contained the only compilation of rules for the determination of questions arising from the multifarious dealings of men, from their contracts, their acts and neglects, and with the revival of learning and of commerce, the great work of Justinian, having slept for hundreds of years, became the fountain of legal lore to which the students of the law throughout all Europe turned for light and authority on doubtful points. The reasoning of the ancient writers, preserved in the Digest, still throws as clear light on many questions as can be found anywhere, and carries with it the authority of *jus naturale*.

Five centuries of struggle between classes for ascendency, and of a public sentiment that demanded from the citizen a sacrifice of private interest and of life when needed for the republic, witnessed the rise of the Roman state, the extension of a system of self-government and of laws over western Europe and all the countries bordering on the Mediterranean Sea. It witnessed a high development of agriculture, the growth of manufacturing, mining, arts and commerce, wherever Rome's power was recognized, and marked advancement in learning. Though Rome waged almost incessant war in some quarters, the area of peace extended with her conquests, and an ever increasing proportion of the people were enabled to pursue peaceful avocations in security. Under these conditions population multiplied and wealth and comfort, though most unequally distributed, were general throughout the state. During these five centuries public office was sought and public duties were performed for honor, not for profit. The rank and distinction resulting from high offices of state were

deemed so great a reward that the brief terms of yearly power were eagerly sought by the most capable citizens.

The vast military organization and the struggle for its leadership developed the empire. Five centuries of rulership from a single head through an ever increasing multitude of highly paid officials, of gradual elimination of all self-government and of substitution therefor of rigid laws, enforced often with extreme severity and cruelty, witnessed the decay of public virtue, the decline of population, wealth, learning and all those conditions which tend to make life enjoyable. Owners of vast estates with their multitudes of slaves afforded no material from which to build an efficient, spirited army. The free and vigorous Germanic tribes swept over Gaul, Spain, Africa and finally Italy and Rome itself. The magnificent structure of a firm and settled government with its code of well developed laws governing so vast a territory and such a multitude of people, capable as one might think of conferring immeasurable good on innumerable people, in fact resulted in desolation and anarchy. Why? Because it was immoral and unprogressive. It bred vice and cruelty in the palace and all who held authority under it, and stifled the political virtues of the multitude. It divided the people into masters and slaves. Though the eastern empire lingered on till Mahomet II took Constantinople, and killed the last of his line, the emperor Constantine Poleologus, it presents no other features of government or laws worthy of especial study. It was but another oriental despotism, with its record of ever recurring cruelty, treachery, wars, murders, and occasional exhibitions of virtue in the palace, soon followed by the same old story of debauchery, vice and imbecility; overthrown at last by a new dynasty to again follow the same dreary round.

Though the Western Empire passed away long before the Eastern, the influence of Rome as a law-making and law-enforcing power was perpetuated through the Church, and still continues. The Canon law was more than a collection of moral precepts advanced as binding on the conscience. It covered a field claimed by the Church as under its government, and came to be accepted in more or less of its rules by the

secular power of all the nations professing the Christian religion. It was given form by synods and councils of the clergy and the decretals of the Pope. These were put forward as carrying a religious sanction, binding on all mankind, and were enforced by the tribunals of the church in accordance with its practice. From the Canon law are taken many of the rules now observed not only on the continent of Europe, but in Great Britain, its colonies and the United States, in matters relating to the domestic relations. The Church took charge of the baptism of infants, the marriage of adults and the burial of the dead. In the performance of these rites there was no distinction of rank. Prince and pauper alike were children of the Church. With the acceptance of the Christian religion the heathen prince bowed to the spiritual power of the Pope, and received baptism at the hands of a priest. It was impossible to be a Catholic without acknowledging some part of the Canon Law, and thus the most powerful monarchs found it impossible to wholly ignore the temporal sway of the Pope within their dominions. The principal heads of the jurisdiction of the ecclesiastical courts were:

1. Marriage and divorce.
2. Legitimacy of children.
3. Wills and the administration of estates of deceased persons.
4. Causes relating to church property and revenues.
5. Those affecting the persons of the clergy.

The first two were earliest asserted, most generally admitted and continued to be longest exercised. The fourth and fifth were most difficult to establish and maintain. Many of the principles followed by the ecclesiastical tribunals as substantive law are still retained in countries where the jurisdiction of church tribunals is confined to the discipline of its members in purely religious matters.

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CHAPTER XV

Mediaeval Europe

The empire of the Romans in Europe was limited on the north and east by the Danube and the Rhine after the abandonment of Dacia in 256, and included Britain and the lowlands of Scotland in the north and the Chersonese on the Black Sea. Without these boundaries lay the vast *terra incognita* of Germany, Sarmatia and the northern peninsula. Of the early history of this unknown country we know only what is told by Greek and Roman historians in connection with wars and movements of people, where Greeks and Romans came in contact with Germans, Getae, Scyths and other people of the north and east.

After their conquest Spain and Gaul became thoroughly Romanized, and the country south of the Danube with its predominant Greek elements submitted to Roman rulership and laws. Though the empire was many times shaken by wars over the succession to the imperial throne, and though in the east Persia offered battle from time to time, the period from the reign of Augustus to the overthrow of the western empire in the fifth century was one of comparative peace and security, yet not of progress. Agriculture and the useful arts, instead of advancing, fell into decay. Learning waned and the ability to read and write, which under the republic had become common, was rare. The great works of Justinian in the next century, reducing the laws to form and system, never became generally known to the people of his exhausted and crumbling empire.

Imperial rule produced neither moral nor material development. Roman sentiment never condemned, but rather delighted in bloody spectacles and exhibitions of cruelty and barbarity. Slavery lay at the foundation of property rights. The ignorant multitude applauded the lavish expenditures and

barbaric display of the rich. Neither the government nor the property system rested on any moral basis. With the destruction of the middle order the integrity of the domestic system was broken, and that only sure repository of virtue and purity, the family, was subjected to the debasing influence of frequent divorces and remarriages at the dictation of interest or caprice.

With the republic also passed away that devotion to the public welfare, which had been the conspicuous virtue of Romans throughout the long and desperate struggles that gave Rome mastery of the known world. This was the Roman approximation to a conception of the universal moral principle of mutual help. In its place came oriental sordidness. Deprived of all participation in affairs of state, unless as the mere instruments of the imperial will, the ambition of the citizen was to gain wealth and through wealth enjoyment. The sure fruits of successful effort in this direction are cruelty and sensuality, which in turn bring disease and destruction. Out of the darkness came the Germanic tribes, whose history no records preserve. With manners and customs bearing more resemblance to those of the Romans of the early days than prevailed in the empire, they attacked the enervated Romans. In the early years of imperial rule the vast resources of the empire were such as to render victory over the comparatively insignificant tribes sure, if not easy. In the reign of Marcus Aurelius an irruption of the Marcomanni and allied tribes swept across the upper Danube over Pannonia, Noricum and Rhaetia to the Alps. They were driven back after fourteen years of war. In 236 the theretofore unknown tribes of the Alemanni crossed the Rhine, and the Goths appeared on the Danube. During the civil wars from the reign of Philip to Claudius, 244 to 249, the barbarians improved their opportunities, and the Alemanni and Franks poured into Gaul and Spain and even Africa. In 247 the Goths crossed the Danube and overran Moesia, Thrace and Macedonia and in 251 defeated and killed the emperor Decius. In the reign of Valerian 253-260 their fleets appeared on the Black Sea and ravaged the maritime towns of

Asia Minor. In the reign of Gallienus, 260 to 268, a fleet of five hundred sails appeared on the coast of Greece and sacked Athens, Corinth, Argos and Sparta. In 269 under the emperor Claudius the Romans defeated and drove them back across the Danube. Five years later a raid of Franks and Alemanni was repulsed on the Rhine. As a result of these conflicts the Romans were forced to recede and abandon Dacia and all possessions beyond the Rhine and Danube to the advancing barbarians. Under the vigorous and despotic reign of Diocletian the integrity of the empire was preserved and the authority of the government vigorously maintained, but there was no improvement in the moral tone of either people or government. Selfishness and want of social virtue called for a better corrective than a more vigorous assertion of authority and an increased burden of taxation. The removal of the capital to the Bosphorus was soon followed by the division into the eastern and western empires, and by the decay of imperial authority throughout the west.

In 376 the Huns emerged from the unknown hives of Asia and pressed against the Goths, who sought the protection of the emperor. They were allowed to cross the Danube and settle in Moesia, but soon rose in arms against their protectors and in 378 defeated and killed Valens, overran Illyricum, and advanced to the gates of Constantinople. Theodosius made peace with them and took many into the army. While the boundaries of the empire were nominally maintained throughout the fourth century, there was a growing pressure from the northern tribes. As a result of their contact with the Romans, Goths, Franks and other nations acquired some knowledge of military science, and learned to supplement the hardy valor of their warriors with some measure of discipline and mutual support. On the other hand, civil wars, the dependence on mercenary troops, the utter disappearance of everything like unselfish devotion to the public welfare, the grinding burden of taxation levied to pay mercenaries, many of whom were barbarians, and to support the vile profligacy of the palace and the ever growing multitude of officeholders, the slavery or extreme poverty of all who labored, and the

want of courage and manhood in the favored few, who dissipated in wasteful luxury the best of all the toilers produced, left the empire enervated and spiritless. Barbarians who had fought in the armies of the emperors became qualified to lead armies, and Alaric, who had been favored by Theodosius, led the Goths from their settlements south of the Danube, where many of them had embraced the Christian religion, into Illyricum and Greece and thence into Italy, closing his triumphant career with the sacking of Rome in 410.

Contemporaneous with this movement of the Goths there was an irruption of the Vandals, Suevi and Alani into Gaul and thence into Spain, where they established permanent settlements and partitioned the country among the tribes. In 419 Ataulf as king of the Visigoths founded a monarchy in southwestern Gaul. In 429 the Vandal king, Genseric, crossed into Africa with his army and their families and established his authority there. He was recognized by the Emperor soon after and took Carthage in 439. The movements of these Germanic tribes were not solely in the form of attacks, starting from their homes beyond the great rivers, but were in part migrations into new homes assigned them by the emperors. Goths, Vandals and Franks learned Roman methods before achieving great victories. In 451 the Huns under Attila attacked the empire and invaded Gaul. Attila came as the ruler of a great dominion, including not only Huns but many German tribes. He drove the Goths before him, who in turn united with the Romans and aided in his defeat. In 455 the Vandals under Genseric invaded Italy from the south and sacked Rome. In 476 Odoacer, the Goth, was proclaimed king by the barbarian mercenaries in Italy, and although he nominally recognized the authority of the emperor of the east and received the style patrician, all real power was in his hands. Though a Goth, he recognized the Roman laws, and used the Roman system of administering them. He took one-third of the lands of the great proprietors and distributed them among his followers. Odoacer was overthrown, not by Romans, but by the Ostrogoths, who under Theodoric invaded Italy with their wives, children and chattels from the

Balkans, where they had tarried when their brethern the Visigoths moved westward.

Theodoric ruled Romans by Roman law and Goths in accordance with their own customs. He provided for his people from the lands confiscated by Odoacer, a great part of the holders of which had been killed in battle. The Goths were judged by their counts, and where a controvery arose between Goth and Roman, the case was heard by a mixed court. He had his body guard and its chief officers of Goths and also a full establishment of Roman officials. Theodoric extended his rule, not only over Italy, but also over the Germanic people in Rhaetia and Noricum, and over southern Gaul and Spain. The traditions of the Lombards related that they had dwelt on the Scandinavian peninsula, whence they had crossed the Baltic into Germany and pressed their way down to the Danube. In 552 Justinian's general Narses employed 5,000 of them as auxiliaries in his war in Italy, where they learned of its fertility and desolation. In 568, under the leadership of Alboin, whom they had elected king, the whole nation, men, women, children, slaves and chattels, crossed the Alps and descended into Venetia, whence they spread over northern Italy. They came with primitive German customs, divided into tribes or clans led by elective chiefs called *Aldanes*. The tribes united in choosing a king when war rendered concert of action necessary, but his authority seems to have practically terminated when war was over. After Alboin had been murdered and Clepho, his successor, killed by a slave, they chose to do without a king for ten years, and the tribes ranged over Italy and across the Alps into Provence. Settlements were made by them in various parts of the peninsula alongside the Romans and remnants of the Goths. The Lombards were fierce and warlike, but never established a firm dominion over all Italy, though they became the dominant portion of its population. They retained their ancient customs and laws more persistently than the Goths, and in 643 their king, Rothari, published a compilation of their laws, which was promulgated, not as emanating from his authority alone, but with the counsel of his *witan* and the assent of the armed

folk-moot of the Lombard nation. It prescribes the *weregeld* to be paid for homicide, laws against armed violence, rules of inheritance and of the obligation of the follower to his lord, and for judicial combats. The people were divided into freemen and *aldu,* serfs, who tilled the soil. It was the Lombard invasion that caused the imperial governors to remove from Rome to the inaccessible Ravenna, where the shadow of imperial power lingered for a time, circumscribed within a very narrow compass.

During the reign of Odoacer in Italy the Salian Franks under their king, Clovis, invaded Gaul from their home on the east of the Rhine. By force of arms he extended his dominions on both sides the Rhine, and overthrew the empire of the Visigoths in Gaul. He ruled as a fierce and bloody soldier. The Merovingian dynasty founded by him lasted nominally from 481 to 751. With the vast increase in the territory ruled by Clovis and his successors came also a corresponding increase of arbitrary power. The ancient Germanic custom of deciding public questions in general assemblies of the people, which was entirely practicable for a small compact tribe, speaking a common language, became impossible when dominion was extended over so large a territory, including many tribes differing in language and customs from each other. The power to rule was acquired through military supremacy, and naturally the king became a military despot, who soon ceased to consult even the warriors of his native race. The king was distinguished from his followers by wearing long hair, a crown and using a kingly spear. After the conquest of Gaul Clovis assumed the patrician robe of Rome. At his palace he was surrounded by his companions in arms, bound to his person by a special oath of fidelity. In the royal household the chief was styled Mayor of the Palace, and was the highest official under the king. After him came the Marshal, having charge of the royal stables, the *Comes Palatii* his legal adviser and assessor, the Treasurer and Royal Secretary. These exercised their functions under the king's commands at the palace or on any mission on which he might send them. The kingdom was divided into counties, over

each of which was placed a count. In the Germanic part of the kingdom the counties corresponded with the tribes, and in the Roman with a city with its dependent district. The count was military leader, judge and taxing officer. Several counties were under a duke in some parts of the realm, who became the commander of the combined military forces with general control over the counts. The counts and dukes were assisted by deputies, who filled their places when absent. Beneath these there was a headman over each of the hundreds into which a county was divided, who was a judge in petty causes in time of peace and head man of his hundred in time of war. At stated periods the count went into each hundred and disposed of causes in a public assembly, being assisted by chief men of the hundred, whom he called to his aid. In this court the count exercised full power and disposed of life and property. Great crimes were punished with death, but the family of a murdered man might condone the offense on the payment of a sum of money. Trials were conducted in various forms, compurgations and combats were allowed among the Ripuarians, but not among the Salic Franks, and ordeals were resorted to as well as the testimony of witnesses. Besides the officers named the king had his bailiffs in charge of the crown lands, from which he derived an important part of his revenue. Aside from these the revenues of the king were derived from custom dues on the frontiers, fines and compositions in the courts and taxes charged against each county, collected and remitted by the count.

By the time of Clovis German people were scattered throughout those parts of Europe that had been dominated by the Romans, and German customs variously modified by new environments, ripened into laws. Even where the Roman element was dominant changed conditions, the decay of learning and stagnation of all commercial and industrial pursuits led to innovations in the law. The diversity of customs and the tenacity with which the invaders held to their own led to the application to each person of the law of the tribe to which he belonged rather than the laws of the territory which he inhabited. The customs of illiterate barbarians did not

cover anything like the field of the Roman law but were adapted to their needs and were rules of action and of right which they had learned in their tribes. Great diversity of conditions, lack of a government with power extending over any large territory for any considerable period, poverty, lack of intercourse between distant people and general ignorance and illiteracy were conditions which naturally led to very great diversity of customs and local laws. From Scandinavia to Spain and Italy the people of each town and community of any considerable size had its own peculiar usages.[1] To collate and trace the changes in even those rules that became the local laws for considerable districts would be a stupendous task. Traces of many of these local customs may still be found in existing laws, but increasing learning and intercourse constantly tend to uniformity of laws.

The spirit of the German people had always been opposed to polygamy. Clovis became a Christian and was baptized, but domestic virtue was something almost unknown in the palaces of the Merovingians. The Franks maintained their own system of laws, which Montesquieu says were compiled after quitting their own country by the sages of the nation,[2] and the customs of the German tribes which he subdued were also compiled by Clovis' order. The Franks had reached that stage where title to the land on which the possessor dwelt was recognized, and the Salic law of descent was: "1. If a man dies without issue his father or mother shall succeed him. 2. If he has neither father nor mother his brother or sister shall succeed him. 3. If he has neither brother or sister the sister of his mother shall succeed him. 4. If his mother have no sister the sister of his father shall succeed him. 5. If his father has no sister the nearest relation by the male side shall succeed. 6. Not any part of the Salic land shall pass to the females, but it shall belong to the males, that is the male children shall succeed their father."[3] The kingdom was treated as the property of the king, and its integrity was not

[1] Continental Legal History Series, Vol. I.

[2] Spirit of Laws, p. 196.

[3] *Id.*, p. 326.

protected by a rule of succession which passed the undivided power from hand to hand. On the death of Clovis his four sons fought for supremacy, and similar civil wars, the sole excuse for which was the ambition of rulers, were fought in succeeding generations. The Merovings were bloody, treacherous and licentious, and like most other dynasties of absolute rulers, later generations inherited the vices without the ability of the founder. Though the nominal rule of the kings continued for four generations thereafter, the real powers of government were assumed by the mayor of the palace in 642, from which time forward the kings were imbeciles and the names prominent in history are Pepin and Charles Martel, mayors of the palace, the latter of whom commanded in the great battle (732) which turned back the tide of Mohammedan invasion.

The history of Spain under the rule of the Visigoths is obscure. Though they with the Suevi and Alani gained a lodgment there early in the fifth century, it was not until after their defeat by Clovis at Poitiers that they transferred the seat of their government from Gaul to Spain, about 510. The Goths constituted but a small part of the population. Their government, though monarchical, was elective, and the subject Romans were ruled by Roman law. The church early gained a strong hold on the Spanish people, and in course of time the Goths, who were Arians, through motives of policy were led by their king to adopt the orthodox faith. The succession to the throne was the occasion of a great number of civil wars. The people at the time of the Saracen invasion in 711 were divided into a few very rich and a dependent multitude of slaves. They offered but a weak resistance to the Mohammedans, who completed the conquest of the country within the next two years and put a final end to the Visigothic rule. The division of the state for governmental purposes was similar to that of Gaul, the ancient Roman *civitates* being used as the basis of local government.

The long and vigorous reign of Charlemagne, 768 to 814, stands out in bold relief in a long period of darkness. Of his eminent abilities there can be no doubt, and while his morals

lacked much of even an approximation to virtue, he yet was far better than his Merovingian predecessors. He not only restored to the kingdom all that had at any time before belonged to it, but for the first time in history he joined Germany, Gaul, Italy and northern Spain in a single empire. Though his government was administered on substantially the same system as that of his predecessors, it was infused with vitality through his remarkable energy and industry. He was not a stranger to any part of his vast empire. Not only did he visit every quarter in person but his special *Missi Dominici,* traveling legates, were constantly bringing him information of the condition of affairs in every part of the realm. Like all other rulers, who before his time had acquired extensive dominion in the western empire, he felt the charm of the Roman imperial name. In 800 Pope Leo III crowned him in St. Peters as Augustus, Emperor of the Romans. The receipt by Charles of this title at the hands of the Pope carried with it a recognition on the part of the military ruler of the west of the spiritual supremacy of the Pope, and throughout many succeeding centuries this recognition carried vastly more weight, and the precedent was of vastly more value to the Pope, than the coronation was to Charles, whose dominion had resulted from his own capacity without important aid from the church. In another aspect this recognition of spiritual authority was important. It was followed by a recognition of the need of a moral basis for the exercise of authority. He required all his subjects above the age of twelve to take a new oath of allegiance to him as Emperor, to be administered by the local clergy, who were required to warn all, "That this vow of homage was not merely a promise to be true to the Emperor and to serve him against his enemies, but a promise to live in obedience to God and His laws, according to the best of each man's strength and understanding. It was a vow to abstain from theft, oppression and injustice, no less than from heathen practices and witchcraft, a vow to do no wrong to the churches of God nor to injure widows and orphans, of whom the Emperor is the chosen proctector and guardian." He taught submission to the moral law and recognized the

church as the representative of the Holy Empire. The government of Charles, like that of his predecessors, was thoroughly despotic in character. It, like all despotisms, derived its qualities from the ruler. To carry his will into effect he selected men who carried out his policies, and like every other great leader he had a keen perception of the merits and capacities of men. To preserve the system in its vigor the energy and capacity of Charles himself was required. It has been the fate of every despotism to have the successors of a great founder wanting in some, and often in all, the essential qualities which render despotism a refuge from anarchy. Under the weak and good natured reign of his son Louis the empire crumbled. The practice of dividing it as an inheritance among the children of the ruler obtained and, coupled with revolts of local rulers, resulted in the complete dismemberment of the state after the death of Louis. The acceptance of the imperial crown from the hands of the Pope by Charles bore the full measure of its fruits under the reign of the pious and well meaning Louis, who acknowledged the supremacy of the Pope in spiritual affairs without exacting in return, as his father had done, an acknowledgment by the Pope of the temporal superiority of the emperor. The submissiveness of Louis to Papal authority and his exemption of church property and its tenants from taxes and military service, creating the tenure known as *frank almoin,* which required merely prayers for the welfare of the emperor and his children and the empire, was of immense advantage to the church and correspondingly weakened the state. The great empire of Charles was divided among his grandsons, and the Frankish principle of division was continued among their descendants. The right to rule was treated as the property of the ruler, rather than a trust exercised for the good of the people. This breaking into fragments, with constant warfare between rival claimants of territory, became chronic among the Carlovingians, as it had been with the Merovingians.

In the latter part of the eighth century the Vikings made their appearance in England and on the coasts of the Frankish empire. They were a hardy race of navigators, dwelling on

the Danish and Scandinavian peninsulas, whence they issued in growing numbers and with increasing boldness to pillage those parts of the country most accessible from their boats. From the time of Tacitus they had been noted as sailors, and they now appeared as pirates and most determined warriors. In an age when might made right, it is perhaps invidious to designate them by a name which is now so opprobrious. It is difficult to draw a clear line between their robberies and those of the organized forces on the continent. That they were in the lead of all other people as navigators is clear, and it is said that they fought with superior arms and protected by coats of mail. That their object in their raids was plunder rather than the acquisition of land, and that they scattered in numerous fleets and attacked widely distant places under separate leaders, exhibits a difference in methods, if not in principle. Their raids increased in numbers and boldness, till in 911 Charles the Simple granted them an ample district between the Somme and Seine, on condition that it should be held as a fief under his sovereignty. The Norsemen did homage as his vassals, though with ill grace, and accepted the Christian religion. After this settlement the piratical inroads were substantially at an end.

We have seen how, proceeding from Italy as a base, the Roman power was extended in all directions, and how Roman rule was imposed on the natives of Spain, Gaul, Britain and a portion of Germany. We have also seen how incoming waves from the unknown regions of new and unsubdued people swept back from north and east over all the western portion of the empire, how Goths and Lombards became intermingled with the ancient people of Italy, how Vandals, Goths and Suevi were settled in Spain, and all overthrown by the Saracens, how successive irruptions of Germanic people had broken into Gaul, with the final establishment of the great Frankish empire, and how as a result of these movements of people the empire had fallen and the Romans had ceased to be the ruling element in either quarter. In our effort to gain a clear view of the forces which were at work during what is regarded as the dark ages of European history, we have still to trace the

growing power and influence of the church and the monastic institutions. Out of the Asiatic possessions from the inconspicuous Judean province was brought to Rome the religious and moral teachings of a person so obscure as not to be known to the Roman republic of his time. That religion proclaimed the universal brotherhood of man and fatherhood of God. The Jews looked for a temporal ruler in their Messiah, who should establish their supremacy over the other nations of the earth. They failed to grasp the meaning of his teachings. They did not perceive, nor have Christians in succeeding ages realized, that the moral principles he announced contain the vital principle on which human relations everywhere and at all times should be regulated, that these principles are the universal constitution, on which all governments and all laws must be based in order to develop the highest type of human society and the maximum of human happiness. Though Caesar held power of life and death over all his vast empire, and his will was law to the 100,000,000 or more inhabitants of the countries ruled from Rome, Christs sermon on the mountain to a few followers, unheard and unknown to the great multitude of people of his time, has exercised an influence on the people of after times incomparably superior to that of all the Caesars. Yet its full meaning and significance are but dimly perceived and imperfectly understood, even by the wisest, and to this day rulers and leaders in the most enlightened lands are regarded as exempted from obedience to the golden rule, "Therefore all things whatsoever ye would that men should do to you, do ye even so to them, for this is the law and the prophets." The impression seems to prevail that the law of necessity applies with especial and controlling force to rulers and law makers, and exempts them from obedience to the moral law. The unselfishness and self-sacrificing spirit of Christ are somewhat distasteful to the average man, and self denial is a virtue seldom looked for and more seldom found in high stations.

Whether the moral teachings of Christ be regarded as primarily for the happiness of the souls of men in a future state, or as essential to human welfare in this life, is unimportant for

our present purpose, for we are only concerned with the moral law as a guide to human conduct. There seems little if any room to doubt that Christian doctrines were taught at Rome by the apostles Peter and Paul with some success, and that they gathered about them a community of converts to the Christian faith. In like manner congregations of believers were gained in the great centers of population in the east and in Greece. The leading characteristics of the earliest Christian societies were the spirit of brotherhood and equality, and contempt for power, wealth and social distinction. For the first three centuries Christians were persecuted, and no attempt was made to gain temporal power with Christianity as a foundation. Nothing could present a stronger contrast, than the brutality and viciousness of Roman society as exhibited at the public combats and butcheries in the arena and the licientiousness and depravity in the palace and houses of the wealthiest and most prominent citizens, and the humble and devout Christian societies of the time of Nero. With growth in numbers came increased influence and ambition to lead. As early as 313 the existence of ecclesiastical corporations with common property was recognized by the edict of Milan, and in 321 their right to acquire property by bequest was confirmed. With the conversion of Constantine the days of extreme Christian humility were over, and the clergy labored to add to the wealth and power of the church with such success that, in 370, Valentinian deemed it necessary to prohibit the clergy from receiving bequests from women. Not from any inherent weakness of principles, but from the influences at work on the men who became the representatives of Christianity, the purity of its doctrines became obscured, and the every day worship in the churches became debased to the adoration of images and relics, to worship of the virgin and the saints, of spurious pieces of the true cross and other visible objects, supposed to be possessed of mysterious power by reason of their association with some miraculous manifestation. Purity of life, so distasteful to the fierce and headstrong barbarians, could not be enforced, so in lieu of it the church exacted tribute, penance, and above all faith in the

vicarious atonement, and granted absolution from sins committed. Elaborate ceremonies, altars, images, substitutes for the idolatries of the barbarians, obscured and took the place of the worship of the unseen, living spirit, and of an effort to follow the moral law in its purity. As early as the second century there seems to have been some claim of superiority over other churches put forth by that of Rome. Little by little the Roman bishop assumed authority over the other churches. At the council of Nicaea, 325, the rank of the three patriarchates was established, first, Rome, second, Alexandria, third, Antioch. By the end of the fourth century the claim of precedence had gained such recognition, that questions arising in the various churches of the west were submitted to the Roman bishop, whose decretals were accepted as authoritative, and Innocent I, 402-417, conceived the universal ecclesiastical supremacy of Rome. The establishment of this supremacy in practice was of slow and uneven growth. Leo, 440-461, established the right of appeal by a bishop from the decision of his metropolitan to Rome, and thereby assumed pontificial authority to pass judgment on the acts and claims of the metropolitans as his inferiors. Under Gregory I, 590-604, the territorial possessions of the church were greatly increased, and under his vigorous administration the power and influence of the pontificate strengthened. Prior to Gregory III the privileges of the popes had been recognized and confirmed by the eastern emperor, but in 731 Gregory excommunicated the Iconoclasts, and in return the Emperor confiscated the church properties within the territories which still submitted to his rule. Thenceforth the papal authority ceased to be in any degree dependent on the imperial. In 752 Pepin was anointed and crowned king of the Franks by the papal legate Boniface, and in 754 he handed over to Pope Stephen III an extensive territory, which he had wrested from the Lombards, including Ravenna, to be held and enjoyed by the pontiffs of the apostolic see forever, and this grant was largely increased by his successor Charlemagne. Thus in the course of about 750 years from the days of Peter and Paul, who laid no claim to worldly power, the head of the church extended his power

over the great ecclesiastical organization which had spread over Europe, and became a temporal ruler over a considerable territory. At the end of the eighth century the head of the church was not only a temporal ruler over the papal states in Italy, but he assumed the power to dispense with the observance of the canonical law, under conditions to be determined by himself, and the vast power of conferring privileges on monastic and church establishments throughout the dominions of the western monarchies. The choice of bishops was subjected to his approval and disputes on matters ecclesiastical were appealable to Rome, where full jurisdiction was asserted. The conquests of the Saracens in the east removed the rivalry of Antioch, Jerusalem and Alexandria, and the west became the seat of that faith which was born in Asia. The coronation of Charlemagne by the Pope was an assumption on the part of Leo of spiritual superiority over the ruler of the "Holy Roman Empire." Leo recognized the temporal power of Charles, and in return Charles acknowledged the spiritual rule of Leo. The weak Louis became subservient to the head of the church. Following this exaltation of the head of the church to temporal power came a period of misfortune and of moral degradation, in which the pontificate became a subject of corrupt bargaining, from which it did not recover till the election of Gregory the V, 996-999. Though in course of time despotic characters were developed, the office of Pope was always elective, and the prevailing spirit of the church was democratic.

Another product of the Christian religion was the monastic establishments, which exercised such a profound influence throughout Europe during the darkest period of its history. The life of the ascetic hermit had been recommended by Gautama as that most favorable to spiritual purification, and religious societies, similar to the monastic institutions of the Christians, were formed under his teachings and became very numerous among Buddhists. The leading resemblance of the Christian and Buddhist societies was in the close association of men, whose lives were devoted to religious exercises and aims, dwelling together in celibacy under rigorous rules of

life, to which they voluntarily submitted. The leading difference was, that the doors of the Buddhist institutions were open to pass out as well as in, and the individual was at all times loaded with the burden of his own salvation through good deeds and purification of his spirit, while with the Christians the doors were closed to those who would withdraw, and spiritual salvation was made to depend, not on deeds and individual merit, but on faith and conformity to the requirements of the church. From the most ancient times the life of the hermit has been adopted by men of a certain peculiar cast of mind, and early in the history of Christianity solitary dwellers in the desert gained great renown for sanctity, among the most noted of whom were Paul and Anthony, natives of Egypt in the third and fourth century.

The first great monastic society was founded by Pachomius on the island of Tabennae in the Nile in the first half of the fourth century. Under the rules of the order the monks were distributed into cells, each containing three inmates, known as *syncelli.* A large cluster of such cells was called a *laura,* in which was one common place for meals and assemblies. Work and food were apportioned to each according to his strength, and the dress was regulated, consisting of a linen tunic with a goat skin upper garment, which they were not permitted to take off at meals or in bed, but only when assemblied for the eucharist. They were divided into twenty-four groups, and each group into bands of tens and hundreds under decurions and centurions, all under an Abbot, who, as such institutions multiplied, was subject to the Superior. The finances were managed by a steward. Their usual food was bread and water, with occasional oil, salt, fruit and vegetables for luxuries. Meals were eaten in silence, each wearing a cowl to hide his face. They assembled twice daily for common prayer, and for communion on Saturdays and Sundays. They tilled their lands and wove mats, baskets and in course of time manufactured many other articles for sale for the common fund. Pachomius induced his sister to found a convent of nuns under similar rules. At the time of his death Pachomius had 1,400 monks in his own monastery and 7,000 under

his authority. The order spread rapidly in Africa, Asia, and then into Italy and western Europe. By the fifth century the numbers are said to have increased to more than 100,000 in Egypt alone.

In 529 Benedict drew up his celebrated code of rules, which became the law of the very numerous Benedictine monasteries which spread over western Europe. Worship, study, work, obedience, silence and humility, were the leading ideas inculcated. This code was elaborated in seventy-three chapters. It exhibits a strange mixture of excellent principles and vicious ones. Monasteries formed under this code were voluntary associations of men, who were required to dispose of all their private property, and who became equals on entering the society, except that their rules were enforced by an Abbot elected by themselves, and all important matters were decided after consultation with the whole body. In large monasteries there were deans selected for merit, and each monastery had its steward, charged with the keeping of its supplies. All labor was performed by the monks, who took turns in the kitchen. Hours of work, of study and of prayer, were regulated, as were all matters of dress and of eating. Confession of faults was enjoined, penances, fasts and scourgings were imposed for breaches of the rules of the order, with expulsion as the ultimate penalty for persistent misconduct. Guests were entertained by the Abbot in separate apartments, and the monks were not allowed to speak to them, except with special permission. A probation amounting to about a year in all was required of applicants seeking to join the order. All strife and contention were prohibited, and no monk could go out into the world without leave of his Abbot. The system required the exercise of the virtues of industry, study, self denial and the recognition of brotherly equality. These lie at the foundation of all social progress. It also exacted rigid observance of religious forms, tending to evil or good according to the spirit of the individual, and seclusion from the outside, wicked world, which contracted the field of vision and influence and dried up the natural sympathies of the monks, while protecting them from the dreaded contamina-

tion of a corrupt society. It separated the sexes and defied the imperative law of reproduction. In this it prevented that highest and purest human combination, the Christian family, with its voluntary devotion to succeeding generations. Convents were also established for females with similar rules.

The rapid rise of these religious societies was contemporaneous with the decay of Roman power and the tide of Germanic invasion. The monastery with its buildings, its cultivated lands, its work shops and school, became a prominent feature of all Christendom, not only on the continent but in the British Isles as well. It was a republic of peace, industry, study and devotion, amid external surroundings of war, cruelty, indolence and ignorance. It grew in wealth and importance by reason of its corporate constitution and perpetual succession, and the celibacy of its inmates yielded no heirs demanding an inheritance. It offered a refuge to those who wished to shun the hardness of the outer world. Other codes for the government of monastic societies had been formulated before that of Benedict, notably that of Basil, which became generally followed in the east, and numerous modifications of the Benedictine rules were made in after times. Many societies in course of time became rich and licentious. Abbots like other men became fond of power, and the encroachments of monastic holdings on the realms of the rulers excited jealousy and hostility.

With the decline of the empire of Charlemagne and the civil wars and struggles over succession to local authority arose that form of social organization and land tenure known as the feudal system. With the Romans, as we have seen, land was treated as subject to ownership, bargain and sale in much the same manner as chattels, and there is no sharply drawn line in the law between landed and other property. After the Germanic tribes gained settled habitations and recognized title to tracts adjacent to their dwellings, the title of the possessor was a full and perfect one, and this was termed allodial land. Crown lands, conferred on favorites of the sovereign by the kings in later times, were termed benefices, and were held by a tenure which implied at first, and

finally expressed, a compact on the part of the beneficiary to support his benefactor. From the practice of conferring estates by kings upon their followers in times of wars and seizures of the lands of enemies arose the feudal system, which became such a prominent feature of the dark ages. The fundamental idea of it was a close union between lord and vassal for war. The ceremonies of conferring a fief consisted of, 1. Homage. The vassal with head uncovered, belt ungirt and without sword or spurs, kneeling, placed his hands between those of his lord and promised to become his man, from thenceforth to serve him with life and limb and worldly honor, faithfully and loyally, in consideration of the lands which he held under him. Homage could be accepted only by the lord in person. 2. An oath of fealty by the vassal to his lord. 3. Investiture, which consisted in putting the tenant into possession. This was done sometimes on the land by the lord or his deputy, and sometimes by the symbolical delivery of a turf, stone or other symbol.

The first, and perhaps most important obligation assumed by the vassal, was that of military service under his lord. The amount of service which might be demanded in a year depended on the size of the fief and the usage of the time and place. Forty days was the usual term for a knights fee; during which he must attend with his own equipment and at his own expense. Shorter terms were required for smaller estates. Old men and women must send substitutes on pain of forfeiture or amercement. The terms of the service required indicate the turbulent and disordered state of society. The wars of the lord were mostly with near neighbors, and partook more of the character of forays of bandits than of organized warfare. In some places the obligation of the vassal did not require him to go beyond the lord's territory, or more than a day's journey from it. It was not a system of public defense, but an organization for the private broils of the chief. As incident to feudal tenures the lord exacted: 1. Reliefs. A sum of money required to be paid by the heir of a deceased vassal on investiture with the estate. The amount was not regulated by any fixed law and was often fixed arbi-

trarily by the lord. 2. Fines on alienation by a vassal of his estate. This arose from the necessity for the assent of the lord to an alienation by the vassal. 3. Escheats and forfeitures through failure of heirs or acts or omissions which worked a forfeiture of the tenant's rights, in which cases the estate reverted to the lord, and this was aided by the doctrine of corruption of blood, by which an heir was prohibited from tracing descent through an attainted ancestor. 4. Aids. These were imposed by the lords on various pretexts, notably to raise marriage portions for his sons and daughters, to pay expenses of distant expeditions, to ransom him from captivity, and generally to meet extraordinary demands on him. 5. Wardship. During the minority of the heir the lord became his guardian, and as such had the care of his person and charge of his estate. This incident seems to have been confined to the system in England, Normandy and some parts of Germany, but in France the custody of the land went to the next heir, and of the person to the nearest kinsman who could not inherit. 6. Marriages. In England, Normandy and Germany the lord assumed the right to choose husbands for female wards, and in later times to dictate the marriages of male wards also. The penalty for refusal to comply with the lord's wish was forfeiture of the value of the marriage. These incidents of vassalage were unknown in the earliest stages of feudalism. They are exhibitions of the tendency of those holding superior power to unjustly extend it.

The obligation of the lord to his vassal was to protect him in his possession, and in case of eviction to give him other lands of equal value. Where large estates were granted, subinfeudation followed as a natural sequence, and the vassal in turn granted portions of his estate to sub-tenants, who did homage, swore fealty and gave military service. Thus in time there was developed a chain of tenancies from the king as lord paramount down to the tenants of the smallest holdings. The feudal system was not originally established anywhere by legal enactment of the law-making power of a great state, but was the outgrowth of customs and conditions and the spirit of the times. It therefore was not uniform, but varied in its

incidents and obligations according to local customs. The all pervading essence of it was that the vassal should support his lord, right or wrong, in all his contests, and the lord should protect the vassal in his holding. The system grew up in the ninth and tenth centuries, and by the end of the eleventh had become general over western Europe, and in 1088 a written collection of feudal customs was made by Bearn.

While the system seems to have had its inception in grants of crown lands to followers of the king, the turbulence of the times made it desirable for the holders of allodial or frank tenure lands to gain the protection of the neighboring lord. It therefore became common for the holders of such estates to surrender them to the king or neighboring great lord and take them back as feudal tenures. Not only did laymen generally adopt this course, but monastic and church lands were similarly placed under the military protection of a powerful neighbor. The titles and ranks of European nobility developed from this system. In place of the ancient appointees of the Emperors, who were assigned to duties in a particular district as political representatives of imperial power, there was established a fixed connection between the land and the local lord, which the king could not sever. Under the Roman, Gothic and Frankish emperors, to the time of Charlemagne, there was no necessary connection of political power with title to land. Under the feudal system title to land was the basis of all political power. From villein to king the station, rank and power of each was determined by the relation he sustained to land. Slavery disappeared, and serfdom and villeinage took its place. Men were no longer bought and sold, but the villein was completely at the mercy of the owner of the soil to which he was attached. From the permanence of the relation of the lord to the soil arose a barrier against the arbitrary power of the king. The great vassal could not be displaced or denied his local authority and importance. Behind him stood the strength in arms of his retainers. The spirit of the times, concurring with the genius of feudalism, gave to the great landholders an importance and permanence of power, which ripened into that proud titled aristocracy,

that still exhibits such pretensions of superiority. After the noble orders had become fairly established by transmission of estates and power from one generation to another, and an idea of distinctions of blood and family had taken firm root, kings assumed the power of conferring rank on their favorites, independent of territorial possessions. Churchmen did not escape the all pervading distinctions, which rated the idle nobility so far above the toiling or trading community. Prelates and Abbots ranked as feudal nobles, and swore fealty for their lands, over which they exercised the same power and jurisdiction as the lay nobles. While the lands of churches and monasteries were not generally military tenures, it was not uncommon for them to furnish their quotas to take part in the sovereign's wars.

Among the early Germanic tribes all public questions were determined in a general assembly of freemen. The custom of holding general assemblies was continued by the Lombards in Italy and by the Franks as late as 882. The capitularies of Charlemagne purport to have been ordained by the king with general consent. Thus the law-making power was regarded as still residing in the body of freemen through the Merovingian and until the decadence of the Carlovingian dynasty. With the establishment of the feudal system legislation ceased in France, and for three centuries no general laws were established. The king conferred as much as he pleased with his courtiers and took such advice as suited him. The great nobles in like manner were surrounded by their retainers. To so low a state was the central authority reduced that Louis IX in his Establishments says that the king cannot declare any new law in the territory of a baron without his consent, nor can the baron do so in that of his vassal. The nearest approach to the exercise of legislative authority was the resolutions and agreements of congresses of neighboring lords, who undertook to carry out an agreed policy in their respective dominions. Ecclesiastical councils, of representatives of the churches and religious orders, partook more of the character of legislative bodies, and were more representative in composition than any congress of nobles. Their

ordinances were of course wanting in the sanction of civil legislative power, but the church had its own system of enforcing obedience to its behests by working on the credulity and superstition of an ignorant laity. During the times of which we are now speaking there was no general system of taxation. The king and nobility depended on their estates and perquisities of feudal tenures to maintain their establishments. As the vassal furnished his own equipment and paid his own expenses in the wars, there was no expense connected with the military establishment.

The feudal system was not adapted to urban conditions, commerce or industrial pursuits. The feudal lord was a robber and a tyrant, who fortified his castle and encased himself in armor, that he might maintain his advantage over the weak and defenseless. In the cities, especially of Italy, the spirit of republicanism still survived, though often supplanted by despotic rule of one kind or another. Venice from its sea-protected islands struggled into existence first with twelve tribunes, elected annually, to guide the affairs of state. In 697 they elected a chief magistrate, called the Doge, who was general and judge with powers not definitely limited, but who acted in important matters with the concurrence of a general assembly. He was sometimes permitted to associate his son with him. In 1032 limitations were placed on his power. He was prohibited from associating his son in the government, and required to act with the consent of two counselors, and to counsel with the principal citizens on important occasions. In 1172 a radical change was effected, and a great council of 480 citizens was established. This council appointed the doge and other important officers. At first the members of this body were selected by tribunes chosen by the people, but in course of time they assumed the power of confirming or rejecting their own successors, and ultimately membership became hereditary. In 1179 the exercise of criminal jurisdiction was given to a council of forty members, chosen annually. The general care of the state was given in charge to sixty councilors, over whom the doge presided. In the fourteenth century this council was doubled in numbers. The senate was

annually renewed by the great council. From this body six members were selected, who, acting with the doge as an executive board, treated with foreign states, convoked councils and performed administrative duties. On his election the doge was required to take an oath to observe many restrictions on his power. The method of electing a doge was an exceedingly complicated combination of choice by lot and by ballot through the medium of successive sets of electors. In 1296 the great council was closed, and thereafter all but the families then members of it were excluded. In 1310 the famous council of ten was created, who, in concert with the doge and his six counselors, became the controlling force in the state. Under this system the government was vigorously, but tyrannically, conducted. The power, wealth, commerce and influence of Venice during the darkest period of European history bear witness to the superior vitality of an organization which carries to its head a constant impulse from the whole people, or a large and representative portion, of them. No other European state endured so long, or so completely preserved its integrity during those years of darkness. The unfailing tendency, however, for those on whom power is conferred to extend it, is well illustrated by its history, as also is the decay which always attends a rigid stratification of society and the rule of an hereditary aristocracy, which lives without work and despises and despoils an ignorant and oppressed proletariat. The vices of the Venetian nobility were the vices which tyrants exhibit everywhere.

At Rome the idea that the people were the source of all political power never became wholly extinct. The spirit of the church, if not of the Popes, was distinctly republican. The early bishops and their successors, the Popes, were elected, and the idea of hereditary power never obtained in the church. The celibacy of the clergy effectually prevented it. True there were times of gross corruption in the elections, times when the papal chair was filled by fraud, by bribery and by violence. These evils are not strangers to any form of government or system of social or religious organization. They are manifestations of human weakness and vice. Above the

church at all times shone the pure light of the teachings of Christ, enjoining universal brotherhood and love and denouncing every form of oppression and wrong doing. No system of tyranny could justify itself by any recorded word of His. He never attempted to order or advise any form or system of human government. "Be not ye called Rabbi, for one is your master, even Christ, and all ye are brethern. And call no man your father upon the earth, for one is your Father which is in heaven. Neither be ye called masters, for one is your master, even Christ. But he that is greatest among you shall be your servant, and whosoever shall exalt himself shall be abased, and he that shall humble himself shall be exalted." Absolute equality and unselfishness among mortals is the spirit of all his teachings. The lofty ideal of voluntary obedience to the moral law as the ordinance of God, the sole ruler of all, was not sullied by any attempt at creating a government to be administered by men and subject to all human imperfections. Nor did he attempt to formulate rules of conduct to cover each specific case, and much less to prescribe rules for the government of property rights. With the single exception of his teachings with reference to family relations and the sanctity and indissolubility of the matrimonial bond, he declared no rules of civil conduct which would be ordinarily denominated laws. His teachings were of the moral principles by which every human law, regulation and act, must be tested. Rewards and punishments in a future state of being were promised as the leading incentives to righteousness in this life.

The ancient spirit of Roman republicanism also lingered in the great city, and throughout the darkest of the succeeding centuries there were shadows of consuls, senates, tribunes and other ancient officials of the republic. These temporary and relatively insignificant revivals of the ancient system furnish little or nothing novel or worthy of extended notice here. In the tenth and eleventh centuries the cities of Lombardy, Milan, Pisa, Pavia, Genoa, Florence and other Italian cities, regulated their affairs by municipal officers, chosen by themselves. To trace the history of each is impracticable and perhaps

would be unprofitable, except as they exhibit the superior vigor and prosperity of communities which enlist in public affairs the combined energies of many, over the petty despotisms of the feudal lords. These cities were subject to more or less domination by the emperors, kings and dukes, who from time to time asserted and maintained authority over them with more or less strictness. The superior advantages enjoyed by the people of these cities stand out in strong contrast to the misery and poverty of the villeins under the feudal barons. Thus Milan in the middle of the twelfth century was far more populous than any of the capitals of the great kingdoms. It was defended by strong walls and deep trenches, within which an industrious population dwelt in security, each enjoying the fruits of his own industry and foresight. These little republics were not exempt from such jealousies and rivalries as prevailed among the ancient cities of Greece, and destructive wars were waged from time to time. Against the tyranny of Frederick Barbarossa the Lombard cities united after the destruction of Milan, and gained victory and independence, but their own jealousies and animosities in turn destroyed the league, which had protected them against an external foe. A peculiar and most unfortunate state of affairs developed about the year 1200 from the division of the different cities, and of the citizens of each city, between the factions of the Guelphs and Ghebelins. As no well defined matter of principle or even of policy or interest divided these factions, but merely claims of rival princely houses, malice and prejudice held full sway, and no ground for hostility existed which reason or mutual concessions could remove, city was arrayed against city in malignant strife, and in each city faction warred with faction the more bitterly because without justifiable object or excuse. Notwithstanding the rivalries and wars of these petty republics, their wealth and prosperity, their public works and private establishments, present in strong contrast the difference between a free republican city and rural despotism. The city governments were generally modeled largely after that of ancient Rome.

While Frederick I maintained his rule over the Lombard

cities, he placed over each a chief officer, called a *podesta,* in place of the elective consuls. After his expulsion the cities quite generally adopted the plan of electing a *podesta* from among the citizens of a neighboring city, whose functions, though varying in different cities and at different times, were mainly judicial. He was forbidden to marry in the city or have intimate relations with any of the citizens. The purpose of this was to have a judge who was free from bias or factional prejudice.

The feudal system was not adapted to urban life or commercial pursuits, and the organization of society in the towns never conformed to it. Not only in Italy, but in France and Germany, there was at all times a spirit of independence and an assertion of the right to local government in opposition to the tyranny of feudalism. Along the Rhine, as well as in other parts of both countries, the feudal barons in their fortified strongholds became robber chiefs. The people gathered in the towns formed trades guilds, chose councils, and by offering an asylum to all who chose to join them, grew in numbers and in power.

On the deposition of Charles the Fat in 888 the Frankish empire was divided, and the separate existence of the German empire under Arnulf commenced. In accordance with ancient customs election was the only title to chief power. Just how or by what classes of people the choice was made is not made very clear, but it seems to have been in a general assembly of the five nations of Germany. The actual choice of succeeding emperors appears to have been made by the nobility, ratified perhaps to some extent by general assemblies of the people, but with the growth of the feudal system the actual power of the emperor became so slight that it was scarcely sought after. At the election of Lothaire in 1124 there was what is termed a pretaxation, or selection of a candidate by ten persons, in whose choice the princes agreed to acquiesce. Later the electoral college was composed of seven members, the archbishops of Mentz, Treves and Cologne, the duke of Saxony, the count Palatine of the Rhine, the king of Bohemia, and the margrave of Brandenburg. The

powers of the emperor are not easily stated, nor were they ever clearly defined, but rather dependent on the character of the person filling the office and the temper of the people at the time. His claim of sovereignty over Italy was given more or less recognition, but never amounted to an effectual direction of affairs. The spirit of the feudal lords was such throughout Germany, as well as all parts of Europe where feudalism prevailed, as to deny the right of any superior to interfere with local affairs in their dominions. The feudal baron was the political entity. He waged war when, with whom, and as he pleased. That now clearly recognized distinctive function of sovereignty, the right to form alliances and make war or peace, was then freely exercised by each feudal landlord. The Emperor of Germany, the French king and other potentates, were powerless to prevent the private wars among their vassals, nor were they able to command their support in contests with outside foes. For three centuries after the breaking up of the Empire of Charlemagne the history of Europe is not to be traced as that of organized states with settled governments and laws. The first and far most prominent political fact was the growing power of the feudal lords. That power was exercised singly by each in accordance with his own sense of honor. Pride, arrogance, disregard of human life, detestation of labor, of learning and of all useful callings, were the prevailing sentiments of the nobility. It is indeed difficult to detect anything good in the system. It was as if the free Germanic tribes had been converted into petty despotisms, in which the freeman had become serfs and the chief a tyrant. The cities and towns of Germany and France were of little political importance in those times, as compared with the great landlords and their vassals, and most of them found it necessary to place themselves under the protection, which often meant at the mercy, of a neighboring chief. In Italy alone the feudal barons were placed under some restraints, and in many instances required to dwell within the town and submit to its regulations. The church and the monastic establishments preserved whatever remained of learning, and alone afforded a bond of union

throughout the warring fragments of the ancient empire. Within the monastery labor, study, equality and self-denial were still the precepts, if not generally the practice. The barbarity of the age, however, had its influence on these institutions. Superstitions derived from ancient and impure worships were imported and made part of the stock in trade of the clergy. The pure morality of Christ was too lofty for practical use in an age so degraded, and saints and images, sticks of wood labeled pieces of the true cross, bones of saints and martyrs, and other objects to which pious fraud could give fictitious virtue, were made objects of worship and held forth as possessing miraculous powers. The vice of avarice also seized fast hold of the church of him who so vigorously denounced it, and absolution for the vilest crimes was granted by the church to pious criminals who would pay sufficiently for it. Superstition always has a firm hold on him who feels that his conduct is vicious, and the abbots and clergy of that age found no difficulty in profiting largely from the superstitious fears of the multitude. Not only were the holdings of religious establishments so increased as to cover a large part of the entire country, but the power and influence of the church became predominant. This would have been of incalculable benefit if pure Christian morality could have been promoted, but with increase of wealth came corruption of the church, and in many places monasteries and clergymen's houses became seats of vice and immorality.

Theoretically the monastery was a refuge for the man of peace, who would withdraw from the conflicts of a bloody age, but the spirit of war could not be wholly excluded, and abbots often found it necessary, or deemed it expedient, to arm their followers and take part in the local wars. Nor were the church properties always respected by the barons. Pretexts were invented by the powerful to seize the lands held to pious uses by force, and there was no superior authority with sufficient strength to insure redress. Corrupt as the religious institutions undoubtedly were, they still rendered succeeding ages an inestimable service. Of all the treasures which one age can pass down to another, that of knowledge

and wisdom, gained from experience and the inspirations of religious teachers, poets and philosophers, is of the most inestimable value. To the church and the monasteries we owe, not merely the preservation and transmission to our times of the sacred writings, but also, the perishable manuscripts in which were written the learning of the heathen world, which the art of printing has now made accessible to the educated people of all nations. Through them, perhaps more than any other medium, the light of the Roman jurisprudence has been rekindled to become again the basis of judicial action throughout Europe.

The political importance of the barons in France, where the feudal system attained its most complete development, is exhibited by the following functions and exemptions which they asserted. 1. Power to coin money. 2. To wage private war. 3. Exemption from all taxation and tribute except the feudal aids. 4. Freedom from legislative control. 5. The exclusive exercise of judicial functions in their dominions. A system recognizing these claims necessarily left the central authority a mere shadow. The only semblance of general legislative authority seems to have been that exercised by general councils of the church. With all its tyranny the feudal system contained some germs of social order and civil liberty. It recognized a definite obligation resting on the lord to protect the vassal, and was based on the idea, if not the substance, of mutual support and advantage. The terms of the relation were fixed by general understanding, if not always faithfully observed. Within his demesne justice was administered publicly by the lord in accordance with the customs of the times, and all mere arbitrary power was theoretically denied, though actually exercised. The system flourished for about three centuries and begun to wane. The forces which undermined it proceeded from two directions, the sovereigns and the towns. The king could not maintain his wars successfully with the mere temporary support of his vassals. Longer terms of service and money for supplies were indispensable to the reduction of a fortified town. Long service could only be gained with pay. Pay could only be afforded

by a general system of contribution or taxation. National spirit, stimulated by the crusades, and distant wars, inclined public sentiment toward strengthening the hands of the kings.

At the other end we find the towns, seats of industry, imbued with a more democratic spirit and inclined to resist the tyranny of the barons. Productive industry and peaceful inclinations tended to a greater increase of numbers than that among the retainers of those whose only calling was war. Not only did the numbers of the townsmen increase more rapidly through natural multiplication, but they steadily gained at the expense of the nobles through the settlement of villeins and small feudatories in the towns, where they were generally welcomed and accorded burghers privileges. The feudal system, operating throughout the same great field as the monastic and church system, reduced the power of the kings to a mere shadow of the absolutism of the ancient emperors. The popes persistently advanced their claims of spiritual supervision, and in the exercise of religious discipline exerted in fact a powerful influence, and often an arbitrary supervision, over secular affairs. The papal power was rapidly extended by encouraging appeals to Rome in all disputes arising in the church, and then of controversies between contending princes. Thus Lothair was taken to task for divorcing his wife and excommunicated by Pope Nicholas I. Excommunication in some states of society might amount to little more than an expression of displeasure, but in an age of superstition and of general submission to the church it was a heavy penalty depriving the offender of all participation in the ministrations of the church and of all communion with its members. It in effect singled him out as an object of scorn and detestation to be shunned and condemned by all mankind. The proud Lothair at first treated the action of the Pope with contempt, but was forced to humbly sue at the feet of Adrian II for pardon and absolution. The law also added to the force of the papal authority a disqualification of the excommunicated person to testify as a witness in a court of justice, or even to bring an action. A yet more severe weapon wielded by the

head of the church was the interdict, by which not only the offender, but all his subjects, were deprived of religious privileges. The churches throughout his dominions were closed, the bells silenced and the dead left unburied. No rites but those of baptism and extreme unction could be performed. The penalty fell on the unoffending subjects with the same severity as on the guilty ruler. Though the power of the church was sometimes successfully resisted, and though kings sometimes in turn ruled the weaker popes and used them as instruments for their own aggrandisement, in an age when all learning was the property of the church and superstitious veneration of pope and clergy was so general, the interdict was an effectual weapon for the execution of papal commands.

From the anarchistic conditions which prevailed when feudalism was at its height modern European society has been envolved. The political map of that continent has been subject to many and sweeping changes, and still shows many small states, constantly armed and expectant of war. No firm bond yet binds the people of different nations to each other. Narrowness, distrust and inherited hatreds, still bar the way to sensible combination and the acceptance by rival states of mutual good-will and good deeds. Yet from the disorganized and chaotic mass of the dark ages states with larger territory, more varied popular elements, and better principles have grown up. These we must examine separately and in detail.

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CHAPTER XVI

Russia

Our earliest introduction to the inhabitants of that vast territory now designated as Russia comes through the Greeks, and exhibits many tribes with varied characteristics. The name Scythians was applied quite generally to the nomads of the great plains, and also to those who tilled the soil in the rich valley of the Dnieper. Many early tribes are mentioned by Herodotus and other ancient writers, the relationship of which to each other or to modern people it is not our purpose to trace. From the earliest times central and northwestern Asia has been a breeding ground, from which has issued barbaric hordes that have pushed their way in all directions and especially across the flat grassy Russian plains into Europe. Their movements have been in main migrations of tribes with all their families, cattle and belongings, seeking to escape enemies or searching for pasturage or pillage. Among the characteristics of most of these people, when first mentioned in history, are bravery, cruelty, superstition and ignorance. They scalped prisoners, drank the blood of enemies killed in battle, sacrificed slaves and horses at the funerals of dead kings, and had other horrible customs, yet it would hardly be safe to give this as a general statement of the manners which prevailed for any long period of time. It can be said however that cruelty and indiscriminate slaughter of conquered enemies has generally attended the conquests made by the swarms which from time to time have issued from this breeding ground. The peculiarities of southern Russia have rendered it possible for Asiatic hordes to pass quickly with horses, cattle and all their households from their Asiatic seats into the heart of Europe. Level plains with ample pasturage, unobstructed by mountains or great forests, have afforded a broad highway, open to all who might choose to travel it.

Pastoral tribes, moving with herds and tents, might be equally at home anywhere from the mountain slopes of central Asia to the Dnieper. The prevalence of periodical droughts and resulting failure of vegetation have compelled frequent migrations, and the necessities of their situations have driven tribe after tribe along this highway. It was the people dwelling in, or who passed through this grass land, that came in contact with Greeks and Romans and successively invaded western Europe. The dwellers in the wooded country lying to the north never come in contact with either ancient Greeks or Romans.

The foundations of the government which has since extended from the Baltic to the Pacific and from the Arctic beyond the Black Sea, were laid in the forest regions from which the great rivers flowing into the Baltic, Black and Caspian seas have their sources. The dominant race of Russia is the Slav, classed as Aryans and allied to the Germans. The next most important elements are Finns and Tartars. Intermixture has produced a composite of which the prevailing characteristics are Slavic.

The Slavs as first made known to us were at a very low stage of social development. The family was the political and social unit with the father as its patriarchal head. Polygamy was allowed, and wives were captured, with or without their consent, as a part of the marriage ceremony. The *mir* was an expansion of the family and under the direction of a council of elders called *vetche*. In its deliberations there was little of order, and a decision required the concurrence of all. The idea of the right of a majority to rule did not obtain, but the majority were forced to make such concessions to the minority as would induce them to concur, or to use some other effectual means of enforcing acquiescence. The village lands were owned in common, except the *dvor* or inclosure immediately about the house. A group of *mirs* was called a *volost* or *pagost* and was governed by a council of elders of the *mirs*. A chief of the *volost* chosen by the elders was a leader in war but with little or no power in peace. Any further union of different *volosts* was temporary, and no estab-

lished authority over tribe or race was recognized. They tilled the soil, used coined money of other nations, and had considerable commerce. They were workers of iron and made swords for export.

The foundation of the Russian state starts from the accepted date of 862, when the Variagi came to rule over the Slavs of Novgorod and vicinity, by invitation of the people it is said. Rurik, his two brothers and their military following came to establish order and defend the Slavs. Rurik first settled at Lake Ladoga, and at Novgorod after the death of his brothers. Two other Variagi went down to Kief and became leaders of the Poliane. After the death of Rurik his brother Oleg subdued Kief, extended his dominion over most of the Russian Slavs and in 907 attacked Constantinople and imposed tribute on it. Igor son of Rurik succeeded Oleg, and on his death his widow Olga became regent during the minority of her son Sviatoslaf. She began her reign with barbarous massacres of the Drevliane, by some of whom her husband had been assassinated, and was afterward converted to Christianity, but her son refused to follow her example and but few of her subjects accepted her faith. On the death of Sviatoslaf the empire was divided among his three sons, who ruled respectively at Kief, Novgorod and over the Drevliane. Civil wars followed, resulting in the death of two of the brothers and the consolidation of the whole under Vladimir. He was a cruel, sensual despot, who took five wives and kept concubines by the hundreds. He became dissatisfied with the old religion and made war on Constantinople to conquer the Greek Christianity. As terms of peace he demanded the daughter of the Greek emperor in marriage and accepted baptism. He then proceeded in a truly autocratic manner to throw down the ancient idols and march the people into the rivers to be baptized. His conversion is said to have been followed by a radical reformation of character, by the founding of schools and many other works for the good of the people. Vladimir partitioned his dominions among his sons and even gave a portion to a nephew. They, as usual, fought among themselves, and Iaroslaf became master of all. His reign

from 1015 to 1054 was a brilliant one and placed Russia among the leading states of Europe. He promulgated the first code of Russian laws. It recognized the avengers of blood and fixed the amount of money to be paid for crime; allowed judicial duels, trial by ordeal of red hot irons and boiling water, by oath with compurgators, and also provided for trial by a judge and jury of twelve men. Punishment by death, whipping or imprisonment was unknown. The rule of the Variagi was not of autocrats with firmly established authority, exercised through a system of subordinate officials. The prince occupied relations similar to the Norse and Frank leaders with their bands of military companions and followers called the *drujina.* They were his council of state and his guard. From them he chose governors of towns and constituted courts of justice. They ate at his table and exercised a powerful influence on his policy. Sviatoslaf answered his mother Olga's exhortations to become a Christian by saying that his *drujina* would mock him. He owed his strength to them and in order to retain it was forced to consult their wishes. They were free to transfer their allegiance to another when they chose. Prince and *drujina* were engaged in a common enterprise and lived from the tribute they extorted. This was fixed arbitrarily, and Igor lost his life by attempting to force further tribute from the Drevliane, after he had fleeced them once. The *drujina* was divided into three classes, of whom the *boyars* were the highest. What commerce there was was carried on by the prince and his armed warriors. The mass of the population were peasants—*muzhiks,* and slaves. The leading city in the time of Rurik and for a considerable period thereafter was Novgorod, which is said to have then had 100,000 inhabitants. It was a republic with ruling power in the assembly of citizens, the *vetche,* which was convoked by ringing the bell. They dictated terms to princes and received such rulers as they pleased and on their own conditions. Iaroslaf confirmed and defined the privileges of Novgorod, which subsequent princes were required to take an oath to observe. The revenues he might exact were strictly limited, as also were his judicial and political functions. He

could not execute justice without the concurrence of the *posadnik,* nor reverse a judgment nor take a suit away from the city. In conflicts between citizens and the prince's men a mixed tribunal decided. He could impose no garrison nor colony on them. The chief officer of the city was the *posadnik.* He was charged with the defense of civic rights, and shared with the prince the judicial powers and the apportionment of taxes. He governed the city, commanded the army and directed its diplomacy. The next in authority was the *teusatski,* who was military chief and entrusted with the defense of the rights of the people as a sort of tribune. Novgorod also preserved its spiritual independence by electing its own archbishop, who ranked among the chief dignitaries of the city. The citizens not only elected but retained the power to depose him. Novgorod became a German market, and German settlements were made not only at Novgorod but also at Ladoga and Pskof. Their markets were protected by stockades, and they maintained a monopoly of the western trade. Pskof and Viatka developed later, about the twelfth century, as little republics similarly constituted to Novgorod. The period following the death of Iaroslaf in 1054 till the appearance of the Tartars in 1224 was one of fierce and cruel wars, due largely to the division of the country among the heirs of deceased princes, aggravated by a conflict as to the rule of inheritance between the old Slavonic leadership of the oldest member of the family, by which brother succeeded brother, and the claims of the sons. From the dreary accounts of bloody cruelty and constant wars no new lesson can be drawn. It has had its counterpart in the history of nearly every nation on earth. The advent of the Mongols in 1224 marks the beginning of an important epoch in Russian history. The dominion of Genghis Kahn had already been extended over Manchuria, Northern China, central and western Asia. Nothing could exceed the fierceness and barbarity of his conquests. Indiscriminate slaughter, rapine, destruction of cities and property, death, desolation and ruin everywhere, were the penalties of resistance, and submission often gained no protection. His armies were recruited from all nations, and with

prestige once established he drew to his aid a heterogeneous army, made up from all the nations with which he came in contact. Against his hordes the ever jealous and warring petty princes, who ruled in the dismembered states of Russia, could oppose no effectual resistance. The Russians of that time were not very superior in their rules of warfare to the Mongols. When the ambassadors of the latter came to them asking that they abstain from interference in their contest with the Paluvtsin, the Russians responded by killing the ambassadors. In the battle which followed the Russian army was annihilated. This battle however was not followed by the immediate subjugation of any large territory. The Mongol hordes returned to the east, where they were occupied with other conquests. In 1237 Oktai, one of the sons and successors of Genghis, sent his nephew Batu with an immense army into Russia. He quickly overran the grass country of the south and spread ruin and desolation everywhere. His army penetrated the forests to within fifty miles of Novgorod. Mangu, a grandson of Genghis, took and destroyed Kief and put its people to the sword. The difficulties of a hilly timbered country impeded the progress of a horde accustomed to the open plains, and the obstinate defense of Olmutz in Moravia checked their advance. The death of Oktai recalled Batu to the east, and the wave of conquest had reached its western limit. Though they passed through Hungary into Germany, they gained no permanent foothold beyond Russia. Batu established his capital at Sarai on the lower Volga, where as representative of the great Kahn he ruled in barbaric splendor. By the persuasion of Alexander Nevski Novgorod paid tribute to the Mongols. Russian princes were required to appear at the capital of the Golden Horde and do homage to its chief. In many instances they were compelled to appear in the court of the Great Kahn on the further side of Asia. The rule of the Mongols was that of military chiefs, interested in extorting tribute and extending their power, but taking no interest in the local affairs of the people. They left those they spared with their social system, their local courts and laws unchanged, and with possession of their lands, which their nomad con-

querors had no desire to cultivate. The conquered people were required to pay a capitation-tax, levied on rich and poor alike, to be paid in money or furs. The revenue was collected by farmers supported by the agents and guards of the Kahn. In course of time the princes of Moscow undertook the collection from their own subjects. The Russians were also required to furnish their quota of troops. While the Russian princes were allowed to retain their places, it was as subjects of the great Kahn, to whose decision they were required to submit their controversies instead of fighting them out. The corruption of the Kahn's court is reputed to have been extreme. The Mongols were converted to Mohammedanism about 1272. After they ceased to extend their dominions by conquest, their manners softened and we hear no more of their extreme ferocity. During the time of their ascendency the Russians waged successful war with the Swedes and Livonians and strengthened their position on the west and north. With the rise of Poland there was a tendency to Russian concentration about Moscow.

In the reign of Ivan III the Muscovite autocracy began to again consolidate the Russian states. Novgorod had changed from a democracy, devoted to the common welfare, to an aristocracy divided into discordant factions. In 1470 it submitted to the sway of Ivan. By assuming the rôle of judge between the warring factions he took away from them their ancient and highly prized privilege of determining all their causes at home. They rebelled and he subdued them and finally abolished the *vetche* and *posadnik,* and in 1478 the republic of Novgorod ceased to exist. The Tartar empire had broken into fragments, and Ivan finally threw off the yoke of the Horde. Vasili Ivanovitch took away the liberties of Pskof as his father had those of Novgorod, abolished its *vetche,* carried off its bell, placed his lieutenant in it as governor and transplanted its principal citizens in remote parts, as his father had those of Novgorod. Ivan IV, the terrible, extended the boundaries of his empire and at the same time hardened the autocracy. His merciless executions were numbered by thousands and included many of the proudest *boyars* of the empire.

In 1556 he assembled the States General for the first time, and he was the organizer of the *strelitz* or National Guard. The long and vigorous reigns of Ivan III, Vasili and Ivan IV, extending from 1462 to 1584, witnessed the consolidation of the empire, the termination of the policy of dividing it as an inheritance and the centralization of power in the hands of the Czar. The policy of these monarchs was mainly directed toward the firm establishment of the power of the Czar over the nobility. The *drujina,* who were his companions in the palace in peace and in the camp in war, had no taste for administrative details, and in the organization of the bureaucratic system, through which the central power acts on the multitude, it became necessary to call in the more humble and more scholarly sons of merchants and priests. A great number of these bureaus, twenty to thirty, with varying and ill-defined functions were instituted. One had charge of supplying the table of the Czar, the princes of the blood and nobles whom he fed. Others looked after other domestic and court matters. Then there were the *prikazin* of the palace, of the revenue, of secret affairs, petitions, posts, police, buildings, slaves, monasteries, army, embassies and of the provinces. The revenues were derived from the products of crown lands, paid in kind or in money, from a tax on corn, on fires, customs, crown taverns, fines and confiscations. Certain branches of trade were also monopolized by the Czar and used as a means of extorting money from the merchants.

Three grades of courts of justice were established, that of the *starosta* of the district, a magistrate for every hundred plows, the *voievod* in the chief city of each province and the Supreme Court of Moscow. Trials were had on written or oral proofs, a party being allowed to testify in the absence of other proof, or by judicial combat. Debtors were treated with the greatest rigor. An insolvent was liable to be flogged daily for thirty or forty days, after which, if no one would pay his debts, he was sold and his wife and children hired out to service. Persons charged with theft, murder or treason were subjected to a great variety of tortures. Heretics and sorcerers were burned. Counterfeiters had hot metal poured down

their throats. These were for the humble subjects. A nobleman who slew a *mujik* was only fined or whipped, and if he killed his slave there was no penalty, for he might do as he pleased with his chattel. The church was made subservient to the Czar, and the clergy were instructed in the performance of imposing ceremonies, but knew little of religion or morality.

The army was mostly cavalry. The imperial guard of about eight thousand was made up of young courtiers. All the nobles of the empire, counted at about eighty thousand, served on horseback and defrayed their expenses from the revenues of their lands. The levy of the free peasants amounted to about three hundred thousand. The *strelitzi,* organized by Ivan IV and kept at Moscow, numbered twelve thousand. Many foreigners were taken into the service. Soldiers furnished their own rations mainly for short campaigns. Diplomatic relations were established with other countries of Europe. The lower orders of Russia were made up of: 1, chattel slaves; 2, peasants attached to the lands of the nobles, legally free in person but bound to till their masters' lands, and 3. free cultivators, who had the right to move from place to place and change masters. The second class was by far the most numerous. These considered themselves the real proprietors of the land, not as individuals, but as communities, *mirs.* The *mir,* not the individual, paid taxes to the Czar and dues to the landlord. The towns were governed either by a *voievodni,* appointed by the prince, or a *starosta,* elected by the assembly from among the gentry. In assessing the imposts the *starosta* convoked the elders of the towns and rural *mirs.* In the family the father had arbitrary power over wife, children and sons' wives.

The nobleman always had a retinue of slaves, which he kept about his person and ruled with such rigor as accorded with his disposition. The practice of secluding the women at home and veiling when away prevailed. Drunkenness and debauchery were common in a state of society where illiteracy was almost universal. Superstition and ignorance, there as elsewhere, were inseparable companions. Holy water and relics were more relied on for miraculous cures than the medicines of the physicians, and were perhaps safer in the

then existing state of the profession. During the reign of Feodor, son of Ivan IV, the regent Boris Gudenof promulgated the first Ukase forbidding peasants to remove from one estate to another. This was done in the interest of the poor nobility, to prevent the great ones from drawing away the laborers and thereby leaving their estates uncultivated. The number of farmers being inadequate to till more than a small part of the land, the great lords by offering superior advantages could prevent the cultivation of the small estates. The purpose of Boris in this order was to enable the poorer nobility to render military service and defray their expenses, which they could not do without the aid of the serfs. After the death of Feodor, who was mentally so weak as to really exercise no authority, and of his brother Dimitry who was probably assassinated, the royal line failed and a time of turbulence ensued. For a very short time Vladislas of Poland was in possession of Moscow and recognized by the boyars as Czar, but, led by Minin the butcher of Kozma, the Russians gathered and drove out the Poles. Polish dominion was hardly a reality and had no effect whatever on the growth of the autocracy.

In 1613 a great national assembly gathered at Moscow, composed of church dignitaries, and delegates of the nobles, the merchants, towns and distructs. Michael Romanof, a youth of fifteen, was elected Czar, receiving all the votes, and became the founder of the existing dynasty. By raising his father Philaret to the rank of patriarch and associating him in the administration of the government Michael was greatly strengthened. From the companions and military followers of the early princes there had developed a proud nobility, jealous and contentious over questions of precedence. Each insisted on maintaining rank equal or superior to that attained by any of his ancestors, and refused to accept a public station lower than the highest held by any of his predecessors. Contentions over these matters occasioned ceaseless strife and annoyance at all great gatherings. Feodor III (1676 to 1682) resolved to put an end to this trouble. He required all the noble families to deliver into court their pedigrees, that

they might be examined, on the pretext that he wished to correct errors in them. He then convoked the nobles and with the assistance of the clergy burned all the books of pedigrees before their eyes.

This was soon followed by Peter the Great (1689-1725) with an abolition of all nobility, except that based on public service, civil or military. Though thoroughly saturated with the spirit of autocracy and accustomed to use his arbitrary powers without mercy, Peter was still a great reformer of the most practical kind. He perceived the superior industrial and commercial development of Western Europe, and with the spirit of the earnest searcher for knowledge he strove to learn their ways and their arts, not their speculative philosophy or forms of government. He traveled into other lands and even worked as an apprentice in a ship yard in Holland. His eyes were opened to some of the most serious defects of the Russian system and some of the wrongs habitually inflicted on the weak. He put an end to the seclusion of women and introduced western fashions of dress and manners. He abolished the flogging of insolvent debtors and the patrarchate. He remodelled the organization of the army in accordance with western methods and began the construction of a navy. He founded St. Petersburg on the Neva, whence he could communicate with the outside world by sea, having wrested the northern country from the Swedes. He brought into the empire artisans of all classes from every country to instruct his subjects in manufacturing and ship building. He encouraged trading and divided the merchants into guilds. But with all his innovations he jealously maintained the autocracy, applied the knout and the axe as he deemed best.

Though the history of the succession of rulers from the time of Michael shows the usual incidents of intrigues, murders, factions and palace troubles of various kinds, the central idea of an autocracy with unlimited power has been steadily asserted by the Czars and acquiesced in by the nation. The system of administration has been shaped to effectuate autocratic rule. The policy of conquest, colonization and Russianizing has been steadily and successfully adhered to, with the

result that the Czar now rules over an empire unequalled in many respects by any other in the world. Not only have the Tartars, who so long compelled the Muscovites to pay tribute and acknowledge their supremacy, been shorn of all dominion in Europe, but that vast breeding ground of Asia, whence have swarmed out barbaric hordes to sweep with cyclonic force over the states of Europe, has been reduced to the sway of an European state, and is now being colonized by Slavs, who carry with them the customs and the language of the Muscovites. The Turks, kinsmen of the Mongols, find in Russia their most inveterate and persistent enemy, and little by little have been forced to withdraw from Europe.

At the base of Russia's social system it still has the democratic *mir* and patriarchal family. Though, looked at through western eyes, the government is regarded as arbitrary, cruel, corrupt and almost unmitigatedly bad, it has undertaken and completed a railroad across the Asiatic continent and taken the lead in calling a peace congress to enable European states to reduce their vast armies. Unfortunately this has not saved it from a most humiliating war with Japan, or the great war now raging. Whatever the faults of the Russian system, it must be conceded that it is adapted to vast expansion over such people as it deals with. How well it ministers to their welfare is another subject.

The most notable legislative acts since the time of Peter the Great are the ukases of 1861 and 1866 liberating the serfs, the judiciary acts of Alexander II and the establishment of the Duma in 1905 by Nicholas II. This was a first step in the transition from an autocracy to a constitutional monarchy. By the manifesto of Oct. 17, 1905 Nicholas decreed that no measure should become a law without the consent of the Imperial Duma, a freely elected national assembly. Though three successive Dumas have been elected and held their sessions, the transition period is not definitely passed. The Czar still asserts autocratic power so far as he deems it necessary.

By the ukase of Feb. 20, 1906, the Imperial Council was associated with the Duma as the upper house of the national

legislature. This Council consists of 196 members, of whom ninety-eight are appointed by the Emperor and the other ninety-eight are elective. Of the elective members three are chosen by the monks, three by the secular clergy, eighteen by the corporations of nobles, six by the academy and universities, six by chambers of commerce, six by the industrial councils, thirty-four by the governments having *zemstvos,* sixteen by those having no *zemstvos,* and six by Poland. It is apparent from the composition of the Council that imperial influences dominate in it.

The Duma is the lower House of the parliament and consists of 442 members elected by a very complicated electoral system, designed to give control to the land-holding class, while allowing the poor to vote. In the first two Dumas the radical popular elements predominated. To give the conservatives control the method of election and basis of representation were changed, so that no matter how large a popular majority the liberals may have the land-owners will still be able to name the majority of the Duma.

The Russian parliament thus constituted shares with the emperor the legislative power, except in measures dealing with the organization of the army and navy. The despotism has not yet given up the instruments through which despotism may be perpetuated. Any member may propose a law, but it must be submitted to the minister of the department affected by it, who may consider it for a month and then has the right to prepare the final draft for consideration of the House. The ministers are accountable to the emperor, not to the parliament. The Czar has the power under extraordinary circumstances when the Duma is not sitting to issue ordinances having the force of law. While these must be laid before the Duma at its next sitting, the reserved powers to proclaim a state of siege and to prorogue or dissolve the Duma leave the Emperor with absolute power whenever he sees fit to use it. Nevertheless the Duma as the representative body of the nation has a powerful and growing influence and will doubtless dominate when it has capacity to direct public affairs.

By the law of Oct. 18, 1905, a council of ministers to assist

the Emperor in the supreme administration was created with a minister president. This council consists of the ministers of (1) the Imperial Court; (2) Foreign Affairs; (3) War and Marine; (4) Finance; (5) Commerce and Industry; (6) Interior; (7) Agriculture; (8) Ways and Communication; (9) Justice; (10) Public Instruction. Aside from these there are the Comptroller and the Emperor's private Chancery. There is no joint or common responsibility of the ministers. Each is accountable to the Czar and to him alone, and may pursue such policy as the Czar authorizes without regard to the views of the heads of other departments. The Ministers however meet in Council for consultation. They are presided over by a President of the Council of Ministers, named by the Czar. Important matters arising in either bureau may be discussed in these meetings or taken to the emperor privately as he may prefer. Unity of control and direction rests in the Czar alone.

Each minister is assisted by a council which seldom meets, and also has one or two assistants who actively participate in the transaction of affairs. Most of the bureaus are divided into departments according to the nature of their duties, and have officials and clerks charged with the minor details.

The Senate, established by Peter the Great and designed by him as the chief governing body under him, though now of far less importance than the Council, has seven departments exercising administrative functions, through which the laws are promulgated, the acts of governors examined and their conflicts with *Zemstvos* adjudicated. Two departments are the courts of review and constitute the highest court of the empire, and another pronounces judgments in political causes. The Holy Synod, made up of metropolitans and bishops, rules religious affairs.

For purposes of administration the European empire is divided into fifty *guberniya* in Russia and ten in Poland. The Asiatic dominions are divided into the lieutenancy of Caucasia and the governments of Turkestan, Stepnoye, East Siberia and Amur. Each government is divided into districts, *nyezd*, under a police captain, *ispravnik*. At the head of each *guber-*

niya is a governor. Formerly his powers were those of a local autocrat, as representative of the Czar, but now they are greatly curtailed. He is assisted by a vice governor and a government council, which however is merely advisory. By the ukase of 1785 Catharine II confirmed on the *dvorniastvo,* the nobility of each province, the right to name the local functionaries and justices, and to supervise and control the local administration, justice, police, finances and all matters of local interest. Assemblies were held once in three years for these purposes, and they appointed the *ispravniks* and local justices. Their assemblies sat, elected boards, and appointed commissions to inspect the governor's accounts, but in fact exercised very little influence on the administration, which received its impulse from the central authority. In 1864 the *Zemstvo* or territorial assembly was established, composed of representatives of all the orders. The peasants, the towns and the nobility, each elect their representatives separately. The representation is apportioned arbitrarily, so that the peasants, who constitute more than three-fourths of the whole, have less than forty per cent of the delegates, and the million landowners have over forty-five per cent, the town people choosing the balance. The mode of election by the peasants is that the heads of families of the *mirs* choose a council for the *volost,* who choose electors to the *zemstvo.* These convene and name the delegates, *glasuyie,* who compose the *zemstvo.* The landowners have a voice in the election of their delegates according to their holdings, the small proprietors voting collectively. Zemstvos are not established in all the governments, there being only thirty-four at present. The powers conferred on the *dvorniastvo* was substantially all transferred to the *Zemstvo* with others added. There is also a *Zemstvo* of the district with local powers corresponding to those of the province. These relate to all matters of purely local concern. They apportion the taxes, maintain roads and schools, but are limited in their expenditures by the demands of the general government on the revenues. To much of their legislation the governor's assent is necessary, even to the repair of roads and the increase of local taxes. To other acts the

ratification of the Minister of the Interior is required, such as large loans. All resolutions of the provincial *zemstvo* must be submitted to the governor, who has a suspensive veto. He must send in his decision within eight days. If he vetoes, the *zemstvo* must again consider it, and if again passed it is final, except that the governor may still refer it to the minister. The controversy is then decided by the Senate. Sessions are held annually. For the execution of its will the *zemstvo* is dependent on the governor, over whom it has no control. The demand for schools and the exhibition of a willingness to pay for them evidence the value of the influence of the governed in their own behalf, the *mujiks* showing the most interest and liberality of any class in that direction. The worst difficulty met in building up the educational system is the interference of the inspectors, who are jealous of the effects of education. A remarkable piece of local legislation, quite in keeping with the ancient system of land tenures, is compulsory mutual insurance of the property of the peasants against fire. Among the institutions introduced by the *zemstvos* were savings banks, local postal facilities, construction of highways and railroads, draining of marshes and planting trees on the steppes. The main characteristic of the work thus far performed by them is that it is for the general good of the people. To check the freedom of expression in the *zemstvos,* by a subsequent edict it was provided that the chairman should be nominated by the minister, and that he might interrupt any speech or stop the consideration of any motion or resolution, which in his opinion was inimical to the government. The different *zemstvos* were also prohibited from communicating with each other.

At the head of the Judicial System of the empire stands the Senate. In reviewing the proceedings of inferior tribunals it limits its consideration to questions of law and affirms or reverses the decision of the lower court, and in case further proceedings are required remands the cause to it. It exercises original jurisdiction in the trial of accused members of the administration, and is the auditor of accounts. It is a department of heraldry and the supreme court for the trial

of political causes and offenses against the State. It has jurisdiction over differences between members of the administration, as well as between the governors and the *zemstvos*. The department of supreme appeal is divided into two sections, one for civil and the other for criminal matters, which have jurisdiction of causes appealed from all parts of the empire. The judges of these departments, as well as of the district courts, are appointed by the Czar. There is a nominal right of presentation by the remaining members of these courts of candidates to fill vacancies, but their choice must be sanctioned by a procureur-general, who represents the state as one of the officers of each court. This right of presentation does not extend to the presidents or vice-presidents of the court, but only to the other judges, and the candidates proposed may be accepted or not.

In order to give the judges an appearance of independence, their tenure is for life, unless convicted of some offense, but while they may not be arbitrarily removed from office, they may be transferred to a distant province and thus in effect condemned to exile. Procureurs are appointed by the ministry and removable at pleasure.

Substantially contemporaneous with the emancipation of the serfs came a reformation of the judicial system. At the base of it are two sets of courts. For the peasants there are *volost* courts, elected by and having jurisdiction over peasants only in the *volost*, which may include one large or several small *mirs*. The *mirs* name eight candidates from among the peasantry, from whom the chief of the *volost* selects four to sit. To be eligible a man must be thirty-five and able to read and write, where such selections are practicable. The presiding judge of the court is selected by the assembly of elders of the *volost*. The court sits at least once a fortnight, usually on Sundays and holidays. It has jurisdiction in civil causes involving one hundred roubles or less, and in petty misdemeanors where the maximum punishment is a fine of thirty roubles, seven days' imprisonment or six days' work or twenty strokes with the rod. Their decisions are not required to be in accordance with general law, but are governed by the

local customs. The rod however may only be used on the strong who are able to bear it. Of petty matters their jurisdiction is extensive, covering those concerning communal rights, inheritances and other matters growing out of the peculiar organization of rural communities. Appeals are allowed to the assembly of cantonal rural chiefs in civil cases, where imprisonment or corporal punishment is imposed. By the reforms of Alexander II justices of the peace elected by the district *zemstvos* had jurisdiction over all minor civil cases involving five hundred roubles or less and criminal cases punishable by one year's imprisonment or three hundred roubles fine, but by the ukase of 1889 these, except in the great cities, were abolished and in lieu of them the office of rural chief was created for each *volost* with substantially the same jurisdiction, and also various administrative duties. These chiefs must be landowners belong to the local nobility and are paid a salary by the state. They are nominated by the governor of the province on consultation with the marshal of the nobility of the district and confirmed by the Minister of the Interior. The chief has supervision of the financial and police affairs of the commune and nominates the members of the peasants' *volost* court. From the decisions of the chief an appeal lies to the district assembly of canton chiefs. They receive in rural districts 2,200 roubles per year. The district courts, which are given general original jurisdiction in both civil and criminal causes, have three judges and a jury. The judicial reforms of Alexander II, which unfortunately have not been steadily carried into effect, contemplated the complete separation of judicial from administrative powers and public trials on the oaths of witnesses with the aid of advocates, following the most advanced models of western nations.

Of these district tribunals there were in European Russia about sixty, and over them nine appelate courts located at St. Petersburgh, Moscow, Kazan, Saratof, Kharakof, Odessa, Kief, Smolensk, and Vilna. In trials by jury the court answers to the law and the jury only as to the facts. The unexpected acquittal of Vera Zassulich for the murder of General Trepof resulted in subsequent denial of jury trial in simi-

lar cases, which were transferred to a department of the senate or heard before a military court. Reforms in the judicial system from the time of Catharine II to the present have been introduced modified and abandoned, and with the theory of a complete centering of executive, legislative and judicial power in the Czar still fully recognized, all innovations are to be looked on as tentative. Until the judiciary becomes independent of the will of the Czar, no permanent separation of powers can be assured. The ministry are still afraid of an independent judiciary, and the system of appointments is calculated to insure a degree of subserviency in the courts. The vast empire is ruled in fact by the ministers and their agents.

In the actual administration of the government the police department plays a most important part. There are two classes of police officers, one the regular under the Minister of the Interior, the other political, directly under the Czar himself. In the districts into which the provinces or governments are divided the chief officer is the *ispravnik,* a police officer. From the time of Catharine II till the emancipation these officers were elected by the nobility, but are now appointed by the governors. A great multiplicity of duties devolve on the police officers. Through them all administrative orders must be executed, conspiracies must be detected, conspirators arrested and prosecuted. They are health officers, censors, prosecutors in the lower courts, overseers of recruits and soldiers of the reserve and supervisors of passports. In the small towns and country there is no protection against the arbitrary exercise of their authority. It was through the famed Third Section of the Chancellery, the state police, that the arbitrary autocratic powers of government were mainly exerted. Though this has been in form abolished, its substance is still preserved, and police agents enter dwellings, as well as all other places, at any time of day or night without process, and make searches, seizures and arrests at will. The governors of provinces close at will any industrial establishment, forbid an individual to reside in a city, and take political suspects away from the regular courts. The government

may at any time place any province or district under a "state of extraordinary protection" under the most arbitrary military rule. By administative decree the publication of any periodical or other publication may be suspended or prohibited, and an educational establishment may be closed. In every city of any importance there is a colonel or captain of police to whom no place may be closed and from whom nothing may be concealed. His business is to keep all under surveillance, officials as well as citizens. To aid him he has secret agents scattered everywhere. Every indiscreet remark is reported, often with direful consequences.

The main purpose of the Czar in maintaining his secret police was to have a system through which he could keep informed of the doings, not merely of his subjects in general, but of the officials of the empire as well. Of all the difficulties under which an autocrat ruling a vast empire labors, none is greater or of more moment than that of gaining reliable information concerning the multiplicity of affairs which he is called on to direct. A secret police, composed exclusively of trustworthy and upright men, would be of incalculable value to him, but made up of corrupt and unreliable ones it becomes a means for perverting the best of intentions on the part of the ruler.

The constitution of Russian society, while now undergoing some changes, is still essentially the same as for several hundred years. More than eighty per cent of the total population are classed as peasants and live mainly in their rural villages, *mirs*. The *mir* is, and has been from a date long anterior to the establishment of the empire, a democratic self-governing community. It holds its lands in common and pays its dues to the government as a unit. The affairs of the *mir* are managed by an assembly including the heads of all the families. The tillable lands are divided and apportioned to each working unit. Women charged with the support of a family are entitled to take part in the assembly. Between the members of the community there is equality of right in the village property, but the culture is not in common. Pasture lands, and in some cases meadow and timber lands, are used in com-

mon, the hay of the meadows and trees of the forest being divided for use. The custom of building their dwellings in village form has long been maintained, and communities which have settled in the United States have brought this custom with them. In the settlement of the affairs of the *mir* unanimous agreement is required. All are required to attend meetings of the *mir*. The majority may not enforce its will on the minority. The assembly of the *mir* may be convoked by the call of any one. The chief officer is the Starosta, who is paid by the *mir* and is charged with the preservation of order in the community. He supervises the roads, manages the communal funds, the schools and hospitals if any, and any other public institutions of the *mir*. He looks after the collection of the taxes and deals with the government officials in payment of public dues and other matters. He is a general police officer and arrests persons charged with offenses. He is the general business representative of the *mir*, but in all things he is its servant, not its master and must carry out its orders.

A collection of *mirs*, varying to include from six hundred to four thousand persons who were formerly charged with poll tax, is called a *volost*. At the head of this is a *starschina*, elected by representatives of the *mirs*, who holds for a term of three years. He is assisted by a board, *volostnoye pravlmyc*, made up of all the *starostas* of the *mirs* or their assistants or special representatives chosen by the *mirs*. Important matters are decided by this board and minor ones only by the *starosta*. Aside from these officials the *mirs* and board employ such agents as their affairs require and pay them for their services. An important personage in the *mir* is the clerk, who keeps its records, and though without any recognized authority, by reason of superior education often wields great influence. The scarcity of persons able to write frequently makes it necessary to bring a clerk from without.

The *volost* assembly elects the judges, appoints representatives to district assemblies, and provides for roads, schools, hospitals and public works which a single *mir* cannot undertake. The assembly of the *mir* has power to discipline its

members, even to expel them, and to admit new ones. Meetings are usually held in the open air and are without any set form of procedure. Sunday after mass is a favorite time of meeting. While unanimous agreement is necessary to a decision in the *mir,* a majority may decide in the *volost* assembly.

Similar in principle to the peasants' commune is the *artel,* a name given to an association of workmen engaged in the same trade and working in concert. A head man is elected by the members, who represents the *artel* in its dealings with employers and the outside world. The wages earned by all are equally divided among the members. The *artels* are usually small, seldom exceeding twenty in number, and they expel and admit members at will.

All nobility in Russia starts from official station. Two sorts are recognized, hereditary and personal. The hereditary from the time of Peter are the officers of the army having the grade of ensign or higher and civilians of equal grade and their descendants. Inferior public servants belong to the personal nobility and are merely free citizens. The number is necessarily very great, about six hundred thousand hereditary and three hundred and fifty thousand personal. The feudal system never obtained in Russia, and it has no nobility of the kind developed in western Europe having hereditary political power. There are fourteen grades of rank. From the time of Peter special dignities have been conferred by special diploma making about one hundred counts, some fifteen princes and sundry barons. Titles are inherited equally by all the children. There is no primogeniture. Till the time of Alexander II the nobility enjoyed, in common with the merchants and clergy, the privileges of exemption from military conscription, payment of poll taxes and corporal punishment. Of these the first has been taken away, and the others have ceased to be distinctions through the abolition of the poll tax and flogging.

Prior to the emancipation act of February 19, 1861, the title to the lands of the empire was mainly in the nobility and the crown. There was assigned to each village a tract for the cultivation and use of its inhabitants, but they were bound to

work such portion of their time as the landlord exacted,—usually one half—on his estate without pay. The allowance of land to the peasant to cultivate for his own use was in effect but affording him the means to live. All the benefit of his strength, in excess of that necessarily expended for his maintenance and the support of his family, went to the landlord. The emancipation act of 1861, which applied only to the serfs of the nobility, was designed to allow them as their own the lands which had been assigned to them for their individual support theretofore, but it is said that through defects in the practical execution of it their holdings were in fact reduced, and thus, so far as land is concerned, they were rather impoverished. The act of 1866 emancipating the peasants on the crown estates was much more liberal and gave them twice as much as they had been allowed before.

In Russia the usurer is an important factor, and the wide fluctuations in crop returns render the peasants peculiarly at his mercy. To pay taxes, if not merely to sustain life, they must frequently borrow, and to borrow is to invite ruin. Security for small loans is frequently taken in the form of labor contracts to the neighboring landlord, from which the laborer finds it difficult to extricate himself. The liberation of the personal servants of the landlords at the time of the emancipation and the loss of their lands by misfortune or improvidence by peasants have produced a considerable class of landless farm laborers, which seems to be steadily increasing. The peasant proprietors hold about twenty-seven per cent of the lands of the empire, though the peasants number more than three-fourths of the whole population and pay the great bulk of the taxes. The remainder is held by the landlords and the crown, and is cultivated largely by peasants under what are termed bondage contracts, contracts of service for advances made. But twenty-one per cent of the whole area of European Russia is cultivated. Serfdom did not extend over all Russia. Siberia, the country about the White Sea and the Cossacks of the south rejected it. The Tartars of the east, the Roumanians, the German colonists and the Finns, as a rule maintained their liberties. By the emancipation the serfs were not re-

lieved entirely of the burdens of their landlords. The peasants, in lieu of their former services to the landlords, were bound to pay an annual tribute, varying in amount in different places according to circumstances. By a subsequent arrangement the state undertook to aid the peasants to redeem and discharge the perpetual rents for a lump sum, loaned to them by the state, thus releasing the peasants from all obligation to the landlords and transferring the obligation to the state.

The village system since the redemption is still maintained as before, and the lands still belong to the *mir* as a unit. Cities in Russia are of far less importance than in any other equally great country. The people are divided into two main classes, the merchants, who have a certain amount of capital and pay license dues in return for priviliges accorded them, and the mechanics and others of the humbler sort. The merchants are divided into three guilds; the first pay five hundred roubles a year and have the privilege of trading throughout the empire and abroad; members of the second are limited to home trade, and the third are the small traders. Each guild has its board and elects its head. Prior to the emancipation merchants were prohibited from owning inhabited lands, *i.e.* estates with serfs. This restricted their holdings to city property. The restriction is now removed.

A peculiarity of Russian society is the scarcity of professional men. The medical profession languished mainly from want of schools. The legal profession had no standing, procedure in the courts being secret and conducted by officers of the government. The reforms of Alexander II make the courts open to all classes equally, require trials to be public and allow parties to be heard in person and by attorney. This has given life to the profession of the lawyer. At so low an ebb was legal training, that it is said that a considerable number of the judges of the courts of general jurisdiction had no previous training in the law. The leading peculiarities of Russian society are its division into two main classes, the peasants and the office-holding and land-owning nobility, and the meagre numbers and small importance of what in some

other countries make up what is termed the middle class, but which in fact is morally and intellectually the highest. Russia is also peculiar in that the number of its landless and dependent class is smaller than in any other great country.

The educational system is yet in its infancy and illiteracy is the rule all over Russia. This is not due to any disinclination to learn or want of capacity in the children. No where are more apt students to be found. At the great cities there are universities, which in many respects rank well with the best schools of Europe, but are afflicted with excessive governmental supervision. They are revolutionary hot beds, and rigid police supervision of the students is regarded as indispensable. The natural spirit of the students induces them to revolt against this interference, and riots are not infrequent. The government has the impossible task of giving a liberal education to the youths and still retaining respect for despotism. Scattered through the provinces are high schools, at which instruction in the dead languages is given along with other branches. Primary schools are yet more numerous, but hardly one-tenth of the children are as yet afforded even the rudiments of education. Only about one-ninetieth of the revenues raised from the people is applied to schools. The army, navy and public officials absorb the lion's share. To the means furnished the schools by the government must be added about as much more raised by the *zemstvos,* besides that paid for private instruction. The people everywhere show great interest in obtaining the benefit of schools, and the peasants especially exhibit much liberality in taxing themselves to establish them.

Railroads and telegraphs are mainly in the hands of the government, and a system of banks is also maintained. Manufacturing industries are still in a very backward state.

In religion most of the Russians adhere to the Greek Church. The clergy, who are dependent on the Czar for their positions, have for centuries been the mainstay of his authority. Over an illiterate and devout people they exercise a most powerful influence, and the duty of submission to the Czar's authority is constantly inculcated by every priest in the land. Perhaps

no other people in the world are so thoroughly loyal to their chief ruler as they, and this is largely due to the influence of the clergy.

In its governmental system Russia seeks to administer the affairs of its vast empire from a single head. Its territory is not divided into either tributary or self-governing dependencies, but is a compact and largely homogeneous state. The central power connects itself directly with each part down to the peasant village. It allows and in fact derives great advantage from the democratic *mirs,* which in effect reduce the number of units with which it has to deal from that of the individuals to that of the *mirs* or *volosts.* Local self-government over limited areas aids autocracy. The force of the *volost,* made up of unlettered peasants, is insufficient to endanger or interfere with the central authority. The recently established *zemstvos,* if permitted to consult and combine with one another, might check arbitrary power, but such combinations are jealously prohibited, and the *zemstvo* is not sustained or invigorated by that inherited strength, which the primitive village has brought down from antiquity. Its powers are more strictly limited and its functions not generally comprehended.

The system of laws which prevails exhibits peculiarities due to the manner of its development. Although it cannot be said that all its laws are an indigenous growth, and that none have been borrowed from other nations, the system is distinctly Russian. It is in main a product of local customs, peculiar to Russia, which furnish the laws of the peasant communities, and of edicts of the Czars. There never has been an adoption of the legal system of any other state or people. From time to time the Czar has issued his ukase, covering any subject he had in mind in his own way, without regard to anything which his predecessors had done. Russian Czars have frequently been bold innovators. As a reformer the Czar has ideal conditions for action. He makes the law as he wills. The emperors have for many generations realized the necessity of governing in accordance with declared principles, but they have been unwilling to part with their judicial

power, or speaking more accurately, with the power to set aside and disregard their own rules wherever deemed expedient. The laws therefore have been only for the guidance of subordinates, and then only so far as seemed consistent with the policy of the bureaucracy. There have been various compilations of the laws of the empire, beginning with that of Iaroslav in the tenth century and ending with that of Speransky in the reign of Nicholas I. This last compilation fills forty-five quarto volumes, containing the laws of the empire arranged in chronological order. These laws have been condensed into a code, *Svod,* classified by subjects, and included in fifteen volumes, containing over sixty thousand articles in fifteen hundred chapters. This vast mass of legislation would seem to be sufficient to afford fixed rules for most cases, but as a matter of fact there is much contradiction and inconsistency in the ukases of the various Czars, issued at different times and acting under varying impulses. To the subject these laws have afforded no safe rule of conduct or protection of property rights, because of the system of administration. Trials in the courts of both civil and criminal causes until 1864 were secret, the evidence being taken down in writing. A system of appeals from one court to another has long prevailed, but this adds little to the suitor's security and causes much delay and expense. Lawyers were not advocates but merely intercessors with the judges. That best of all guarantees for the integrity of judges, trials in the presence of the public and of the professional lawyers, whose business it is to extract the truth from parties and witnesses and apply the law to the facts, was not given till the reforms of Alexander II. While long steps in the right direction have been made in the reformation of the judiciary, there is still much to be desired in the way of independence and fearlessness on the bench. This may be said with truth of every other land, as well as Russia. There it is the Ministers whose influence is regarded as most baneful, elsewhere it is mainly the rich and powerful. The principal complaints urged against the Russian system are for arbitrary arrests and punishments; lack of security for the citizen against the malice of police officers; cruelty and bru-

tality in the manner of executing sentences; insecurity in the home against searches, seizures and arrests, and police interference with the private life of the citizen. To this is added a charge of general and all pervading corruption among public officials, courts, police officers, governors and even ministers. Just how far this sweeping charge is justified by the facts it is impossible to state, but the want of that effective check, accountability to the people for whom and on whom authority is exercised, renders it probably true that the charge is well sustained. The Czar and the ministers seek to keep informed of all that is doing through the secret police and spies, but of the integrity of these they have no better guaranty than of the officials they are sent to watch. The fundamental difficulty, which no autocratic government has ever permanently overcome, is that the number of matters to be investigated is too great and the scene of action is too far away for any set of men at the capital to be able to learn the facts and act intelligently on them. To conduct the affairs of so vast an empire safely and intelligently much must be referred to the people of each district, who alone can be relied on to bring to account their local oppressors or incompetent public servants. With every step forward in civilization an accession of mental and moral force in the governing head is required, which no one man or small clique of men can possibly furnish. The knowledge, virtue and power of the great multitude must be drawn from in order to move forward safely and rapidly. The purest and best part of the administration of Russian affairs will generally be found to be that under the immediate supervision of the Czar himself and that directly managed by the people in their local concerns.

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CHAPTER XVII

Italy[1]

Were it not for the fact that the city of Rome is included within its boundaries and is now its capital, there would appear little connection between modern Italy and ancient Rome. The boundaries of the present kingdom, though clearly marked by nature, were never of importance to Rome. Her policy and system both under the republic and empire applied equally to more distant lands. As a political unit Italy has no history till within the last half century. After the fall of the western empire came the Goths and established a kingdom over the peninsula, nominally under commission from the eastern Emperor, but really with little recognition of his authority. Then followed the effort of Justinian to reëstablish the Byzantine rule and the appointment of an exarch at Ravenna to rule as his representative. Then came the invasion of the Lombards, also a German race. They came not merely as an invading army but as a moving nation with wives, children and all their chattels, occupied the valley of the Po and moved slowly down along the interior of the peninsula, leaving Venice, Ravenna, Rome and other portions untouched. From their advent till modern times the sovereignty over Italy was divided. The temporal power of the popes, like that of feudal lords in later times, had for its foundation a recognized ownership of land. By various means the Roman pontiff acquired large possessions in and about Rome, over which he assumed civil authority. Under Gregory I (590 to 604) these possessions were largely increased. In 754 the Frankish king Pepin, having taken up the quarrel of the Pope with the Lombards and defeated them, handed over to Pope Stephen III a con-

[1] For Mediaeval events in see ch. XV. For a full account of the legislation of the Goths, Burgundians, Lombards and Franks see Calisse's History of Italian Law, Continental Legal History Series, Vol. I.

siderable district including Ravenna and Pentapolis, "to be held and enjoyed by the pontiffs of the Apostolic See forever." This was followed in 800 by the alliance of Pope Leo III with Charlemagne, by which the latter received the imperial crown from the former and in return recognized the spiritual supremacy of the Pope throughout Christendom. The southern portion of the peninsula did not submit to Charlemagne, but recognized the ultimate sovereignty of the emperor at Constantinople. After the Frankish empire fell into decay there followed a period of discord and lack of central authority, though there was a titular king of Italy, who waged war on the local nobility to enforce his authority with varying success. In 961 the German emperor Otto entered Lombardy and in the next year was crowned emperor by the Pope at Rome. The dominion of Otto and succeeding German emperors was never fully recognized throughout Italy, and wars frequently occurred in efforts to enforce their authority. Then came the war of the investitures, which was a struggle for actual power between the Pope and the Emperor. Following this conflict, though it may not be safe to say as a result of it, came the age of free cities. The feudal system was introduced into Italy and was enforced in rural communities, but the towns adopted popular systems and asserted their independence. The history of these petty states affords a most valuable lesson in the subject of our study. Their development was along similar lines with substantially similar results. At first a comparatively few people joined together for mutual aid and protection. The system of municipal government at first adopted was popular in character and design to protect the more humble citizens against aggression. The tyrant most dreaded was usually a feudal lord, against whom the burghers united. Joining for defense against the exactions of rapacious nobles, they were disposed to accord justice to each other. This necessarily implies consideration for the rights of the humble. With superior moral principles as the basis of their institutions they naturally drew strength and gained numbers from among those who could escape from the dominions of oppressive nobles. With freedom of action accorded to each

citizen and protection to all these little republics exhibited a degree of activity and force far exceeding that to be found among people ruled by petty despots, and the development of industries and trade went forward at a remarkable pace. Though the free cities succeeded in combining against common enemies at times, they soon manifested jealousies and hostility toward each other. Like the ancient Greeks they lacked capacity for combining for common ends, and went to war instead. In their several internal organizations democratic systems were gradually converted into oligarchical ones and these generally, perhaps universally, divided into warring factions, which were only subdued by a despot, usually from without the particular city. Thus it will be observed that these republics began with relatively good principles and exceptional prosperity and ended in disaster and tyranny. The question naturally forces itself on us, if the early system is the better, why is it invariably followed by that which is worse? Why does the good perish and the bad take its place? The answer must be that the early system contained the germs of its own destruction, and that these germs grew and gained strength at the expense and ultimately to the exclusion of the salutary principles which were dominant in the early organization.

Everywhere it will be found that the power of a ruling oligarchy has developed in connection with the theory of the transmission of property by inheritance. Probably the reason why the effects of laws of inheritance in developing a distinct class are not readily perceived is, that estates pass from father to son, one at a time, so that there is no time when there is a noticeable change in the personnel of the oligarchy. Where all start poor and on a substantially equal footing, difference in capacity, strength, prudence and other circumstances, results in the accumulation by some of more property than the rest. Perhaps no social or political distinction results from this difference. The feeling of fellowship between the richest and poorest may continue through life. But at the death of the wealthy one the estate passes by inheritance to a son who has done nothing to merit it. He takes it with a feeling of

pride and superiority over the sons of the poor. If possessed of the requisite qualities the inheritance he has received adds to his power to acquire wealth, and he increases his holdings. His riches give him distinction and naturally mark him as a public man. He is placed in authority more or less of the time. At his death an increased estate passes to his heir. By this time the bond of sympathy between rich and poor is broken. The son, whose ancestors for two or more generations have enjoyed wealth and exercised power, believes himself to be of a superior class. He associates only with those of similar fortune and looks with contempt on the poor. Starting with an utterly false estimate of his own deserts, he regards the possession of property through a law which is merely a human regulation, as due to the special grace of a higher power and himself marked out as superior to the multitude. Discarding utterly the doctrine that individual merit and desert rest solely on individual conduct and effort, he makes a virtue of idleness and takes the fruits of the labors of others without suspecting that justice would deny him any share of that for which he returns nothing in exchange. Naturally the heirs of wealth associate mainly with those of their class, and by intermarriages wealth is consolidated and the interests of families are combined. The history of all the Italian cities shows that through exactly this process an oligarchy was established, based on possessions. Then came jealousies, rivalries and factions. While the poor may at times raise riots when bread is scarce, the idle rich spend their time in plotting to gain still greater prominence and ascendency. Having plenty they covet still more and incite the poor, who are dependent on them, to fight in their interests. The landed aristocracy of Italy, like those of other parts of Europe in feudal times, based their rights on grants from the king or emperor. His right to make such grants generally had its foundation in military power and conquest. The shifting fortunes of the rulers of different states placed it in the power of some one of them at some time to regard each tract of land as conquered territory to be given to his favorite followers, and as to many parts there were many changes of sovereignty.

Though the soil of Italy became a bone of contention among foreign and domestic princes and for 1400 years was without national unity, its people still held a commanding position in many respects. The church passed from being an organization to propagate religious faith and moral principles to one whose main aim was power and mastery. The weapons of the church were not merely interdicts and excommunications, but the Popes did not hesitate to equip armies and fight bloody battles. Through the theory of land titles the churches and monastic societies became possessed of a large proportion of all the best lands in Europe. To the revenue derived from these was added a great variety of contributions from all classes of people for supposed services, in the collection of which the priesthood became very expert. Schemes to gather money were never wanting, and the sale of indulgences and the confiscations of the Inquisition show to what depths of iniquity the professed heads of the Christian religion could descend. Most of the people of Italy have been poor, ignorant and sorely oppressed during most of the time since the fall of the western empire, yet there have always been bright spots somewhere. The ancient spirit of liberty and law has always lived in the breasts of some of the sons of the peninsula, and from time to time has found expression in the institutions of her cities. The learning and arts of the Greeks and Romans have never been entirely lost. Ravenna, Venice, Milan, Genoa, Naples, Florence, Pisa, Verona, Mantua, Bologna, Parma, Pavia, Siena and scores of other cities, including old Rome itself, have at times exhibited regard for justice and the blessings of peaceful industry and beneficial enterprise. Not their wealth, but their inability to make wise and just disposition and distribution of it and their jealousy of rivals have proved their ruin. The church lost its hold on the consciences of men when its main aims became the gathering of wealth and the increase of power. Though the Italian cities severally were able to accomplish brilliant results, the ancient capacity for organization, which characterized Rome, was lacking. Confederacies like that of the Lombard cities might successfully resist a foreign aggressor for a time, but

no system was developed which effectually provided either for continued coöperation against outside foes or for the determination of controversies between the different cities and their citizens arising from conflicting interests. Faction soon became strife, and the utterly senseless quarrels of Guelphs and Ghibellines covered the streets of the cities with the blood of rival parties and armed city against city and state against state. Conflicting claims of Pope and Emperor to power added to the turmoil and intensified the hatred of factions. Factional strife as usual resulted in the evolution of tyrants, from whom the people hoped at least for order. Then came the age of mercenary soldiers hired by petty tyrants to fight their wars, of intrigue and deception, for which the statesmen of the Italian states gained unenviable notoriety.

The fifteenth century found Italy divided into five states, the kingdom of Naples, the duchy of Milan, the Popes dominions, and the republics of Venice and Florence. The last named cities held high rank in commerce and domestic industries. This was a period of power for the Pope and of Venetian dominance on the sea. Then followed that struggle for dominion in Italy between the kings of Austria, France and Spain, with its varying combinations, always resulting in the domination of foreign rulers over more or less of the country, which lasted till recent times. Local dukes and princes were for the most part dependents on the rulers of one or another of these great kingdoms.

Italy became the field of contest between Republican France and despotic Austria in 1796, and as a result of Napoleon's successes temporary republics were established. Later Napoleon established his authority and ruled through his representatives, but the congress of Vienna in 1815 undid all his work and again divided Italy into petty states.

Victor Emanuel, whose ancestors had enjoyed more or less power in Savoy, Burgundy and Lombardy from the tenth century, was accorded the kingdom of Sardinia, including Piedmont and Genoa. Austria held Venice and Milan, the Pope the states of the church, and the Bourbon prince Ferdinand Naples and Sicily. Austrian influence dominated, and

despotism in all its odiousness returned. In 1820 revolts occurred, which were soon suppressed by the combined forces of Austria, Great Britain and Bourbon France. Trials of leaders and persons obnoxious to the rulers by courts organized to convict followed, and the hand of despotism put many patriots to death as traitors. In 1830, following the uprising in Paris, there were outbreaks in some of the cities, which were soon suppressed. The desire for Italian unity and freedom spread not less rapidly for the iron rule of the princes. The advocates of a republic, though forced to act in secrecy, continued their agitation and contrived to hold meetings ostensibly for other purposes. The scientific congress professing to be devoted to scientific research was in fact a cover for republican gatherings. On the accession of Pius IX to the papacy he proclaimed a general amnesty for political offenses and sided with the liberals. In 1847 constitutions were granted in Rome, Piedmont and Tuscany. Austria and Naples refused to make concessions, and in 1848 a demonstration at Milan by the liberals was made the occasion of the slaughter of many citizens in the streets. Uprisings at Naples forced the allowance of a constitution in 1848. In response to the popular demand the king of Sardinia made war for the liberation of the Austrian provinces, but without success. Opposition to the war by the Pope caused an uprising at Rome, which resulted in the temporary establishment of a republic. The Pope was resorted to power by the French in 1849. The dukes of Parma, Modena and Tuscany, who had been scared from their dominions, returned under Austrian protection, and the old order of things was restored. In 1859 France came to the aid of Sardinia, and as a result of a brief campaign Sardinia gained Tuscany, Modena and Prama, but at the price of the concession to France of Savoy and Nice. This was soon followed by a revolution in the south of Italy. Under the lead of Garibaldi Sicily was soon overrun, and crossing to the main land Naples was taken. In 1861 this kingdom voted to be annexed to that of Sardinia, and Victor Emanuel was proclaimed King of Italy. As a result of the Austro-Prussian war, in which the Italians took part with the Prus-

sians, Venice was restored to Italy. The French revolution of 1870 resulted in the withdrawal of French support from the Pope, and on the twentieth of September 1870 Victor Emanuel entered Rome and made it his capital, the Pope retaining the Vatican with its dependencies. In these recent wars for the liberation of Italy the republicans have been the popular leaders, and republican enthusiasm has given the energy which has resulted in the establishment of the present limited monarchy. The constitution is essentially that granted by Charles Albert. The crown is hereditary in the male line of the house of Savoy. Legislative power is in the king and parliament, and the king on his accession is bound to take an oath in the presence of both chambers, that he will obey the constitution. His style is "by God's grace and through the will of the nation King of Italy": thus recognizing the concurrence of divine and popular will. The executive powers of government are exercised through a ministry responsible to parliament, composed of nine members namely, Foreign Affairs; Interior; Public Instruction; Finance; War; Marine; Grace; Justice and Worship; Public Works; and Agriculture, Industry and Commerce: The Senate consists of the princes of the royal family and an undefined number of persons forty years of age or over, appointed by the king from the archbishops, bishops, ministers, high officials, admirals, generals and other persons of wealth or distinction. There must be an election of members of the chamber of deputies at least once in five years. All males twenty-one years of age or over, who pay taxes to the amount of twenty *lire* and can read and write, are allowed to vote. There are 508 members of the chamber of deputies. In 1865 the whole kingdom was divided into sixty-nine provinces and eight thousand five hundred and forty-five communes, but many changes have been subsequently made in the arrangement. In each province there is a prefect appointed by the king and a council chosen by the same electors, which elects its own president and has supervision of provincial affairs. In each commune there is also a council having charge of the local affairs with power of local taxation. The Italian government is still essentially aristocratic, but the difficulties with which

Italian statesmen have been confronted were very great. No other country included so large a percentage of beggars and idle poor. Brigandage and lawlessness, extreme ignorance, religious bigotry and general incapacity for public affairs, prevailed in many localities. Though Italian cities are still seats of learning and culture and the homes of men of a very high order of intelligence, morals and education, Rome, Naples and other cities contain great masses of depraved men and women, from whom little that is good need be hoped for at once.

In the matter of education though the government exhibits most commendable solicitude, Italy is still far behind most European states. Each commune is bound by law to afford primary education and attendance is made compulsory, but there are still very many places where schools are not maintained for all, and many children who do not attend. There are seventeen national universities and numerous special schools of high order. The judicial system has at its head five courts of cassation, at Rome, Turin, Florence, Naples and Palermo. Below these are twenty-three courts of appeals in the principal cities. The number of courts of assize varies at the pleasure of the king. Trials of criminal cases are by jury, and the death penalty is no longer inflicted. There are one hundred and sixty-two civil and correctional tribunals, and 1813 praetors having jurisdiction in civil causes involving less than 1500 lire and also in criminal cases. It is a part of their duty to effect compromises of litigation without trial. There are also special judges, styled *conciliatori,* to aid in bringing about settlements, and about one-fourth the causes are said to be disposed of in this manner. The principles of the Roman law still afford the basis of the modern system of Italy, though changed in many particulars.

CHAPTER XVIII

Spain and Portugal

Of the habits and organization of the people of Spain at the time it first became known to the Greeks and Phoenicians or later to the Romans we know very little. They are mentioned as barbarous tribes. The Phoenicians were the first to make settlements and establish trading ports on the coast. Gades, Tartessus and Tarraco are said to have been flourishing towns as early as the seventh century B.C., Carthage, itself a Phoenician colony, had acquired a kind of dominion over the peninsula by the time of the first Punic war, 264 B.C., but had not succeeded in establishing a settled government over the interior tribes. Considerable progress was made by Hamilcar and Hasdrubal in extending their rule over the peninsula prior to the second Punic war, but, beyond the facts that they were backed by strong armies and at the same time encouraged matrimonial unions between their followers and the natives, little can be told of the system by which they governed. During this war the Romans invaded Spain, and by 205 B.C. they had taken the mastery of the country out of the hands of the Carthaginians. The process of planting Roman colonies and introducing the Roman system met with much resistance from the interior tribes, and it was not till the time of Augustus that the whole peninsula to the Pyrenees became pacified. The Roman system then became general, and under it Spain enjoyed a marked degree of prosperity and exemption from war for nearly three hundred years, though sorely oppressed by the tax gatherers.

Under Augustus Spain was divided into three provinces, Boetica in the southeast with Corduba for its capital, Lusitania, corresponding to modern Portugal, of which Emerita Augusta was the capital, and Tarraconensis, covering all the remainder, with Tarraco for its capital. Of these Boetica,

the most orderly and thoroughly Romanized, was a senate province, and the other two were imperial provinces, of which the Emperor named the governors. The whole peninsula was divided into fourteen *conventus,* each made up of a combination of communities within the district, and having a chief town at which justice was administered. In the time of Vespasian 360 towns are enumerated, including those having the full Roman franchise, those having the inferior franchise, the *colonia,* and the tributary towns, on the inferior classes of which he conferred Latin rights. Spain became one of the most thoroughly Latinized of all the Roman provinces, and all the characteristics of Roman civilization were developed throughout the peninsula. The vine and the olive were successfully planted, and agriculture flourished. The rich mines were opened, and the working of metals and weaving of fabrics were industriously followed. Latin became the language of the country, and among its sons the two Senecas, Lucan, Florus and Martial, were types of philosophers and poets of high order. In politics Spain can boast of having produced a Trajan and a Hadrian, who, during forty of the best years the Roman empire ever knew, directed its affairs. The first great shock came in 256, when the Franks passed the Pyrenees and spread destruction over the peninsula. Tarragona was sacked and almost destroyed, and for twelve years the rich provinces were desolated and scourged by the barbarous invaders. After this storm another era of peace and prosperity followed till 409. Contemporaneous with the sacking of Rome by Alaric, a tide of Suevi, Alani and Vandals swept over the country and desolated it. About 414 a Visigothic horde under Ataulphus and as an ally of Rome entered the country. Soon afterward Ataulphus was murdered and his successor Walia made a treaty with the Emperor Honorius, by which he nominally acknowledged the imperial sovereignty, and thereafter proceeded to subdue the Suevi, Alani and Vandals. Although he was able to extend his authority over most of the peninsula, he was not able to thoroughly subdue these tribes, and for many years there was warfare between the Romanized Goths and the German tribes. About 429 the

Vandals, led by their king Genseric, passed into Africa and established their dominion there. Under Euric, 466 to 485, the Gothic state was extended over a large part of Gaul, and the seat of government established at Bordeaux. Euric was a legislator as well as a warrior, and he caused to be collected and embodied into a written code the "Customs of the Goths." His successor Alaric II caused the work to be revised and enlarged by civil lawyers, incorporating many of the principles of Roman civil and ecclesiastical law. Roman sovereignty gradually gave way even in name to the actual rule of the Goths. The Gothic dominion soon yielded north of the Pyrenees to that of the Franks, but continued in Spain with many wars and frequent domestic upheavals till the advent of the Saracens in 711. Under the Goths the people were ruled by an elective monarch and an hereditary aristocracy, representing the temporal power, and by the church, which soon gained a predominant influence in the state. Bigotry, persecution and the inquisition, exhibited their barbarities, and by their side the Christian doctrine of the equality of all men before the law found place in their code. The barbarisms of valuing men's lives according to rank, of judicial combat and trial by ordeal, were unknown. The succession to the Gothic throne was often contested, and many occupants of it fell by the hands of assassins. Here as elsewhere the dangers of wearing a crown failed to deter men from seeking the coveted prize. The Goths were Arians, though the major part of the Spanish population adhered to the orthodox faith. In the latter part of the sixth century King Ricared adopted the Catholic faith and proceeded vigorously and successfully with the conversion of his subjects. From that time forth Spain became the most reliable of Catholic states. Religious zeal, whetted possibly by the known wealth of the Jews, who dwelt in Spain in great numbers, caused their cruel and bloody persecution and a decree for the expulsion of the last of them from the country at the time when the Mohammedan power was spreading over northern Africa.

The Jews invited the Saracens to invade Spain, but it can hardly be said that their encouragement was the cause of the

invasion. In 711 Tarik with 5,000 men landed at Gibraltar. This force was inadequate to the task before it, and Tarik wisely awaited reinforcements before hazarding a decisive battle. Having received large accessions to his force both from Africa and from Disaffected subjects of Spain, he marched out and destroyed the army of King Roderic in a long and hard fought battle, in which the tide was turned by the treachery of a part of Roderic's army. Tarik at once took advantage of his success and quickly overran the country. A state which it had taken the Romans two centuries to subdue was overrun and reduced by the Saracens in a few months. The rapid success of the Mohammedan armies in Spain, as elsewhere in the early days of religious zeal, was largely due to the superior treatment by them of conquered people. The alternative of the "sword, the tribute or the Koran" offered to those capable of adapting their beliefs to their material interests an easy escape from all oppression, and even when the tribute was imposed, it was a more moderate burden than many of the Christian rulers placed on their subjects. An example of this is given in the terms of the capitulation of Theodomir to Abdelazis after a stubborn resistance.

"In the name of the most merciful God, Abdelazis makes peace on these conditions, that Theodomir, shall not be disturbed in his principality, nor any injury be offered to the life or property, the wives and children the religion and temples of the Christians . . . that he shall not assist nor entertain the enemies of the Caliph, but shall faithfully communicate his knowledge of their hostile designs, that himself and each of the Gothic nobles shall annually pay one piece of gold, four measures of wheat, as many of barley, with a certain proportion of honey, oil and vinegar, and that each of their vassals shall be taxed at one moiety of said imposition." This was dated in the ninety-fourth year of the Hegira.

Not content with the possession of Spain, the Saracens passed the Pyrenees and overran the southern part of Gaul, till their crushing defeat near Tours in 732 by the Franks under Charles Martel put a definite end to their encroachments. By 759 they abandoned all possessions beyond the Pyrenees.

The struggle for the mastery of the Mohammedan world carried on in the east resulted in the overthrow of the Omayads and the destruction of the members of the royal household, except Abd-al-Rahman, who effected his escape to Spain, where he was warmly welcomed and after a struggle with the Abbasid adherents succeeded in establishing his authority. Though he and his immediate successors assumed the modest title of *emir,* all connection with the Caliphate was in fact severed and the independence of Spain was maintained. Under Abd-al-Rahman a struggle for mastery against opposing factions aided by the then overshadowing power of the Franks resulted in the firm establishment of his power and a long era of peace, during which the schools of Cordova took high rank, and the study of mathematics, astronomy, medicine and kindred sciences was carried to the highest stage anywhere attained at that time. His descendants, who succeeded him in authority, left notable monuments of the wealth produced by the skill and industry of the people. The elegances of eastern civilization and the public utilities of roads, bridges and aqueducts, so characteristic of the Roman provinces, were exhibited in city and country in forms which have excited the wonder and admiration of later generations. To clearly comprehend what is sometimes called Moorish civilization it must be borne in mind that the Mohammedans merely imposed their own authority and civilization on that which they found in Spain on their arrival. The country was not cleared of its ancient inhabitants, but the descendants of Phoenicians, ancient tribes, Greeks, Romans and Germanic tribes still inhabited it and constituted a great majority of the population. In agriculture the Roman system prevailed. In trade Jews as well as Romans played an important part. In the arts and sciences the rulers wisely encouraged men of skill and learning from all parts of the world to teach as well as to labor among their people. The wealth of Spain was not alone in gold, silver and the works of laborers' hands, but in knowledge as well, and Cordova could boast of its library of 600,000 volumes. The prosperity of Spain under the Omayad dynasty illustrates the advantages of combining different civilizations

in a proper spirit. The Arabs and their eastern followers brought with them the arts and acquirements of the east, which were added to the Roman civilization which preceded them. Each profited from the peculiar knowledge of the other, and each was stimulated to better effort in useful callings. But the Omayads also brought with them the seeds of the destruction of their empire. Religious bigotry, polygamy, the seclusion of women, and a despotic theory of government, worked out their natural results. How false the life of a typical oriental potentate is was pathetically expressed by Abd-al-Rahman III who ruled from 912 to 961, and under whom the height of oriental magnificence was maintained, in a memorial in which he said, "I have now reigned above fifty years in victory or peace, beloved by my subjects, dreaded by my enemies, and respected by my allies. Riches and honors, power and pleasure have awaited on my call, nor does any earthly blessing appear to have been wanting to my felicity. In this situation I have diligently numbered the days of pure and genuine happiness which have fallen to my lot; they amount to fourteen. O man! place not thy confidence in this present world." Like most others in similar station he failed to comprehend his own vices, and that he daily transgressed the laws of healthy life. In his multitude of secluded ignorant women he lacked a worthy wife. In the abundance of the fruits of the labors of others with which his wants were supplied he lost the healthy relish which comes from useful effort. In the exercise of despotic power over the lives and fortunes of others he was not disciplined by the salutary resistance which the freely expressed judgments of others of equal capacity afford. Most of all, in his exalted station he lacked the sympathy and fellowship of others. Of the brotherhood of man he had no comprehension, and without it he could not realize the fatherhood of God.

The Mohammedans, having extended their dominion over all the rich provinces of Spain, allowed a remnant of the Goths to take refuge in the mountainous district of the northwest. There Pelayo and a few hardy followers preserved their independence. Christians who preferred the hard life

of the mountains to submission to Moslem rule in more genial districts, joined them, and thus the little state grew. Alfonso, the grandson of Pelayo, extended his possessions over Galicia, and his son fixed his capital at Oviedo. Though in name Christians, the Visigoths were still warriors whose principal employment was fighting the Mohammedans and each other. Succession to the throne of the petty state was often the occasion of internal discord, and the record of assassinations and fratricidal wars for the throne is similar to that of other kingdoms of that time. By the end of the eighth century the kingdom of Oviedo was fairly well established and had defeated the Moslems in several great battles.

In 801 Charlemagne extended his power into the northeast of Spain and established a mark there, over which the Count of Barcelona ruled as representative of the Frankish Emperor. On the breaking up of the Empire the district of Catalonia was subject to frequent transfers of sovereignty, being sometimes under a local ruler and at others subject to Gaulic kings. About 900 Sancho founded the kingdom of Navarre, in the district in which the ancient Basques had taken refuge from the invaders, and into which later the Suevi withdrew before the Visigoths. The possessions of the kings of Oviedo were extended into Leon and Castile, and Sancho the great of Navarre extended his rule over Aragon. The German custom of dividing kingdoms as a patrimony among the sons prevailed, and the number of separate states depended on the number of sons of the kings and the success of one in taking the share of another by fraud or force. Thus the states of Leon, Castile and Aragon were formed. The mixed population of that part of Spain still held by the Arabs and the conflicting religious beliefs and priestly leaderships were a source of never ending trouble to the rulers. The ninth century was a period of disorder, revolts and divided authority throughout the Mohammedan dominions, but much the same conditions prevailed among the Christians, and they neglected the opportunities which the times afforded for the expulsion of the Mohammedans. Abd-al-Rahman III ascended the throne of Cordova in 912 and assumed the title of caliph. Though he

did not succeed in establishing his sovereignty over the Christian districts in the northern portion of the peninsula, such was his success in encouraging trade, agriculture and manufactures, that the country enjoyed unexampled prosperity, and his revenues were sufficient to enable him to maintain an efficient army and navy and to annually devote vast sums to the construction of public works and buildings. Of all the rulers of his time he expended most of the money taken from his subjects by taxations for their education and for aqueducts, bridges, roads and other objects really beneficial to them. The century following the accession of Abd-al-Rahman III to the throne was the golden age of the Mohammedan dominion. In the early part of the eleventh century the state fell into disorder and civil war, and in 1031 by the abdiction of Hisham III the Omayad dynasty, which had ruled for three hundred years, came to an end; all central authority ceased and the state was split into disorderly fragments. It is noteworthy that under these conditions the largest and most enlightened cities, the great seats of learning and the arts, Cordova and Seville, were organized as republics.

Following the fall of the Omayad dynasty there was a period of great discord and disorder in the Moslem districts, and the Christians made a substantial acquisition of territory. Among Mohammedans and Christians alike most of the civil strife and bloodshed resulted from the ambitions of the nobility and the descendants of princes. The thirst for power was their dominant passion; wars against those nearest in blood were common, and treachery and assassination of brothers and other near relatives not infrequent. Those whom the people followed led them to destruction. Rulers were rarely actuated by any motive of duty or public service, but usually the sole object of each was to aggrandize himself. The struggle between the followers of the two religions was not less mercenary, but had the added force of the desire for priestly dominion on either side, and the warriors were stimulated to risk their lives under promise of a sure reward in a life to come, each side equally confident that his God was the true God and that he fought against infidelity and falsehood.

In the time of Gregory VII the Christians of Spain, who had been somewhat isolated, adopted the ritual of the Roman church and thenceforth became the most servile of its followers. The successes of the Christians induced the *emir* of Seville, then the most powerful of the Moslem princes, to call to his aid Yussef, the king of the Almoravids, who ruled over a vast African empire with Morocco as his capital. In response the king came with a strong army, and Alfonso VI of Castile, aided by the King of Aragon and Count of Barcelona, was defeated in a great battle at Zallaka in 1086. Having been recalled to Africa by the death of his son, Yussef again crossed into Spain in 1090, and by the end of the century all the Mohammedan districts of Spain were united under the rulership, not of a Spanish prince, but of the King of Morocco. Alfonso VI of Castile had extended his power to such extent as to assume the title of emperor of Spain, but before his death the Moorish power curtailed his dominions. Thereafter his ambitious daughter Urraca warred with her husband Alfonso of Aragon, and as the result Alfonso ruled Aragon and Navarre and her son by her first husband, as Alphonso VII, ruled Castile, Leon and Galicia. In this age of crusades Spain also had its crusading orders, formed to fight the infidels, the Calatrava founded in 1158, that of St. James Compostella in 1175 and of Alcantra in 1176. In the kingdom of Portugal, which grew rapidly in the twelfth century, there was the order of the Evora. In Africa Abd-al Mu min, as leader of the sect of Almohades, overthrew the empire of the Almoravids and then crossed into Spain. The Spanish Almoravids called to their aid the Christian kings of Castile and Aragon, but their combined forces were unable to cope with the victorious Moors, and a second Moorish rulership was imposed on the fairest part of Spain. The feuds and dissensions in the Christian states gave the Moors a respite from danger from that quarter, but a revolt of the Almoravids in 1199 was followed by five years of civil strife, and soon afterwards a confederation of the kings of Castile, Aragon, Leon, Navarre and Portugal, was effected, mainly through the influence of the Pope and clergy, and on July 16, 1212 in the

great battle of Las Navos de Tolosa the Moors sustained a defeat from which they never recovered. The old Arab leaders gave way in the district still held by the Moslems to the Moorish element, which thereafter dominated. In 1230 Castile and Leon were united under Ferdinand III, who extended his possessions at the expense of the Moslems, capturing Cordova and Seville, their chief cities, and others of less importance including Cadiz. During the same period the king of Aragon extended his dominions over the Moorish possessions in the Balearic Islands, Valencia and Murcia, so that by 1266 the Moors were confined to Granada. By this time Portugal had acquired substantially the same territory it now possesses. Though reduced within such narrow territories, the Moorish state, which had been reduced to a homogeneous population, continued without material change in its dimensions for more than two centuries. Its history is one of struggles of aspirants for power with each other, of dissension and civil war, with occasional collisions with the Christians, as well as alliances at times.

The organization of society in the states of Castile and Aragon, which had now taken most prominent place in Spain, was similar to that of many other states in which Germanic elements were dominant, though modified somewhat by religious and local influences. The power of the King of Castile was not absolute. The cortes, which originally was a meeting of the great nobles and royal household, in 1162 admitted to membership deputies from the cities, who at first were elected by vote of all free citizens and afterward by the city magistrates. The national assembly of the cortes was made up of three estates, the clergy, nobles and representatives of the towns, who deliberated separately at times and as one body at others. The two first named orders were exempt from taxation. The feudal system took root in Christian Spain. The nobles exercised judicial powers in their domains, and the bishops and higher clergy decided causes within their jurisdiction in accordance with the laws of the church. The nobles and towns exercised the right of forming confederations for the protection of their rights by force, and the actual admin-

istration of government was mainly local under the clergy, nobles and town authorities. Grants of taxes were made by the cortes, and in these matters at times only the third order, who represented taxpayers, were allowed to participate.

The constitution of Aragon was still more restrictive of the kingly power. The cortes consisted of four estates, the great nobles, the equestrian order, the clergy and the representatives of the towns. The concurrence of all was essential to the passage of a law, and they exercised the right of supervision over the administration of justice and the expenditures of public moneys. The cortes assembled once in two years, and the king had no power to dissolve it. A most important officer was the *justiza,* appointed by the king from the equestrian order. He could be removed only by the cortes, to whom alone he was accountable for his official conduct. His person was sacred, and he was the supreme interpreter of the laws. He could call the king's ministers to account and even dismiss them from office for misconduct. Through him the oath of allegiance was expressed on behalf of the barons in the following form: "We who are each of us as good as you, and who are altogether more powerful than you, promise obedience to your government if you maintain our rights and liberties, but not otherwise." The cortes was not the law-making power but the supreme court of justice, presided over by the *justiza.* The office gained dignity and power from the appointment of men of exceptional character and ability, who exercised a marked influence on the affairs of the state. Though the kingdom of Aragon by 1213 included Catalonia and Valencia, each of these provinces had its separate cortes and was governed in accordance with its own laws, to which the people jealously adhered. The great nobles, in accordance with the feudal customs of the times, waged private wars and demanded their shares of all conquests made by the state. The constitution of the cortes in Valencia and Catalonia was essentially the same as in Castile, having but three orders.

Alfonso X of Castile, who came to the throne in 1252, caused a code of laws to be prepared, based on the civil and canon laws, called the *Siete Partidas,* but the adoption of it

by the cortes was not effected till 1348, long after his death. The history of Castile from the time of Alfonso X to the union with Aragon is similar in its leading particulars to that of other European states where the feudal system prevailed. The kings and great nobles, instead of preserving the general peace by their wisdom and moderation, were turbulent, contentious and often cruel. Civil war often followed the demise of the king between factions supporting opposing claimants to the crown. When the crown was not an available pretext for war, the jealousies and rivalries of the nobles afforded other pretexts for bloody strife. Neighboring kingdoms also came in for their shares of the horrors of war, and during this period the Christian kings caused their subjects to war with each other quite as much as with the followers of the Prophet. In Spain as elsewhere in Europe the great nobles imposed a check on the power of the kings, which at times was reduced to little more than a shadow. The towns also preserved some measure of independence, but by taking the choice of delegates to the cortes from the mass of citizens and vesting it in the magistrates popular influence was greatly restricted and the opportunity for corrupt influences correspondingly increased. Throughout the country districts of Castile the rule of the nobles was despotic and the condition of the common people that of serfs.

In Aragon there was far more of genuine restriction on arbitrary power. The king was even less potent than in Castile, and the *justiza* and cortes gave the townsmen and common people some measure of protection. In Catalonia there was much genuine republican spirit. Still in Aragon the nobles through the theory of ownership of the land retained control of the face of the earth and dictated to the multitude the terms on which they might live. Aragon had its written fundamental law, in 1283, called the "General Privilege," which placed limitations on the powers of the king and contained substantial provisions to secure the citizens against arbitrary power, but it was far from an effectual protection for the common people. In 1287 Alfonso III signed what is termed the "Privilege of Union," which allowed the subjects

to take up arms against the king if he attempted to infringe their liberties. Pedro IV revoked it in 1348 after putting down a serious revolt. While doing this he swore to respect the personal and political liberties of his subjects. Through the claims of its rulers to the throne of Sicily, Naples and Sardinia, Aragon became involved in foreign politics and wars, and while the King of Aragon for a time ruled also over portions of Italy, no close union of the detached territories was effected, but each retained its customs and laws. In the thirteenth and fourteenth centuries the kingdom of Navarre was more closely connected with France than with Spain. Through various alliances of its reigning house with other rulers there were frequent changes in its rulership and territorial connections. In the fourteenth century by the marriage of John of Gaunt and Edmund of York to daughters of Pedro, King of Castile, claims to the Castilian throne arose, which brought English troops into the peninsula, and alliances with the French king shifted according to the prevailing influences of the time. The dreary details of intrigues and wars in the interest of contending princes are so similar in their essence that it seems altogether idle to follow them. While a victorious leader may gain a name and be called a hero, the net result of the strife is always misery, woe and death to the multitude.

The kingdom of Portugal developed from the fief of Terra Portucalensis, which Alfonso VI of Castile conferred on Henry of Burgundy in 1094. Its independence dates from the reign of Alfonso Henriques, renowned as a crusader against the Moslems. He reigned from 1128 to 1185. In his wars he received some aid by Templars and crusaders from Germany, Flanders and England. Alfonso II (1211 to 1223) summoned the first Portuguese parliament, which was constituted of high church officials and nobles. The feudal system prevailed there at that time, and the church had extended its possessions to such extent as to induce Alfonso to propose a statute of mortmain, prohibiting further acquisition of church lands. Under Alfonso III the boundaries of Portugal were extended to include substantially its present territory,

and in 1254 he summoned a cortes, in which representatives of the cities were admitted to sit with the clergy and nobles. While Alfonso received from the city representatives the aid he anticipated in his contests with the clergy, on the other hand they denounced his tampering with the coinage and compelled recognition of their control over the levy of taxes. John I who came to the throne by the choice of the cortes, concluded an alliance with England, and in 1385 John of Gaunt aided him in his war with Castile with an army of 5,000 Englishmen. His reign witnessed the increase of the possessions and power of the great nobles by grants of lands. In the fifteenth century the Portuguese took the lead in nautical explorations and extended their voyages along the coast of Africa.

In 1485 Bartholomew Dias rounded the Cape of Good Hope, and in 1497 Vasco Di Gama reached India by way of the cape. The Portuguese promptly took advantage of these discoveries, and in 1505 Almeida was sent as viceroy to India. In 1520 Magellan, a Portuguese in the Spanish service, sailed through the straits at the extremity of South America into the Pacific Ocean. The foreign trade, which developed in consequence of these discoveries, brought rapid increase of wealth, but it also brought the poison of African slavery. The lands, especially in the south, were cultivated by black slaves. Though John II in 1484 had broken the power of the feudal lords by the drastic remedy of putting about eighty of the leading ones to death, the evils of a state made up of a few masters and many slaves rapidly developed along with the increased wealth. Bigotry was not confined to Spain, and in 1536 the Inquisition was introduced into Portugal with the same cruel and disasterous results as in Spain. The material advantages acquired by the discoveries of her seamen were not preserved to the nation. Corruption in official stations, especially in the colonial governments, and emigration caused by bigotry and oppression at home weakened the foundations of the state. In 1578 Sebastian invaded Africa and sustained a crushing defeat. Two years later Portugal was forced to submit to the dominion of Philip II of Spain.

Ferdinand and Isabella were married in 1469. On the death of Henry IV of Castile in 1474, each claimed the throne, but the succession was ultimately settled on Isabella. Henry's daughter Joanna was also a claimant, supported in her pretensions by a faction of the nobles and also by her uncle Alfonso V of Portugal. Her adherents were defeated in battle. On Jan. 20, 1479, John II, of Aragon died, leaving to his son Ferdinand the succession to the thrones of Aragon, Sicily and Sardinia. Though Ferdinand and Isabella thus came into possession of the kingly office of all these countries, they were not thereby consolidated into one kingdom, but for the time each retained its separate system of laws. Navarre, which came to John II by his first wife, passed to their daughter Eleanor. Ferdinand and Isabella set about increasing their own power and restricting the privileges of the nobility. In 1476 the *Santa Hermandad* was organized as a popular confederation throughout the whole of Castile for police and judicial purposes. Its members were of the burgher class and its affairs were managed by local courts, from which an appeal was allowed to the Supreme Court, and by a junta of deputies from all cities convened annually. A body of 2,000 cavalry was placed at the disposal of the brotherhood, and a special code of laws for its use was compiled in 1485. The jurisdiction assumed by the Brotherhood curtailed by so much that of the nobles, and afforded something like protection against their tyranny and injustice. The administration of justice took on some of the characteristics of a regular system, and educated lawyers were appointed to the chief judicial positions. To further strengthen the powers of the sovereigns they secured the grandmasterships of the powerful military orders of St. Iago, Calatrava and Alcantara, which in independent hands might prove dangerous. Lavish grants of crown lands were revoked and the domains reclaimed. Under the prudent administration of Isabella, to whom the credit of administrative reforms is given, the revenues were increased from 885,000 *reals* in 1474 to 26,283,334 in 1504 without the imposition of any new taxes, but the latter sum was received after the acquisition of Granada and includes its taxes. In his

appointments to official positions Ferdinand chose men attached to his interests, without regard to their rank, and built up a personal following on which he could rely. Few sovereigns have exercised so profound an influence on the institutions and characteristics of a state as Ferdinand and Isabella. Being both most devout Catholics, they set about removing the last vestige of Moslem power from the peninsula, and after a long and bloody war on Jan. 2, 1492, they entered Granada, the last stronghold of the Moors, in triumph. The religious zeal of Ferdinand accorded with the prevailing sentiments of the great mass of his Christian subjects, and by a skillful use of the religio-military orders and priestly influences he attached to his interests sufficient force to enable him to overawe and master the proud Castilian nobility. It accorded with his general policy as well as his religious bigotry to introduce the institution of the Inquisition into Spain. In 1478, on the application of the king and queen, Pope Sextus IV issued his bull for the establishment of the Holy Office, as it was termed, in Spain, and granting it the right to appoint the inquisitors. In 1480 the first were named from among the Dominicans, and early in 1481 they began their work at Seville. The ostensible purpose of the Holy Office was to inquire into and correct errors of religious faith, and thereby preserve and protect in its purity the Christian religion. The safety of human souls according to the doctrines of the church depended, not on conduct or morals, but on belief in the established creed and observance of church forms and requirements. Disbelief of its doctrines or noncompliance with its ceremonies was magnified into crime and given the direful name of heresy. To discover and suppress heresy was the mission of the Holy Office. In Spain the Christians had to deal with Mohammedans and Jews, stiff necked and perverse unbelievers, on whom it was deemed useless to use argument or persuasion, for they had deliberately chosen to follow false doctrines. Many of them were also guilty of another offense, which may have incited the activity of the inquisitors quite as much as errors of faith, namely that of possessing wealth. It was intolerable that heretics should live in peace and enjoy wealth while the

king and clergy wanted money. The new tribunal commenced its work vigorously, and in the first year 298 victims were burned at Seville alone and their estates confiscated. In answer to protests from citizens who did not approve of this barbarity, the Pope ordered a more mild administration of the Holy Office and named the archbishop of Seville as sole judge of appeals in matters of faith. In 1483 Thomas of Torquemada was named by the Pope inquisitor general for Castile and Leon, and he proceeded to organize his dread tribunals. He was the president of the court with two lawyers as assessors and three royal counsellors. This force being found still insufficient for the work, a central court was organized styled the *Consejo de la Suprema,* composed of the inquisitor general, six apostolical counsellors, a fiscal procurator, three secretaries, an *alguazil* (chief of police), a treasurer, four servants, two informers, and such other agents as might be needed from time to time. Under this central tribunal there were four local ones. All the officials connected with the Holy Office were paid out of the confiscated estates and were therefore directly interested in finding heretics of wealth and convicting them. The Inquisition proceeded to formulate its rules, which were embodied in thirty-nine articles and defined the procedure of the Holy Office. These provided for summoning heretics to come forward and confess, fixed the penalties to be borne by the penitent and submissive, regulated the treatment of penitents in prisons, the torture to extort confessions and other procedure of trials, and authorized the condemnation of dead heretics whose estates were coveted. The Inquisition was nowhere approved by the people and occasioned a revolt in Aragon, but the combined power of the church, the religious orders and the crown maintained it. The procedure was provided with ample forms to fill the requirements of a judicial system, but none of them were designed to afford protection to an innocent person falsely accused. When complaint was made, a preliminary examination was held and the result reported to the tribunal. If the case was regarded as one calling for action, the informers and witnesses were reëxamined and the evidence submitted to "the

Qualifiers of the Holy Office," a body of priests. These having given their opinion against the accused, as was their custom, he was removed to the secret prison of the Office and cut off from all communication with the outside world. Then followed three "first audiences," in which the officials did their best to extort a confession. If unsuccessful in this the fiscal in charge demanded torture to extort a confession. After torture, for which the most fiendish devices were used, the victim was taken before the court, where the charges were for the first time read to him, and he was asked if he desired to make a defense. If he answered that he did, he was allowed to choose a lawyer from a list furnished by the court, all of whom could be relied on to offer no obstacle to a conviction. After all the evidence was in the Qualifiers were again called on for their opinion on the whole case. This being adverse to the accused, he was sentenced with privilege of appeal to the Supreme tribunal or to the Pope. These appeals afforded a chance for the friends of the accused to contribute their means to the papal treasury. If, as sometimes happened, the victim was at last acquitted, he might retire to his home, broken in body and ruined in fortune with no redress against his accusers. If condemned, he was brought before the court, regaled with the solemnity of the *Auto-da-fé* and informed of his fate. He might then become reconciled and as a penitent submit to the severe penalties prescribed, or, refusing to do so, he was "relaxed," that is turned over to the secular authorities to be burned; for the church shed no blood!

Later under Ximenes the institution was further extended by the organization of ten tribunals, at Seville, Jean, Toledo, Estramadura, Murcia, Valladolid, Majorica, Pampeluna, Sardinia and Sicily, and under Charles V and Philip II it was extended and performed its horrible work on the Protestants of the Netherlands, of whom great numbers were tortured and burned. The institution was introduced into Portugal in 1536 on the solicitation of John III, where it performed its deadly office with great vigor. Its blighting influences were manifested by a marked decrease of the population of Spain and Portugal and by the crushed spirit of the people. Literature

could not thrive where almost any publication was liable to be found by the Qualifiers to contain heretical expressions. The figures given of the numbers who in Spain became victims of the Holy Office prior to 1810 are sufficiently appalling, 31,912 burnt alive, 291,450 imprisoned as penitents and 17,659 burned in effigy and their estates confiscated. But this by no means indicates the full measure of misery and evil caused by this awful wickedness. Great numbers left their homes and perished in foreign lands to escape its hands, and all freedom of expression and intellectual progress were blasted. Though acting with close observance of forms and executing what were regarded as written laws, sanctioned by that authority most highly venerated, the Roman Church, in their actual workings these tribunals utterly disregarded all law, human and divine, and trials before them were conducted by methods that could not fail of the most diabolical results. The accusers were the judges and profited by every conviction. The proceedings were secret, and the accused denied all tests by which the falsity of the evidence against him could be shown, or by which facts favorable to his innocence might be established. Confinement and torture were inflicted on those accused, whether guilty or innocent. But beneath all this the whole system was utterly wanting in any moral basis. The alleged crime of heresy is a myth. The opinions on religious subjects of one mind are as sacred as those of another.

Though utterly indefensible in its purposes and methods and baneful in its results, the Inquisition was still a logical outgrowth of the prevailing spirit of the times. During more than seven centuries difference of religious faith had furnished the pretext for bloody wars between Christians and Mohammedans, in which many battles were fought in either of which more men were killed for religion's sake than all whose lives were taken by the Inquisition. Though the moral sense of the Christian world of today revolts at the cruelties and rank injustice of the Inquisition, it still glories in the deeds of the Cid and the many renowned kings of Spain and Portugal who led their people to death in wars against the infidels, and draws deep satisfaction from accounts of the wholesale

slaughter of the more polished and industrious followers of the Prophet. To establish a tribunal to punish those who after the expulsion of the Moors still persisted in denying the creed of the victors was merely carrying the purpose of ridding Spain of unbelievers to its logical end. What use to drive out the Moslems by force of arms if unbelievers might still retain their wealth and dwell in security in Spain? Why kill heretics in battle if they were entitled to live in peace after their armies were destroyed? The savagery of war still gains the approval and even the admiration of most of mankind, though it has been productive in Spain of a hundred times more misery than the Inquisition.

The wars of Ferdinand were not confined to those against the Moorish followers of the Prophet, but in Italy he fought against other Christians for territory which he claimed as appurtenant to the throne of Aragon, and wrested Naples from the French king. The greatest glory of the reign of Ferdinand and Isabella came as the fruit of a peaceful enterprise for which Isabella made provisions. The discovery of America by Columbus gave Spain a prestige and an opportunity for expanding its wealth and power far outweighing all the conquests of Ferdinand in his bloody wars. The year 1492 witnessed the departure of the Moors from Spain and the opening to view of the new world. On the death of Isabella in 1504 there was a temporary separation of Aragon and Castile, occasioned by the selection by the Castilians of the archduke Philip as regent during the minority of the infant Charles, but Philip's death was followed by the choice of Ferdinand as regent. In 1512 he wrested Navarre from France, thus combining all Spain under his rule. The policy of Ferdinand, steadily pursued throughout his long reign, resulted in the concentration of the powers of government in the hands of the king. The administration was carried on through the instrumentality of five councils, the "Royal Council" as the highest court of justice, the "Council of the Supreme" for ecclesiastical affairs and the Inquisition, the "Council of the Orders" for the direction of the great military orders, the "Council of Aragon" for the management of that

kingdom and Naples and the "Council of the Indies" for the territories discovered by Columbus. The firm alliance between church and state and the religious policy established during this reign fixed the character and moulded the policy of the Spanish government till modern times, and still influence it in great measure. Ferdinand died in 1516 and Charles, son of his daughter Joanna and of her husband Philip son of the German Emperor Maximilian I, succeeded to the thrones of Castile and Aragon, and thus the House of Hapsburg came to the united Spanish throne. In 1519 Charles succeeded his father as emperor. Serious revolts followed. Charles was a foreigner by birth, reared in the Netherlands, and it was only by intimidation that he obtained supplies for his wars from the cortes. After his authority had become well established and all rebellions suppressed, Charles convened the Castilian cortes in 1523 and compelled them to grant supplied before presenting their petitions for redress, thus establishing a precedent adhered to thereafter, which gave him what he required and still left him free to reject all demands of the cortes. During his reign Cortes conquered Mexico, Pizarro, Peru, and Milan and a portion of North Africa were added to his dominions. In 1538, as a result of the refusal of the nobles in the Castilian cortes to consent to an excise tax, Charles excluded them from seats in the cortes, which thereafter consisted of only thirty-six deputies from eighteen towns, who were wholly wanting in strength to oppose the will of the king. On the abdication of the throne by Charles, his brother Ferdinand became emperor of Germany, and his son Philip succeeded to the Spanish throne and made Madrid his capital. He was a narrow bigot, and his policy was thoroughly despotic. By military force he crushed all remnants of popular liberty, and by the aid of the Inquisition he destroyed whomsoever he pleased. He caused the *justiza* of Aragon to be put to death and assumed the right of naming his successor. The control of the cortes over judicial affairs was taken away. The extension of Spanish dominions gave to the king ample power to take away the ancient privileges of the provincial cortes separately, and the Spanish people suf-

fered from the spread of Spanish dominion. In 1580 Philip maintained his claim to the throne of Portugal by an army commanded by the Duke of Alva, and thus the whole peninsula became united under his rule. During his reign the Inquisition employed its force to crush Protestantism in the Netherlands, but met with a stubborn resistance that after the martyrdom of vast numbers of its citizens finally resulted in independence.

Philip died in 1598, leaving a great empire to his son Philip III, yet the search for gold in the New World and the prosecution of wars for the aggrandizement of the king consumed the lives of men and impoverished those rich districts, which when properly cultivated by a peaceful and industrious population yielded riches in great abundance. Though in the wilds of America priests sought to convert the heathen, Spanish policy everywhere was wanting in moral strength. Wars of conquest and the vast acquisitions of American gold failed to make good the loss of the natural returns of the efforts of her soldiers if employed in peaceable callings. The gold sufficed for only one purchase and then passed into the channels of trade. The industries of the Netherlands enabled them to keep the gold which Spain wrested from her new subjects. The narrow bigotry of Philip III found expression in 1609 in an order requiring all Moriscoes to leave Spain within three days under penalty of death. The order was wholly without justification in morals or economics, as the Moriscoes constituted the most industries, skillful and peaceful portion of the population. They were leaders in agriculture and manufactures, and their expulsion was a crushing blow to the material resources of the kingdom, as well as a most cruel and unjustifiable infliction on them. By their expulsion the revenues were greatly reduced. The desire for foreign dominion and devotion to the Catholic cause combined sufficient influence on Philip to draw him into the Thirty Years' war in Germany. Spanish troops took a leading part in that great contest and came in contact with the Swedes and their Protestant allies. The wars brought neither profit nor glory to Spain. The Dutch gained signal victories over the Spanish fleets and

destroyed their naval ascendency, which had resulted from the discovery of America. Though great victories were gained on land, they were barren of advantageous results. An edict calling all able-bodied men to join the army resulted in a revolt in Catalonia, the driving out of the Castilian troops and the establishment of a republic under the protection of France. Still more important in its permanent consequence was the revolt of Portugal, occasioned by the same measure, and resulting in the independence of that kingdom in 1640. As a result of naval victories the Dutch took from Spain its possessions in Malacca, Java, Ceylon and much of Brazil, and forced it to abandon its claims to Holland and even to cede to them the northern districts of Brabant, Flanders and Limburg. Catalonia was soon reduced to submission. France having effected an alliance with England, forced the Spaniards to submit to still further loss of territory in the low countries. Under Philip IV and Charles II Spain continued to lose prestige down to the time of the death of the latter in 1700. The effects of religious bigotry, of despotic government, of the concentration of the wealth of the country and the ownership of the lands in monastic establishments and an indolent nobility, devoid of all enterprise and given over to luxurious living, and of a most unwise and oppressive system of taxation, are better shown by a comparison of conditions in Spain at the close of that period with those in former times, than by the mere loss of rulership over distant provinces. The population of the country, estimated at twenty millions under the Arabs and at twelve millions under Ferdinand and Isabella, had fallen to six millions under Charles. The Moors, the most industrious element of the population, had been driven out; manufactures declined, fertile districts became barren through lack of cultivation, the destruction of trees and general inefficiency of the agricultural system. After being the first naval power in the world Spain ceased to be formidable on the sea. Her foreign commerce passed into the hands of the Dutch and English merchants, and she was unable to hold the trade of even her own colonies in the new world. Education was neglected. The people

were neither instructed in letters nor in the useful arts. Nowhere else has the contrast between a fairly just and liberal Mohammedan policy and a bigoted cruel and unjust enforcement of a creed called Christian been exhibited so disadvantageously to the latter as in Spain. Nowhere else have scientific truth and the moral law been so ruthlessly superseded by a false and cruel priestly tyranny. The war of the Spanish succession, which ensued on the death of Charles II, involved no principle of interest to the multitude, but was a contest instigated by crowned heads for their own ends. France, England, Portugal, Holland and Austria were all involved, and bloody battles were fought, but at the end by the accession of the Archduke Charles to the throne of Austria and the German empire England found that the cause for which it had fought was the one most dangerous to its interests. Peace was concluded leaving Gibraltar and Minorca in the possession of England with the added privilege of importing slaves into the Spanish colonies. The right of Philip V to the Spanish throne was recognized, the cause of the Catalans, who had supported Charles, was abandoned, and they were left to defend themselves. Though they fought obstinately, the power of Castile was too great; they were crushed and all their ancient liberties were forever after denied them. Thereafter they were ruled from Madrid under Castilian laws. Later Philip neglected his subjects at home and caused many of them to fight against Austria for possessions in Italy. The contest dragged on till his death in 1744. No advantage came to Spain from the long contest, but a little added territory for Don Philip to pass to Austria on the extinction of his male descendants.

Ferdinand, VI spoken of as weak and obstinate, had the blessed courage to keep the country at peace. He refused to be drawn into the Seven Years' war, and for the thirteen years of his reign he allowed his subjects exemption from the horrors of war. The reign of this monarch also witnessed a marked reaction against the papal power. In 1753 he asserted his right to appoint to all important benefices, and of the 12,000, which the Pope had filled before, Ferdinand left

only fifty-two. He next issued an edict that henceforth papal bulls should not be obeyed till they had received the royal sanction. Charles III, who came to the throne in 1759, continued the work by driving out the Jesuits, restricting the extension of church lands, and moderating the cruelties of the Inquisition. At the time of the American revolution Spain joined with France against England, and on the conclusion of peace gained Minorca and Florida. This reign was one of material progress. The ministers sought to restore prosperity by the encouragement and protection of industry and trade. By a most commendable ordinance issued in 1773 an effort was made to remove the Castilian prejudice against trade by declaring that no loss of rank or privilege should be occasioned by engaging in industrial occupations. Agriculture was stimulated by the construction of roads and canals, and by removing the restriction on inclosures, that had been imposed at the instance of the owners of the great flocks of sheep which overran the country and destroyed all cultivated crops. Charles III died and Charles IV came to the throne at the outbreak of the French revolution. A Bourbon king could not sympathize with a demand for popular rights, and the policy of the Spanish monarch was reactionary and directed to strengthening the despotism. Spain joined the first coalition against France and sustained crushing defeats in the campaigns of 1793 and 1794, due mainly to inefficient organization and want of supplies. This was followed by a treaty of peace which bound Spain in an alliance with France against England. In 1800 Spain ceded Louisiana to France and agreed to aid her in all her wars, and in 1801 invaded Portugal at the call of Napoleon. In the struggle with England the Spanish fleet was destroyed and the prestige of the former nation at sea firmly established, but French influence still dominated, and in 1808 Napoleon caused Charles IV to abdicate and placed his brother Joseph on the throne. A popular uprising was temporarily successful and entrusted the government to a junta of thirty four, to rule in the name of Ferdinand, but Napoleon soon scattered their army and restored his brother to power. The national party made Cadiz

its capital, and in 1810 the cortes assembled there. In 1812 it promulgated a constitution providing for a limited monarchy with all legislative power in the hands of a single national assembly.

With the aid of the English under Wellington the French were driven out of Spain in 1813, and in the next year Ferdinand 7th returned to Madrid and assumed authority. He set aside the liberal constitution, restored the nobles and the monasteries to their privileges and exemptions from taxation, allowed the Jesuits to return and the Inquisition to resume operations. A tyrannical and profligate court and bigoted clergy again combined to crush all liberal sentiment. In 1819 the sale of Florida to the United States, the revolt of the Spanish colonies in America and the ill success of the government in its efforts to reduce them to obedience, caused great popular discontent throughout Spain. In 1820 a revolt started at Cadiz, which rapidly spread over the whole country. The king accepted the constitution of 1812, dismissed his ministers and put liberals in their places. The cortes met and proceeded to abolish the monasteries, the Inquisition, the clerical titles and entails of landed estates, and to pass laws to secure freedom of the press and of public meetings. This was distasteful to the monarchs of Europe, and in 1823, at the dictation of the Holy Alliance through a congress at Verona held by France, Austria, Russia and Prussia, a French army invaded Spain and restored despotic power to Ferdinand.

In 1829 Ferdinand issued an edict abolishing the Salic law, which excluded females from succession to the throne. In 1833 he died, and his infant daughter Isabella was proclaimed queen with her mother as regent. Ferdinand's brother, Don Carlos, claimed the crown under the Salic law and drew to his aid the supporters of absolutism. Christiana was supported by the liberals and granted a constitution establishing two legislative chambers chosen by indirect election. This was not satisfactory to the liberals, and in 1836 the constitution of 1812 was revived. By 1839 the Carlists were subdued. In 1843, after temporary ascendency of the radicals, which had caused Christiana to withdraw to France and the selection of

Espertero as regent by the cortes, Isabella became of age and was recognized as queen. The history of her reign is one of court intrigue, with the reactionary party in the ascendency most of the time. Married to a cousin, who was believed to be an imbecile, though not really quite so, she had piety without morality, and the Spanish nation had to bear the shame of a notoriously licentious woman as its queen; fat, coarse and indolent, she yet was good natured, generous and kind hearted. She even delighted in granting pardons, to which Spanish monarchs generally showed great aversion. In 1854 there was a popular uprising with rioting at Madrid, resulting in the appointment of a liberal ministry, whose purposes were expressed in a proclamation stating: "We desire the preservation of the throne, but without the *carmarilla* which dishonors it; the rigorous enforcement of the fundamental laws, improving them, especially those of elections and the press; a diminution of taxation founded on strict economy, and also respect to seigniority and merit in the military and naval services. We desire to give the towns the local independence necessary to preserve and to increase their own interests, and as a guarantee of these things we desire a national militia."

In 1866 Isabella recalled her old ministers, the most prominent liberals were driven into exile and the cortes dissolved. In 1868 another revolt occurred which caused Isabella to go to France. A cortes was summoned and met in 1869, which adopted a new constitution providing for a limited monarchy. It substituted the principle that the sovereign power was derived from the people for the doctrine of divine right of kings, granted religious liberty and provided for a Council of State, a Senate and House of Representatives. A regent was chosen to hold pending the choice of a king. In Nov. 1870 Amadeo of Savoy was chosen by the cortes, but he left the country, which he could not successfully govern, in Feb. 1873. Thereupon the cortes proclaimed a republic. War with the Carlists followed without very decisive results. The republic lacked vigor, and on the last day of 1874 Alfonzo XII, son of Isabella II, was proclaimed king and acknowledged by the army. There had been five changes of ministry in less than two years

with much modification of the theory of government, the last being a virtual dictatorship. The Carlists continued the fight for a short time, when Don Carlos gave up the struggle and left the country. Under the reign of Alfonzo XII as a constitutional monarch Spain enjoyed peace till his death in 1885. After his death a son was born, who came to the throne as Alfonzo XIII. His mother ruled as regent through his minority, during which time Spain was forced by the United States to relinquish its claims to Cuba, Porto Rico and the Philippine Islands.

Shorn of its foreign possessions, it does not necessarily follow that the people have to face more unfavorable conditions. On the contrary there are evidences already that the statesmen of Spain are beginning to grasp the true basis of national greatness. Proud, indolent grandees, who refuse to do anything useful and squander the resources of the country in ostentatious living, are a curse and nothing more to any country. Those of Spain have for many centuries been advanced types of worthless nobles. Though popular government was not unknown in many of the districts of Spain, and the people of Aragon, Catalonia, the Basque provinces and the large cities, have exhibited a disposition and capacity for preserving popular liberty, the composition of society throughout the nation seems to be such as to still invite abuses in the administration of public affairs. The grand lack in Spain, as everywhere else on the face of the earth, is of knowledge, social virtue and morality. The people are more generally illiterate than elsewhere in Europe, though under the Arabs their schools were probably the best then in existence. Primary education has been compulsory by law since 1857, but only a small portion of the population can read and write; about twenty-five per cent. Progress is being made, however, and the time is probably not far distant when the Spanish people will take the rank to which they are entitled, and which in past generations was not inferior to any others in Europe.

By the fundamental law of June 30, 1878 the monarchy is hereditary, and the king becomes of age at sixteen. He is grand master of the eight orders of knighthood. He exercises

the legislative power in conjunction with the cortes, which is composed of a senate and a chamber of deputes. The senate is made up of three orders: 1. Members by right of birth, princes, rich nobles and the highest state officials. 2. Members nominated by the king for life. 3. Members elected by the state corporations and chief tax payers for a term of five years. The number of the first two classes must not exceed one hundred and eighty, and there may be as many of the third. The chamber of deputies consists of one deputy for every 50,000 population, elected for five years, by electors twenty-five years of age, who have paid a land tax of twenty-five *pesatas* for one year or an industrial tax of fifty *pesatas* for two years. There are eight executive departments, presided over by ministers responsible to the cortes for their acts. In each province there is a civil governor and an elective council chosen by the communes. The system of laws as in most European states is based on the Roman law with local modifications. There is a court of first instance in each of the 501 judicial districts into which the kingdom is divided and a court of second instance in each of the fifteen divisions in which they are grouped, with a supreme court of cassation or review at Madrid. Justice is administered publicly, and parties must be represented by counsel.

On achieving independence from Spain in 1640 Portugal recognized John IV as king. Portugal exhibited substantially the same tendencies toward increased power in the monarch as most European states for the next century, though some great reforms were made, especially in the reign of Joseph, who came to the throne in 1750 and abolished slavery, which had become a great curse to the country. From 1677 to 1828 the cortes never convened. The people of Portugal were profoundly impressed by the French revolution and were involved in the succeeding wars. In 1820 a constituent assembly framed a constitution abolishing the Inquisition and with many radical changes, but this constitution never became fully operative.

In 1826 Pedro IV, who had ruled Brazil under his father succeeded to the throne of Portugal also. He drew up a

charter for a constitutional monarchy and appointed his brother Miguel regent of Portugal. Miguel refused to recognize the constitution and assumed absolute power. Civil war soon followed. The struggle between the reformers and the adherents to the ancient order continued with varying success and more or less violence to the close of the reign of Maria II. Sometimes the constitution was followed, then it was amended, and at other times disregarded, but by the time of the accession of Pedro V in 1855 matters had become fairly settled, and Portugal entered on a more peaceful and prosperous career. In 1852, 1878 and 1895 the charter of 1826 was amended. The monarchy was hereditary, and the king ruled with the advice of a cabinet of seven members chosen by a premier named by the king. The cortes consisted of a House of Peers of ninety members, nominated by the king for life. They were not all titled nobles, nor were all the nobility entitled to seats. The House of Deputies had one hundred and forty-eight members, elected by all male citizens twenty-five years of age or over, who paid above $1.10 direct tax per year or had an annual income from real estate of $4.50. By the revolution of 1910 the monarchy was overthrown and a republic established. The religious orders were expelled and their property confiscated. The Council of State was abolished as were also all hereditary titles and privileges. The country is divided into seventeen administrative and twenty-six judicial districts. There are courts of appeals at Lisbon and Oporto and a Supreme Court at Lisbon. There are governors in the administrative districts and elected councillors in each of the 292 *concellos* and in each of the 3960 *freguezias* there is a magistrate elected by the people, with authority corresponding to that of a justice of the peace. Education is compulsory under the law of 1844, which required all children from seven to fifteen years of age to attend a primary school. There is a university at Coimbra and there are at various towns secondary and high schools. The improvement of the system of government and the increased prosperity of the people have followed the work of the schools. The economic, moral and political value of the general diffusion of knowledge among

the people has been shown by the improvements in social and material conditions.

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CHAPTER XIX

Denmark, Sweden and Norway

The inhabitants of the Scandinavian peninsula and of the islands and peninsula lying across the water to the south are so closely allied in blood, and their history has been so closely connected, that the development of their institutions will be treated together. That they are closely related to the Germans is evident, though the date of their separation precedes history. Their earliest known organization differed from that of the Germanic tribes in the system of land tenure. The village tenure in common never obtained so far as we are informed. Land was treated as the property of the individual owner. Slavery existed, though the number of slaves was not large. The spirit of the people was distinctly opposed to submission to authority, and the power to manage their affairs remained in the body of freemen. Local affairs were determined in a meeting of the free men of the district, and those of the whole country by a general assembly of freemen, there being no system of representation. Before the advent of written laws the Swedes and Norwegians had their law-men, who were looked to as repositories of the traditions of the law. They recited the laws to the people in their assemblies—*Things*—and were consulted in cases of doubt. The Scandinavians first became known to the balance of Europe from their incursions by sea. They were navigators at an early day, and their enterprises were directed against all the coasts of the continent and British Isles, which they pillaged and laid waste in the most ruthless manner from the Baltic to the Mediterranean. No other country then produced such bold navigators and reckless warriors. They did not engage much in commerce, but were generally pirates and freebooters. At home they were little less fierce. Courage and hardihood were the virtues most regarded, and these seem to have been possessed in an unusual degree even

by the women, some of whom took part in their expeditions. In early times there were petty kings in each district, chosen as leaders by the free men, with little real power over their followers. There was no code of laws, but disputes were determined by combat or by the freemen in their assembly in accordance with ancient customs and advice of their lawmen.[1] Distinctions of wealth and leadership had developed a nobility by the dawn of their history, but without destroying the authority of the freemen assembled in their *things* over all public affairs.

It is said that Gorm the Old, who flourished between 860 and 936, was the first to extend his authority over all Denmark including Schleswig, Holstein, Skania and part of Norway. A little earlier Harold Fairhair had subdued all the petty kings in Norway and placed the *fylkis* or shires under his earls and the *herads,* (subdivision of the *fylkis*), under his *lendermenn.* The date and extent of the domination of the early Swedish kings is so interwoven with the mythical that it is impossible to say much with certainty. Eric who ruled in the tenth century is said to have extended his power over Denmark and his son Olaf, who succeeded him in 993, was the first Christian king of Sweden, having been baptized about A.D. 1000. These were times of almost ceaseless war, and no compact and efficient system of government was established by any of them. The name of Cnut, the Dane, stands out prominently in history because of his conquests in England about 1018. He extended his power over Norway also and into Sweden. Tradition mentions earlier rulers over the Scandinavian races, the greatest of whom was Odin, reputed a Scythian chief, who extended his power from his native land in the Russian steppes to Sweden and Norway, and introduced to the people the religion and institutions of his ancestors. His kingdom is said to have included not only all Denmark, Sweden and Norway but much of the country lying along the line of his march from his native land. There are many points of similarity in the customs of the pagan Scandinavians and those of the ancient Scythians, and there appears good ground for

[1] Continental Legal History Series, Vol. 1, p. 535.

believing that they were carried into the north by Scythian invaders. Odin the leader seems to have been translated into Odin the god of warriors, and to have become the principal deity of northern nations. Frigga, the earth, daughter and wife of Odin, and Thor, first born son of Odin and Frigga, were the leading deities worshipped, and not only animals but human beings were sacrificed to propitiate them. It was the fashion of northern rulers to trace descent from Odin and to fortify their claims to authority by the superstitious veneration for the supposed gods. Odin is said to have established his power and residence in Sweden about 70 B.C., and the dynasty he established to have continued till 630 A.D. The reigns of Odin and his immediate successors are described in the traditions as peaceful and prosperous and are accepted as a golden age of prosperity. Little can be told with any fair degree of certainty of those early times.

The system of laws prevailing throughout the Scandinavian countries in the time of Cnut imposed fines, definitely fixed for each offense from murder down, graded according to the rank of the injured party. For an injury to the person of a high nobleman the fine was twelve times as much as in case of an ordinary freeman. For theft the fine was generally triple value of the stolen article. The modes of trial allowed the accused to clear himself by the oaths of compurgators, swearing that they believed him innocent. Judicial combat was a recognized mode of trial, as were those by ordeal of fire or water. Trial by jury was also allowed.

On the death of Cnut his dominions were divided between his three sons. The history of the following century is filled with the wars of rival claimants of kingly power. While these claimants fought, Wendish pirates pillaged the people, who for their protection entered into an association for their mutual defense, built ships, manned them and captured many of the pirates. Here was the spectacle of war and discord among princes and an assumption of the function of protecting themselves from external foes by the people. After long and desolating civil war Valdemar overcame his rivals. Prior to his reign all freemen had been permitted to come to the national

council armed, but in his time the clergy and the nobles took away this privilege, and the peasantry of Denmark and Sweden lost most of their political rights.

Valdemar II of Denmark made conquests in the east but was unable to hold them, and the city of Lubec succeeded in freeing itself from his rule. After the loss of much of his foreign possessions Valdemar caused a general survey to the made of his kingdom. The provinces were divided into Episcopal dioceses, which were subdivided into parishes and small districts, from each of which a fixed contribution of men and ships for the defense of the country was required. To remedy the confusion in the law occasioned by the charters of cities, by which they had been granted the right to administer the law in their own courts, the royal guilds; the claims of the clergy of exemption from secular power and the study of the Roman civil law, Valdemar convened in 1240 a national assembly, at which was promulgated what was intended as a code of laws for the whole kingdom, called the Jutland law. By this time feudalism had made its way into Denmark, the local assemblies of freemen were no longer held, but were superseded by the *Adel-Ting* or *Herredag,* an assembly to which only the princes, prelates and nobility were admitted. The peasantry had been generally compelled to place themselves under some feudal lord and thereby lose their independence. The national diet was convened annually at Nyborg. During its recess the government was administered by the king and his council, composed of the leading nobles and officers of the kingdom. The marked change which had occurred consisted in the development of a class of land holding nobles, who shared political power with the king to the exclusion of the great body of the freemen who formerly met in the *Lands Ting.*

On the death of Valdemar II Eric succeeded and fought with his brothers who refused homage for their fiefs, and then led an expedition into Esthonia: on returning from which he was assassinated. Christopher's reign was noted for a controversy with the church, resulting in an interdict against his kingdom for seizure and imprisonment of the bishop of Lund. Eric VII, Grippling, had bloody wars, in which many

of his subjects perished in a contest with the duke of Schleswig and his allies over the possession of the crown, followed by further controversy with the church over the right to control appointments to clerical offices, and was at last murdered in his chamber (1287). During his reign the nobles extorted from him a charter defining their privileges and the limits of royal authority, which thereafter was renewed by succeeding monarchs. He also granted charters to several towns and made general regulations for municipal bodies. Eric VIII warred with Norway, where the murderer of his father received protection, and the controversy with the papal power was renewed. Then followed a barbarous warfare with his younger brother over his right to certain fiefs.

Christopher II on his election by the diet in 1319 was required to sign a declaration; That the bishops and all other members of the Holy Church should freely enjoy their rights and liberties, property and vassals, as formerly, and should be entirely exempted from taxes and the secular jurisdiction: That no ecclesiastical person should be arrested, exiled or deprived of his goods, without the Pope's bull, if a bishop, and if an inferior clerk, only by the regular sentence of his canonical judge: That the chiefs should have feudal jurisdiction over their estates to the extent of amercing in small penalties according to the custom of each province, and that the king should not make war without the advice and consent of the prelate and principal men of the kingdom: That the burghers should enjoy their freedom and not be subject to any new toll or tax without consent of the diet: That the merchants should be repaid the sums borrowed from them by the king or his bailiffs: That no impost should be laid on the free peasantry contrary to the established laws and customs: That a parliament should be held annually at Viborg: That no man should be imprisoned or deprived of life or property without public trial and conviction before the proper courts and with the right of appeal to the highest tribunal: That plundering shipwrecked vessels should be punished: That no law should be enacted except by parliament, and that the king alone, with the advice of the nobles and pre-

lates, should have power to change the above rules. Christopher lavished grants of lands on his favorites. He was rewarded for his generosity with revolts and driven from his kingdom, which he vainly fought to recover and died after fourteen years of turmoil. The king had lost his power. The turbulent feudal lords and the rising towns of the Hanseatic league dominated the country. His death was followed by a period of turmoil. Valdemar IV, who after some delay was elected king, had both civil and foreign wars which brought misery on the people.

During the period we have just considered the course of events in Norway was far from peaceful. Sverre in 1202 after a long struggle took the throne from the youthful Magnus V. Having gained the crown by the sword, he had to fight to keep it. Having incurred the displeasure of the Pope, his kingdom was laid under an interdict. He died after twenty-five years of strife. After three brief reigns came that of Hakon, who also had to fight to maintain his authority. His last important undertaking was a disastrous expedition to Scotland. Magnus VI became king in 1263. He granted charters to Bergen and Trondheim and made regulations for their municipal affairs, trade guilds and fraternities. He also compiled a general code of civil and criminal laws, which was accepted by the people assembled in the *Gula Ting* in 1274. It provided for an annual *Law Ting* at each chief town of the kingdom, presided over by a judge and attended by a panel of jurors. Trial by battle and ordeal had already been abolished, and two witnesses were required to establish a crime. Compurgators were still allowed. The kingdom was again divided, as formerly, into marine districts, each of which was required to furnish its quota of men and ships. Beacon stations were established on the heights, by which signals could be passed from point to point in case of invasion. Erik married the daughter of Alex III of Scotland, and involved his country in a fierce and profitless war with the Danes in defense of the murderers of Eric Grippling. Hakon made war on the king of Sweden to avenge the murder of his son-in-law. As a result Magnus Senek was placed on the Swedish throne and afterward succeeded to that of Norway also.

In Sweden slavery was abolished by King Magnus in 1335. Margaret was chosen their first queen by the Danes and Norwegians. War followed with Albert of Sweden, and he was taken prisoner. In 1397 there was assembled at Calmar delegates from the diets of Denmark, Sweden and Norway, who joined in choosing Eric king of the three countries. Articles of union were agreed on, by which the three countries became united under the same sovereign and his male issue, choice of sons to be made by the representatives of the kingdoms, but each kingdom was to be governed by its own laws. The Hanseatic league, then flourishing, was confirmed in its privileges in the towns of the three kingdoms. Eric entered into war over Schleswig, which at length involved the German emperor and the intervention of the Pope. He made a pilgrimage to the Holy Land, leaving his wife as regent. He had wars with the Hanse towns, which wasted the country and finally resulted in a treaty confirming the commercial privileges of the league. The Swedes rebelled against Eric's misrule and civil war followed, which was terminated through the intercession of the bishops, who this time were peacemakers. Eric provoked revolt and war again ensued, followed by another congress at Calmar, at which the election of a successor to the throne was confided to a college of one hundred and twenty delegates, forty from each state, to include representatives of the prelates, judges, burgomasters and free peasants. Complaints against Eric's rule finally resulted in the choice of Christopher as his successor, and Eric became a pirate.

The peasants of Jutland revolted against the high taxes and oppression of the nobles, but their resistance was overcome in the usual manner. Christopher made unsuccessful war on the Hanse towns. Christian was chosen king by the Danish nobles and then by the Norwegians, but Knutson was named by the Swedes, each acting separately. War followed; Knutson was defeated and driven out and Christian recognized as king of Sweden. Another revolt headed by the archbishop of Upsala again placed Knutson on the throne, from which he was again deposed. On his death Sten Sture received the support of the national diet of Sweden and defeated the Danes in a great

battle. In 1478 the university of Copenhagen was founded and that of Upsala in Sweden soon afterward.

John, having been chosen by the Danes and Norwegians, invaded Sweden to enforce submission there and finally obtained their recognition. In an attempt to subjugate Dethmarschen he met with a signal defeat by the free peasants, in which great numbers of the Danish nobles were killed. Revolts again occurred in Sweden, and his authority was resisted during the balance of his reign. Norway also rebelled but was reduced to submission. In his contests with the Swedes and their allies, the Hanse towns, the war degenerated into pillaging expeditions. The barbarity exhibited was extreme. Christian II came to the throne in 1573. The Swedes resisted his authority, and he called to his aid the clergy and the soldiers. Under the name of authority and religion the grossest barbarities were committed. Having overcome the opposition, partly by force and partly by promise, he was crowned at Stockholm. At the close of the court festivals he seized the leaders who had opposed him, and to whom he had solemnly promised amnesty, and on the demand of a churchman for justice against his enemies he turned them over to an ecclesiastical court for trial. They were condemned the next day, and on the pretense that he as king could not shield them from punishment for heresy, on Nov. 8th, 1520 a great number of the leading men of the kingdom were butchered. The Pope's agent was encouraged in his trade of selling indulgences, from which he realized large sums from all factions.

Gustavus Vasa, son of one of the murdered men, after wandering from place to place took refuge with the poor but free Dalecarlian mountaineers, whom he incited to a revolt which gained in force till with the aid of the Hanseatic League the Danes were driven from Sweden. In Denmark Christian excited the hostility of the nobles by forbidding the sale of serfs and allowing them to change their masters, by prohibiting wreckers from seizing shipwrecked goods and in lieu appointing bailiffs to save and return them to the owners on payment of salvage. The nobles revolted and Christian left the kingdom. Gustavus Vasa was then elected to the throne of Sweden by the diet and became the founder of a famous dynasty.

Frederick succeeded to the thrones of Denmark and Norway. After a time the dethroned Christian succeeded in raising a revolt in Norway and involving the people in war, but he was taken prisoner and spent the next twelve years of his life in a dungeon of the castle of Sonderborg, and then was removed to that of Kallundborg. Christian III came to the Danish and Norweigan throne in 1533. The reformation took early hold in Denmark, and religious strife, revolts of the peasantry and many other internal disorders occurred. Christian adopted the reformed faith, took away all temporal power from the clergy and confiscated the church property. The blow at the clergy was accompanied by a confirmation of the privileges of the lay nobility. Sweden also threw off its submission to the sway of the clergy and took side with Luther. Under Gustavus Vasa Sweden enjoyed a degree of peace and prosperity it had not known for many generations. He died in 1560 and was succeeded by Eric his son. His rule was in striking contrast to that of his father. He was fickle, wasteful and plunged into needless wars at home and abroad, from which the people suffered more than the usual miseries. At last they rose, deposed him and elected John in his place in 1568, who had war with Denmark and with Russia, from which no good resulted. Frederick II of Denmark made cruel war on the valiant Dithmarschen peasants, whom he attacked with an overwhelming force and ruthlessly slaughtered. Then followed long and wasting war with Sweden, the pretext for which was the wearing by the Danish monarch in his coat of arms of the triple crown, implying sovereignty over Sweden, the independence of which had been established. The war ended with the loss of his crown by Eric of Sweden. The peace negotiated with King John did not last and more fighting followed till, weary of war, a new treaty was made. Frederick was a Lutheran and persecuted all of other faiths with the zeal and intolerance which characterized the times. Sigmund, son of John of Sweden, having been chosen King of Poland, succeeded on the death of his father to that of Sweden. He was a Catholic and his subjects Protestants. Duke Charles, son of Gustavus Vasa, was made regent. Religious

differences resulted in civil war. Sigmund was deposed and Charles made king.

Christian IV ascended the Danish throne at the age of twelve. After reaching his majority he took an active interest in promoting good government, especially in Norway, and made a voyage around the north cape into the White Sea. Then disputes with Charles of Sweden and war followed, which was continued after the death of Charles by his son, Gustavus Adolphus. After great suffering by both parties a peace was concluded. Gustavus waged successful war against Poland, in which he gained great glory and great numbers of his people lost their lives. At a meeting of the Saxon states at Lauenburg in 1625, while the Thirty Years' war was in progress, Gustavus was chosen captain general of the confederate army of Danes, Germans, Scotch, English and Swedes. His brilliant career in that memorable war ended with his life in 1632 on the hard fought field of Lutzen. As a result of this war the power and territory of Sweden were greatly increased, though at a fearful cost of life and property to the people.

In Denmark power and landed property had steadily centered in the hands of a few, till the national assembly was no longer convened, and a few great lords dominated in the councils of the state. In 1660 Frederick convened the national diet, to which the nobles, the clergy and deputies from the towns were summoned, but there was no longer a free peasantry to be called. Norway was not called on for representatives. At this diet the crown was made hereditary, and the king absolved from the ancient limitations of his authority in favor of the nobility. The great lords were forced to swear fealty to the hereditary and unlimited monarch. This was one of the most remarkable revolutions in history and completely changed the character of the Danish government, from one in which each king had been forced at his accession to power to swear to observe the very extensive privileges of the nobility, leaving him little more than a nominal ruler, to an absolute monarchy in which the king engrossed all executive, legislative and judicial powers and was raised above the law, save that the order of succession to the throne, which the king was authorized to

establish, could not thereafter be changed. This gave to the king power to crush the great nobles, whose counsel he was no longer required to take, and to fill all offices with persons of his own selection, devoted to his interests. The motive for the change influencing the clergy and lower orders in the diet was to obtain relief from the tyranny of the oligarchy, who were exempt from public burdens while owning a great share of the land. The union of the multitude in support of a single head of the state in order to overthrow an obnoxious oligarchy is not unprecedented, but no other instance is recalled where absolute hereditary power has been deliberately conferred in a time of peace. Christian V, soon after coming to the Danish throne, took advantage of the war in which Charles XI of Sweden had engaged with the elector of Brandenburg to attack the now most dreaded foe of Denmark. The Danes and their allies were at first successful by sea and land, but the youthful Charles at last took the field and defeated them. After many battles with varying fortunes a peace was concluded, which left both parties with the same possessions as at the beginning of the war.

In Sweden Charles convoked a diet in 1680 for the purpose of remodeling the government, as a result of which a new board, called the Grand Commission, was established with power to inquire into the transactions of the ministers and punish the usurpations of the senators. Steps were also taken to recover grants of royal domains from the great nobles, to whom they had passed by grant or mortgage, on repayment of the original price paid the crown for them. Another diet, convened the following year, gave the king authority to change the constitution. This change was promoted by the same influences as those which changed the Danish constitution. In 1693 an act was passed which in terms made the king absolute and authorized him to govern the realm according to his will and pleasure without being accountable to any earthly power.

Charles XII, 1697, was a minor of fifteen years at his father's death, but notwithstanding the will of his father, which extended his minority to eighteen, in six months he assured the exercise of the unlimited kingly powers. He was

soon involved in war with a combination formed by Denmark, Saxony and Prussia. He met this formidable array with such marvelous courage, energy and success, as to challenge the admiration of all Europe and raise him to the first rank of military heroes. Not waiting for the allies to combine their forces, he at once assumed the offensive, attacked and crushed Denmark first, then sailed over the Baltic, landed at Pernau on the Gulf of Riga, attacked the poorly equipped and undisciplined Russians and destroyed army after army, far exceeding his own in numbers. Having disposed of the Russian armies, he turned upon the Saxons and passing through Lithuania he entered Poland, took Warsaw and Cracow, deposed the Saxon Augustus and caused the election of Stanislaus in his place. Thence he marched into Saxony and the imperial domains. Augustus was forced to sue for peace and make such terms as the victorious Charles saw fit to impose. These required the renunciation of the crown of Poland and the abrogation of his treaty with the Czar. After resting a while in Saxony, during which he drilled and perfected his army, Charles entered on the task of invading Russia and overthrowing the Czar. Peter had not been idle, but had profited by the bitter experience of former defeats and devoted his attention to the improvement of his army. Charles advanced but encountered stubborn resistance and an exceptionally severe Russian winter. Instead of pushing on toward Moscow, he turned to the south and passed through the Ukraine to join forces with the Cossack chief, Mazeppa, whom he expected to join him with a force of 30,000. Instead of Cossacks he was met by Russians. After suffering heavy losses from the severity of the weather and the want of supplies, as well as from frequent engagements, in the summer of 1709 he again attempted to force his way to Moscow with the remnant of his once splendid army. Peter met him at Pultowa on July 8 with 70,000 men, and, though he fought obstinately, overwhelming numbers decided the day and the Swede's army was destroyed. With a small band of horsemen Charles made his escape into the Turkish domains, where he remained, supported by an allowance from the sultan, whom he sought to induce to raise an army with

which to renew the contest. Having played the rôle of a most troublesome guest to the Turks till Oct. 1714, Charles, in company with only two officers, started back to the north, reaching Stralsund safely on Nov. 21. He was most enthusiastically received by the army, but his presence was not sufficient to enable the small Swedish garrison to resist the combined besieging army of Danes and Prussians. He succeeded in escaping in a boat, just as the town capitulated, and made his way across the Baltic into Sweden. Still bent on conquest, he raised a new army, with which he invaded Norway. On his second invasion of that country at the siege of Frederickhall on Dec. 11, 1718, he was struck by a ball and killed. The career of Charles affords a striking example of the misfortune it is to a kingdom to have a great military hero for a king. It also illustrates the strange infatuation, which causes the multitude to applaud and follow a leader who marches them to destruction, so long as he succeeds in gaining battles and inflicting greater misery on his enemies than his own troops suffer. Had Charles been content to make peace after his early wars, which though carried on in the enemies' country were really defensive, he might have claimed to be a protector of his people, but his insane thirst for conquest caused him to drain his country of men, to be killed or maimed in war or sold into slavery as prisoners. His early campaigns brought booty and wealth, but loss, disaster and poverty alone resulted from the later ones. The great mass of men who followed him to his wars never returned but met death or slavery. The people at home endured the misery of the loss of friends, the sharp pinch of poverty and distress resulting from the destruction of war. Like the barbarous idol worshippers, the Swedes continued to worship their hero and to furnish him victims by tens of thousands. Rejoicing in the early days of success in the destruction and misery he and his followers caused others, they at last felt a full measure of it themselves. This is in the very nature of war, yet savage man still worships the war god in Christian churches, as well as in pagan grove or temple, and still immolates on his altar the bravest and strongest of the youths, leaving the perpetuation of the race to those physi-

cally weaker and less courageous. By this system the race of the peaceful, though weak and defective, is preserved and propagated, while the more warlike element is destroyed.

Ulrica, younger sister of Charles, was chosen by the states to be his successor, but she was required to renounce all claims to despotic power and all hereditary right to the crown. A new constitution in forty articles was framed, which provided among other things; that all offices of trust or profit should be filled by the native nobility; that all taxes should be approved by the assembly; that the senate should manage public affairs in the absence of the sovereign and in case of a vacancy, and that cities and towns were to be confirmed in their corporate rights. This constitution was accepted by the queen. The policy of the new reign was to make peace, and this after some delay was accomplished, but with large concessions of territory to Russia. Ulrica soon abdicated and asked the election of her husband Frederick in her stead. This was done in 1720 with a further extension of the guarantees of the constitution. The king might propose laws, but the legislative power was vested in the states. Sweden enjoyed the blessings of peace till 1741, when bad counsel prevailed in the diet, and war was again declared against Russia. In the campaign which followed the advantage was with the Russians, and the Swedes lost Finland as the price of peace. For blood and treasure wasted there was no return but humiliation.

In Frederick IV, Christian VI and Frederick V, Denmark found peaceful rulers, who devoted their energies to the improvement of the condition of their subjects, but were yet without power, and perhaps lacking in disposition, to do justice to the peasants and poor, who still submitted to the grinding oppression of the nobles.

Sweden again became involved in war with Frederick of Prussia, 1755 to 1762, but the drain of men and resources was not so severe as in her former greater struggles. Gustavus III ascended the throne of Sweden in 1771. He delayed his coronation until he could make sure of the fidelity of the soldiers, when he threw off the mask and refused to recognize the constitution, under which his predecessor had been sub-

jected to the dictation of the nobility, and assumed dictatorial power. The diet was summoned, and with the army at his back Gustavus dictated terms to them and required the members to swear to support his constitution, which contained fifty-seven articles and placed all executive power in the king. The diet was still retained, composed of the four orders, but the king ceased to be dependent on its will.

Christian VII, a weak, narrow minded, dissolute son of a very worthy man, who had been a good king, came to the Danish throne in 1766. His accession was but another illustration of the evil of transmitting power by inheritance, and of the certainty that good men will sometimes have bad sons. Christian traveled abroad and brought home favorites, chief among whom was Struensee, whom the king found practising medicine at Altona and took into such favor that he soon appointed him prime minister. His success in also gaining the confidence of the young queen led to his destruction. He was arrested and tried, if a proceeding before a commission of his bitter enemies who instigated the prosecution can be dignified by that name, and condemned to death, which was inflicted in 1772. From this time till 1784, when the king's son Frederick was associated with him and became the actual ruler, the queen dowager administered the government, though in Christian's name. The young prince displayed unexpected talents and virtues. Through the stormy period of the French revolution and the ensuing wars he succeeded in maintaining peace till 1801, when, having joined Russia and Sweden in an alliance to protect their commerce on the seas against searches and seizures by Great Britain, the Danish fleet was defeated before Copenhagen with heavy loss of men and ships. This defeat was followed by a disruption of the coalition and a change of policy hostile to France. In Sweden Gustavus III proceeded to rule without summoning the diet, till impelled to do so in 1772 in consequence of a memorial of the nobles. He merely made them a speech and dissolved the diet. In 1787 he joined the Turks in waging war on Russia, but officers and men refused to go out of the kingdom to wage an offensive war, which the national diet had not sanctioned, and his expedition

into Finland failed. The diet was afterward convened, and Gustavus proposed a change in the constitution, conferring on the king the power to declare war and make peace. To this the clergy, burghers and peasant orders assented, but the nobles opposed it. Thereupon Gustavus caused the arrest of the refractory nobles, recognized Levenhaupt, president of the nobility, as authorized to give assent on their behalf, and he having affixed his signature to the act, it was treated as duly concurred in by all the orders. The king then abolished the senate and in its place appointed a council divided into two departments, one composed of six nobles and six commoners constituted the supreme judicial tribunal, the other of eight nobles and four commoners had cognizance of minor matters. The war with Russia was resumed and several bloody battles followed, but on the conclusion of peace in 1790, each party was left with the same territory as before the war. Neither party had gained, but both had suffered from the struggle. With a view to obtain supplies for an invasion of France, Gustavus summoned a diet to meet in 1792 at Gefle on the Gulf of Bothnia. With a sufficient military force to overawe all opposition he succeeded in obtaining what an exhausted country could furnish. Shortly thereafter he was assassinated at a masked ball. His brother became regent and ruled in peace during the minority of his son, who mounted the throne as Gustavus IV. Gustavus conceived a bitter hostility to Napoleon, early joined the British in the coalition against him and persisted in his warlike attitude when Russia and Prussia had concluded peace. His obstinacy carried him so far as to cause a rupture with Russia and Denmark. He attempted an invasion of Norway but was driven out and in 1809 was deposed. Charles XIII concluded peace with Russia, abandoning all Finland. In 1810 the French Marshal Bernadotte was named as successor to the Swedish throne, and in 1813 he started with 20,000 Swedes to join the allies against Napoleon and his ally Denmark and compelled the latter to cede Norway to Sweden. He then invaded Norway and forced the unwilling people to submit to Swedish authority. The Danes, having been on the losing side, were forced to submit to the permanent loss of

Norway and ceased to be a prominent power. The duchies of Schleswig and Holstein at all times occupied a relation to the Danish crown different from that of other provinces and had been the cause of many wars. In 1848 there was war with Prussia over these dutchies, and the peace of 1850 confirmed the possession of Denmark, but in 1864 they were taken from the Danes by the combined forces of Austria and Prussia and thereafter retained by Prussia.

The modern constitution of Denmark was drawn up by an assembly elected for that purpose in 1849 and ratified by King Frederick VII in 1850. It provided for a diet of two houses, both elective. The first, called the *Folksthing,* deals with the budget and general affairs, and is composed of one member for every 16,000 people, elected for a term of three years. The second chamber, called the *Landsthing,* under the revision of 1866 consists of sixty-six members, twelve of whom are named by the king, and the others are elected for terms of eight years by districts. Its functions are confined to local matters. The king is the executive head and is assisted by a privy council. In its educational system Denmark takes high rank. It is directed by a royal commission, composed of a president and four assessors, who appoint the professors at the university of Copenhagen and all teachers of grammar schools. Attendance at the schools is compulsory, and nearly all can read and write. Lutheran is the religion of State and confirmation is compulsory. Denmark is still afflicted with class distinctions and an hereditary aristocracy with an undue share of wealth and exemption from taxes and burdens. The perpetuation of the aristocratic class is fortified by the law of primogeniture, and other traces of the feudal system still abide there. On the whole, however, Denmark has gained far more in the last century from a more useful government than it did from a more powerful one in former years.

The union of Norway and Sweden was recognized by the congress of Vienna in 1814 and maintained till the peaceful separation in 1905. Since the fall of Napoleon, Sweden and Norway, so long given over to almost ceaseless warfare, have enjoyed a long period of peace and growing prosperity. The

two countries were united under one king in accordance with the *Riksact* of 1815, which left each free from the other as to all internal affairs, their foreign relations only being joint; both being under the same king, as executive head, and bound to defend each other in case of war. Bernadotte ruled Sweden and Norway under the style of Charles XIV from 1818 till 1844. He devoted much of his energy to internal improvements and those useful duties, which tend to the comfort and happiness of the people instead of their destruction. No material change was effected in the internal constitution of Sweden, either on its union with Norway or during his reign. In 1866 the constitution was amended and a diet established, consisting of two chambers, one elected for nine years by the provincial assemblies and towns, and the other for three years by vote of all natives possessing the required property qualification. The executive power is vested in the king, acting under the advice of a council of ministers, who are responsible to the diet. Legislation may be initiated either by the king or the diet, but must be concurred in by both. The council of state consists of ten members, seven of whom are respectively the heads of the several departments of justice, foreign affairs, army, navy, internal affairs, finance and ecclesiastical and school affairs. The *Riksdag* annually appoints a board to examine the record of the proceedings of the council and with power to indict them before the Rikratt. The *Riksdag* meets annually. To be eligible to the upper house a person must be thirty-five years old, own land worth 80,000 crowns or have paid taxes on an annual income of 1000 crowns. Members of the upper house serve without pay, but members of the lower house receive 1200 crowns per year, and are chosen by voters possessed of a property qualification of the value of 1000 crowns or farm lands worth 6000 crowns, or who pay taxes on an income of 800 crowns. All electors are eligible to the lower house. Sweden is divided into twenty-four counties with representative local governments, which levy local taxes and regulate local affairs. The judicial system consists of courts of three grades. 1. The *haradsratter* consisting of a judge and seven to twelve assessors elected by the people, in

which the assessors, if unanimous, may decide contrary to the opinion of the judge. In the towns there are *radhusratter,* boards of magistrates. 2. Three *hofratter* (higher courts) in Stockholm, Jonkoping and Christanstad and 3. the Supreme Royal Court, two members of which attend sessions of the council when questions of law are settled. Jury trials are not allowed except in cases relating to the liberty of the press. The educational system is of a high order. Attendance of the schools is compulsory. The universities of Upsala and Lund are flourishing institutions of high rank.

On the acceptance of the union of Norway with Sweden by the *Storthing,* the Norwegian representative assembly, the king sanctioned the constitution made at Eidwald on May 17, 1814, and promised that no change in it should be made without the consent of the *Storthing.* The fundamental law of Norway consists of 112 articles and made it an hereditary constitutional monarchy with the same king and the same rules of succession as those of Sweden. The constitution required the king to take the following oath before the *Storthing:* "I promise and depose that I will govern the kingdom of Norway conformable to its constitution and laws, so help me God and His holy writ." The cabinet is to consist of Norwegians only, who "shall carry on the government in the name and on behelf of the king," three of whom shall constantly attend the king while in Sweden. The ministry are accountable to the *Storthing.* The organization of the *Strothing* is peculiar. It is divided into two bodies, a *Lagting* and an *Odelsting.* The members of both are elected by districts merely as members of the *Storthing,* and the whole body selects from its members one-fourth its number, who constitute the *Lagting,* the other three fourths constituting the Odelsting. All bills are first introduced in the *Odelsting* by a member or a minister. If passed, a bill goes to the *Lagting,* which may concur or reject it. In case of a rejection by the *Lagting* it is again considered and if again passed with or without amendments it is once more submitted to the *Lagting.* If then rejected it is considered by the whole *Storthing,* sitting as one body, a two third vote being required to pass it. When passed the act went to the king,

who signed if he approved it, and suspended if he disapproved. If a bill had been passed without amendment by three regular *Storthings* elected successively, during sessions separated by at least two intervening regular sessions, it became a law without the king's sanction. Appropriation bills were not subject to the king's veto.

The democratic character of the *Storthing* was well tested, when the hereditary nobility was abolished by an act proposed in 1815 and finally passed in 1824 under the provisions of the constitution, without the king's sanction and over his opposition and repeated objection. The people of Norway escaped the blight of the feudal system. The peasants have always been free, and their tenure of land has been that of absolute owners. The lowest court in Norway is that of mutual agreements, held once a month in every parish by a commissioner elected by the householders. Next is the *sorenskrior* which sits quarterly and has jurisdiction of both civil and criminal causes. The entire kingdom is divided into four provinces, eighteen amts, sixty-four *sorenskriveries* and forty-four *fogderies*. The *stifts-amt* court consists of three judges with assessors, who are stationary in the chief towns in each of the four grand divisions, and review the action of inferior courts. All cases may be carried by appeal to the *Hoieste Ret* at Christiania. A judge is liable in damages for a wrong decision. The system of electing members of the *Storthing* is peculiar, in that the voters choose electors who meet in each county and name the members. A low property qualification is required or a public appointment to qualify a voter.

Norway has a good school system, raging from generally attended primary schools, middle and high schools to the university at Christiania. The Norwegian of to-day, as his ancestor the viking, still sails the sea, and considering the number of people in the country, Norway plays a very prominent part in the carrying trade and foreign commerce of the world. Her people are no longer the dread and terror of the seas, but honest, peaceful toilers, faithfully doing their part of the useful labors, yet preserving their old love of liberty and retaining an essentially democratic state.

In 1905, owing to the refusal of the King to accede to the demands of Norway with reference to the foreign consular service, the relations of the two countries were severed peacefully. King Oscar relinquished the crown of Norway on October 27 and on November 18 Charles of Denmark was elected king of Norway and took the name of Hakon VII.

In 1907 parliamentary suffrage was given to unmarried women over twenty-five years of age who pay taxes on incomes of 300 kroner in the country or 400 in town and to married women whose husbands pay taxes on like incomes.

CHAPTER XX

Germany, Austria, Hungary and Poland

The characteristics of the early German society have been briefly mentioned in Chapter II. The mass of the people were freemen, who bore arms and held as slaves prisoners of war and those condemned to slavery for crime. Important affairs were decided in assemblies of the tribe, and the authority of the nobles was temporary and largely dependent on the will of the freemen. Lands were owned in common and periodically distributed. Each village chose its own chief, and the heads of the hundreds and tribes were also elected by the freemen. The chiefs were accustomed to gather a personal following around them, which became the nucleus of military power and the starting point of established authority. In war the whole body of freemen constituted the army and went out to battle. When large numbers combined they chose their *herzog*. The Romans came in contact with the Cimbri and Teutons about 100 B.C. In numerous conflicts with various tribes thereafter they invariably found them strong and brave. In A.D. 6 Arminius formed a confederacy of such power that he was able to fall upon Varus and utterly destroy his legions. The Romans succeeded in establishing their authority over most of Austria, Hungary and along the Rhine, but were never able to extend their rule over interior and northern Germany. With increase in numbers and advancement in capacity for organization the Germans in turn drove the Romans out and invaded the Roman provinces. The Marcomanni formed a powerful league, which the Romans under Marcus Aurelius fought through successive campaigns. In the fourth century the Goths founded a great kingdom, extending across the continent from the Baltic to the Black sea. This was broken up by the Huns, who poured in over the Russian steppes from Asia. Under pressure from this invasion the Burgundians,

Vandals and Suevi moved westward, the first named taking the valley of the Rhone, the Vandals passing on through Gaul and Spain into Africa and the Suevi establishing themselves in Spain. The Goths under Alaric invaded Italy, seized Rome, and spread over Gaul and Spain. The Lombards also pushed southward and succeeded the Goths in the mastery of Italy. The Avars from the east established themselves in Hungary. Though these and other tribes played a most important part in the dismemberment of the Roman empire and established their authority over large districts, the most important advances toward the organization of a great German state were first made by the Franks, who dwelt along the lower Rhine. They lived in close contact with the Romans of Gaul, with whom they were comparatively friendly and from whom they borrowed notions of government. By the middle of the fifth century the Salian Franks, who dwelt about the mouth of the Rhine and along the shore of the North Sea, had an hereditary king, who ruled over a state divided into *gaue* governed by *grafen* appointed by the king. There were no nobles but the officials and immediate followers of the king. The popular assemblies of freemen were however still the source of authority and determined all matters of great concern. Under Clovis, 481 to 511, the kingdom was extended both east and west.

In the Germanic portion of the kingdom authority was delegated to favorites, as *grafen* in the counties and *herzogen* over larger districts, to whom were given large tracts of land. While the kings increased the measure of their authority in the western portion of their dominions and gradually ceased to consult with the freemen of the nation, in the east the assemblies of the tribes and hundreds were still held, and the authority of the king and his officers was kept in check. Through the ownership of land and the retainers by whom they were surrounded, the *grafen* and *herzogen* gradually extended their power over the freemen and shook off the restraints of the king, till under the impotent Merovings all real authority was in their hands.

Under the more vigorous sway of the mayors of the palace,

Pepin and Charles Martel, the central power was restored to some extent, and under Charlemagne a more thorough and efficient system was established. The authority of the Merovings was never established over the whole of Germany. The Saxons and many others repeatedly repudiated it. They preserved their free tribal system and refused to accept Christianity down to the time of Charlemagne. The Saxons refused to confer on their chiefs authority to bind them by treaties. No central authority capable of speaking for all the tribes existed. The Bavarians also retained much of the same independence.

Charlemagne extended his general system over Germany. Over the border counties he placed Margraves, who administered justice in his name, collected tribute and commanded the border forces. Over the interior counties he placed *grafen,* who decided causes in accordance with local customs and the general code. Four times each year each district was visited by his messengers, who reported to him and carried his commands. He also founded schools in connection with the churches and monasteries. Under his rule, however, the liberties of the freemen were curtailed, and their great assemblies no longer held. The nobles only were consulted, and their advice was followed when it suited him. The matters which had before been decided by the assemblies of freemen were determined by his appointees, and all popular gatherings were discouraged. The burdens of his many wars fell heavily on the people, who were often compelled to serve in distant parts to their financial ruin as well as risk of life. From all on whom he conferred lands, Charles exacted an oath of fealty, he also required all his prelates, counts and many great landowners, whose titles were not received as benefices from him, to take a like oath.

The feudal system developed as an accompaniment of the empire of the Franks. Its essence was rulership through a theory of land tenure, by which the relations of the different orders of society were based on their interest in or relation to the soil. The ancient Germans had not reached the conception of absolute title to land. They regulated occupancy in

severalty for from one to three years by the freemen of the tribe, but did not entertain the artificial notion of a title which continued through all time as an absolute property, even of the tribes. The Romans made no distinction in theory between title to land and to cattle and slaves employed in tillage. The feudal system came with the seizure of the lands of the Romans and others in Gaul by the invading Franks. Dominion over the land and the conquered people were acquired contemporaneously, and in granting local jurisdiction and mastery, whether as a mere landowner or as an agent of the sovereign power, Charlemagne exacted an oath of fealty. The high regard in which the authority of the church had come to be held and the fearful consequences, spiritual and temporal, which were believed to result from a violated oath, gave to the form of swearing fealty a force and value deemed of first importance. The object of the kings in parcelling out the land among feudatories was to secure their own dominion by the military service which their vassals were bound to furnish. The counts and Margraves appointed by Charlemagne under his vigorous rule obeyed his commands and carried out his policy, but under his weak successors the feudal system developed power in the local lord, who became a despot over those beneath him, a jealous and contentious neighbor to his equals and a haughty and often rebellious vassal of the king. On his own estate the feudal lord administered what had to pass for justice. The actual tillers of the soil were without protection as against him. The practice of building strong castles, within which the barons defied all authority and from which they issued to rob the passing merchant or to wage war on some neighbor nowhere gained more ample development than along the Rhine, Danube and throughout Germany. Not all of the lands of Germany were held by feudal tenure. The village system prevailed largely in the south, and peasant communities with lands in common have survived in various parts to the present day. It would be a tedious and perhaps profitless task to trace the endless wars for succession to power and the ever changing frontiers of the German emperors, who held more or less sway, according to their varying

capacities and the shifting combinations of local rulers with which they were forced to contend. Charlemagne was crowned at Rome by the Pope and held real power in Italy. In 918 Henry, Duke of Saxony, was chosen Emperor and, being a capable and vigorous ruler, extended his authority over the whole German population and in a great battle defeated the Magyars, who were the scourge of Germany at that time. He encouraged the building of towns for the traders, which were made places of defense, and at that early day introduced a check on the tendency of the great lords to draw all the freemen to their support as vassals. The towns steadily developed as centers of industry and trade, and their spirit of independence, which has never disappeared, has profoundly influenced German civilization in all succeeding ages. Probably this development should be attributed more to the genius of the people than to the policy of Henry. At Henry's request the nobles after his death chose his son Otto as his successor. He not only preserved but extended the bounds of the empire. He added Lombardy to his dominions and received the imperial crown from the hands of the Pope. Henceforth the German emperors assumed the title of Roman emperors and claimed to rule the Holy Roman empire, whether receiving the crown from the Pope or not and without regard to the possession of real power in Italy. Otto had to contend with rebellious subjects. The Roman title and efforts to rule Italy proved a source of weakness rather than strength to his successors. The real governing power soon fell into the hands of local potentates holding large estates, or of leaders chosen by the people in contests with the invading Northmen, Magyars and Slavs, against whom the Emperors failed to give protection. We read of dukes of Saxony, Bavaria, Swabia, Lorraine and Franconia, whose power and influence grew as feudal lords. Many unprotected owners of free or allodial lands, being at the mercy of more powerful neighbors, chose to surrender their holdings to a powerful chief and take them back as fiefs under the protection of the feudal lord. The central power was without sufficient vigor to restrain the great lords, who levied war on one another at will. The imperial

power ceased to be recognized as an inheritance after the accession to the throne of Arnuld, the illegitimate son of Carlman: thereafter the Emperors were elected. In 911 Conrad of Franconia was chosen by the nobles under the lead of Otto duke of Saxony. From that time down to the final separation of Austria and Germany in recent times the office was filled by election, but the number of electors was very limited. It was the choosing of an Emperor by princes who exercised more real power than he. The local rulers under the titles of *graf, herzog, Margrave, landgrave,* king, elector and other designations of lay rulers, and the bishops, archbishops, abbots and other ecclesiastical rulers, were each subjected to restraining influences of varying potency according to times and circumstances. The kings and grand dukes, who acquired authority over considerable districts, were dependent for their military following on their feudatories. The ancient German idea of determining questions of war and peace in assemblies of freemen was never wholly obliterated, although at times and in places disused. Local assemblies of the inferior nobility were often convoked in all parts of Germany, and exercised the power at times of choosing their overlords and of deposing distasteful rulers. Feudalism effected the exclusion from the assemblies of the great mass of the people, but the nobility, of whom Germany has been at all times most prolific, never became accustomed to submit to hereditary arbitrary power.

While in other countries it is possible to trace a governmental system maintained by changing dynasties through long periods of time, in Germany we trace the development of the civilization of a race of people maintaining the possession of their ancient home and often sending out conquering hordes to assume mastery of other lands, but never themselves at any time subjected either to a single foreign ruler or a firmly established government of their own with general power over the whole German people. In the earliest times of which we have any account, free German tribes occupied substantially all of modern Germany, the Netherlands, and Austria. The Romans succeeded in imposing their authority on the southern

and a little of the western part of this territory, but it was always a precarious dominion, and the crumbling of the empire first began where it came in contact with Germans. Except for a brief period while the Romans held Dacia—including modern Hungary—the empire was bounded by the Danube and the Rhine, beyond which the Germanic tribes maintained their freedom and defended their possessions against all comers. They have been attacked from every quarter, from the west in the early days by the Romans and later by the French and Spanish; from the north by their kinsmen the Danes, Swedes and Norwegians; from the east by Poles and Russians in the north and the later swarms from Asia in the south—Huns, Avars, Magyars, Tartars and Turks. In the southeast Goths, classed as of German stock, and Avars, Huns and Turks have established successively their authority over Hungary and part of Austria, but the German stock has never been rooted out, and only in Hungary, where the Magyars became the dominant race, have they been forced to give way and allow an alien people to impose enduring dominion over them. On the other hand the German Franks established their dominion over Gaul. The Goths, Vandals and Suevi overran Spain. Wave after wave of German conquest swept over Italy under the names of Goths, Lombards, Franks and Germans. Even Britain was colonized and mastered by the Angles and Saxons.

The preservation of the German race and the maintenance of its possession of central Europe have not been due to any strong centralized government, nor to harmonious or concerted action of the different states. The system of dividing inheritances equally among males has, during much of the time, been applied to those estates which carried also hereditary rulership, and has resulted in repeated divisions of states among heirs, who frequently fought with each other for the whole. The Franks under the Merovings suffered for centuries from the contests of the heirs of their kings for the inheritance. The rights of rulers great and small were the only rights considered, and the people were constantly called on to give up their lives in the struggles of vicious and cruel

nobles for mastery over the land. Nothing can be more sad and dreary than the records of the bloody struggles brought on by the ambition, malice, cupidity and other evil passions of those invested with authority. If the accounts of wars great and petty, with which the pages of German history are so completely filled, were in fact the records of all that has been done by the princes and rulers, a sweeping judgment, utterly condemning the whole and denying all value in such governments, might safely be pronounced, but war has always been the favorite topic of historians, and the doings of peace are mostly left without other record than their impresses on society and the face of the earth. Most prominent among the characteristics of German society, the good effects of which can be discerned in all periods of history, are the relative purity of domestic life, the respect accorded women and the equal treatment of children. No cruel theory of slavery to a father or husband was ever adopted. Purity and warmth of attachment of husbands and wives to each other and to their children without distinction have in all ages been eminently characteristic of the Germans. Though the Rhine was for centuries infested by its robber barons, and though wrong and robbery abode securely in the castles all over the land, in no country and among no people has there developed a more general and sturdy honesty than among the Germans. The performance of promises and the payment of debts imply industry, without which the ability is wanting. So the German people are noted for industry and thrift. This is especially true of the low countries, Holland and Belgium, where the manufacturing of fabrics and attendant foreign trade early developed. The strength of the German people has been and is moral strength. They have not until very recent times exhibited marked capacity for great combination for military supremacy, but have on countless fields exhibited a tenacity and obstinate courage which has preserved the integrity of their homes, where other people would have been crushed or enslaved. German development has been many sided. Henry III 1039-56 sought to reform the church, which had fallen into great corruption, and in 1046 he entered Rome, deposed

the claimants to the papal throne and placed on it a man of his own selection. In 1075 Gregory III assumed powers never before conceded to the Pope and issued a decree forbidding the clergy to marry and against investiture in clerical offices by laymen. In Germany half the land is said to have been held by the clergy, to whom it had been given by the sovereign, and the principal strength of the emperor was derived from the support of the churchmen attached to his interests by the feudal tie. Henry IV resisted and denied the power of the Pope. In return he was excommunicated and his subjects declared absolved from their allegiance by a papal bull. A long continued struggle, known as the war of the investitures, followed, which did not end till the concordat of Worms, by which as a compromise it was agreed that the right of electing the prelate should be vested in the clergy in the presence of the emperor or his representative, and that he should invest them with the sceptre, and he resigned the right of investing them with ring and staff. With Henry V the Franconian House ended, and Lothair duke of Saxony was chosen. The termination of the Hohenstaufen dynasty found the imperial authority reduced to a shadow. Frederick Barbarossa and his successors expended so much of their time in foreign wars, the crusade and in Italy, that the rulership in Germany was left almost wholly to the local princes. The great duchies were broken up, and the number of lords holding directly from the Emperor had been greatly increased. The imperial cities had developed into free republics. The ruling class in the country consisted of a large number of prelates, dukes, palsgraves, margraves, landgraves and counts, inferior in authority to the Emperor only and denying obedience to him. Beneath these immediate nobles were the mediate feudal barons with their inferior holdings. These looked down upon the simple freemen, who held allodial lands, whom they frequently robbed and oppressed. The great bulk of the population outside the cities consisted of the peasants and serfs, without any share in the government and wholly at the mercy of the nobility. Besides the free imperial cities there were mediate cities, acknowledging the supremacy of the lord of

the district. The election of the emperors, though in fact dictated by a few great princes, in theory required the action of the whole body of nobles who held by a tenure immediate from the Emperor. On the occurrence of the interregnum following the death of Conrad IV in 1254, through the influence of Pope Urban IV the electoral college was definitely constituted of the archbishops of Mentz, Cologne and Treves, the houses of Mittelsbach and Saxony, the Margrave of Brandenburg and the King of Bohemia. Prior to this time the territories governed by the princes were not divided among the heirs, as were private inheritances. This principle was now changed and divisions were made of the principal duchies.

The divisions of the states resulted in that bewildering multitude of petty sovereignties, which baffles all attempt at clear description. Contemporaneous with this splitting of states the free cities evidenced some capacity for organization and combination for the common good. The Rhenish Confederation founded by Mainz and Worms within a year included seventy cities. Even more important was the Hanseatic League, originating with Lubeck and Hamburg, which ultimately took in over eighty cities and became one of the great commercial powers of Europe. In 1273 Rudolph of Hapsburg, a petty Swabian noble, was elected Emperor and obtained the grant of the fiefs of Austria, Styria and Carinthia to his son Albert. In this manner the rule of the Hapsburgs in Austria was inaugurated and thereafter many Hapsburgs were recipients of the imperial title.

In 1356 Charles IV promulgated what is termed the Golden Bull, defining the rights of the imperial electors in certain particulars as to which there had been uncertainty. It had not been settled whether all the princes of each electoral house were entitled to vote, nor by what rule a selection of an elector should be made from different branches of a family. This was definitely settled on the principle of primogeniture and a single vote to each house, thereby limiting the number of electors to seven, the three archbishops before mentioned, the King of Bohemia, the Rhenish palsgrave, the Duke of Saxony and the Margrave of Brandenburg. The electors

were recognized as invested with sovereign powers within their respective states, and their subjects were allowed to appeal to the imperial tribunals only in case of a refusal to administer justice. When the imperial authority was at a low ebb, voluntary combinations of various kinds and for different purposes sprang up. The crusades developed the order of Teutonic knights, which became a potent force for a time. During the twelfth century a secret organization known as the Vehmgericht grew up, and continued its activity down through the reign of Charles IV (1347 to 1378). Its operations much resembled those of a modern frontier vigilance committee in its summary administration of punishments for offenses against the order. It operated as a check on the arbitrary power of the princes, though often used to gratify the malice of members of the organization. The Hanseatic league grew in importance and waged successful warfare with the Danish king for the protection and extension of its commerce. The petty princes were allowed, and even encouraged, to form leagues among themselves for the maintenance of peace. The actual government of the country was divided between the clergy, whose influence was powerful at all times, the great princes, who were held in check by the feudal lords under them, and the free cities. In these there were struggles between the leading families claiming special privileges and authority and the trades guilds and democratic elements which sought self-protection. The greatest vigor was found where the brains of many were actively employed in public affairs. With the development of industry came the desire for knowledge and the study of the works of the Greeks and Romans. Commerce can only flourish in an atmosphere of order and regulated by recognized laws. The study of Roman law was taken up by the commercial cities, and its rules were followed where applicable. The Germany of today is noted for its schools and the general diffusion and profundity of its learning. Comparitively poor in the quality and extent of their lands, the Germans are perhaps the richest of all the people of the earth in that best possession of all, the knowledge acquired through past ages. The founding of its universities, which have ex-

ercised such a potent influence on modern civilization, began in the fourteenth century. Among the earliest were those of Prague 1348, Heidelberg 1386, Wurzburg 1402, Leipsic 1409, Rostock 1419, Greifwald 1456, Tübingen 1477.

The cities of Swabia formed a league for mutual protection, which for a time became quite potent, and entered into an alliance with the Swiss confederates, but the princes joined in a counter alliance, and in 1388 in a battle at Döffingen the cities were defeated and the tyranny of the petty despots became still more grinding. In the next century a similar war, known as the margraves war, was waged between a league of many cities, headed by Nuremburg, and the princes. In this, as in the case of the Swabian league, the advantage was on the side of the princes. About this time the mediate nobles, prelates and cities began to assert their rights through the medium of local diets into which they gathered. They claimed the right of determining questions of taxation and the purposes to which the money should be put, and also to insist on a regular administration of justice. These diets, composed of the lesser nobility holding a position intermediate between the peasants and the great princes, exercised a salutary check on the arbitrary powers of the great lords. The discovery of gunpowder caused a great change in the art of warfare and was followed by the organization of bands of mercenary troops who fought for whomever would employ them. In 1488 a Swabian confederation, in which princes, mediate nobles and towns joined for the establishment of peace, produced good results temporarily.

With the advent of gunpowder and mercenaries the feudal tie was severed and feudalism came to an end. At the farther extremity of the empire the Magyars, who first appeared as nomads from Asia devastating the country and spreading terror among the Germanic people, gradually adopted settled habits and planted their habitations in a district which had been most of the time under the sovereignty of the emperors.

Nowhere have the baneful tendencies of power long exercised to fall into the hands of men who disregarded the primary purpose for which the power was conferred been more

clearly exhibited than in the great Roman Church. The humble purity and self-sacrificing spirit of Jesus were the foundation on which the vast power of the popes was built. Temporal power and revenues became the prime concern of those who ruled the church, and venality and immorality so prevalent that, instead of leading the people in the paths of virtue, the churches became centers of pollution. Germany, with its free cities, its local diets of nobles and its ancient traditions of virtue, quickening with the light of the ancient world, which it had begun to study, was the natural field for the Reformation. In 1517 Martin Luther nailed to the church door in Wittenberg his famous thesis. This was not the first attack that had been made on the prevalent abuses, but it precipitated the conflict which divided the Christian world into hostile factions, who fought, murdered, burned and tortured each other with a fiendish cruelty almost inconceivable. Huss suffered martyrdom one hundred years before for like sentiments. The immediate occasion of Luther's stand was the sale of indulgences by papal authority. This was a remarkable illustration of the prostitution of office for the gratification of the officials. In order to raise money to maintain the pope and high church officials in the splendor so incompatible with the teachings of the Master, the Pope sent out his agents to sell licenses to violate the moral law as taught by the church, and to grant immunity from the consequences of wrongdoing before the commission of the act. The purpose was to raise money to enable the clergy to gratify their own vices. It was even worse in principle than the ordinary robbery of those whom a ruler is bound to protect to minister to his vanity or sensuality, because it encouraged those whose money was taken under a fradulent claim of power to grant absolution in advance, to violate the moral law and do wrong to themselves and to others. It was a marked exhibition of the inherent tendency for those who possess great power to forget the duties they have assumed and the services they owe to the multitude and pervert their offices to the gratification of their own lusts and selfishness. The church, with its pure and lofty mission of leading men in the paths of virtue and brotherly love,

was distorted into a hideous combination of impostors, who encouraged the violation of the moral law by others for the price of sin paid to themselves. Against the power of the vast church organization Luther opposed the teachings of Christ and the moral law. The free cities, the local diets, the schools, and even the clergy, perceived the strength of his position and the falsity of the papal claims. The revolt against the false assumptions of ecclesiastical power spread with surprising rapidity throughout Germany. The democratic elements sided with Luther, and the nobility divided. The imperial force naturally sided with the Pope. As in most revolutions, the scope of the issue broadened and deepened. What at first was merely a protest against a particular abuse became an attack on the assumption and exercise of a function not warranted by the constitution of the church. Direct accountability of the individual to his Maker, instead of mediate accountability through the church, became the new doctrine. Real spiritual penance of the sinner, instead of money payments or mortifications of flesh imposed by the priesthood, was taught by the reformers. It was a partial return to the democracy of the early church. Whatever forms or names may be assumed, there are at the bottom only two distinct and antagonistic principles of government, the despotic, by which power is exercised by the ruler for his own purposes and gratification, the democratic, where it is used for the good of the multitude. The terms are here used to express purposes, not forms of government. The former is essentially vicious, because it wrongs the many to minister to the vices of the few. The latter is essentially moral, because at its foundation there must be justice, fellowship and mutual help, even if real brotherly love is wanting. Many governments have seemed to be almost wholly despotic. None have ever been purely democratic in the above sense for any long period. The despotic tendency is always present in every established system. Its tendency to grow has been nowhere better illustrated than in the Roman church.

Naturally the despotic elements of society soon rallied to the support of the Pope, while the more democratic sided with

Luther. This is a general statement of the situation, subject to many qualifications resulting from personal interests, surroundings and influences.

Maximilian of Austria was on the imperial throne when Luther took his stand, but died in 1519, and was succeeded as emperor by his grandson Charles V, who was also King of Spain, the two Sicilies, and Lord of Burgundy and the Netherlands. Charles was a typical despot. In the Diet of Worms in 1521 he issued an edict denouncing Luther and placing him under the ban of the empire. Before his election the electors had exacted from Charles a promise that he would respect German liberties and grant reforms which had been demanded from Maximilian. The members of the diet became alarmed at the power assumed by Charles in this edict and took steps to impose checks on it. An administrative council was nominated for the government of Germany while Charles should be away. The number of troops to be raised by each state for common purposes was also definitely settled. Charles invested his brother Ferdinand with sole authority over the Austrian territories and left Germany to enter on his war with Francis I of France. During the absence of Charles Ulrich von Hutten, a young nobleman, conceived the idea of forming a united reformed German state, and under the leadership of Francis von Seckingen a large force was gathered and an attack made on the elector of Treves, but the princes joined their forces and Seckingen was defeated and slain. The idea of religious liberty suggested to the peasantry a revolt against the grievous oppression under which they suffered, and in 1524 they sought their rights with the aid of a few of the nobility. The war spread over much of southern and central Germany, and at first the peasants met with some success, but in the following year they were completely subdued and their condition rendered even worse than before. By these wars the power of the princes was augmented at the expense of the lesser nobility. Nevertheless the Reformation made rapid progress and gained recruits from the various orders of society. Diets were held for the purpose of settling the controversy, in which Charles persistently sought to restore the authority of

the Pope, but met with stubborn resistance from the Protestants. Arbitrary power is never tolerant of criticism of its vices. It clings to them with more tenacity and desperation than to deserved authority. The sale of indulgences, the simony, venality and sensuality of the clergy could not be defended by reason, and all discussion of the truth tended to undermine clerical power. Stern repression was therefore resorted to. Councils were held at Spires in 1526 and 1529, at the first of which the administrative council, which leaned toward the Reformation, granted religious freedom to each state, but at the one in 1829 changes in religion were forbidden. In the following year a diet was held at Augsburg, at which the Lutherans submitted a summary of their doctrines in what was styled the Augsburg Confession. They declined to attend mass and held services of their own in defiance of the will of Charles. In 1532 Charles granted the peace of Nuremburg, by which temporary toleration of the Augsburg Confession was allowed. The Lutheran princes and cities formed a league which took in most of the northern cities and princes and many of the cities of southern Germany. After the peace of Crespy, concluded with France in 1544, Charles turned his arms against the Protestant league and defeated them. He thereupon attempted to compel submission in religious matters. He assumed arbitrary powers which no German Emperor since the early days had been able to wield. His tyranny was distasteful even to the Catholics, and Maurice of Saxony, who had sided with Charles in the first contests, now became the leader of the forces against him. Joining forces with Henry II of France, he compelled Charles to flee from Germany and sign the Peace of Passau, agreeing to summon a new diet, which, having met, again provided for religious toleration of such sort as each state might see fit to accord. This still left abundant room for local discord. The crime of heresy depended for its existence on the ascendency of Catholic or Protestant and concord with or dissent from the faith of the ruler. The atrocities perpetrated in the lowlands by the duke of Alva, and by Frederick II in Bohemia, were characteristic of a war carried on by a temporal despot

to maintain the false and pernicious rule of a malignant clergy. Nor were the atrocities all on one side. Where they were in power, the Protestants were often as intolerant and bloody as the Catholics. The pure religion of Jesus was not in issue on either side, but tyranny and malice brazenly claimed religious sanction for their fiendish atrocities.

The Thirty Years' war devastated Germany and exhibited the evil that men may do, when to war's ordinary barbarities are added the blind fury of religious fanaticism. Though Germany was the principal field of the struggle, Spain, France, England and Sweden were at times involved, and, when it ended, France took territory on the west and Sweden from the north, thereby materially diminishing the German territory. The long struggle left Catholics in the ascendant in the south and Protestants in the north, and the peace finally concluded at Westphalia in 1648 recognized Catholicism, Lutheranism and Calvanism. The imperial power had been completely shaken off by the Protestant citizens and princes, and after the peace substantially all authority passed to the diet, which alone had power to make laws, declare war and conclude treaties in the name of Germany. Its power over the states was however shadowy, for they were conceded the right to make alliances among themselves, and even with foreign powers if not injurious to the empire. After 1654 the diet became a permanent body and was made up of representatives of the princes and cities, but it exercised little authority. The real governing power lay in the local rulers and the governing bodies of the cities. As a result of the war the population was reduced from about 20,000,000 to 6,000,000 or 7,000,000, and the destruction of property was in a still greater proportion. The once flourishing and powerful Hanseatic League was ruined and broken up in 1635, during the progress of the war. Among the worst effects of the long struggle was the growth of the spirit of despotism among the ruling class, engendered by so long a strain of war, and the feeling of helplessness, dependency and servility among the multitude. Even in the cities democratic systems were converted into powerful oligarchies or swept away by princely

dictation. From the close of the Thirty Year's war to the French Revolution despotic theories of government prevailed, and the spirit of militarism grew. The Austrian Hapsburgs continued to hold the imperial title most of the time, but under the lead of vigorous rulers Prussia developed a rival German power. From the time of Urban IV, when the constitution of the electoral college was first settled, the Margrave of Brandenberg had been one of the imperial electors, and in 1438 the elector Frederick became a candidate for the imperial throne. His successor Frederick II, 1440, 1470, vigorously asserted authority over the cities and built a castle in Berlin.

In 1230 the priestly military order of Teutonic knights, which had been formed during the crusades, entered Prussia, whose people had not yet been converted to Christianity. In the course of a half century they subdued the country and received a grant of dominion over it from the emperor. Under their rule, the country, which was at their advent but sparsely peopled, was settled with many German colonists, and cities and towns were soon built. In the course of a century the power of the order declined, and in 1467 West Prussia became a fundal dependency of Poland. In 1511 the Teutonic Order chose Albert, of the Franconian branch of the Hohenzollerns, as grand master of their order. He embraced the Protestant cause and converted the lands of the order into a secular hereditary duchy in 1525, continuing as a vassal of Poland. In 1611 this duchy fell by inheritance to the elector of Brandenburg, and the two districts were joined as one country under the Hohenzollerns. Thereafter in 1657 under Frederick William, called the great elector, it was declared independent of Poland. In 1701 the elector Frederick III, with the assent of the Emperor purchased by aid in his wars, assumed the title of king and took the crown at Königsberg under the style of King Frederick I of Prussia. Under his rule Prussia made little progress and still ranked along with Bavaria, Saxony and Hanover as dependencies of the empire. His son and successor Frederick William reformed the finances and remodelled the army, which he brought to a

high state of discipline and efficiency, so that Prussia took fourth rank as a military power, though only twelfth in population. He was a despot, but a hardworking, thoughtful and economical one, who labored to add strength to his state. With the aid of the Saxons and Danes he defeated the Swedes and drove them out of Pomerania. He collected taxes in money for the maintenance of his army and abandoned entirely the feudal military system. Everything was bent to strengthen the military establishment, which absorbed five-sevenths of the total revenues. Rigid discipline was imposed, not only on the army but on all employed in the civil service, whose duties were strictly defined and derelections severely punished. The long and vigorous reign of Frederick II, called the great, 1740 to 1786, witnessed the further development of the military despotism and increase of the territory of the kingdom at the expense of Austria and Poland. In his contests with Austria, France and Russia, Frederick gained great victories, but at fearful cost in human life and misery. The seven years' war witnessed the destruction of numerous towns and villages and a decrease of half a million in the population of the kingdom, but gave to the king the title of Great. Frederick nevertheless labored earnestly to advance the interests and prosperity of the country in accordance with his despotic ideas, and some of his innovations were real reforms. He completely separated the judicial from the administrative departments of government, abolished torture in trials and capital punishment for inferior offenses, confining executions almost entirely to cases of murder. He reduced the expenses of litigation and required that every cause be disposed of within a year. He undertook a codification of the law, which however he was not able to complete. He was a vigilant master over all the public servants, whom he closely watched and held to strict account. Himself an untiring worker, he exacted strict attendance to duty from his subordinates. In matters of religion he granted full liberty to each to go to heaven by any route he chose to travel and allowed full freedom of discussion. The stratification of society he left unchanged, but allowed no authority to the diets conflicting with

his will. His successor ruled according to the same principles, but without the vigor or ability of Frederick.

Austria started as a Margravate of Charlemagne and grew in prominence and territorial extent at times. In 1453 it was raised to the rank of an archduchy. The frequent choice of emperors from the ruling house of Austria gave it a marked prominence among the German states, and the history of the rulers of Austria is largely identical with that of imperial Germany. The Thirty Years' war and the growth of Protestantism in the north weakened the influence of Austria in Northern Germany, and was the entering wedge which ultimately resulted in the destruction of the empire. As a result of its struggles and negotiations, by 1713 Austria had 190,000 square miles of territory and 29,000,000 people. The reign of Maria Theresa, who ascended the throne in 1740 and ruled till 1780, witnessed great wars, including the Seven Years' war with Frederick of Prussia, but was a period of great prominence for Austria, which added still further to its territory. Her husband Francis I was chosen Emperor (1745 to 1765), but his imperial powers were completely overshadowed by those of his wife as ruler of Austria. She was not only a vigorous head of the military power, but a reformer in civil affairs, though by despotic methods. Her son and successor Joseph II attempted sweeping reforms, which however he was unable to carry out.

At the breaking out of the French revolution nearly every vestige of ancient popular government had been obliterated. Arbitrary power was everywhere exercised under a claim of divine right to rule, and backed by military force. In the south there was no constitutional check on the absolute power of the ruler of Austria, save in Hungary, and this was little regarded. In the north the Prussian despotism was vigorously maintained, and in the minor principalities equally arbitrary and despotic maxims were followed. Yet the traditions of ancient liberties still survived, and the people were a strong and vigorous race, fitted for rapid advancement under favorable conditions. As a result of the peculiar political organization of Germany the superior nobility, who were the

real governing power, jealously guarded their social rank, and by their code of *Fürstenrecht* valid marriages of those ranking as the immediate vassals of the emperor could only be made with those of equal rank. Offspring by marriage with the inferior or mediate nobility were treated as illegitimate. The hereditary political power of the margrave, duke or other titled prince, passed by the rule of primogeniture, as did the lands held in feudal tenure from the crown, but allodial lands and personal estates were equally divided among the sons, or in some instances the daughters also took a share, sometimes less than that of a son. All the children however ranked as nobles of inferior degree. The inferior nobility were no less tenacious of their social rank than the princes. The rule of inheritance of rank by all the children has resulted in great multiplication of the lesser nobility, many of whom are exceedingly poor. Prior to the Thirty Years' war the petty lords wielded considerable power and political influence through the diets, but the long struggle left them shorn of their importance, except as they were the holders of estates. As landholders they had valuable privileges. They were judges of all matters of dispute between tenants of their estates, and exempt from taxes and from having soldiers quartered on them. They had the right to settle tradesmen on their estates in opposition to the town guilds. They enjoyed exemption from that severity of punishment which was visited on offending peasants.

The system of land tenures, prevailing at the time of the French Revolution and still unchanged in many parts, exhibits many peculiarities, resulting from ancient ideas and conditions. The village system with many modifications was common throughout Germany, especially in the south and among the Slavonic people. Whether the land was allodial or held by feudal tenure under a lord, in many places all land, except that immediately about the dwellings, was held in common and subject to changing occupancy by periods of varying length. Pasture and woodlands were usually used in common, the tilled land only being divided. In other places the cultivated land was divided and held in severalty, but

without power of alienation by the owner without the consent of all who might be entitled to inherit it, and the balance was used in common. Various regulations were made with reference to the construction of dwellings and the division of the land. In some places the village is built along a single street, and the land cut in long strips extending back from the dwellings. In others the dwellings are in a cluster and the land divided so as to assign to each his three fields, to be tilled according to the prevailing three field system of rotation of crops. Where the system of permanent ownership of these fields obtains, whenever cultivation is extended over reclaimed forests or other common lands, a division of these is made, and each receives his allotment. As a result of inheritance still further divisions are made, and thus it has come to be the case that much of the land is divided into exceedingly small patches, and one owner may have a great number of them scattered about. In some cases, for mutual protection, the peasants gathered into larger villages, and the lands they held were scattered over a considerable district. In some places all the lands have been divided, while in others there are still common pasture, forest and meadow lands. In the northern and western parts the village system is not general; the farms are in compact bodies, with dwellings scattered over the country. This has been promoted by the entailment of estates, by a custom of leaving the land to a single heir and by restriction of the numbers of children.

The minute subdivision of lands has been regarded as an evil, and in some of the states methods have been adopted by the government of reapportioning the districts so as to throw all the lands of an owner into a compact body. This has been found a somewhat difficult task to perform satisfactorily. While some of these peasant holdings were free or allodial, as a rule they were under a lord, who not only took a share of the produce, but was also accustomed to compel the tenant to labor for him on his separate lands a portion of the time. Such service was called *frohn,* and, as the lord was himself the judge of all matters of right on his estate, was often very oppressively exacted. The condition of the peasantry from

the establishment of the feudal system till the revolution was essentially that of serfs, and those claiming allodial tenures were loaded with taxes or pillaged in one form or another, so that their condition was hardly distinguishable from that of the feudatories. Poverty and oppression in peaceful times, ruin and death in war, have been the lot of the German peasants for many centuries. In the cities the ancient democratic systems had been crushed, and all political power was in the hands of the princes and nobility.

In the development of its system of laws the situation of Germany was somewhat peculiar. After Charlemagne no Emperor was sufficiently powerful, and at the same time sufficiently interested in general rules of law, to undertake much legislation for the government of the empire. The feudal system furnished the basis of land tenures, and the peasantry had to submit to the rulership of their lords, whose will, whatever it might be, was law. On church lands the rule of the clergy and heads of monastic institutions was probably rather more mild on the whole than that of the barons, but was generally oppressive. For the government of trade the Roman law was studied and followed with more or less modifications. During the times when the free cities maintained their leagues, they established their own rules and customs, but with the founding of schools came the study of the learning of the Greeks and Romans, and the principles of the Roman law were taken as guides in the administration of justice.

The history and government of Poland is closely allied and interwoven with that of Germany, though the stratification of its society is somewhat different. In the earliest times of which we have any accounts there were three orders, 1. The nobles, who were the rulers; 2. Peasants, personally free but bound to do fixed services for their lords; 3. Serfs, who were the property of their masters and under their absolute power. In 965 King Mieczyslaw, in order to gain the hand of the daughter of the Bohemian king, consented to become a Christian and be baptized. He thereupon proceeded to convert the nation by commanding all Poles to be baptized. The Poles came in frequent contact with the Russians in the east and

the Germans on the west. In these struggles they were on the whole fairly successful in maintaining their position, and by the time of Casimir III Poland held high rank among the states. In 1364 the foundation of the university of Cracow was laid by Casimir, whose plans with reference to it were afterward carried forward by Queen Jadwiga. In 1347 by the statute of Wislica many matters were regulated. The duty of a palatine was to lead the troops of his palatinate in war and to preside over the diet of the nobles of his province. Under the palatines were castellans who were their lieutenants in war. Palatines and castellans were senators and judicial officers who held court in their provinces. *Nuntii,* deputies, were chosen from the various districts of each palatinate. The senators, of whom sixteen were ecclesiastics, all sat in one house. By this statute the power of life and death, theretofore exercised by the nobility over the lives of their serfs, was taken away, and a peasant ill treated by his lord was allowed to remove to the estate of another. The inhabitants of the towns, of whom many were Germans, were governed by the law of Magdeburg, to administer which a Teutonic tribunal was established at Cracow, consisting of a judge versed in foreign law and seven citizens nominated by the starosta. It is said that before this there were no written laws in Poland. The national diet was made up of the nobles and upper clergy and some of the prominent citizens. It soon not only determined questions of peace and war but also elected the kings. The diet chose as Casimir's successor Louis, King of Hungary. In 1369 by the marriage of Queen Jadwiga with Jagiello Prince of Lithuania the two countries were united. He was not a Christian, but became one and proceeded to convert his Lithuanian pagan subjects by commanding them to be baptized. In a diet held in 1496 it was ordained that thereafter no peasant or burgher should hold office in the church, and the peasantry were obliged to submit their causes to courts presided over by their noble masters. It was also decreed that no king should declare war without the consent of the diet. Shortly after this burghers and peasants were prohibited from owning lands. In the diets the Slavonic

principle of unanimity of decision was adopted. This proved not merely inconvenient but disastrous, and rendered it possible to prevent action on any matter of importance by merely corrupting one member. When majorities were effectively checked by minorities, fights and bloodshed often followed. Nowhere was the rule of an oligarchy more complete and tyrannical, and nowhere else was there ever more turbulence and discord among the governing body. In 1529 Sigismund published his code of laws in the White Russian language. Though by the *pacta conventa,* exacted from Henry of Valois when he was elected to the Polish throne, the power of the King had been closely limited, on the choice of Stephen Batory as his successor, after Henry's return to France to become its king, still further restrictions were imposed by the nobles. Sixteen senators were chosen at each diet to attend and counsel with the king, and no decree could be issued by him without their consent. The right of final appeal to the king was taken away, and his jurisdiction was limited to a small district about his palace. The local diets of the palatinates elected their judges, who constituted courts of final jurisdiction over causes between the nobles. In 1617 Wladislaw, son of King Sigismund of Poland, was chosen Czar of Russia, but he was soon driven out. In 1652 a single member of the diet by his veto prevented a resolution in which all the rest concurred. Afterward action was similarly defeated on many occasions. Under John Sobieski the Poles took a leading part in the great battles with the Turks which resulted in their crushing defeat before Vienna in 1683. From this time the power of Poland rapidly declined. In 1772 the first partition was made, in which Prussia, Austria and Russia each took portions of its territory, and in 1846 the last vestiges of its independent national existence were obliterated by its great neighbors. The constitution and characteristics of Polish society were peculiar. It had law but no justice, a king with little real power and a sorely oppressed peasantry. The nobility, who alone possessed real power, surrounded themselves with their retainers and lived in luxury and vice from the labors of their serfs. In their associations with each other

they were turbulent, quarrelsome and jealous, yet in contests with kings and peasants they zealously maintained the unjust privileges of their order. Poland presented compactly the undivided rule of the nobility, which throughout Germany was interspersed with democratic cities and peasant communities maintaining more or less independence in the management of their local affairs. Its loss of national life was mainly due to the lack of moral basis for the authority exercised by the nobility and the want of a recognized theory binding the people together for their mutual protection. Gross oppression of the multitude destroyed the military efficiency of the common people, and the rivalries, ambitions and jealousies of the nobility unfitted them for coöperation against foreign enemies.

In its educational institutions Germany took high rank at the time of the French Revolution, most of her great universities having been founded long before that time. Religious toleration and a genuine desire for knowledge tended to favorable conditions for the dissemination of political truths. While German rulers were alarmed at the uprising in France and arrayed themselves on the side of kingly rule, there was much response among the people to the demand for liberty, equality and fraternity. With the cry of "war to the palace but peace to the cottage," Napoleon was able to recruit his armies on German territory and to attach many of the smaller states to his interests. Though himself a military despot, Napoleon succeeded in posing as the leader of the multitude in an attack on arbitrary power, and his successes were largely due to the rising spirit of the commonalty. During the progress of the wars with Napoleon reforms were freely promised by German rulers, and in 1807 under the lead of Stein Prussia established a responsible ministry as the confidential advisers and executive agents of the king, abolished serfdom, removed the disability to own land from the common people, and allowed to all a free choice of occupation. By the *Stadteordenung* of 1808 the right of local self-government was restored to the cities, and the system of administration was thoroughly reformed. In 1810 Hardenberg broke the

bond between the peasants and landed aristocracy by making the tenants absolute owners of two-thirds their holdings, leaving the other third to the landlord. Yet more important was the establishment of the great common school system under the guidance of William von Humboldt, which has been of such incalculable benefit. The military system was again remodelled so as to include in the army the whole body capable of bearing arms. In the final struggle by which Napoleon was overthrown, Prussia played a leading part. Thorough reforms were also made in the civil administration, and appointments were based on competitive examinations.

In Austria, though some concessions were made tending to relieve the oppressed peasantry, and more were promised, no marked change of system was inaugurated.

In 1806 Napoleon succeeded in forming the Confederation of the Rhine, composed of central and southern states with himself as protector, thus detaching from Austria and Prussia a large German element. After the first peace of Paris a congress of German state was held at Vienna to rearrange the political constitution of Germany. Prussia was given part of Saxony, the Rhineland and Swedish Pomerania, Austria took Salzburg, Vorolberg and Tyrol. The members of the Rhenish confederation were mostly left with their territory intact, the kingdom of Westphalia and other states established by Napoleon being abolished. Hanover was made a kingdom, Weimer, Mecklenburg and Oldenburg grand duchies, and Lubeck, Bremen, Hamburg and Frankfort free cities. The German Bund was formed, composed of thirty-nine states, each independent in its local affairs. The governing body was a Diet in which each state was represented, sitting at Frankfort under the presidency of the Austrian plenipotentiary. The Diet was authorized to settle all disputes between members of the confederation, neither of which was allowed to make war on another, nor to form alliances against the interests of any other member. It was further provided that each state should establish a constitutional system of government.

The restoration of the Bourbons to power in France was followed by a reaction in which the kings again asserted their

arbitrary powers. Austria, under the guiding hand of Metternich, continued to be a harsh and grinding despotism, ruling over a diverse population of Germans, Magyars, Slavs, Italians and others. No steps were taken to secure popular representation or substantial justice to the lower stratum of society. Neither did Prussia proceed to form a constitutional government, though a number of provincial diets were appointed. The government soon began to fear the march of liberal ideas at the schools, and in 1819 a conference of the ministers resulted in issuing a decree placing the universities under police supervision and providing for rigid censorship of publications. A commission was also appointed to detect secret political societies. In Nassau, Weimar, Bavaria, Baden and Würtemberg constitutions were granted which resulted in checking the arbitrary rule but little. The reactionists maintained their ground till 1830, when constitutional governments were established in Hanover, Brunswhick, Saxony and Hesse-Cassel, and freedom of the press was granted in the other constitutional states. The main advance made through the medium of the Diet was in the abolition of trade restrictions and the foundation of the *Zollverein,* in which all the states but Austria joined. In 1847, to prevent a popular rising which seemed threatening, Frederick William IV of Prussia summoned to Berlin a diet, made up of representatives of the provincial diets, which formulated its demands for popular representation in government, but the king refused to abate his claims of power to rule by right Divine. In the following year a popular convention was held at Mannheim, at which four fundamental reforms were demanded,—freedom of the press, trial by jury, national armies, and popular representation. These demands were universally adopted by the liberals, and within a few days thereafter there was a liberal ministry in each of the small states. In Austria Metternich was dismissed, a new cabinet for Hungary appointed and constitutional government promised. In Prussia there was a popular uprising, and Frederick William promised compliance with the demand for constitutional government. An assembly was summoned, at which the demands of the

reformers were discussed. At last the king dissolved the assembly, and on Dec. 5, 1848 granted a constitution and gave orders for the election of a representative chamber. In the meantime, at a preliminary meeting held at Heidelberg, a call was made for all Germans who were or at any time had been members of the Diet to meet at Frankfort to consider the subject of national reforms. About 500 accepted the invitation and convened. After long discussion and the failure of many projects for a compact German state, a scheme was adopted and accepted by a number of states under the name of The Union, and on March 20, 1850 a parliament consisting of two houses, chosen under the arrangement, met at Erfurt. Austria again headed the reactionists, and under her leadership representatives of the states met at Frankfort on Sept. 4, 1850, and proceeded to act as the restored Diet. Prussia stood at the head of the Union, Austria of the old Bund. Prussia and its supporters however soon yielded, and from June 12, 1851, the old Diet was recognized and went on with its sittings as before and the Union disappeared. Following the outbursts of 1847 and 1848 was a period of reaction in which political offenders, *i.e.* those opposing arbitrary power, were severely treated, and petty despotism again appeared triumphant notwithstanding the constitutions. In 1864 Prussia took Schleswig, Holstein and Lauenburg from Denmark by force. In 1866 the superiority of the military establishment of Prussia over that of Austria was demonstrated in a most remarkable campaign begun June 14 and ended July 3 by the battle of Königgratz, in which Austria was completely humiliated. Thereupon Prussia annexed Hanover, Hesse-Cassel, Nassau, Frankfort, Schleswig and Holstein. All states north of the Main were forced into a North German confederation with Prussia at its head. Steps were taken for the formation of a confederate parliament, but the war with France in 1870 cleared the way for the present empire. On Jan. 18, 1871 in the palace of Versailles and in the presence of a great assemblage of German princes and officers the Prussian king was proclaimed emperor of Germany. The existing German empire was thereupon established and sanc-

tioned by Austria and the confederate parliament. On March 21, 1871, the Diet met at Berlin and the constitution of the North German confederation, which had been accepted in 1867 by a Diet elected by general ballot, was extended and revised to meet the changed conditions. By this constitution all the German states, except those included with Austria, Hungary, Holland and Belgium, the two last named of which of late have not been treated as strictly German, became consolidated in the new German Empire.

The present constitution was promulgated April 16, 1871, by the Kings of Prussia, Bavaria and Würtemberg and the Grand Dukes of Baden and Hesse. It defines the territory of the empire and gives its laws precedence over those of the individual states. All laws are required to be proclaimed in the *Imperial Gazette*. A common citizenship is established throughout all Germany, on which no state may place limitations.

The following matters are under the legislative control of the empire; matters of domicile, citizenship, passports, trade and industry, custom duties, commerce, regulation of weights, measures, coinage and the emission of paper money, general banking regulations, patents for inventions and copyrights, protection of trade in foreign countries and organization of the consular service, railways, navigation on water ways common to several states, postal and telegraph affairs, reciprocal execution of judgments of one state in another, the authentication of public documents, laws concerning notes, obligations, commerce, crimes and legal procedure, police regulation of medical and veterinary matters, and laws relating to the press and to the right of association.

The legislative power is vested in the Federal Council and *Reichstag*. A majority of votes of each body is necessary for the passage of a law. The Federal Council consists of fifty-eight members, of which Prussia has seventeen, Bavaria six, Saxony and Würtemburg four each. Baden and Hesse three each, Mecklenburg-Schwerin and Brunswick two each and Saxe-Weimar, Mecklenburg-Strelitz, Oldenburg, Saxe-Meiningen, Saxe-Altenburg, Saxe-Coburg-Gotha, Anhalt,

Schwartzburg-Rudolstadt, Schwartzburg-Sonderhousen, Waldeck, Reuss (elder branch), Reuss (younger branch), Schomberg-Lippe. Lippe, Lubeck, Bremen and Hamburg one each, but the vote of each state must be cast as a unit. The Federal Council has a general oversight of the execution of the laws of the empire, appoints seven permanent committees from its own members and proposes laws to the *Reichstag*. Each member of the Council has the right to appear and be heard in the *Reichstag,* but the same person cannot be a member of the Council and *Reichstag* at the same time.

The king of Prussia is made president of the Confederation with the title German Emperor with power to declare war and conclude peace, form alliances, make treaties, accredit and receive ambassadors; but for a declaration of war in the name of the empire the consent of the Council is required, except in case of attack. He convenes the Council and *Reichstag,* adjourns and closes them. The Council and Diet shall be convoked annually. The Council may be convoked without the *Reichstag,* but the latter cannot be without the Council. The Chancellor of the empire presides in the council. Bills laid before the Council in the name of the emperor and adopted are presented to the *Reichstag* and advocated by members of the Council or by special commissioners appointed by them. The Emperor appoints and dismisses imperial officials, prepares and publishes the laws and supervises their execution. "The decrees and ordinances of the Emperor shall be made in the name of the empire, and require for their validity the signature of the Imperial Chancellor, who thereby takes upon himself the responsibility for them."

The members of the *Reichstag* are chosen by ballot for three years' terms. An imperial official may be elected to the *Reichstag,* but if he accepts an office of higher rank, or if a member accepts a new appointment to a salaried office of the empire or a state, he forfeits his seat. The proceedings of the *Reichstag* are public, and it may propose laws, and has power to judge of the election of its own members and regulate the mode of transacting its business. A majority of all constitutes a quorum. In matters not affecting the whole em-

pire only members from the states concerned may vote. Members have a limited privilege from arrest and draw no pay as such. Germany forms a custom and commercial union with substantially free trade among its states, except that the Hanseatic cities of Bremen and Hamburg remain free ports outside the union. Custom duties are regulated by the empire. A number of special provisions relating to taxation are inserted.

"Art. 41. Railways, which are considered necessary for the defense of Germany, or in the interest of general commerce, may, by imperial law, be constructed at the cost of the empire, even in opposition to the will of those members of the union through whose territory the railroads run, without prejudice however, to the sovereign rights of that country; or private persons may be charged with their construction and receive rights of expropriation. Every existing railway company is bound to permit new railroad lines to be connected with it, at the expense of the latter. All laws granting existing railway companies the right of injunction against the building of parallel or competitive lines are hereby abolished throughout the empire, without detriment to rights already acquired. Such rights of injunction cannot be granted in concessions to be given hereafter." Provisions are made for the operation of all railroads in harmony and all charges are subject to Imperial control. Art. 48. "The post and telegraph system shall be organized on a uniform plan and managed as state institutions throughout the German Empire."

Art. 50. "The Emperor has supreme supervision of the administration of post and telegraph."

Art. 53. "The navy of the Empire is a united one under the supreme command of the Emperor."

The merchant marine is made subject to regulation by the Empire.

Art. 57. "Every German is subject to military duty, and in the discharge of this duty no substitute can be accepted."

Art. 59. "Every German capable of bearing arms shall belong for seven years to the standing army." Three years in active service, four years in reserve. The next eleven articles

also relate to military affairs and contain among others the following provisions:

Art. 64. "All German troops are bound implicitly to obey the orders of the Emperor. This obligation shall be included in the military oath."

Art. 68. "The Emperor shall have the power, if public security within the federal territory demands it, to declare martial law in any part of the Empire; and until the publication of a law regulating the occasions, the form of the announcement, and the effect of such a declaration, the provisions of the Prussian law of June 4, 1851 shall be considered in force! Arts. 69 to 73 inclusive relate to finances.

Art. 69. "All receipts and expenditures of the Empire shall be estimated yearly, and included in the budget. The latter shall be fixed by law before the beginning of the fiscal year."

Art. 76. "Disputes between the different states of the union, so far as they are not of a private nature and therefore to be decided by the competent judicial authorities, shall be settled by the federal council, at the request of one of the parties."

Art. 78. "Amendments of the Constitution shall be made by legislative enactment. They shall be considered as rejected when fourteen votes are cast against them in the federal council. The provisions of the Constitution of the Empire, by which certain rights are secured to particular states of the union in relation to the whole, shall only be modified with the consent of the states affected."

An analysis of this readily shows that the leading purpose subserved is that of organization and consolidation of the German states into one Empire with increased military efficiency. There is no article in the whole instrument clearly framed to protect the citizens against the usurpation or unjust use of power by the government. The *Reichstag* as a representative body is the sole check on Imperial power. Its legislative powers are not circumscribed.

To an American it seems strange that there is no separate title devoted to the Judiciary. The mention of courts is incidental and there is not a line establishing any independent

power in them, with the sole exception that certain offenses affecting the state are to be tried before the Court of Appeals of the three free Hanseatic towns at Lubeck. The principal mention of the courts is in the latter part of Article 75, as follows: "More definite provisions as to the competency and the procedure of the Superior Court of Appeals shall be made by imperial law. Until the passage of a law of the Empire, the existing competency of the courts in the respective states of the Empire, and the provisions relating to the procedure of those courts shall remain in force."[1]

Each of the states included within the empire except Alsace, Lorraine and the two grand duchies of Mecklenburg have constitutional governments, and the six larger states have two houses in their legislative bodies in which the upper includes the nobility, clergy and representatives of the wealthy class, and the lower is made up of representatives chosen by the voters.

In the completeness of its military organization Germany may fairly be accorded first place among all the nations of the earth. Every man is subject to military service and no substitution is allowed, every German capable of bearing arms is required to serve in the standing army seven years from the age of twenty-one to twenty-eight. The first three years he must spend in active service and the remainder in the reserve. After this he belongs to the *landwehr* for five years more. Those receiving a fixed standard of high school training are required to serve actively only one year. All males between the ages of seventeen and forty-two, not included in the above, are members of the *landsturm,* liable to be called into active service in case of invasion. The emperor is the commander of this immense force, which is most thoroughly and efficiently organized with officers of various grades appointed by him.

Of the expenditures of the Imperial Government the army and navy and military pensions have absorbed as high as eighty per cent of the total. This, however, does not include expenditures in the maintenance and operation of the railroads, posts and telegraphs, which are paid from earnings and leave a net surplus of revenue.

[1] Foreign Constitutions 1894.

Education is made compulsory throughout the empire. Most of the expenses of the primary and secondary schools are borne by the local governments, but much is done by the imperial government to promote the educational system. Its great universities rank with the best in the world. Many of these have endowments which go far toward defraying their expenses. No other country has done more to distribute among its people the treasures of accumulated knowledge than Germany, and none has profited more from the wisdom of such a course. As a result of its most excellent school system illiteracy among its people is almost unknown, and its great universities and technical schools are famed the world over for their thoroughness and breadth of learning as well as for their progressiveness. At the head of the judicial system is the *Reichgericht,* the judges of which, 90 in number, are appointed by the emperor. It is the supreme court and court of appeals for the empire. All inferior courts are courts of the separate states, but all are subject to imperial legislation. Small civil cases involving amounts up to about $100 are decided by the *Amtsgericht.* Above is the *Landesgericht,* of which there are 170 in the empire, with more extended jurisdiction, and over this is the *Ober Landesgericht,* the highest court of the state, exercising appellate jurisdiction. Petty offenses are tried by a judge and two *Schöffen*: Serious crimes by judge and jury. Courts of arbitration, presided over by a judge, are also provided for commercial causes. The system of procedure is rather more summary than that prevailing in England and the United States. The law is studied as a profession, and advocates practice before the courts. The number of lawyers, however, in proportion to population is relatively very small. The judges and members of the profession bear high rank for integrity and ability, and except in rare political causes, the administration of justice is efficient and creditable. A summary of the Civil Code which took effect in 1900 will be found in the Appendix.

The political history of Hungary is interwoven with that of Austria and can best be considered in connection with it.

The first king of Hungary is called St. Stephen, and ruled

997 to 1038. He was converted to Christianity and took active measures to convert his subjects. He was very zealous in promoting the establishment of churches and monasteries. The king owned a large part of the lands, from which he received a portion of the crops and military service from his retainers on them. He also levied taxes on the products of the mines and exacted one-thirtieth the price of merchandise sold at fairs, as well as tolls on roads, bridges and ferries. Presents to the king were also required from the towns on given days. The power of the king was not that of an absolute ruler over the whole country, but resembled more a great proprietor's over his estate. The Church and the nobility exercised over their domains substantially the same authority as the king over his. At court the king had his lord palatine, court judge, lord of the treasury and minor officials. The towns elected their own judges and local officials. The laborers on the estates of the king and of the nobility were without political rights, and subject to the authority of their lords. The powers of the king were not clearly defined. Appeals lay from the acts of the nobles to the king, but in their own domains the nobles were practically absolute masters. The authority of the king was theoretically absolute, but subject in fact to checks imposed by the nobility. A most remarkable document, bearing a strong resemblance to the English Magna Charta, is called the "Golden Bull," extorted from Andrew II, who ruled 1205 to 1235, given in the form of a letter, by which he recited that, "The nobles and others in our realm have suffered detriment, in many parts, of their liberties as established by King St. Stephen, through the power of some kings, who either from anger revenged themselves or listened to the counsel of wicked advisers or sought their own advantage." It then proceeds to ordain that the anniversary of the sacred king should be celebrated at Stuhlweissenburg: that the king should be present in person or by his palatine to hear causes; that all the nobles might freely assemble there; that the nobles should not be detained or oppressed except by due process of law; that no taxes should be levied on the estates of the nobles or the clergy; that if a noble die without male issue his

daughters should inherit one-fourth his property and the rest he might dispose of as he pleased, in default of which it should go to his next of kin, but in case he was absolutely without kin then to the king. If the nobles were called on to go out of the country to war he must pay the expense. "The palatine shall be judge over all the people of our realm without distinction, but in capital cases and matters of property which concern the nobles, the palatine shall not decide, without the king's knowledge"; that foreigners should not be given lands and should not be elevated to dignities without the consent of the council of the realm; that offices should not be granted in perpetuity, and Ishmaelites and Jews should be incapable of holding them "excepting these four great lords, the palatine, the banus, the court judges of the king and queen, no one shall have two dignities at the same time. Should, however, we or any of our successors at any time be disposed to infringe upon any of these four orders, the bishops as well as the other lords and the nobles of the realm shall be at liberty, jointly or singly, by virtue of this letter, to oppose and contradict us and our successors forever, without incurring the penalty of treason."

All the burdens were of course borne by the peasants and laborers. From the fruits of their toil the landed gentry lived in idleness and drunkenness. Against the oppression of the lord the peasant could only appeal to the lord himself, with the chance of greater oppression for having made complaint. In 1514 the peasants were gathered for the crusade. Many of the lords opposed it because they needed the laborers in the fields. 40,000 of them assembled at Pesth. Instead of marching against the Turks, under the leadership of George Dozsa they marched against the nobles. They took many castles and massacred such of the nobles and their families as fell into their hands. The nobles finally rallied and under the lead of the vayvode of Transsylvania defeated the peasants and captured Dozsa, whom they placed on a red hot iron throne and crowned with a red hot crown and gave a red hot sceptre. Many others were tortured and killed. The diet, which assembled soon after, ordained the perpetual servitude of the peasantry, and fixed them to the soil, which before that time they had been allowed to leave. At the same session was

passed and confirmed by the king what is termed the tri-partite code, compiled by Stephen Verboczy the chief justice. It accorded equal rights to all the nobles, who could not be deprived of liberty without due trial and were exempt from taxation and subject only to the king and as to the peasant it provided, "The peasant has no sort of right over his master's land save bare compensation for his labor and such other rewards that he may obtain. Every species of property belongs to the landlord, and the peasant has no right to invoke justice and the law against a noble."

Austria, so long the head of the German Empire, has ceased to be a part of it, but is still one of the great states of Europe. The past century has witnessed the loss of much of its territory, including its possessions in Italy, but it still governs a large and exceedingly rich district. When in 1806 Napoleon established the confederation of the Rhine from sixteen German States, the Emperor Francis renounced the title of emperor of the Romans and assumed that of Emperor of Austria. Though promises of reforms were made, Austria constantly recurred to its despotic methods, and lent its aid to perpetuate arbitrary rulership throughout Europe. The only marked step in advance during the long reign of Francis, who died in 1835, was the establishment of a system of primary schools. Discontent grew among the people, and in 1846 an insurrection occurred in Galicia. This was soon suppressed, and the dismemberment of Poland was completed. In 1848 far more serious outbreaks occurred. Metternich, the counselor of tyranny, resigned and went to London. An imperial proclamation was issued abolishing the censorship of the press, establishing a national guard and convoking a national assembly. Under the leadership of the members of the university of Vienna the national guard and academic legion organized a committee and dictated laws to the government. On May 17, the Emperor Ferdinand and his wife fled to Innsbruck. Uprisings in Italy followed and soon after in Bohemia and Hungary also. Civil war ensued between the imperial supporters and the revolutionists, which did not end till 130,000 Russian troops invaded Hungary in support of the imperial cause. The triumph of the supporters of despotic rule

was accompanied by the slaughter of great numbers in battles and by shooting and hanging the leaders of the revolt who were captured. The congress organized by the revolutionists was dissolved and the emperor, of his own motion, promulgated a constitution. Many reforms and internal improvements were now undertaken, but the old tendency to relapse into military despotism soon asserted itself, and on Jan. 1, 1852, it was announced that the constitution was abolished. In 1859 the combined forces of France and Sardinia drove the Austrians from Italy, and in March 1860 the emperor promulgated a new constitution, by which he declared that the right to enact, alter and abolish laws should thereafter be exercised by himself and his successors only with the coöperation of the *Reichsrath.* This body was established for the empire and to be composed of representatives of the several kingdoms included within it. On Feb. 27, 1861, it was decreed that their former constitutions should be restored to Hungary, Croatia, Slavonia and Transsylvania. At the same time a law was promulgated providing for the representation of the different portions of the empire in the *Reichsrath,* which was made up of two bodies, a house of peers and one of deputies. On May 1, 1861, the new *Reichsrath* was formally opened by the emperor in a speech in which he said, "that liberal institutions with the conscientious introduction and maintenance of the principles of equal rights to all the nationalities of his empire, of the equality of all his subjects in the eye of the law, and of the participation of the representatives of the people in the legislation, would lead to a salutary transformation of the whole monarchy." Hungary, Croatia, Slavonia and Transylvania declined to send representatives, claiming separate constitutions. After the humiliating defeat by the Prussians in 1866, the emperor turned his attention to the improvement of the affairs of his empire. The Hungarians were in passive rebellion, refusing to pay their taxes. In 1865, the emperor had recognized the necessity of self-government for Hungary in local affairs, and on Nov. 19, 1866, by an imperial rescript, he promised the appointment of a responsible ministry and the restoration of municipal self-government. Baron Beust, a Saxon and a Protestant, was made prime minister of the em-

pire. In 1867 the *Reichsrath* assembled at Vienna, and many important measures of reform were adopted. On June 8, 1867 the emperor and empress were crowned king and queen of Hungary at Pesth, at which time pardon and amnesty for political offenses were granted. Religious toleration was accorded by the *Reichsrath*. In 1873 the power of choosing members of the *Reichsrath* was transferred from the provincial diets to the voters.

Under its present constitution Austria-Hungary recognizes the hereditary succession to the throne by primogeniture in the male line of the house of Hapsburg-Lothringen and, on the failure of male heirs, in the female line. Two distinct states are recognized as joined for common ends, each having its own ministers and legislative bodies. These are subordinate to a controlling body called the Delegations, consisting of sixty members of each state, two-thirds elected by the lower house and one-third by the upper house of each parliamentary body. They usually sit and vote in two chambers, one for Austria and the other for Hungary, but in case of disagreement they all sit together, and the decision of a majority is binding on both states when approved by the emperor. The administration of the empire is divided into three executive departments, Foreign Affairs, Ministry of War, Ministry of Finance. These ministers are accountable to the Delegations. The *Reichsrath* of Austria consists of an upper and lower house. The former is composed of: First, Princes of the Imperial House; Second, Heads of noble houses of high hereditary rank; Third, Archbishops and bishops with the rank of princes; Fourth, Life members, nominated by the emperor for distinguished services. The lower house is composed of three hundred and fifty-three members elected by all citizens possessing a small property qualification. The emperor convokes the *Reichsrath* annually and nominates the presiding officers of each house from among its members. It has general legislative powers on matters of trade, finance, railways, posts, telegraphs, customs, mints, military service, etc. Members of either house may propose new laws, which must receive the sanction of both houses and the emperor. The executive functions for Austria are vested in a Ministerial

Council presided over by the emperor or minister president and made up of ministers of the interior, of religion and education, finance, commerce, agriculture, national defense, and justice. There are also local diets in the seventeen provinces with powers over local concerns.

The Hungarian parliament also has an upper and a lower house, known as the House of Magnates and the House of Representatives. The former is made up of three princes of the reigning house having estates in Hungary, thirty-one Archbishops and bishops and 381 high officials and noblemen. The Lower House is made up of representatives chosen for three years by all citizens paying a certain amount of tax and contains about 450 members. There is a similar ministry in charge of the executive department for Hungary as in Austria. Great progress has been made during the last half century in the educational system, but it is still far behind that of Prussia, owing largely to the domination of the priesthood. All children from 6 to 12 are bound to attend the common schools. There is a fair system of secondary schools and there are seven universities at Vienna, Gratz, Innsbruck, Prague, Cracow, Lemberg and Pesth. There are also various technical schools. Austria-Hungary has made great progress in its railroads, owned by the state, which are a marked success and afford excellent service at exceptionally low rates. It also owns and operates the telegraphs. The judicial system for Hungary is independent of the administration. The supreme court sits at Buda-Pesth. There is a secondary court of appeals at Moros-Vacarhely in Transylvania. Under these is a system of what are termed royal courts and of circuit courts.

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CHAPTER XXI

Holland and Belgium

The low wood and marsh land near the lower Rhine were part of the Frankish Empire. In the time of Charlemagne, in accordance with his general policy, it was divided into *landschafts* and *gaus* ruled over by dukes and counts; each *gau* had its chief town, surrounded by a wall, wherein the count administered justice. The *gaus* were divided into marks or villages, in which a headman acted as judge in minor causes. The sovereignty over this territory alternated between French and German overlords. The northmen also invaded and desolated it. The piratical incursions of the vikings and the exposed situation of the country caused the people to gather into towns for mutual defense. These became sanctuaries, not merely for freemen, but serfs escaping from the estates of the nobles were also accorded freedom and protection. Trade, manufactures and other characteristics of town life developed, and the people soon built ships and profited from commerce and fisheries. From about A.D. 1000 the history of Holland begins to take definite form under its counts, whose allegiance shifted according to changing circumstances from the French kings to the German emperors, but with little real control from either.

William I, who died in 1224, granted charters to several of the towns, securing them in their liberties and providing for a regular administration of justice. Under Floris V the Hollanders took part in the strife between the French and English kings in aid of the latter, and in return gained valuable trading and fishing privileges by treaty. Marked characteristics of the early society were the independent and commercial spirit of the towns and the resistance of the claims of the nobility by the burghers. The counts from time to time were induced

to grant charters defining the rights of the towns. By about 1300 the imperial authority ceased to have any recognition, and Holland took its place as an independent state. Prior to this time for about 400 years the real power had been exercised by a vigorous line of counts, who appointed bailiffs over the country districts and *schouts* as judges in the towns. When matters of great interest to a city arose, the people were summoned into the public square by ringing the great town bell, and then they decided the question by vote. Justice was administered by a man's peers in accordance with the special customs of Franks, Saxons and Frisians. The supplies of the count were furnished by taxation, which fell mainly on the towns and early took the form of contributions in return for protection, not merely against foreign foes, but against the extortions of the lesser nobility, and in their corporate privileges against all. The counts usually sided with the burghers against the nobility. In the fourteenth century the towns joined the Hanseatic League, from which they were ejected in the fifteenth. During the last half of the fourtenth century civil strife over the succession to the countship and the struggle between the burghers and the nobles, who formed the parties of the *Kabbeljaus* and *Hoeks,* the "Cods" and "Hooks," produced a state of continued disorder and much fighting. In 1436 Holland passed under the rule of Philip of Burgundy. From this time the charters of the cities and the liberties of the burghers were treated with contempt. Trade continued to thrive under more arbitrary rule, and Holland developed her fisheries and her shipping. In the art of printing and the study of the learning and arts of the ancients the people of the cities of the Netherlands took an early and leading part. The dukes aided in the collection of manuscripts and the founding of libraries and encouraged painters and authors in their work, especially in Flanders and the Brabant, which in these particulars were in advance of Holland. In 1477 on her accession to power the cities secured from the Dutchess Mary her sanction of the "Great Privilege," which affirmed the right of the cities and provinces to hold diets, to approve her choice of a husband and to have a voice in any declaration

of war. It declared that natives alone should hold high office; that no new taxes should be levied without the approval of the estates; established one high court for Holland, Zealand and Friesland; and made Dutch the official language. Though Philip of Burgundy convened the States General in 1464, it was not till after his time that they were allowed real power. In Holland the nobles collectively had but one vote, though all were permitted to sit in the assembly. Each of the large cities was also entitled to one vote. The president of the states, styled the *vogt,* became an officer of importance. Through marriage of Philip with Joanna of Aragon the sovereignty of the Netherlands was inherited by Charles V, king of Spain and German emperor. During his reign and that of his son and successor Philip was carried on that long and desperate struggle for civil and religious liberty by the people of the low countries against the cruel and bigoted Spaniard. Never has tyranny appeared more cold and heartless than that exercised in the name of religion by the bloody Duke of Alva and the murderous tribunals which tried by torture and punished with death the iconclasts and heretics. The charters of the cities and the rights of the States General were disregarded, and bloody executions by hundreds and by thousands followed. After opposition to the Spaniards had been crushed out in the provinces, the Dutch took their ships and preyed on Spanish commerce. In 1572 the "Water Beggars," as the naval force was termed, seized Briel at the mouth of the Meuse; the struggle on land was renewed and pushed till the Spaniards were driven out of Holland. In 1581 a meeting of the seven northern provinces was held at The Hague, which declared their independence and framed a constitution in accordance with the principles of the "Great Privilege" of the Duchess Mary, with William of Orange as sovereign. Under the able leadership of his son Maurice of Nassau the integrity of the country was preserved, and Holland grew in importance as a naval and commercial power, while the rich provinces of Hainault and Brabant were desolated and almost depopulated as a result of wars and Spanish misrule. Toward the close of the sixteenth century the Dutch seamen began to sail in distant

seas, and in 1602 the Dutch East India Company was formed. During the progress of the Thirty Years' war, 1618 to 1648, a separate treaty of peace was concluded with Spain, by which the independence of the provinces was recognized, and Spain abandoned all her claims.

In 1651 a great assembly of the provinces was held for the purpose of settling the system of government. The *stadtholder,* whose office had been made hereditary in the house of Orange, was confirmed as commander of the military forces and exclusive head of the state. The legislative power was vested in the States General, made up of deputies numbering at times as many as 800. There was a permanent council of state and a chamber of accounts. Each province had its own *stadtholder* and estates. Each town had its chief minister and each great city a senate; that of Amsterdam containing thirty-six burghers, who were charged with the maintenance of order, the collection of taxes, and the administration of justice. At first the senate was elected for life by the whole body of freemen, but from the sixteenth century vacancies were filled by cooptation, and it became a close oligarchy. Other towns were similarly organized. The senate named the deputies to the States General. The right of making war and peace, concluding alliances, coining money and levying taxes, was vested in the States General. Though in the defense of their liberties and their country the Dutch had many long and desperate wars, their foreign policy was never aggressive, except for the extension of their trade. In this they met with great success and were able to obtain trade privileges in the east not accorded to other countries. Their greatest acquisition was of the rich island of Java, where they rule over a population many times that of Holland with very little friction with the natives. On the sea and in manufactures and trade the Dutch continued to gain their peaceful victories, and also carried on desperate struggles with Spain and England for naval supremacy.

No marked change in the organization of the state took place till the breaking out of the French Revolution. In 1775 a new constitution was formed, sweeping away the ancient

system and establishing in its place an elective representative government, but change after change followed in quick succession. In 1805 Bonaparte imposed a new constitution and a ruler, and in the next year made his brother king of it as a dependency of France. In 1810 he annexed it as a part of the empire. After the overthrow of Napoleon an assembly of notables met and recalled the prince of Orange, who had taken refuge in England, and chose him king under the title of William I. By the treaty of Paris Belgium was united to Holland under the hereditary sovereignty of the house of Orange. The king was given full executive powers and the initiative in proposing laws. He also appointed the council of state. The States General, composed of two chambers, was the legislative body, and similar representative assemblies were provided for each province. The union of Holland and Belgium was not the result of any popular movement, but was an incident of the settlement of the balance of power by the leading states of Europe at the conclusion of the Napoleonic wars. Belgium had never had any well defined national existence, having been border and disputed territory over which the rulers of France, Germany, Spain and Burgundy extended or were forced to yield their sovereignty according to the varying fortunes of war and diplomacy. There was never a close bond of sympathy between the Belgians and Dutch, the former being more closely allied with the French and the latter with the Germans. In 1830 a revolt broke out at Brussels, as a result of which there was a conflict between Holland and the people of Belgium. A cessation of hostilities resulted from the mediation of the great powers and a convention of delegates chosen from the different provinces of Belgium assembled at Brussels, which declared for independence and a constitutional hereditary monarchy. In June, 1831, Prince Leopold of Saxe-Coburg was chosen king, under the condition that he would accept the constitution and swear to maintain the national independence and territorial integrity, which he did. Further conflicts took place between the two countries, and in 1832 France and England proceeded to enforce submission by Holland to the determination of the powers by

force of arms. In May, 1833, after much negotiation, a treaty was concluded providing for the settlement of boundaries and the separation of the two countries.

The present constitution of Holland is that established in 1814 as revised in 1848. The crown is hereditary by primogeniture in both male and female lines. The king is the executive head with power to declare war and make peace. He appoints the ministers, of whom there are eight: namely, of the interior, the *watersaat* (including trade and industry, railways, post offices, etc.) of justice, war, finance, marine, the colonies and foreign affairs. Though appointed by the king the ministers are accountable to the country for the conduct of affairs. The law-making power is vested in the king and States General, composed of two houses. The members of the upper house are chosen by the several provinces from those paying the largest direct taxes and contains thirty-nine members holding for terms of nine years, one-third of the members being chosen every three years. The members of the lower house are chosen by electoral districts by all citizens paying the requisite tax, varying from twenty to one hundred and sixty guilders. One member is chosen for every forty-five thousand people. There is also a council of state, appointed by the king, to which all legislation is submitted by the king before being presented to the states, and all enactments by the States General are submitted to the council before approval by the king. In each province there are similar assemblies having charge of local matters, made up of two houses chosen by the same electors. The presidents of these assemblies are appointed by the king. At the head of every commune is a communal council chosen by the people. The president of the council, the burgomaster, is appointed by the king for six years. There are eleven provinces and about 1130 communes. The administration of justice is by a system of courts, at the head of which is the Supreme Court sitting at The Hague, with inferior local courts in each province and commune.

The people of Holland enjoy complete religious liberty, freedom of speech, of association, and the right of trial by jury. No country furnishes a better illustration of the possibilities

of overcoming natural difficulties by combined effort and of turning adverse natural conditions to advantage than Holland. As formed by nature the district now included in the kingdom was exposed to inundation from the sea; much of it so low and marshy as to be unfit for cultivation and much actually below sea level. The soil was not of exceptional fertility in general, and much of it was sandy and poor. By a system of dykes more than 1550 miles in length, some of which are now utilized as beds for railways, not only have the low marsh lands been protected and reclaimed, but large districts have been gained from the sea and converted into fruitful fields. Though well supplied with rivers, the interior communication was early supplemented by an extensive system of canals. These and the flooding of lowlands by cutting the dykes have in times past materially affected military operations and been utilized in the defense of the country. From the earliest times the people have found it necessary to unite their efforts in overcoming natural forces as well as in fighting other people. This induced a spirit of association and also led to a perception of the essential principles to be observed in combining for common enterprises and sharing the benefits. The people of Holland were among the leaders in modern times in the study and elaboration of legal principles. Grotius, 1583 to 1645, is still regarded as a leading authority on international law. In the controversies with Charles and Philip of Spain the Hollanders argued most tenaciously for the observance of their charters and the protection of the laws, as well as for religious liberty, though in the condemnation of Barneveldt and Grotius and the execution of the former, as well as in many other judicial outrages, they showed that the spirit of cruelty and intolerance was not confined to one creed or sect. Still throughout all the bloody persecutions there was a marked disposition to proceed by established forms and to execute only after the forms of law had been complied with.

Combined effort was also necessary in carrying forward commercial enterprises, and the Dutch were among the earliest to take full advantage of the opening of trade with distant lands. By negotiations and a generally pacific policy they

established trading posts in the East and West Indies, Asia and America, which afforded their merchants advantages, from which they made great gains and took leading rank in the commercial world. The wars of Holland have with but rare exceptions been purely defensive. In these the people have exhibited a degree of stubborn bravery and of brilliant daring never surpassed by any people. It has been in all its history mainly a collection of towns, and the democratic spirit, engendered by close contact of many people engaged in industrial pursuits, has never been successfully crushed by any ruling power. On the other hand the aristocratic spirit has grown from generation to generation among the families possessed of great wealth, and the present constitution with its property qualification for voters shows the effects of this tendency. Commercial and industrial pursuits necessitate a degree of education not found among the peasant communities of Europe prior to the eighteenth century, and the people of Holland of the fifteenth, sixteenth and seventeenth centuries enjoyed as large a measure of education as any in Europe. The extent of the domination of the Dutch is not fully measured by their territorial possessions. They early learned the mastery gained by the investment of money and the acquisition of legal titles to property, and Dutch capital has been placed in America and elsewhere in such manner as to still further extend the power and influence of her capitalists and financiers. In perception and utilization of the advantages of combination and mutual help in peaceful enterprises no modern people and perhaps none of any age have excelled them. The educational system provides for general primary instruction but is not so thorough as that of Prussia. It is being improved. There are four universities of high rank, at Utrecht, Leyden, Groningen, and Amsterdam.

The constitution of Belgium adopted in 1831 exhibits more marks of modern influences than that of Holland. The latter has its traditions and survivals of ancient organizations, while the former is thoroughly modern.

The first title relates to the boundaries and division into provinces. The second is much like the bills of rights in the

constitutions of the American states, and contains among others the following important provisions:

Art. 6. "In the State there shall be no distinction of order. All Belgians are equal before the law; they alone are admitted to civil and military employments, with such exceptions as may be established by law for particular cases."

Art. 7. "Individual liberty is guaranteed. No one can be prosecuted, except in the cases specified by law and in the form which it prescribes. Save when taken in the act, no one shall be arrested except by virtue of an order issued by a judge. It shall be shown at the time of the arrest or not later than twenty-four hours thereafter."

Art. 8. "No one shall be deprived against his will of the judge whom the law assigns him."

Art. 9. "No penalty shall be established or enforced except by law."

Art. 10. "The home is inviolable. No search shall be made except in cases provided for by law and in the form which it prescribes."

Art. 11. "No one shall be deprived of his property except for public use and then only in the cases and in the manner provided for by law; and a just indemnity, to be ascertained beforehand, shall be paid."

Art. 14. "The freedom of religions, their public exercise, as well as the liberty of expressing their opinions on every matter, are guaranteed; reserving the right of repressing crimes committed in the exercise of these liberties."

Art. 15. "No one shall be compelled to observe, in any manner whatsoever, the rites and ceremonies of any form of religion, nor be required to observe days of rest."

Art. 17. "Public education shall be free, every preventive measure is prohibited. The repression of crime shall be regulated by law. Public instruction given at the expense of the state shall also be regulated by law."

Art. 18. "The press is free, no censorship shall ever be established, nor can writers, editors or printers be required to give bonds. When the author is known and resides in Belgium, the editor, printer or news agent cannot be prosecuted."

Art. 19. "All Belgians have the right to assemble peaceably and without arms, conforming themselves to the laws which may regulate the exercise of this right, but without being obliged to obtain permission beforehand. This regulation does not apply to open air meetings, which are entirely under police regulation."

Art. 20. "Belgians shall have the right to form associations; this right cannot be suppressed by any preventive measure."

Art. 22. "The secrecy of the mails shall be inviolable. The law shall determine who are the responsible agents in the violation of the secrecy of the mails."

Art. 24. "No previous authorization is necessary to begin suits against public officials for the acts of their administration, with such exceptions as may be made regarding the Ministers."

Title three distributes the governmental powers.

Art. 25. "All powers emanate from the nation. They shall be exercised in the manner established by the constitution."

Art. 26. "The legislative power shall be exercised collectively by the king, the House of Representatives and the Senate."

Art. 27. "The initiative shall belong to each one of the three branches of the legislative power. But all laws relative to the receipts or expenses of the state, or the contingent of the army must be first voted by the House of Representatives."

Art. 28. "The interpretation of the laws in an authoritative manner shall belong only to the legislative power."

Art. 29. "To the king belong executive powers within the limits prescribed by the constitution."

Art. 30. "The judicial power shall be exercised by the courts and tribunals."

Sessions of the Houses are required to be public, subject to a right to resolve themselves into secret committees. Each house judges of the returns and qualifications of its members. Appointment by the government to a salaried position vacates the member's seat. A majority constitutes a quorum. An absolute majority is required to pass a law, and the vote must be taken by roll call. Members are privileged from arrest.

Art. 47. "The House of Representatives shall be composed of Deputies elected directly by those citizens paying the census prescribed by the electoral law, which shall not exceed one hundred florins of direct tax nor be below twenty florins."

The number of deputies shall not exceed one for 40,000 inhabitants and to be eligible one must be a Belgian twenty-five years old. The term of office is four years and one-half are elected every two years. Members have a monthly salary of two hundred florins, except that those who reside in the city where the session is held get no salary. The senate is composed of half the number of the House, elected for eight years, one-half every four years, but entirely renewed in case of dissolution. Senators must be Belgians forty years old and pay at least 1000 florins direct taxes, including licenses in Belgium. They receive no salary.

The constitutional powers of the king are conferred on Leopold of Saxe-Coburg and made hereditary in the male line by primogeniture. In case of failure of such heirs the king may name his successor, with the consent of the two houses. The king cannot be chief of another state without the assent of the two houses.

Art. 63. "The person of the king shall be inviolable, his ministers shall be responsible."

Art. 64. "No act of the king shall have any effect, if it be not countersigned by a Minister who, by this act alone, makes himself responsible." "The king appoints ministers, confers grades in the army, and appoints officers of the general administration and foreign affairs, and such others as are authorized by law. He has no power to suspend the laws. The king commands the army and navy, declares war, and makes treaties. Treaties of commerce or imposing obligations on the Belgians must be ratified by both houses." "No cession, no exchange, no addition of territory can take place except by law." "The houses shall be in session each year, for at least forty days," and the king may convoke them on extraordinary occasions and may dissolve them simultaneously or separately. He may remit or reduce sentences, except those against the ministers. He may confer titles of nobility.

Art. 68. "No one shall be a Minister who is not a Belgian by birth or who has not received supreme naturalization."

Art. 77. "The law shall fix the civil list for the duration of each reign."

Art. 78. "The king shall have no other powers than those which the constitution formally confers upon him and the particular laws passed in pursuance of the same constitution."

In case of vacancy of the throne the ministers exercise the kings' powers, and the two houses provide a regency during the minority or disability of the king.

Art. 87. "No member of the Royal Family shall be a minister."

Art. 88. "The Ministers shall have a deliberative voice in one or the other house only when they are members thereof. They shall have free access to each of the houses and must be heard when they demand it. The houses may require the presence of the Ministers."

Art. 89. "In no case shall the verbal order or writ of the king relieve a minister from his responsibility."

Impeachments of ministers are tried before both houses in joint session. Articles 92 to 107 inclusive relate to Judicial Power.

Art. 94. "No tribunal nor civil court shall be established except by law. No extraordinary commissions or tribunals shall be established under any name whatsoever."

One Court of Appeals for all Belgium is established with no original jurisdiction except in the trial of ministers. Court proceedings must be public, except when dangerous to public order or morals and formally decided so to be. Jury trials are required in all criminal matters. All judicial officers are named directly by the king. Judges are appointed for life with salaries fixed by law, and prohibited from accepting any other salaried appointment. The powers and procedure of all courts civil and military are subject to regulation by law. Provincial and local institutions are regulated by law on the principles of direct election, local self-government in local affairs, publicity of council meetings, budgets and accounts.

Art. 110. "No tax for the benefit of the state shall be established except by law."

Art. 111. "All state taxes shall be voted annually."

A court of accounts, charged with the examination of the accounts of the general administration, with members named by the House of Representatives is established. Title V relates to the army and requires all matters relating to its numbers, method of recruiting and organization to be regulated by law.

Art. 128. "Every foreigner on Belgian territory shall enjoy the protection accorded to persons and property, with such exceptions as may be established by the law."

Art. 130. "The constitution can neither be suspended in whole or in part." The constitution may be revised after a declaration that there is need of revision and dissolution of the houses by a two-thirds vote of newly elected houses. This constitution is clearly the most advanced of all those retaining a king as head of the state. In practice time has demonstrated the wisdom of its provisions, and Belgium with the most dense population of any European country enjoyed a high degree of prosperity and had kept clear of destructive wars until invaded by the Germans in August, 1914.

In its provision requiring authoritative interpretations of the law to be made only by the law-making power, it is in advance of the American constitutions.

In each province there is a governor named by the king and a provincial council elected by the people. The affairs of the communes are also conducted by councils chosen by the people for terms of six years and a burgomaster appointed by the king from among the members of the council. There is a general primary school system, carried on at the expense of the communes, and secondary schools, part supported by the communes and others by the government. There are four universities, at Ghent, Liege, Brussels and Louvain. Besides these there are technical schools of high rank. In its benevolent and charitable institutions Belgium takes high rank and maintains many of various classes.

Much attention is paid to the needs of the working classes and to organizations designed to assist them. There are not only savings banks and mutual assistance societies, but charity workshops are provided at Ghent, Liege and other towns,

where indigent laboring men out of employment are relieved. These are not only means of temporary relief to the necessitous, but are designed as schools of instruction and to encourage industry among those who otherwise might become criminals or beggars. There are also manufacturing schools for girls, where they are taught to make fabrics, etc. Liberal provisions are made for the care of the insane, diseased and infirm and for temporary relief to the indigent.

The judicial system consists of a court of cassation at Brussels, composed of a president general, a president of the chamber and fifteen councillors. It has power to revise the action of inferior courts and reverse their decisions for errors of law. It is divided into two chambers, one for civil and the other for criminal causes. There are three courts of appeal, one each at Brussels, Ghent and Liege. In the capital of each province is a court of assize, composed of a councillor deputed from one of the courts of appeals and two judges chosen from among the presidents and judges of the primary tribunal where the court is held. This court has jurisdiction of crimes and the trial is by a jury of twelve, chosen from a panel of thirty by lot. In each arrondissement is a court of primary jurisdiction of civil causes and misdemeanors. The number of judges in these varies from three to ten. There are also tribunals of commerce in the principal towns. Appeals are allowed in causes involving 2000 francs or more. In the manufacturing towns there are councils of *prud-hommes,* composed of master tradesmen and workmen, who decide disputes between masters and workmen. All judges are appointed by the king for life and are incapable of holding any other office. The interests of the state are represented by advocates and procurators appointed by the crown. After the settlement of its disputes with Holland Belgium entered on a prosperous and peaceful career. It passed through the period of 1848, which shook so many European states, with but slight disturbance, and as a mining and manufacturing state has enjoyed a good degree of prosperity.

Great dissatisfaction has been manifested recently over the provisions of the electoral law which gives to Belgians over

thirty-five years of age if married or widowers paying five francs direct tax two votes each and to those having certain other property qualifications, official status or university diplomas three votes each. By this increased voting power a minority of the voters is given a majority of the votes.

The future of Belgium at this time appears to depend on the outcome of the war now raging in Europe. Though in no manner responsible for it the people are suffering most of any from the war, and the land is again drenched with blood because no efficient measures have been taken by the great nations to settle their controversies by reason.

CHAPTER XXII

Switzerland

The territory included in modern Switzerland passed successively under the rule of Romans, Franks and Burgundians, without the development of any local national life. About A.D. 406 or 407 the Almanni took possession of northern Helvetia, which their descendants still occupy. A little later the Burgundians settled about Lake Geneva and soon acquired mastery over southern Helvetia. The ancient Celts and Romans were not exterminated, but remained subject to the invading tribes. The Alemanni carried with them the Germanic customs of land tenure, using pasture and waste lands in common, and of determining all public matters in an assembly of the freemen. The rule of Charlemagne was extended over all Helvetia, and feudalism developed there substantially as elsewhere throughout western Europe.

The history of Switzerland, as well as the romantic legends connected with its political birth, are closely connected with the rise of the House of Hapsburg, whose early seat was in the modern canton of Aargau, with estates in the cantons of Luzern, Schwyz and Unterwalden. From ancient times the Germanic tribes were accustomed to act in concert in the assertion of their rights, and the feudal system did not have the effect of obliterating all such organizations in the mountain districts of Switzerland. Prior to the controversy with the Hapsburgs we find the people of Schwyz and of separate parts of Unterwalden organized into *Markgenossenschaften* and accustomed to meet and confer with reference to their common interests. In 1231 Henry VII issued a charter to the men of Uri, making them immediate vassals of the empire, promising them his protection, and setting them free from Count Rudolf of Hapsburg. In 1240 a similar charter was granted by Frederick II to the men of Schwyz the original of which is still preserved and reads:

"Having received letters and messengers from you, to prove and make known your conversion and submission to us, we accede to your express desire with gracious and affectionate good will; we praise your submission and loyalty not a little in that you have shown the zeal which you have always had for us and the empire, by taking protection under our wings and those of the empire, as you are bound to do, being freemen who must turn to us and the empire alone. Since therefore you have chosen our rule and that of the empire of your own free will, we receive you loyally with open arms and respond to your sincere affection with our single minded favor and good will, by taking you under our special protection and that of the empire, so that we will never allow you to be alienated or withdrawn from our sovereign rule and that of the empire."

This charter was not recognized by the Hapsburgs as taking away their rights, and it it difficult to see how the Emperor could rightfully cut the feudal bond, which already existed between Rudolph and his vassals. In the controversy between the Emperor Frederick and the Pope the people of Schwyz and Uri supported the Emperor, while Rudolph supported the Pope. Frederick II was excommunicated and deposed. Count Rudolph, during the conflict, called in the aid of the Pope to restore his vassals to their allegiance, and built the fortress of New Hapsburg near Lake Luzern, from which his rights were enforced.

In 1273 the fief of Schwyz passed from the Laufenburg line of the house of Hapsburg to that of Austria, and in the same year Rudolph was chosen emperor. By this chance the imperial sovereignty, assumed by the charter of Frederick, became united in the person of Rudolph with that of the house of Hapsburg. Rudolph governed it as an immediate possession, and it therefore ranked as *"unmittelbar."* During his reign an edict was issued, exempting the people from answering a summons to appear before any tribunal outside the valley, and providing that they should be answerable only to the emperor, his sons or the judge of the valley. Unterwalden was divided into a number of marks and contained the monastery of Engelberg and many free peasants. Rudolph died

July 15, 1291. On August 1 of the same year the three forest states concluded a league and executed their first articles of confederation, which, written in Latin on parchment, are still preserved. This document is of interest, not only as the work of the founders of the Swiss confederacy, but in the light it throws on the state of society and the conceptions of law and social order then entertained by the people. The following is a translation:

"In the name of God, Amen—
Honor and the public weal are promoted when leagues are concluded for the proper establishment of quiet and peace.

1. Therefore know all men, that the people of the valley of Uri, the democracy of the valley of Schwyz and the community of the mountaineers of the Lower Valley, seeing the malice of the age, in order that they may better defend themselves and their own and better preserve them in proper condition, have promised in good faith to assist each other with aid, with every counsel and every favor, with person and goods, within the valleys and without, with might and main, against one and all who may inflict on any of them any violence, molestation or injury or may plot any evil against their persons or goods. 2. And in every case each community has promised to succor the other when necessary, at its own expense, as far as needed in order to withstand the attacks of evil-doers and to avenge injuries, to this end they have sworn a bodily oath to keep this without guile and to renew by these presents the ancient form of the league, also confirmed by an oath. 3. Yet in such a manner that every man, according to his rank, shall obey and serve his overlord as it behooves him. 4. We have also promised, decreed and ordained in common council and by unanimous consent, that we will accept or receive no judge in the aforesaid valleys who shall have obtained his office for any price or for money in any way whatever, or who shall not be a native or a resident with us. 5. But if dissension shall arise between any of the confederates, the most prudent among the confederates shall come forth to settle the difficulty between the parties as shall seem right to them; and whichever party rejects their verdict shall be an adversary to the other

confederates. 6. Furthermore, as has been established between them that he who deliberately kills another without provocation, shall if caught, lose his life, as his wicked guilt requires, unless he be able to prove his innocence of said crime; and if perchance he escape, let him never return. Counsellors and defenders of said criminal shall be banished from the valleys, until they be expressly recalled by the confederates. 7. But if any one of the confederates by day or in the silence of the night, shall maliciously injure another by fire, he shall never be considered a compatriot. 8. If any man protect and defend the said criminal he shall render satisfaction to the injured person. 9. Furthermore if any one of the confederates shall spoil another of his goods or injure him in any way, the goods of the guilty one, if recovered within the valley, shall be seized in order to pay damages to the injured person according to justice. 10. Furthermore, no man shall seize anothers goods for debt unless he be evidently his debtor or surety, and this shall only be done with the special permission of his judge. Moreover every man shall obey his judge and if necessary, must himself indicate the judge in the valley, before whom he ought properly to appear. 11. And if anyone rebels against a verdict and in consequence of his obstinacy, any one of the confederates is injured, all the confederates are bound to compel the contumacious person to give satisfaction. 12. But if war or discord arise amongst any of the confederates, and one party of the disputants refuse to accept justice or satisfaction, the confederates are bound to defend the other party. 13. The above written statutes, decreed for the common weal and health, shall endure forever, God willing. In testimony of which at the request of the aforesaid parties, the present instrument has been drawn up and confirmed with the seal of the aforesaid three communities and valleys.

Done *Anno Domini M C C. L XXXX Primo.* in the beginning of the month of August."

A little more than two months later Uri and Schwyz entered into a separate alliance with Zurich for three years. In 1294 an assembly of the men of Schwyz was held, at which it

was resolved that no one should be permitted to sell or give land to monasteries in the valley or to strangers outside, under heavy penalty, and requiring the monasteries and foreign owners to pay taxes on their holdings the same as residents, and not impose them on their tenants. During the reign of Albrecht I the cantons were governed by native *Landamannen.* The critical investigations of historians have cruelly swept away the basis for the poetic tales of Tell and his compatriots and the period when Swiss liberty is pictured as taking birth. In place of these thrilling tales it is said that the period of the reign of Albrecht I was uneventful, as far as the Swiss cantons are concerned. Albrecht refused to confirm the charters, but those of Uri and Schwyz were confirmed by Henry VII, and a charter was also granted to Unterwalden. These charters were an assertion by Henry of Luxemburg, as emperor, of sovereignty in opposition to the claims of the Hapsburgs. The question at issue was not whether the forest states were free or subject to the Hapsburgs but whether they were *"mittelbar" i.e.* subject to the Hapsburg as Hapsburgs or *"unmittelbar"* and subject only to the emperor whether he were a Hapsburg or other prince.

In January, 1314 a band of Schwyzers attacked the Abbey of Einsiedeln, which was under the protection of the Hapsburgs, and after damaging much property took away the monks as prisoners and drove off the cattle. This raid resulted from a controversy over the use of lands claimed by both parties. On Nov. 15, 1315, a conflict occurred at Morgarten between the confederates and a force under Duke Leopold, in which the latter sustained a crushing defeat. The battle was remarkable in the fact that a body of mounted and armored knights were defeated by peasants on foot. On Dec. 9, 1315, a meeting was held and the league of the cantons renewed on the same lines, with the additional provisions that: "those lords or that lord who shall attack one of the Lands with violence, or force unjust exactions; such a one or such men shall not be served as long as they have not given satisfaction to the Lands," and also "We have also agreed that none of the Lands nor any among the confederates (*Eidgenos-*

sen), shall give an oath or pledge to a foreigner without the advice of the other Lands or Confederates." Three years later the Duke of Austria renounced all sovereign rights over the states, but retained jurisdiction over his estates, and peace was concluded. On Nov. 7, 1332, a perpetual league was concluded between the three forest cantons and Lucern. This compact recognized the rights of Austria in Lucern, and of the Emperor over Uri, Schwyz and Unterwalden, but provided for mutual assistance in case of aggression from any quarter and for arbitration of controversies among the confederates. Lucern had been under ecclesiastical rule and had also obtained a charter. In 1291 Rudolph of Hapsburg bought for his sons all the possessions of the Abbey of Morbach. Through this purchase Lucern passed to the Hapsburgs, and in 1315 the citizens had been compelled to take part in the battle of Morgaten against the Forest Cantons.

At this time Zurich was a city of considerable importance and classed as a free city. The form of the city government was, however, oligarchical. The people were divided into classes as nobles, free burghers and working men. The governing body was a council composed of thirty-six burghers, divided into three groups of twelve each, a group governing one third of a year. The working class had no vote nor share in the city government. In 1336 there was an uprising against the abuses of the council, led by Rudolph Brun, who, though of a leading family and a member of the council, became the champion of the common people. A new charter was formed called the "First Sworn Brief," which provided that the whole population should swear to serve and obey the *Bürgermeister* in all things, without however, disparagement of the rights of the Emperor and the two church establishments of the city. The *Bürgermeister* must swear to protect all citizens to the best of his ability without distinction of rich or poor. A new council was to be elected by two classes, the first included the nobles and burghers who lived on their incomes, or were in business as merchants, woolen-drapers, money changers, goldsmiths and salt dealers. These together formed an association, called the *Konstaffel*. The workingmen made up

the second class and were grouped into thirteen guilds according to occupation. They were organized into companies and drilled for the defense of the city. Over each was a guildmaster, elected semiannually by the guild, who became ex-officio a member of the council. The *Konstaffel* chose an equal number, making the full council twenty-six in number. On important occasions all the citizens were assembled for consultation. The *Bürgermeister* was chosen for life. Following this change of organization there was trouble with the Count of Rappersweil and his followers, and on Feb. 23, 1350, an attack was made on Zurich under the lead of the son of a Count of Rappersweil who had been slain in a fight at Grinau. The attempted surprise resulted in the capture of the young count and his principal followers, thirty-five of whom were barbarously executed. Brun, who had been chosen *Bürgermeister,* took Rappersweil, destroyed the castle and devastated the possessions of the Hapsburgs about the head of the lake. As a result Zurich was confronted with the forces of Austria and needed help. On May 1, 1351, a perpetual league was concluded between Zurich, Lucern, Uri, Schwyz and Unterwalden, each promising mutual assistance, but allowing the members to form separate alliances, and pledging the forest states to help maintain the existing form of government in Zurich, if requested. War followed between the Austrian duke and the confederates. On June 1352 Glarus joined the confederacy, Lucern not becoming a party to the compact. On June 27 Zug, which had been taken possession of by the confederates, also joined the league. After an indecisive campaign peace was concluded with Austria, by which the Duke retained Glarus and Zug.

The city of Bern was also an *unmittelbar,* free city, claiming charter rights under what is called the *Goldene Handveste,* claimed to have been granted by Frederick II in 1218, allowing immunity from imperial taxation, except an annual homestead tax, with the privilege of electing all its municipal officers, exemption from military service so far away that they could not return at night, and containing many other regulations of municipal affairs. In 1295 certain reforms

were made. In addition to the *Schultheiss* and council of twelve, a board of sixteen was chosen from the four wards of the city, which was empowered to elect a common council of 200. Artisans, theretofore unrepresented, were eligible to the board and council. Guilds were forbidden. Prior to this time Bern had vacillated in its allegiance between Savoy and Hapsburg. In 1323 Bern sought and gained the alliance of the Forest States and in the following years waged war and took a number of places in the neighboring district. In June 1339 the battle of Laupen was fought and won by the confederates, and in 1342 peace was concluded, which was followed in 1355 by the admission of Bern into the Confederation. A document similar to the former ones was drawn up, but not making a close league between the cities. Charles IV, having quarreled with Rudolph IV of Austria, confirmed the charters and leagues of the States, and in 1364 the latter recovered Zug from Austria. In 1375 there was an invasion of a large army of mercenaries under Ingram de Courcy, which entered Argau and laid waste the country. The attack was directed rather against Austria than the Swiss but, as usual, innocent people rather than the hostile ruler suffered. The people, however, rose, surprised and defeated a large detachment and soon drove the remainder from the country. This was called the Gugler invasion. After a brief interval of peace quarrels were renewed with Austria. All the members of the league except the Forest Cantons and Glarus joined the Swabian Confederacy. Lucern refused to pay customs to the Austrian bailiff and received and protected peasants from the ducal estates. The bailiffs seat at Rothenburg was destroyed. Zug attacked the castle of St. Andreas, Zurich marched against Rappersweil and the men of Schwyz took Einsiedeln. A summons was sent to the Swabian cities, to which they made scanty response.

In June 1386 Leopold III, who had succeeded to the western possessions of the Hapsburgs, organized an expedition to crush the confederacy. Many noblemen of the neighboring country came to his aid, and he also hired several bands of mercenaries. With a force of 6,000, including many armored

knights, he made a feint of an attack on Zurich, but it was his purpose to strike Lucern as the heart of the Confederacy. With overweening confidence his forces moved along, unprepared for an attack, when on July 9, 1386 they were met at Sempach by about 1,600 men of Lucern and the Forest States. The battle which ensued, though not involving great numbers, is one of the most notable in history from the fact that a very inferior force of peasants and burghers, fighting without armor, defeated so large a force of armored knights and professional soldiers. Leopold was killed and his army completely routed. Some circumstances favored the Confederates. Their attack was a surprise, on ground unfavorable to horses, so that the knights were forced to dismount, and, the heat being intense, their armor was such a serious encumbrance as to outweigh the protection it afforded. The tale of the heroism of Winkelried and the share he contributed to the victory is a subject of controversy among historians, though not so thoroughly discredited as the legends of Tell. The results flowing from this remarkable battle were momentous, for it finally broke the power of Austria in the Confederation. The men of Glarus at once rose against Austria and in April 1388 defeated at Näfels the army sent against them, though the Austrian odds were much greater than at Sembach. In 1389 a peace for seven years was concluded, which secured the confederates in all their possessions, and on July 16, 1394 it was extended for twenty years. Only a few months after the battle of Näfels the Swabian cities met a crushing defeat at the battle of Doffingen, and their league came to an end.

At the head and front of the confederacy, thus far, had been the men of the Forest States. Uri, Schwyz, Unterwalden and Glarus were still democracies of the ancient German type. The people assembled in the open air as the *Landgemeinde*. They chose a council to transact current business, but the power of ultimate decision, the sovereign authority, rested in the whole body of citizens, and it was their united mental and physical energies that produced such surprising results. The rule of the cities was more oligarchical in character, the

chief executive officer and the council acting for the whole. Bern, the most important of the cities, was also the most oligarchical in its constitution. The chief magistrate, called the *Schultheiss,* and council of twelve from the aristocracy had held exclusive authority till the reform before mentioned. The *Pfaffen brief,* subscribed by all the confederates except Bern and Glarus, contained among others the following important provisions. 1. All vassals of Austria, whether clergy, laity, nobles or commoners, taking abode in the confederation, must swear fealty to the Confederates. 2. No foreign ecclesiastic, dwelling in the Confederacy, should summon others before foreign tribunals, except in ecclesiastical or matrimonial cases. 3. A priest violating this rule should be outlawed. 4. The Confederates guaranteed the safety of all roads from the *Stubende Brücke* on the St. Gothard route as far as Zurich.

The covenant of Sempach (*Sempacher brief*), was executed in 1393 by the eight confederates, and also by Solothurn, and recited that,

"Whereas they had fought and won against Austria they now desired to make provision for future attacks" and provided, 1. That no confederate should break into the house of another with intent to plunder either in war or peace. 2. That the safety of merchants in persons and goods be guaranteed. 3. Those taking part in future military expeditions were to stand by one another, whatever might happen, like true men, as also their forefathers did. 4. Should anyone desert in war or break any of the rules of this covenant and his guilt be attested by at least two honorable men, he should be promptly punished in his person and goods, according to the law of the state to which he belonged. 5. The wounded were to stay by their comrades until all danger was past nor be considered deserters if unable to help. 6. Thereafter no man should be allowed to take plunder until the fight was at an end and the captains gave permission, and all spoils should be equally distributed to every man a share. 7. All monasteries and churches should remain inviolate, unless the enemy took shelter in them. 8. Women should not be attacked unless they warned

the enemy by an outcry or themselves fought, in which case they should be punished as they deserved. 9. None of the contracting parties should provoke war wantonly without due cause or warning as provided in the various leagues.

This compact provided no governmental machinery for common ends, but nevertheless was a substantial bond. It advanced principles of humanity, for the violation of which war should afford no excuse. Though by no means free from the savagery of the times, in their provisions for arbitrating disputes among themselves and mitigating the horrors of war the confederates exhibited a morality far in advance of the general spirit of the time.

The monastery of St. Gallen, founded during the seventh century, had grown into a powerful ecclesiastical establishment with large estates. The abbots exercised authority over the estates of the monastery, while the supreme authority over the district was in the hands of an imperial bailiff. In 1345 the Abbott was appointed baliff over the city of St. Gallen and the villages of the province. In 1377 five villages, united under the name of Appenzell, joined the Swabian league and created a council of thirteen, elected by the people. In 1401 an alliance between these villages, St. Gallen and other communities suffering from the rule of a tyrannical abbot, formed a league and attacked the possessions of the Abbot. In 1403 Appenzell was taken under the protection of Schwyz and received an *Amman* from it as chief magistrate, and proceeded to commit further depredations on the abbot's estate. He gathered a considerable force, which met a crushing defeat at Vögelinsegg. Again, on June 17, 1405, having called in the aid of Austria, an effort was made to compel submission to the Abbot's rule, but the mountaineers were again victorious and assuming the offensive overran the whole country southeast of the Boden See. This country they were unable to hold, and in 1407 they sustained a defeat.

In 1411 a new alliance was formed between Appenzell and Schwyz, with all the other members of the confederacy except Bern, by which, however, Appenzell occupied a subordinate position under protection of the other states. In 1412

St Gallen was also added to the league. In 1388 the people of some of the communes of upper Valais, exasperated by the murder of the Bishop, had inflicted a crushing defeat on Count Amadeus VII of Savoy and the nobility allied with him, and in 1403 the Bishop of Sion and the people of the Valais entered into *"Burg und Landrecht"* with Uri, Unterwalden and Lucern. Here it will be observed that the Bishop and the people were opposed to the nobles. In 1403 Uri and Obwalden invaded and established their authority in Ticino as a subject province. In 1412 the peace with Austria was renewed for a further period of fifty years. In 1415 under instigation of the emperor Sigismund, who was at war with Frederick of Austria, the members of the league attacked the Aargau and besieged the stronghold called the *Stein.* While the siege was being pressed, peace was concluded between the emperor and the duke, and the confederates were ordered to withdraw, but they refused, took the *Stein* and divided the territory among the members of the confederacy. Uri however took no share. Disputes having arisen between Schwyz and Zurich over the estate of the Count of Taggenburg, Zurich formed an alliance with the ancient enemy, Austria, and the confederates declared war. In a battle before Zurich the confederates were successful. After a brief time an overwhelming force of mercenaries, called the Armagnacs, came into the country and attacked about 1,300 of the confederates near Basel on Aug. 21, 1444. A most desperate fight ensued, in which the latter were nearly exterminated. The effect of the battle, however, was to check the advance of the victors. In 1450 the principle of arbitration was invoked, and the Schultheiss of Bern chosen final arbiter between the contending parties. He declared the allegiance between Austria and Zurich null and that by the perpetual league Zurich was still bound to the confederation. On the other hand Zurich was given back her territory, except a small portion of the Taggenburg estate.

In 1474 the confederation was drawn into a war with the Duke of Burgundy, in which it defeated him in two great battles and took a great quantity of spoils. Differences hav-

ing occurred between the Forest States and the cities, a diet was called to meet at Stans in Unterwalden to settle matters. It met in 1481 and after stormy scenes finally reaffirmed the Covenant of Sempach and *Pfaffenbrief* with an additional covenant against dangerous assemblies in the towns leading to tumults. It was further provided that the covenants should be sworn to every five years. In 1499 the confederates became involved in a war with the Emperor. After a brief struggle the matters in dispute were referred to arbitration, and from that time the confederation became practically independent, though not formally recognized as being so. In 1500 Basel and Schaffhausen were received into the confederation as the eleventh and twelfth members. The Swiss had reached the stage of a recognized military power, and Swiss mercenaries were eagerly sought by European potentates. The confederation also entered upon a struggle with the French King for Italian possessions, which resulted in their defeat at Morignano in 1515. Following this war Appenzell was admitted into the confederation as the thirteenth state. Though the confederation had waged such successful wars, it was still without any central government. All concert of action was attained by conferences of representatives of the different states. The diets, which were held by delegates, were not strictly legislative or sovereign bodies, but rather assemblies of ambassadors, who could only act in accordance with instructions. Nevertheless the country does not seem to have suffered greatly from the want of a stronger government. Common needs and purposes formed a stronger bond of union than any accepted system would under other circumstances. No error is more common or more harmful than that the acceptance of an official system necessarily adds greatly to the welfare of the people. A government is not firmly established until the people generally are educated to regard it as having rightful authority and to yield obedience to the rules and principles on which it is founded. When this condition is attained, the great majority of the people observe and obey these rules and principles without the direct application of the power of governing agencies. Compulsory

measures are only required for the minority who refuse compliance. The bond of the feudal system was the oath of the vassal to serve his lord and the promise of the lord to protect the vassal. When the relation was entered into, its obligations were distinctly taught and assumed as a personal duty, deliberately accepted, and to the performance of which the vassal was bound by his oath. In the absence of the compact or of any accepted relation, the vassal would have had the same natural right to lead and command as the lord, and in a company of freemen would as often be chosen by his fellows to do so.

The peculiarity of the Swiss confederation, distinguishing it from most if not all other confederations, was that it was an *Eidgenossenschaft,* an oath bound association, in which the individuals composing the democratic states entered into a written compact, agreeing to do certain things for mutual protection, and to be bound by certain rules which were deemed conducive to the general welfare, and took an oath that they would perform the compact. This was in effect an oath of mutual support in defense of their rights, instead of an oath of fealty to an overlord. The bond which thus tied equals to each other proved in the early struggles even stronger than the feudal bond. It was superior in its moral principles. It appealed both to the conscience and to the intelligence of all the freemen, and the voluntary compliance yielded to the compact was such as to make a few peasants and burghers the superiors in war of the feudal lords of Austria, and even of Burgundy, France and the empire. It is also worthy of notice that the leading necessity for arbitrary central authority, vested in one ruler, is to raise, equip and command armies in war. The need of a single head, vested with power to decide and act promptly, has been almost universally recognized, yet the superiority of the free confederates over the feudal lords and their retainers was demonstrated over and over on many hard fought battle fields. There is much similarity between these early contests and those of the Greeks against the Persians. Perhaps the most significant fact connected with this matter is, that a force of men fighting a defensive war,

which each man regards as his war, and when he has been educated to regard it as his religious duty to do his utmost for himself and his sworn comrades, is superior to another force of equal numbers which merely obeys a constituted leader, and that education in and voluntary assumption of social duties are of the highest value in the organization of states.

Among the most noted leaders of the reformation was Ulrich Zwingli. He was quite as much a political as a religious reformer, and he preached vigorously against the sin of fighting the battles of despots for pay. Zurich accepted his doctrines, and the other Swiss cities inclined toward the reformation. The Forest Cantons remained Catholic. War between the opposing factions threatened in 1529, but a peace was concluded which allowed religious freedom to each state, not to each person. In 1531 Zurich having cut off supplies of food from the Forest States and suppressed the monastery of St. Gallen and appropriated its lands, civil war broke out and Zurich was defeated. A second peace followed, which recognized the right, not only of states, but of each parish or commune, to determine its form of worship. The League split into two camps. The Catholics held Uri, Schwyz, Unterwalden, Lucern and Zug, which in 1529 as the *"Christliche Vereinigung"* had entered into an offensive and defensive alliance with the King of Hungary, and Freiburg, Solothurn, Inner Rhoden, Appenzell and St. Gall, which gave them seventeen out of a total of twenty-nine members of the diet as then constituted. The reformers held Zurich, Bern, Basel Schaffhausen, Ausser Rhoden (Appenzell) with Graubunden. Thurgau and Glarus were divided. Prior to the reformation Geneva was a republican city, over which the count of Savoy and the Bishop claimed seigniority. In 1519, at the instigation of the republican elements in the city, a temporary alliance was formed with Freiburg and Bern and another in 1526 for twenty-five years. In 1536 by the aid of an army from Bern Geneva was liberated from the rule of the Bishop and Count of Savoy. The people had been converted to the principles of the reformation, and a new alliance was concluded. Geneva became the field of the labors of William

Farel and John Calvin, and under their leadership adopted a rigid and intolerant system, which was enforced with the burning of Michael Servetus at the stake for heresy and other cruelties. Secret spies and torture were called to the aid of those who professed a reformation of the Church of Rome.

In October 1586 the Golden League was formed by the Catholic states of Uri, Schwyz, Unterwalden, Lucerne, Zug, Freiburg and Solothurn for the maintenance of the true faith in their territories and engaging to help each other, if attacked by external enemies, notwithstanding any other league new or old. In 1612 Zurich and Bern entered into an alliance with the Margrave of Baden. Though religious dissensions had disrupted the Confederation, unlike their co-religionists throughout Germany, the opposing factions did not join in the Thirty Years' war, but maintained an attitude of neutrality. They were unable to escape some complications with Austria, which conquered the Prattigan, and the Spanish and French in the Valtellaine.

The treaty of Westphalia, concluded in 1648, terminated the Thirty Years' war and recognized the independence of the Confederation in the following language, "Aforesaid city of Basel and the remaining Cantons of the Helvetians are in possession of as good as full freedom and exemption from the empire and are in no way subject to the *Dikasterien* and courts of the empire."

The hiring of mercenary troops to foreign princes, the payment of pensions to the states for the privilege of hiring mercenaries, the rulership of the Aargau, Thurgau and other lands taken by force of arms and ruled as dependencies by the cantons, the exercise of authority by representatives of the states, by bailiffs and captains, tended to develop the aristocratic spirit, not only in the cities, but in the Forest Cantons as well. With more intercourse and closer relations with neighboring states and with the growth of individual fortunes social distinctions and oligarchical tendencies developed. The democratic cantons exercised over their dependencies the rights of the feudal lords whom they had displaced, and with no less vigor. In 1653 the peasant's war broke out in the

Entlebuch, a valley subject to Lucern, and spread over the whole Confederacy. Popular assemblies were held and protests made against the tyrannies of the local governments. Armed encounters followed between the peasants and the authorities, resulting in the defeat of the former and the barbarous execution of Leuenberger and Schibi their principal leaders.

In 1663 Louis XIV of France renewed a treaty, first made with the Confederation in 1602, and thereby obtained their plege to supply him at least 6,000 and not more than 16,000 men annually in return for 3,000 francs to each canton annually, regular pay for the mercenaries and certain commercial privileges. The aristocratic tendencies were most marked in the cities of Bern, Lucern, Freiburg and Solothurn, where there were no guilds sharing in the government as at Zurich, Basel and Schaffhausen. They were promoted there as everywhere by the principle of the inheritance of wealth and power. The burghers, who administered the municipal government, refused to admit new members to burgher rights, and a small class secured possession of all the offices and adopted the principle of coöption, by which they supplied all vacancies by appointment and without any consultation with the body of the citizens. In Bern of 360 burgher families eighty held all the offices.

It is most remarkable that Swiss territory should have become the dwelling place of so many of the great men of the eighteenth century, Voltaire, Rousseau, Gibbon, Madame de Stael, Lavater and Pestalozzi. On Swiss soil there was an awakening to the falsity of the claim of the descendants of robber barons to rule by right divine, and to the manifest right of all men to liberty, not only of conscience, but of conduct. Switzerland, though not the field of the great struggle for liberty which took form in the last part of the eighteenth century, was a school in which the principles governing social relations were studied with great profit and profound influence on all western Europe. In 1759 there was formed the *Oekonomische Gesellschaft* at Bern, said to have been the first agricultural society in Europe. It promoted improved

systems of agriculture. In 1762 the Helvetian society, with the Baths of Schinznach as the place of its meetings, was formed for the study and discussion of social problems and to promote reforms in public affairs.

There were various attempts to gain relief from the tyranny of the oligarchies, which had developed not only in the cities but in the Forest Cantons, in Appenzell against Landammann Zwellweger, in Zug against Zur Lauben, in Schwyz against the family of Reding, whose wealth, acquired in foreign service, was made the basis of claims of right to rule at home. In Geneva there were many revolts and efforts to throw off the rule of the oligarchy.

In Bern the democratic leader Henzi and two companions were executed, as was Waser in Zurich. The lands, wrested from feudal lords by the Confederates and held as subject districts, revolted against the oppression of their rulers: Wilchingen, in Schafhausen, Entlebuch, the Vaud, the Toggenburg and Val Levantina, all strove for relief, but without success. Those claiming an hereditary right to take the proceeds of the labors of others without compensation maintained their claims by force and visited barbarous punishment on those who asserted their natural rights.

In 1790 the Helvetian Club at Paris was formed by exiles from Swiss districts and issued pamphlets teaching the rights of man, which they succeeded in circulating in spite of the efforts of the Cantonal authorities to suppress them. Disturbances soon followed. In 1790 Lower Wallis rose against the upper district. In 1792 the "Raurician" republic opposed the prince bishop of Basel and became the French department of Mont Terrible. Napoleon sought an occasion for the occupation of Swiss Cantons, and when exiles from Vaud and Freiburg called in the directory to protect the liberties which had been guaranteed by France, an excuse was found and troops were sent into Mulhausen, Bienne and the territory of the Bishop of Basel and into Vaud where the "Lemanic Republic" was proclaimed. In 1798 a large French army entered the country and took Bern, which alone offered serious resistance and yielded only after a decisive battle. After this

all the other states yielded to French dictation. On April 12, 1798 a new constitution, called the Helvetic, was promulgated by authority of the French Directory, which declared the body of all the citizens sovereign, established a representative government, guaranteed religious liberty and freedom of the press, abolished all hereditary titles and powers and all feudal tenures of land. Two legislative bodies were created, a Senate of four delegates from each canton and a Grand Council of representatives elected by the people. The executive power was conferred on a Directory of five members, to be chosen by the Senate and Council jointly. Four ministers at the head of administrative departments were provided for. A supreme court, consisting of one judge from each canton, was created. Each canton was given a prefect, a board of administration and a local court. All distinctions between the cantons and their subject districts were abolished, and the people of all Switzerland were placed on an equal footing. This constitution was accepted by all but the three forest cantons, which resisted, but a strong French army after severe fighting enforced submission and on July 14, 1798, deputies from the eighteen cantons met in Aargau and took the oath of allegiance to the constitution. Nidwalden alone refused to allow its citizens to take the oath and made a desperate resistance, exhibiting the ancient Swiss spirit, but was overcome by superior numbers. Much new legislation was passed by the Senate and Council. There was an abolition of all the vexatious trade restrictions between the cantons with which they were burdened, and free trade was established throughout the republic. In August 1799 an offensive and defensive alliance was formed with France. During that year Switzerland became a battleground for the contending armies of France, Austria and Russia, and suffered much from their presence. The Helvetic constitution did not prove acceptable to the people, and divers new drafts were proposed in 1801 and 1802. In 1802, following the withdrawal of French troops, there were uprisings against the authorities, and in the ensuing conflicts the insurgents were generally successful. Napoleon put an end to the strife by issuing a proclamation inviting the

Swiss people to send delegates to confer with him concerning a new constitution. On this call about sixty delegates went to Paris, and on Feb. 19, 1803, a new constitution, styled the Act of Mediation, was signed and promulgated. It was a compromise between the old confederation and the Helvetic constitution. It reinstated the old Diet with enlarged powers, and restored the sovereignty of the cantons. Six cantons were selected, namely Freiburg, Bern, Solothurn, Basel, Zurich and Lucern in which the diet was to be held in annual rotation, the *Schultheiss* or *Bürgermeister* of each capital becoming in turn President of the confederation with the title of *Landamann* of Switzerland. Each canton sent one delegate to the Diet, but cantons having more than 100,000 inhabitants had two votes. The cantons separately had all powers not delegated to the Federal authorities. The *Lands gemeinde* in the democratic cantons were restored, and in the other cantons the government was put in the hands of the great council as the legislative body and the small council as the executive, and a property qualification required for voters and officials. No canton was allowed to form a separate political alliance. Full liberty was given all citizens to settle in any canton and no privileged class, except as stated, or subject lands were allowed. With the downfall of Napoleon Switzerland, in common with the rest of Europe, exhibited reactionary tendencies. On Dec. 22, 1813, Bern declared the Act of Mediation void and reinstated the surviving members of the old council, who had served before the revolution. A week later the Diet also denounced the Act and the work of forming a new constitution was undertaken, but was not completed till 1815, under the supervision of the great powers, which, at the Congress of Vienna on Nov. 20, 1815, guaranteed Switzerland independence and the inviolability of her territory. On Aug. 7, 1815, the twenty-two states comprising the confederation signed the new *Bundesvertrag*. Valais, Geneva and Neuchatel were now admitted as states on an equal footing. The new pact regulated the contributions of men and money to the Confederation, and provided a Federal Board of Arbitration to settle internal dis-

putes. The Diet was made of delegates limited to one vote for each canton. Bern, Zurich and Lucern were made capital cities in rotation. The office of *Landamann* was abolished and no central authority was created to enforce the decrees of the Diet. Church and monastic establishments were guaranteed protection. Following the adoption of this scheme of loose confederation the cantons returned to much of their ancient system. Censorship of the press and the mercenary system are among the worst of the results of the reaction.

The spirit which brought about the French Revolution of 1830 was also at work in Switzerland, and meetings were held in many of the cantons, demanding reforms and increased respect for popular rights. In that year nine of the cantons revised their constitutions in response to these demands. During the following year there were conflicts in Basel, Schwyz and Neuchatel, resulting in the first named in a division into two half cantons. Attempts to revise the federal constitution failed. On March 17, 1832, Luzern, Zurich, Solothurn, St. Gallen, Aargau and Thurgau joined in what was styled the *Siebenerkonkordat,* guaranteeing the maintenance of the constitutions of the members. On November 14 the following conservative cantons Uri, Schwyz, Unterwalden, Baselstadt, Neuchatel and Valais, withdrew from the diet and united in a league; thus dividing the Confederation into hostile sections. From this time on dissensions between the reformers and conservatives, the Catholics and the Protestants, continued, the cantons arranging themselves in opposing factions according to the prevailing sentiment in each. In 1843 Luzern, Uri, Schwyz, Unterwalden, Zug, Freiburg and Valais, Catholic states, formed the *Sonderbund* and in December 1845 signed an Act of Secession, appointed a council of war, and pledged each other mutual support in case of attack. War did not result till the fall of 1847 and was then short and conducted with a most commendable effort to reduce the brutalities of war to a minimum. Dufour, the commander of the federal forces, was both a humane man and an able, energetic general. A campaign of twenty days settled the issue in favor of the Federal side. On November 30, after the war

was over, the French ambassador presented a collective note of the great powers, offering mediation between the contending factions, but the offer was rejected on the ground that the issue had already been decided. In 1848 a constitution was adopted. Under it a man settling in a canton other than that of his birth acquired citizenship after two years, but was excluded from communal rights. A Federal legislature was established, made up of two houses, the *Stande Rath,* composed of two deputies from each canton, and the national council, elected for terms of three years, one for every 20,000 population or major fraction. The *Bundesrath* of seven members elected by the assembly, was the executive head, and their chairman was styled President of the confederation. The *Bundesgericht* of eleven members was the supreme court. All enlistments of mercenaries in foreign service were forbidden by vote of the assembly.

On Jan. 31, 1874, a revised constitution was adopted by the two houses and on May 29 was ratified by vote of the people. It is unique in so many of its provisions that it is well worth careful study. The first seventy articles define the purposes of the Confederation, the relation of the cantons to it and to each other, and many other matters difficult to summarize.

"Article 1. The peoples of the twenty sovereign cantons of Switzerland united by this present alliance namely" (names) form in their entirety the Swiss Confederation.

"Art. 2. The purpose of the Confederation is to secure the independence of the country against foreign nations, to maintain peace and order within, to protect the liberty and the rights of the confederates and to foster their common welfare."

"Art. 3. The Cantons are sovereign, so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all the rights which are not delegated to the federal government."

"Art. 4. All Swiss are equal before the law. In Switzerland there are neither political dependencies nor privileges of place, birth, persons or families."

Art. 5. Guarantees to the cantons and their citizens

their territory, liberty and constitutional rights. Article 6 requires the cantons to ask the Confederation to guarantee their constitutions, to be accorded on condition that they are not repugnant to the Federal Constitution and have been ratified by the people. Article 7 prohibits the cantons from forming separate alliances, though conventions with regard to legislative, administrative and judicial subjects are allowed subject to approval of the Federal authorities.

"Art. 8. The Confederation has the sole right of declaring war, of making peace and of concluding alliances and treaties with foreign powers, particularly treaties relating to tariffs and commerce."

Art. 9. Preserves the rights of the cantons to make treaties respecting public property and border police intercourse, not conflicting with the rights of the confederation or other cantons. Article 10 relates to intercourse with foreign governments. "Art. 11. No military capitulations shall be made."

Art 12. Prohibits officials from receiving pay, gifts or titles from foreign governments.

"Art. 13. The Confederation has no right to keep up a standing army. No Canton or half Canton shall, without the permission of the Federal government, keep up a standing force of more than three hundred men; the mounted police not included in this number."

"Art. 14. In case of differences arising between Cantons the States shall abstain from violence and from arming themselves; they shall submit to the decision to be taken upon such differences by the Confederation."

Arts. 15, 16 and 17 provide for mutual aid in case of foreign attack or internal disturbance.

Article 18 binds every Swiss to perform military service and Arts. 19-20-21 and 22 provide for the organization of the army under the general control of the Confederation, but entrusting certain duties to the cantonal officials.

Art. 23 authorizes the Confederation to construct public works which concern Switzerland or a considerable part of it. Art. 24 gives the Confederation superintendence of dikes

and forests in the upper mountain region. Art. 25 gives like power to protect game.

"Art. 26. Legislation upon the construction and operation of railroads is in the province of the Confederation."

"Art. 27. The confederation has the right to establish besides the existing Polytechnic School a Federal University and other institutions of higher instruction, or to subsidize institutions of such nature. The Cantons provide for primary instruction which shall be sufficient, and shall be placed exclusively under the direction of the secular authority. It is compulsory and in the public schools free. The public schools shall be such that they may be frequented by the adherents of all religious sects without any offense to their conscience or belief. The Confederation shall take the necessary measures against such Cantons as shall not fulfill their duties."

"Art. 28. The customs are in the province of the Confederation. It may levy export and import duties." Article 29 requires import duties to be low as possible. Art. 30 gives the proceeds of customs to the Confederation, out of which certain cantons are given allowances for Alpine roads.

Art. 31 guarantees free trade throughout the Confederation, except as to articles subjected to state police supervision and the salt and gunpowder monopoly. Art. 32 gives the cantons power to collect duties on wine and spirits under certain restrictions. Art. 32, amended in 1885, authorizes the Confederation to regulate the manufacture and sale of alcohol. Art. 33 permits the cantons to regulate the granting of certificates to practice a liberal profession.

"Art. 34. The Confederation has power to enact uniform provisions as to the labor of children in factories, and as to the duration of labor fixed for adults therein, and as to the protection of workingmen against the operation of unhealthy and dangerous manufactures. The transactions of emigration and guarantees inviolable secrecy of letters and telegrams. by the State, are subject to Federal supervision and legislation."

"Art. 34 *bis.* (*Amendment of Oct 26, 1890*). The Confederation will by law establish invalid and accident insurance,

having regard for existing invalid funds. It may declare participation obligatory for all or for special classes of the population." Art 35 Forbids gaming houses.

Art. 36 places posts and telegraphs under the Confederation and guarantees inviolable secrecy of letters and telegrams. Art. 37 gives the Confederation general supervision over roads and bridges and Art. 38 gives it exclusive control of coinage.

"Art. 39. The Confederation has the power to make by law general provisions for the issue and redemption of bank notes, but it shall not create any monopoly for the issue of banknotes, nor make such notes a legal tender."

Art. 40. The Confederation fixes and the cantons enforce the standard of weights and measures. Art. 41 makes manufacture and sale of gunpowder a state monopoly. Art. 42 states the sources of revenue of the Confederation.

"Art. 43. Every citizen of a canton is a Swiss citizen." A Swiss settled in a canton other than that of his birth enjoys full political rights, but does not share in the municipal and corporate property, unless by act of the canton.

"Art. 44. No Canton shall expel from its territory one of its own citizens, nor deprive him of rights, whether acquired by birth or settlement." Naturalization is regulated by federal legislation. Art. 45 gives every Swiss citizen, except criminals and paupers, right to settle anywhere in Swiss territory on a certificate of origin. Arts. 46 and 47 subject residents to the jurisdiction of the place of domicil and provide for federal legislation as to temporary settlements and to prevent double taxation.

"Art. 48. A federal law shall provide for the regulation of the expenses of the illness and burial of indigent persons amenable to any Canton, who have fallen ill or died in another Canton."

"Art. 49. Freedom of conscience and belief is inviolable." No person can be compelled to take part in religious services or pay taxes to a religious body to which he does not belong. Art. 50 gives the public authorities supervision of religious bodies with power to determine their controversies. Art. 51

excludes the order of Jesuits from Switzerland and authorizes the exclusion of any other dangerous order.

"Art. 52. The foundation of new convents or religious orders, and the reëstablishment of those which have been suppressed are forbidden."

Art. 53 makes civil status and records thereof and control of places of burial subject to civil authority.

Art. 54 secures freedom in contracting marriage and gives the wife the citizenship of her husband.

Art. 55 guarantees freedom of the press, but allows the suppression of abuses by the cantons.

Art. 56 allows freedom in forming associations except for unlawful purpose.

"Art. 57. The right of petition is guaranteed."

"Art 58. No person shall be deprived of his constitutional judge. Therefore no extraordinary tribunal shall be established. Ecclesiastical jurisdiction is abolished."

Art. 59. Suits for personal claims must be brought in the domicile of a resident solvent debtor.

"Imprisonment for debt is abolished."

"Art. 60. All the Cantons are bound to treat the citizens of the other confederated states like those of their own state in legislation and in all judicial proceedings."

"Art. 61. Civil judgments definitely pronounced in any Canton may be executed anywhere in Switzerland."

Arts. 62 and 63 abolish exit duties on property.

Art. 64. The Confederation has power to make laws on legal competency, commerce, copyright inventions and bankruptcy.

"The administration of justice remains with the Cantons, save as affected by the powers of the Federal Court."

"Art. 65. No death penalty shall be pronounced for a political crime."

"Art. 66. The Confederation by law fixes the limits within which a Swiss citizen may be deprived of his political rights."

Art. 67 gives the Confederation power to regulate extradition from one canton to another.

"Art. 68. Measures are taken by Federal law for the

incorporation of persons without country and for the prevention of new cases of that nature."

"Art. 69. Legislation concerning measures of sanitary police against epidemic cattle disease, causing a common danger, is included in the powers of the Confederation."

"Art. 70. The Confederation has power to expel from its territory foreigners who endanger the internal or external safety of Switzerland."

"Art. 71. With the reservation of the rights of the people and the Cantons, the supreme authority of the Confederation is exercised by the Federal Assembly which consists of two sections or councils to-wit:

A. The National Council.

B. The Council of States."

Arts. 72 to 79 provide that the National Council shall be composed of one representative for each 20,000 persons or major fraction and gives at least one to each canton and half canton of a divided one. All Swiss twenty years of age may vote and are eligible to election. The term is three years. The Council chooses from its members a President and Vice-President for each session.

Arts. 80 to 83 relate to the Council of States which consists of two representatives from each canton, and chooses its President and Vice-President for each session.

Arts. 84 to 94, give the Federal Assembly legislative power over the matters within the control of the Confederation. A majority of each Council is a quorum and a majority of those voting is required.

"Art. 89. Federal laws, enactments, and resolutions shall be passed only by the agreement of the two Councils.

"Federal laws shall be submitted for acceptance or rejection by the people, if the demand is made by 30,000 voters or by eight Cantons. The same principle applies to federal resolutions which have a general application, and which are not of an urgent nature."

Articles 90 to 94 relate to elections, voting of members of the Council and the introduction of measures and sittings of the Council.

"Art. 95. The supreme direction and executive authority of the Confederation is exercised by a Federal Council, composed of seven members."

Articles 96 to 104 provide that members of the Federal Council are chosen by the Councils in joint session for a term of three years, and they also choose from the Council a President and Vice-President for one year. Members are disqualified from holding any other office or following any other pursuit. President and Vice-President cannot hold two years in succession. Four members of the Council make a quorum. Members have the right to speak but not to vote in either house.

"Art. 105. A Federal Chancery, at the head of which is placed the Chancellor of the Confederation, conducts the secretary's business for the Federal Assembly and the Federal Council." The Chancellor is chosen by the Assembly for three years.

"Art. 106. There shall be a Federal Court for the administration of justice in federal concerns.

"There shall be, moreover, a jury for criminal cases."

"Art. 107. The members and alternates of the Federal Court shall be chosen by the Federal Assembly, which shall take care that all three national languages are represented therein.

"A law shall establish the organization of the Federal Court and of its sections, the number of judges and alternates, their term of office and their salary."

Arts. 108 to 114 relate to the organization, powers and jurisdiction of the court, which extends to all cases in which the Confederation is a party, between cantons and between cantons and persons or corporations, involving the status of persons, and important cases which the parties agree to submit to it, and of political crimes and against officials acting under federal authority and over questions of conflicting jurisdiction and constitutional law.

"Art. 118. The Federal Constitution may at any time be wholly or partially amended."

"Art. 119. Complete Amendment is secured through the forms required for passing federal laws."

"Art 120. When either Council of the Federal Assembly passes a resolution for the complete amendment of the Federal Constitution and the other Council does not agree; or when fifty thousand Swiss voters demand the complete amendment, the question whether the Federal Constitution ought to be amended is, in either case, submitted to a vote of the Swiss people, voting yes or no."

Art. 121. (*Amendment of July 7, 1891*).

"Partial amendment may take place through the forms of Popular Initiative, or of those required for passing federal laws.

"The Popular Initiative may be used when fifty thousand Swiss voters present a petition for the enactment, the abolition or the alteration of certain articles of the Federal Constitution.

"When several different subjects are proposed for amendment or for enactment in the Federal Constitution by means of the Popular Initiative, each must form the subject of a special petition.

"Petitions may be presented in the form of general suggestions or of finished bills. When a petition is presented in the form of a general suggestion, and the Federal Assembly agrees thereto, it is the duty of that body to elaborate a partial amendment in the sense of the Initiators, and to refer it to the people and the Cantons for acceptance or rejection. If the Federal Assembly does not agree to the petition, then the question of whether there shall be a partial amendment at all must be submitted to the vote of the people, and if the majority of Swiss voters express themselves in the affirmative, the amendment must be taken in hand by the Federal Assembly in the sense of the people.

"When a petition is presented in the form of a finished bill, and the Federal Assembly agrees thereto, the bill must be referred to the people and the Cantons for acceptance or rejection. In case the Federal Assembly does not agree, that body can elaborate a bill of its own, or move to reject the petition, and submit its own bill or motion or rejection to the vote of the people and the Cantons along with the petition."

"Art. 122. A Federal law shall determine more precisely the manner of procedure in popular petitions and in voting for amendments to the Constitution."

"Art. 123. The amended Federal Constitution, or the amended part thereof, shall be in force when it has been adopted by the majority of Swiss citizens who take part in the vote thereon and by a majority of the States.

"In making up a majority of the States the vote of a Half-Canton is counted as half a vote.

"The result of the popular vote in each Canton is considered to be the vote of the State."

In several particulars the development of the governmental system of Switzerland is unique. From the first advent of its Teutonic population there has been a settled distrust of arbitrary power and a disinclination on the part of the democratic communities to submit, for any purpose, to the dictation of a central authority. The cantons have manifested a willingness to combine for defense against Austrian and other rulers, who sought to impose their authority, but after success have preferred to retain freedom from any superior authority. The first real union under a central authority was forced on them by France, but since then the remodelled government is the product of Swiss genius. They have had to deal with people differing in language, ancestry and customs, separated by natural barriers and dwelling under a great variety of conditions. They have had democratic agricultural cantons and oligarchical cities, monastic establishments and Calvinists, cantons claiming proprietary rights over other districts, and a vast complication of petty trade restrictions and vexatious regulations imposed by each district for local advantage, to contend with. The inherent difficulties of establishing a system just and satisfactory to the German, French and Italian elements, to urban and rural communities, have not been less than those presented to statesmen elsewhere. They have also been subjected to external influences, which, to a weaker race, would have been irresistible, but which they with a moral and physical courage never excelled by any people have successfully overcome. Against the intrigues of the great powers they have presented a superior code of

morals and superior devotion to the true interests of their country.

The initiative and referendum, by which the people retain in their own hands at all times power to veto the acts of their representatives, to compel action by them on matters they will not undertake, and to amend even the fundamental law whenever they see fit, is a natural outgrowth of the hereditary distrust of delegated power. The Swiss system is clearly the most democratic, and gives the most unrestricted play to the law of social growth and progress of any ever devised. At the same time the process which is marked out for legislation insures full consideration of the question acted on, and guards against the dangers of popular passions perhaps as well as any known system. These dangers are usually greatly magnified. Unjust systems, by which a few profit and many suffer, are always built behind the protection of the governmental system. There is little occasion for fearing that such systems will be established as a result of a popular vote, but, whenever clearly pointed out, an existing one is likely to be more quickly gotten rid of by the direct action of the people than in any other manner. It is almost axiomatic that the deliberate judgment of the whole people, on any matter of general interest, is more likely to be right than that of a less number, entrusted with powers and privileges distinguishing them from the multitude and viewing the matter from the standpoint of a favored class.

In practice the referendum has operated mainly as a check on the action of the Federal Assembly, a few of the laws passed by it having been rejected by the people, while more than five to one of the enactments of the assembly have been allowed to take effect without any call for submission to a popular vote. The existence of the power in the hands of the people to reject an enactment must act as a wholesome check on the legislature, and the initiative tends to stimulate action demanded by the people.

Another marked superiority of the Swiss system over that of other European states is the absence of a standing army, the greatest curse which the governments of modern Europe impose on their people. Switzerland follows a settled policy

of neutrality in all the wars of other nations, and recognizes the principle of arbitration as of the same value and fulfilling the same mission of peace in the settlement of disputes between nations that the courts perform with reference to the contentions of individuals and bodies of citizens within the state. The ambition of military leaders, inherited feelings of hostility between nations, and ignorance of the blessings which may be derived from friendly intercourse, still produce that most lamentable spectacle of great nations professing civilization and Christianity, groaning under the weight of crushing military establishments, each of which becomes the main reason and excuse for the maintenance of the other.

Bern, the Swiss capital, has also become the seat of the most advanced governmental combination ever yet effected, the international Postal Union, a governmental combination, the sole purpose of which is to facilitate intercommunication between the people of all the nations of the earth. It discharges one of the highest and best functions of government, a useful service through the friendly coöperation of all nations in a surprisingly economical manner. Perhaps Swiss statesmen are not entitled to especial credit for the success of the Union, but the peaceful principles on which the state acts render it the natural home of such a Union. Switzerland, after enduring the evils of the lordship of one canton over the people of another under a claim of property rights, now has no subject territory. Wherever Swiss sovereignty reaches are Swiss citizens with equal political rights. The constitution shows evidences of a desire to reach better adjustment of compensation for labor, to better the situation of those who have less than a fair share of the fruits of industry, but it cannot be said that any principle of property rights in marked advance of those recognized in other countries has been accepted.

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CHAPTER XXIII

France

No country presents a more instructive history in the line of our study than France. We here have a chance to observe the development and reconstruction of their institutions by a people substantially homogeneous, who have dwelt in the same state for more than two thousand years. The Frenchmen of today are the lineal descendants of the Gauls, Belgians and Iberians of the days of Caesar, with some admixture, it is true, of Roman and German blood, and some commingling of Northmen. The record of events from the time of the Roman invasion is perhaps more full and complete than that of any other country. Nowhere else can be found wider extremes or greater variety of political institutions and theories of government. All stages of social organization from that of the small semi-savage tribe to the vast empire, and from the absolute despotism to the commune, have been exhibited. Abject slavery has been followed by the theory at least of liberty, fraternity and equality. Since Rome fell, no other European country has exercised so profound an influence on the institutions of other states.

The earliest inhabitants of whom we have any accounts include Iberians, presumed to have been the earliest comers, the Gauls and their kinsmen the Belgians. The descendants of the Iberians still dwell on the slopes of the Pyrenees and are called Basques. They were short of stature, of dark complexion, resolute and tenacious in the defense of their homes, but without capacity for organization on a large scale. The Gauls of early days, like the French people of today, were bright, vivacious, brave and intelligent, but they too had made little progress in the organization of society. They dwelt in villages mainly, but had some walled towns. Caesar describes them as divided into factions, and mentions these factions as

extending into every clan and village. The ruling classes were divided into two distinct orders, the knights and warriors, whose only calling was war, and who substantially every year carried on strife with some neighbor, and the Druid priests, who were not only charged with the management of religious rites, but also were the judges and teachers of the people. Beneath these ruling classes were slaves in large numbers, constituting the bulk of the population. The authority of the Druids was very great, and the Roman church appears to have borrowed some of its forms from them. One method of enforcing their judgments was by excommunication and interdict, causing everyone to fly from the condemned person as a being accursed, and to whom they could give no aid without calling down the heaviest penalties on themselves. They sacrificed human beings to their gods, preferably criminals and enemies, but for want of these the innocent were taken, and religious enthusiasm induced some to voluntarily become victims. In their exemptions from military duty and from taxes the Druids enjoyed privileges similar to those of the later clergy. In the use of torture in their trials and of burning as a punishment they furnished precedents for the Inquisition, and they ranked the crime of resisting their authority, as the later church did that of heresy, the most deadly of all offenses. Yet Caesar praises the impartiality of their justice, and gives them credit with protecting the weak as well as the strong. They built no churches, but held their rites in the groves. Whether polygamy was practiced is not made very clear, but it seems that it was. Caesar says that at marriage the husband added to the wife's dowry an equal sum, and that the increase of the whole was kept by itself and belonged to the survivor on the death of one of them. The husband and father had the power of life and death over his wife and children. Funerals were conducted with great extravagance and ceremony, and with human sacrifices of slaves or dependents of rich nobles. The Gauls appear to have passed the stage of common tenure of land in Caesar's time, for he speaks of the Druids having power to decide questions of boundary. They were accustomed to the use of money, and in the useful arts were

considerably in advance of the Germans. The Belgians were more like the Germans, to whom they were nearer and more closely related, and with whom they were almost constantly at war. Some progress had been made in weaving and metal working. Confederations were sometimes formed by different tribes for defense against incursions from the east, but they were not inclined to unite for aggressive warfare.

The Greeks at an unknown date settled at Marsailles and established Masselia, which became an important trading port, and in 122 B.C. the Romans founded the town of Aquae Sextiae, now Aix, and spreading out over the adjacent country formed the province of Gallia Braccata, of which as a Roman *municipium* Narbonne was made the capital in 118 B.C. In the time of Caesar the Helvetians and German tribes were threatening to invade Gaul, and Caesar's first campaigns were against them, with the Gauls seeking his assistance and protection. Having overcome these enemies, Caesar proceeded to reduce Gaul to the Roman authority, and by 50 B.C. had accomplished the task. From Gaul as a basis he established his power over Rome. Roman institutions were well adapted to the tastes and needs of the Gauls, who soon became thoroughly Romanized. The work of organization was not completed in Caesar's time. In 27 B.C. Augustus established three new provinces, in addition to the old one, out of the territory conquered by Caesar, namely Aquitania in the southwest, Lugdunensis in the middle and Belgica in the north. The population of the country was mainly of the ancient stock, with whom Roman colonists freely mingled. Though there were some revolts after Caesar's time, they were soon suppressed. The Romans brought their system of agriculture, their laws and arts. They built cities, made roads, encouraged commerce and established social order.

A long period of peace and rapid advancement in civilization followed. By 160 the Christian religion was introduced, and during the next hundred years it spread rapidly. The country was substantially exempt from inroads of foreign enemies for about three centuries. Under the empire Gaul played an important part. Antonius Pius was a native of

Gaul. In the last half of the third century Postumus established a Gaulic empire, which was continued by his successors Victorinus and Tetricus. In 236 the Alemanni, a German tribe unknown to the Romans, crossed the Rhine, but were driven back, and about the same time the Goths appeared on the Danube. During the next half century there were many incursions of Frank and Alemanni into Gaul, but no permanent conquest. By this time the imperial government had so ground the people of Gaul with taxation that they were thoroughly impoverished, and a notable uprising of peasants and slaves took place in 285, which spread over the north of Gaul and added to the miseries of the people. The title to the land was held by a few, and the work of tillage was mainly performed by slaves. The Gauls under Roman rule relied on the imperial government for protection, and when the period of disorder came, they were an easy prey to their more warlike neighbors across the Rhine, who, free from Roman domination, organized expeditions when conditions were favorable. Thus from 260 to 268 a band of Franks swept through Gaul into Spain and finally passed into Africa and disappeared. From this time forward there was more or less border warfare and incursions of Germanic tribes into Gaul, some of whom effected permanent settlements.

Early in the fifth century commenced that movement of people which put an end to Roman rule in Gaul. From 406 to 409 there was a deluge of invaders, who mercilessly killed the people and destroyed their property. Cities and towns, of which a great number had been built, were taken, pillaged and burned. In 412 the Visigoths and Burgundians established kingdoms in the south of Gaul. In 451 Attila and the Huns, who had become the terror of Europe, made their way into Gaul and took Orleans. They were met by the combined forces of Romans, Gauls, Goths and Germanic tribes, defeated at Châlons in a great battle, and expelled from the country.

The Franks, from whom France takes its name, were mainly settled in the neighborhood of the lower Rhine, and were divided into the Salians and Ripuarians. Though prior kings are named, their history is unimportant, and with Clovis king

of the Salian Franks of Tournay commences the Frankish state. Clovis was a fierce, cruel, cunning and unscrupulous barbarian, who did not hesitate to take the lives of all who stood in his way, often with his own hand, but he was successful in extending his power over nearly all Gaul. He married a Christian maid, Chlotilde, who, aided doubtless by other influences, converted him to Christianity. His warriors also were baptized, but neither he nor they took in much of Christian morality. He however became allied with the Christian clergy, who aided him in extending his power. The dynasty founded by Clovis derives its name from one of his ancestors, and is styled the Merovingian. With it the history of France as a nation begins. At his death Clovis left his kingdom divided among his four sons. He had acquired most of it by conquest, and he left it as an inheritance, divided according to the prevailing German custom among all his sons. They fought for the shares of each other, with the result that Clotaire got it all. At his death it was partitioned among his four sons and again united under Clotaire II. The Merovingians ruled from 511 to 752, and their history teaches little but the evils of despotic military rule. They were cruel, perfidious, debauched and many of the later ones almost idiotic. The pernicious principle of treating political power as property to pass by inheritance caused untold misery and misfortune to the people. No other dynasty illustrates so constantly and forcibly the evil consequences of passing political power from father to son without regard to capacity or merit. No other dynasty exhibits in more disgusting form the evils of despotic rule. Not kings only, but queens as well, displayed their cruelties and vices. The stories of Fredegonde and Brunechild are typical of a most cruel age and the execution of the latter, at the advanced age of eighty by tying her to the tail of an unbroken horse by the hair of her head, one arm and one foot, of the possibilities of kingly cruelty under Clotaire II. Murder and rapine lay at the foundation of the kingdom, and morality found little lodgment in the palace or the home of the great landlord. Christianity was for them merely the name of a superstition, and these coarse and brutal rulers

hoped for aid in their cruel deeds from the unseen power, to whose priests they gave present of lands and goods.

The government, laws and land tenure, which developed as a result of the conquest of the Franks, were made from three widely different systems. Before the advent of the Franks the Roman law furnished rules for all property rights, land tenure and inheritance, as well as for determining the status of citizens and slaves. The people were accustomed to submit to the cruel exactions of the tax gatherers, who robbed them of their substance without returning any considerable benefit in the way of public works or services. Illiteracy and ignorance were general, and the moral tone of society low. A large proportion of the people was held as slaves to the rest. In race the inhabitants were mainly Gauls, with an admixture of Romans, and with settlements of Goths and other Germanic tribes in places. The Franks had never been subject to Roman rule or law. They preserved and followed most of the ancient German customs, though the power of the king had been considerably increased. The controlling power of the nation still resided in the assembly of freemen, but the king and his antrustions, the followers of his person, had become a military caste and largely dominated the affairs of the state.[1]

Three orders of people had been formed among them. The antrustions, the freemen and slaves, whose relative importance may be judged by the rate of composition allowed for taking the life of one of them. For the antrustion, six hundred sous, for an ordinary freeman two hundred sous and for a bondman forty-five sous. At and prior to the time of Clovis the antrustions had not become a landed aristocracy. They were the companions and personal followers of the king, who fought with him and received a share of the booty taken, and were accorded a degree of consideration above that of ordinary freemen. To just what degree the ancient German system of common tenure of land had been modified it is difficult to determine, but neither the idea of individual ownership of an

[1] For a very full and interesting account of the development of the laws of France see Broussaud's French Private Law, Continental Legal History Series, vol. 3.

inheritance in the soil, nor of feudal tenure, had gained general recognition. In religion they worshipped the fierce German gods without the intervention of any priestly order. In domestic life they were monogamists, and their women were treated as companions. Though their customs admitted slavery, slaves were not numerous among them. On their advent into Gaul they found the Roman Church. It had supplanted the ancient Druids and already owned considerable estates. Among a people sunk in ignorance and prone to gross superstition, the clergy, with the mystery of book and bell, had gained great influence, and through the confessional, absolution, baptism, marriage and the many functions assumed as pertaining to religion, exercised a potent authority. Clovis adopted this religion, and his soldiers followed him to baptism as they did to battle. Though in after times contentions sometimes arose between the princes and the clergy, the two, working in concert, contributed greatly to each other's power. The princes encouraged the support of the church, and often granted it great possessions, and in return the clergy taught the ignorant multitude the divine right of kings to rule and the sacredness of their persons. The church had its peculiar list of offenses against its rules and authority and its own system of punishing offenders. The Franks as conquerors became the dominant force, and in all matters pertaining to the rights of Franks the Salic law prevailed, but it was crude and covered only the needs of a comparatively simple people. The Roman law, having been the development of a great empire during a long course of time, was of far greater volume and complexity, but owing to the long period of oppression, the general ignorance and the inefficiency of the judicial system, there was not much knowledge of its principles among the people. The existence of its learning and refinements in scattered volumes, which few even of the ruling class could read, afforded almost no protection to any one in his rights. The canons of the church were of more living force, for they were studied and followed by the clergy in all matters of ecclesiastical cognizance. The earliest code of Salic law extant is of uncertain date, but must have been written subsequent to the early con-

quests of Clovis. The legislative power was still in the assembly of freemen, and the judicial power in a judicial assembly of freemen. Punishments were almost exclusively by fines, and the law determined the distribution of weregeld among the kindred of a murdered man. It is said that the Germans knew only two capital crimes. They hanged traitors and drowned cowards. All other offenses could be commuted in money. In their first inroads the Franks came as red-handed spoilers. The plunder taken was divided among the conquerors. At first they did not covet land so much as cattle and goods, which they took wherever they could find them. In the development of the system of land tenure it was not at first the custom to grant great fiefs in perpetuity, or even for life. In that system which afterward became so general, by which the power and dignity of the nobles were measured by the tenure and value of their lands, the first step hardly contained a hint of what followed. At first the counts were sent to rule over their districts for a year only. The distribution of the counties was a matter debated in the general assembly, but later it was solely for the king. The authority of the counts was renewed from time to time, until an assignment to a county was generally equivalent to a term for life.

Clovis and his sons raised and led their own armies, appointed the counts who ruled in the counties and the chiefs of hundreds, but in the course of a few generations the incapacity of the kings made it necessary to choose more vigorous leaders. In a society constituted like that of the Franks at that time the chief man in the household of the king, where all the principal men congregated, naturally exercised the authority which the king was too weak or too indolent to exert. The mayors of the palace were sometimes named by the kings to aid them in their struggles with the *lendes,* the antrustions, and sometimes elected by the *lendes* in opposition to the king. While the kingdom was divided, in Neustria the mayors supported the interests of the kings, while in Austrasia they sided with the *lendes.* The mayors assigned the lords to their fiefs, raised the armies and led them to battle. Under Dagobert I and his son, Sigebert II of Austrasia, Pepin of

Landen, who had acquired vast possessions and great military prestige, became mayor of the palace. His son and then his grandson Pepin succeeded to his authority. The latter for twenty-seven years and during the time of four kings exercised the chief power in the state. He sought to pass his power at his death to an infant grandson by his first wife, but the nobles would not have it so and chose his son Charles instead. Charles became the real ruler, and the kings were mere puppets in his hands. The invasion of the Mohammedans and their crushing defeat by the Christians under the command of Charles at Poiters in 732 gave him the name of Martel and greatly strengthened his position. Charles found it necessary in order to carry on his wars to make the church contribute, and did not hesitate to lay hold of church lands and confer them on his followers. Still he was a zealous churchman, and labored not only to drive back the Moslems, but also to propagate Christianity in Germany. At his death he transmitted a divided authority to his two sons, but one of them soon withdrew to a monastery, leaving Pepin sole mayor and ruler in fact.

In 752, with the advice and consent of the Pope, the general assembly of lords and bishops proclaimed Pepin king and put an end to the puppet kings. During the times of the mayors of the palace much progress had been made in the development of the feudal system. Land had become the source of wealth and power. The possessions of the church had been extended at times and taken away at others. The many partitions of the kingdom and the constant struggles between the descendants of Clovis, and later the mayors of the palace, for the whole kingdom, with the frequent murders and confiscations, brought new lands to the king, which he found it necessary to confer on his retainers in consideration of their support. Each vassal receiving a benefice became bound to furnish aid to the sovereign, corresponding with the size of his estate. In this manner much land had become the subject of tenure as benefices from the king or mayor, though most of it was then held only for life.

The succeeding reign of Charlemagne stands out in bold

relief in a barbarous age. The extension of his empire and the system of government he established have already been considered in the chapter on Mediaeval Europe and will not be here repeated. The feudal system as developed in France has also been treated in the same connection. The house established by Pepin reached its acme of intellectual vigor as well as of power in Charlemagne. With all his prudence in affairs of state, he adhered to the ancient Frankish custom of dividing his empire as an inheritance among his sons, and this custom continued under the Carlovingians as in the first dynasty. The nobility, from being personal followers of the king, entrusted by him with the administration of local affairs for such limited period as he, with the assent of the popular assembly might fix, had grown in power and asserted a title to great estates; and from the time of Charlemagne the benefices began to be treated as inheritances which the king had no power to take away. With a firm hold on the land the feeling of dependence on the king abated, and the system, which was originally designed to create a strong bond of union between king and vassal, by a very natural evolution rendered the king dependent on his great vassals and reduced his authority to a shadow. The genius and energy of Charlemagne led him to take the utmost pains to gather information with reference to the condition of affairs in every part of his empire. He held frequent assemblies of the freemen, where laws and regulations were discussed. From these the double advantage accrued of gathering information from the people drawn together from different parts of the states for his own enlightenment, and the dissemination of knowledge and instruction in laws and principles of government among the leading citizens. He also employed messengers, constantly traveling over the country, to learn and report how the local affairs were being administered and what the needs of the people were. Nothing indicates more strongly his wonderful energy and capacity than his success in gaining and distributing information. Herein lies one of the greatest inherent weaknesses of a government by a single ruler. He cannot and does not know much about the conditions and the needs of his sub-

jects. In the nature of things a single person can be in but one place and investigate but one subject at a time. In a great kingdom there are thousands of places and subjects requiring careful, patient, intelligent consideration, and often vigorous action. To the indolent king in his palace with his dissolute courtiers the needs of the times are almost unknown, and often the capacity to act efficiently is wanting. The task is altogether too great even for the greatest of men. This truth was well illustrated in the succeeding reign of Louis the Pious, who is characterized as moral, cultured and actuated by the highest motives and purposes, yet in his tastes he was modest and retiring, preferring solitary study to mingling with the throng. The government of such an empire imperatively demanded the utmost vigor in gathering knowledge of what was going on and the most prompt and resolute action. It was not an age when moral worth in a king brought voluntary compliance with his wishes. The soldiers, who had followed his father, Charlemagne, in his victories, were fierce barbarians. Charles himself could be bloody and cruel when he deemed it useful, as in the case of the revolted Saxons, when he cause the heads of four thousand five hundred of their chief men, whom he had summoned to meet him, to be all cut off in one day. Gentleness and humility were virtues not then appreciated in a ruler. Courage, strength and an iron will were requisite to the control of a turbulent and immoral nobility. The reign of the pious, kind Louis was of weakness, disorder and civil war. In the laws which he promulgated the wonderful diversity of genius and marvelous intellectual energy of Charlemagne is displayed. His Capitularies included articles inculcating moral precepts, regulating matters political and of administration, prescribing penalties, regulating civil rights, relating to religious matters, canonical observances and incidental matters. The Capitularies were lacking in system and logical arrangement, and many of them were mere expressions of sentiment on some moral or religious subject, but taken all together they exhibit the activities of a remarkable mind, capable at the same time of formulating rules and carrying them into practical operation. Unlike some

of his successors, Charles was not afraid of learning, but had a school in the palace conducted by the best teachers he could obtain, and he encouraged the dissemination of such learning as was then taught. There was too much ignorance and barbarism for him to fear the effects of learning among the people. It was a most laudable command he gave to the bishops and abbots, that in the cloistral schools "they should take care to make no difference between the sons or serfs and of freemen, so that they might come and sit on the same benches to study grammar, music and arithmetic." Charles ruled forty-six years from 768 to 814 with Aix la Chapelle as his capital and an empire covering parts of Italy and Germany and all of France. The empire he established fell apart under his successors, and the Carlovingian dynasty came to an end in 987, prior to which time thirteen kings of that race sat on the throne of France. During this period there were many incursions of the Northmen, who ravaged the coasts, ascended the rivers, took and pillaged many of the chief towns. These became more frequent and in larger numbers until the reign of Charles the Simple, when the Northmen under the lead of Rolf settled at Rouen. In 912 Rolf was given as a fief the lands he and his followers had conquered and became a vassal of the king. The Normans settled down to agriculture, and no further incursions ensued.

The Magyars made inroads from 910 to 954 in the eastern provinces but effected no permanent settlement. The feudal system continued to grow, and the inheritance by the sons of the great vassals of their fiefs became an established rule. The German, Italian and French portions of the empire fell apart in 843. The provinces were treated as property, to be bestowed and distributed according to the king's pleasure, and France was divided to meet the varying conditions. The progress made in the development of the inheritance of fiefs is indicated by a capitulary of Charles the Bald in 877.

"If after our death any of our lieges moved by love for God and our person desires to renounce the world, and if he have a son or other relative capable of serving the public weal, let him be free to transmit him his benefices and his honor accord-

ing to his pleasure. If a count of this kingdom happen to die and his son be about your person we will that our son, together with those of our lieges who may chance to be the nearest relatives of the deceased count, as well as with the other officers of the said countship, and the bishops of the diocese wherein it is situated, shall provide for its administration until the death of the heretofore count shall have been announced to us and we have been enabled to confer on the son present at our court the honors wherewith his father was invested." Thus, while the king nominally retained the right to confer the fief at the death of the tenant, he recognized the right of the heir to take it. During this period the power of local administration and the ownership of land had become consolidated. The counts, who under Charlemagne were merely his local officers, had all become great landowners and ruled their estates because they owned them. Political power passed by inheritance with the land. Under the Carlovingians the feudal system continued its development and by the end of that dynasty the great lords and the heads of the church represented the political power of the state. Subinfeudation had become a part of the system, and the great lords had their vassals holding considerable estates with other vassals below them. The advantages of connection with the ruler of the district led those holding allodial lands to give them to the lord and receive them back as fiefs. By so doing the tenant became a person of greater consideration, entitled to a larger composition in case of injury, exempted from the confiscation of his property for failure to appear in court or obey the judge's orders, and from trial by ordeal of boiling water for petty crimes. The immediate vassal of the king could not be compelled to testify in court against another vassal, nor to swear in person at all, but only by the mouths of his own vassals. Thus there was great advantage in holding directly from the king. This process of converting the *allodium,* or independent tenure of lands, into fiefs became most active under the weak kings, when the local lords became the real rulers, unrestrained by any central authority. It continued under the third dynasty. As to much of the land, the church-

men held the places of feudal lords, and archbishops, bishops and abbots were temporal rulers, who took a leading part in national affairs.

On the death of Louis the Sluggard, the last of the Carlovingians, in 987, the lords spiritual and temporal met at Sanlis and Adalberon, archbishop of Reims induced those present to put off the choice of a king till a more general meeting could be held, and to swear to the duke of Paris "between his hands" that in the meantime they would do nothing in the way of the election of a king. About the last of June they reassembled and, putting aside as unworthy Charles of Lorraine, a lineal descendant of Charlemagne and uncle of the late King Louis, on motion of the archbishop they chose Hugh Capet, count of Paris, a descendant of that Count Eudes who had stoutly defended Paris against the siege of the Northmen, as king. He was thereupon proclaimed and crowned king by the metropolitan. He was thus made king by the church and the feudal lords, and the dynasty so established was a feudal one under church influence. In return for kingly aid the church taught the divine right of the king to rule and the doctrine of submission and obedience to his authority, no matter how unjustly or oppressively exercised.

In the election of Capet the French clergy exhibited exceptional independence, for Pope John XVI sustained the claims of Charles. The reign of Hugh Capet lasted only from 987 to 996. On his death his son Robert succeeded him, and he and his son Henry and grandson Philip ruled till 1108. Capet and his successors were great landowners and ruled as counts of Paris over their estates and province. The kingly office gave added prominence rather than a great increase of power. The king had feudal superiority and precedence over his great vassals, whom he had a right to call on to aid him in his wars, but he could not pass the vassals by and command the followers under them. Within his own district the feudal lord brooked no dictation as to the conduct of local affairs, even from the king. The king's court, however, was the fountain of honor and distinction, and kingly power, though not vigorously exercised during this period, was more than a shadow.

This was a time of freedom from foreign wars. The vassals fought their private wars and the king sometimes took part in them. In the time of Capet there was some resistance to his authority by followers of the Carlovingians, but they were subdued.

That the common people felt the grinding oppression of the system is evidenced by revolts of the peasants, one of which occurred in Normandy and was suppressed with great barbarity. The church, too, began to exhibit cruel jealousy of any questioning of its authority, and the burning of heretics became one of its functions. The relations of king and vassals are well illustrated by the aid afforded by King Henry I to young William of Normandy, against his revolted vassals, aided by Guy of Burgundy, and later by the war between King Henry and William in which the king was defeated by William in two battles. The king died soon after and William appeared at the coronation of his son Philip, for whom he fought against his revolted subjects. It may almost be said that private war was so general and inseparable an incident of the times that it did not imply real enmity between the combatants.

This was the age when knighthood flourished. It was essentially a military order of mounted and armored warriors. The code of duty and honor, to which a knight was sworn, exhibits a strange blending of pure Christian virtues and aspirations, with wars' savagery. Many different orders of knighthood were formed during the crusades. In the earliest stages knighthood was connected with the feudal system of land tenure and implied the possession of a fief of sufficient value to maintain the knight, supply him a horse and armor and means to defray his expenses during the customary period of knightly service in the wars of his over lord. There were various methods of conferring knighthood. That deemed most honorable was for valiant service, and conferred by the over lord on the field of battle. The members of the knightly orders of fighting priests, which were organized during the crusades, were not necessarily holders of fiefs, or of any lands. In course of time knighthood came to be conferred only on

descendants of the nobility. The ceremony of investiture might be purely military or a combination of both religious and military rites. When conferred in times of peace with full religious ceremonies, the candidate for knighthood was required to first purify himself in a bath and clothe himself in a white tunic, symbolical of purity, a red robe, symbolical of the blood he would shed for the faith, and a black coat, emblematic of the death awaiting all men. He must fast for twenty-four hours, then enter the church and spend a night in prayer. After confession he received the communion, and often listened to a sermon on the duties of knighthood. He then advanced to the altar with the knight's sword hanging from his neck. This the priest took off, blessed and replaced on his neck. He then knelt before his superior lord and having been duly questioned and made the required responses, received his spurs, coat of mail, cuirass and sword and was dubbed knight by receiving three blows from the lord with the flat of the sword on his shoulder or neck. The knightly oath bound him above all to be a bold and constant fighter, a fierce barbarian in the service of his king, his overlord and the church, but to uphold the rights of widows, orphans and damsels, to injure no one maliciously nor fight for gain, but only for glory and virtue, to guard the honor and rank of his comrades and do not trespass against them, to be truthful and keep faith inviolably with all the world and aid one another, to shun no danger, nor take pay from any foreign prince, to live in order and discipline when in command of troops, to faithfully defend females in his charge and do them no evil, that being challenged to equal combat he would not refuse to fight, that in the pursuit of honor he would dare and do his utmost, "that above all things he would be faithful, courteous and humble, and would never be wanting to his word for any harm or loss that might accrue to him." Had the knights generally strictly adhered to these precepts, many of which breathe the purest and loftiest sentiments, the world would have progressed rapidly from its degraded state, but unfortunately the part most faithfully followed was that which enjoined fighting and bloodshed. The Christian virtues of truthfulness and protection to the weak

were far too often neglected. Still this kinghtly code exercised a profound influence on society. The times were a strange mixture. In church and monastery might be found zealots struggling to attain an ideal purity and holiness by the sacrifice of all wordly comfort and enjoyment. Fasts, vigils, scourgings and all manner of mortifications of the flesh were self-inflicted and patiently endured to attain spiritual purification, On the other hand some churches and monasteries were the homes of ambitious men, who cunningly sought wealth and power or lived as idle debauchees, secretly scoffing at virtue, religion and morality. It was the age of discord and of superstition. The estate of each petty noble was essentially a separate sovereignty, from which the common herd were never allowed to wander. There was no intercourse between those dwelling at a distance from each other, unless they were of knightly rank. At the king's court and at the tournaments the knights gathered for their fierce sports. Education was wholly neglected among the common herd and hardly less among the nobles; even among the monks many were illiterate, and the learning of the clergy was sadly deficient. Yet in some quiet cells there were earnest students and patient scholars who sought light and truth with great diligence. This was the age which brought forth William of Normandy, the conqueror of England, a bastard son of Count Robert, descended from Rolf the Northman, who had won his foothold there about a century and a half before the invasion of England. William's mother was the daughter of a tanner, and it is probable that he owed much of his vigor and ability to her. By reason of the seafaring habits of the Normans and their proximity to England, there was much intercourse across the channel. On Sept. 27, 1066 William sailed with his fleet to effect the conquest of England. How large a force he took or in how many or how large ships he sailed we have no definite record, but he won the battle of Hastings and gained the English throne. Thus a vassal of the French king became ruler of England. The claims of the Norman to rights in France as a feudal lord became a prolific source of contention and wars between the two countries, from which little but evil resulted to the people of both.

Stirred by the preaching of Peter the Hermit the First Crusade started in 1096 to free the Holy Land and clear the way for the pilgrims. Since the age of Charlemagne there had been no foreign wars to take the people of France into far distant lands. There was but little commerce, and the intercourse between distant people was exceedingly limited. The pilgrimages of the devout to Jerusalem afforded almost the only occasion for gaining knowledge of foreign countries and these of necessity were not in great number. The people of France, always noted for their daring and generous impulses, were profoundly moved by the accounts of the sufferings of the pilgrims and the profanation of the Holy City by the infidels. France furnished a large portion of the army for the first crusade and its most noted and efficient leaders, Godfrey of Bouillon, Raymond of Toulouse, Tancred de Hauteville and other less noted men led the organized force, and followed the great multitude which started as a mob and ended in disaster. The impulse which moved the crusades was not moral but religious. Nothing in history better illustrates the difference between morals and religion. The people were profoundly stirred by the preaching of Peter and his details of the desecration of the Holy City and of the wrongs and indignities suffered by the many pilgrims, who sought miraculous aid from a spot supposed to be possessed of peculiar virtures because of its association with Jesus, the apostles and saints. The purpose of the crusaders was war against the infidels, for whose blood they thirsted. In passing through the intermediate country to Constantinople, being unprovided with supplies or money, they foraged as if in an enemy's country, and were guilty of all manner of brutality and excesses, so that they were quite as much the dread of the European Christians as of the Moslems of Syria. After many delays, much discord and sometimes bloodshed among them, the crusaders on the 15th of July, 1099 took Jerusalem by assault and slaughtered great numbers of the Mohammedans. . The leading purpose had been accomplished and Godfrey de Bouillon, refusing the title of king, became Defender and Baron of the Holy Sepulchre. Though the political and religious conse-

quences of the crusades were of minor importance, the educational influences were very great. Not only from all parts of France, but from Spain, England, Italy, Germany and in fact the whole Christian world, the boldest and most enterprising knights were gathered to fight for the faith they professed. They journeyed through strange lands and came in contact with strange people. The Greeks of the eastern empire were scarcely better known to them than the Turks, Arabs and Egyptians, whom they came to fight. The rude Christians saw the cities and gardens of the East. People were moved to view a wider horizon and to long for knowledge of distant lands and alien people. This is the greatest good that ever results from distant wars. In spite of the cruelty and bloodshed, the combatants learn to know and to respect each other. Instead of the settled hatred of distant enemies, some measure of respect and even of friendship results. Commerce founded on mutual benefit develops, and stimulated by trade the industries of each land take on new activities, and the peaceful intercourse of merchants slowly but surely lays the foundation for lasting peace and mutual good will. The scattered people of Europe, who from the fall of the Roman power had dwelt in comparative isolation for six centuries, were now made acquainted with each other. Returning crusaders could tell from personal knowledge of many strange people and distant lands. The impulse thus given to thought and the desire for knowledge which it stimulated were of the greatest importance and by far the most valuable of all the results of the crusades. No country was represented by more or better men in the Christian ranks than France, and none profited more from the educational influence. The Christian rule in Jerusalem ended in 1187 and was never productive of important political results. None of the crowned heads took part in the First Crusade, but the second in 1147 brought out King Louis of France and the German Emperor Conrad. Defeat and disaster met them. When Saladin took Jerusalem in 1187, it must be said to his credit that the barbarities exhibited by the Christians on their entry were not repeated by the Mohammedans, and he even paid the

ransom of many of the captives, after allowing the soldiers to march away.

Subsequent crusades were barren of substantial results, beyond the misery they caused and their continued educational influence. Louis IX engaged in a disastrous expedition in 1248, spending the six following years in Egypt and Syria, only to suffer defeat and fall a prisoner in the hands of the enemy. After paying a heavy ransom and returning to France he lost his life in an attack on Tunis. Louis is extolled as a model prince and a real lover of truth and justice. During the years of peace he did much to advance the welfare of his subjects. One of the greatest evils of the feudal system was the exercise of judicial power by the baron without right of appeal, no matter how great the disregard of the law. Louis appointed itinerant judges and established courts superior to those of the feudal lords, gave a right of appeal in the last resort to himself and made a great law court of his parliament. He restricted feudal warfare among the barons, and issued a code of laws known as the "establishments of Saint Louis." Though a despotic sovereign, he sought to rule by fixed principles, which are generally conducive to order. In his decisions he was governed by what he regarded as the law, rather than by caprice or personal considerations.

The extreme of vice and cruelty which excessive religious zeal may attain was exhibited in the crusade against the Albigensians. Their crime was that by reason of the admixture of descendants of Greeks, Romans, Jews and Gauls with Goths, Arabs and traders from the Mediterranean ports, the people had more of culture and refinement and more breadth of knowledge and liberality of sentiment than the more ignorant people of the north. This necessarily tended to a perception of the narrowness and bigotry of the clergy and to a questioning of the authority of the priesthood. That suppositious crime, heresy, developed under such conditions. The result was that a crusade was preached with the sanction of the pope against the Albigensians, and a vast army was gathered, not only from other parts of France, but also from Germany, and for fifteen years from 1208 to 1223 one of the most cruel

wars and persecutions of history was waged by the orthodox Christians against other more humane and enlightened Christians. Though the pretext for this cruelty was religion and the good of human souls, the power of the church was at stake. The great religious corporation, of which the pope was the head, was quite as jealous of its temporal ascendency, of its revenues and its supervision over temporal rulers, as of mere matters of belief. Bishoprics had in many places come to be treated as inheritances, to be disposed of by will or otherwise in accordance with the wish of the incumbent. The period of feudal discord following the breaking up of the empire of Charlemagne had been auspicious for the extension of the power of the church, the crusades had inspired a feeling of unity among the Christians, and made the Pope, as the head of the church, by far the most conspicuous figure in Europe.

During the twelfth century France was split into many states with ever changing combinations, due to wars, marriages and alliances. The establishment of the Norman dynasty in England induced a succession of wars in support of the claims of English kings to French dominions. The growth of towns and the incipient stages of the development of burghers' rights had already begun in the reign of Philip Augustus, 1180 to 1223. He continued the privileges of forty-one communes, which had been granted charters before his time, and established forty-three new ones. The extremely rudimentary character of the government of Paris in the time of St. Louis is shown by the fact that the same person was prefect, mayor and receiver general under the name of provost, and that the office was a purchasable one. Louis put an end to the sale of the office and separated it from the receivership of the royal domains. He also provided registers for the rules of the various organizations of artisans, the masters of which appeared before the provost to declare and have recorded their regulations. Paris, though the French king's capital, was not to be compared in importance as a manufacturing center to the Flemish towns, which by the thirteenth century had taken the lead in the manufacture of woolen stuffs, and were organized on republican principles, leagued together, with agencies established in London and elsewhere. Their trade by the

year 1300 had become very extensive, and Flanders was the richest and most populous country in Europe. In that year Philip IV added it to France, but in 1302 met a crushing defeat at the hands of the revolted burghers.

It was in the reign of Philip IV *Le Bel,* that Pope Boniface boldly claimed that the spiritual power included the temporal, and hence that the king was under his guidance. This Philip denied, and a fierce controversy ensued which continued till the death of Boniface. Clement V was elected through the active efforts of Philip after the brief term of Benedict XI, and rewarded the French king for his aid. He established his residence at Avignon, where the Holy See was maintained for the next thirty years, largely under the domination of the French kings. Philip also attacked the order of Knights Templar, caused the persecution and burning of their grand master and many leading men of the order, and confiscated their treasures. Under his reign the kingly power was much increased at the expense of the pope, the orders and the feudal lords. In 1315 Louis the Quarreler issued the following edict: "Whereas, according to natural right, every one should be born free, and whereas, by certain customs which from long age have been introduced into and preserved to this day in our kingdom, many persons amongst our common people have fallen into bonds of slavery, which much displeaseth us, we considering that our kingdom is called and named the kingdom of the Free (*Franks*), and willing that the matter should accord in verity with the name, . . . have by our grand council decreed and do decree that generally throughout our whole kingdom, such serfdom be reduced to freedom on fair and suitable conditions, . . . and we will likewise that all other lords who have bodymen (or serfs) do take example by us to bring them to freedom."

It will be noted that this applied only to the serfs of the crown and did not have the effect of liberating those held by other feudal lords. On his death he left only daughters. A posthumous son lived only five days. His brother Philip the Long then convened a parliament, at which it was settled and ever after remained the law, that "the laws and customs inviolably observed among the Franks excluded daughters from

the crown." This rule excluded the claims of Edward III of England, which were derived from his mother.

The development of the towns of France and the influence exerted by them on the governmental affairs differs in some respects from that of other countries. No town at any time prior to the revolution of 1789 occupied a commanding position as a municipality. During the worst period of feudal anarchy the knights and their retainers were, to a great extent, robbers and non-producers. Such industries as their immediate followers pursued were mainly connected with the land. Throughout France, and especially in the southern provinces, considerable towns survived the inundations of the barbarians and preserved some of the ancient Roman forms of municipal government. When the bond which tied Charlemagne's great empire together became so weak that the king looked only to his feudal vassals for the government of their territories in accordance with feudal customs, it appeared that these were not adapted to the needs of manufacturers and traders. On the contrary the feudal baron, who did not work and who made war his business, became a robber of the more industrious townspeople. His extortions were either by peaceable exactions in some form of taxation or by forcible taking of property by himself or his retainers. In a large number of the principal towns the governing power was in the hands of bishops or other church officials, who ruled often in a manner similar to that of the lay nobility. The wrongs suffered by the town folks at the hands of their local rulers led to concert of action on the part of the burghers for self-protection and to conflicts with the local barons. The outcome of these conflicts was some sort of an agreement as to the terms on which the burghers might live, and many of these agreements took the form of charters granted by the lord or bishop, and some of them were submitted to and approved by the king. They related solely to local affairs, and no general combination of the scattered towns for their common protection was effected, which could at any time be called national. Some of the southern towns united for mutual protection, and the Flemish towns formed real republican leagues, but the towns in the interior struggled on separately. Such rights of local govern-

ment as they gained were assured only by their written charters, and observed or not at the pleasure or according to the moral character of the lord. For violation of their rights the only appeal against their oppressors was to the king. Such appeals were often made, but the relief obtained depended on the character of the king. The townsmen looked mainly to peaceful industry for their livelihood, while the knights despised all useful employments and made war and destruction their chief business. A natural law of the utmost importance, but often overlooked gave increase of numbers and of wealth to the peaceful and industrious burghers. They were often plundered and many of them killed by the warlike barons and their retainers. They were themselves often contentious, turbulent and bloody, yet their general purpose was to labor and produce useful things. Theirs was a purpose superior morally and economically to that of the Feudal aristocracy, and it brought to them the reward of increased numbers and importance. In process of time the kings found that the burghers could supply them with money and even with fighting men, and the strife and jealousy between the feudal lords and the burghers made it possible for the king by uniting with the burghers to maintain his authority and increase his power over both. At first the charters of the communes gave them power only to regulate their local affairs by their own officers separately and in their own way, but under St. Louis and Philip *le Bel* general regulations applicable to all the communes were prescribed. Following this came a recognition of the right of the towns through their representatives to be consulted in matters affecting the general welfare of the kingdom, and in 1302-1308 and 1314 Philip *le Bel* convoked the States-General and summoned thereto "the deputies of the good towns." In 1338 the states obtained from Philip of Valois assent to the declaration, that "there should be no power to impose or levy talliage in France, if urgent necessity did not require it, and then only by grant of the people of the estates."

Thenceforth there was a connection between the towns and the central authority by representation in the States-General, when convened, and by the direct exercise of the king's authority in the government of the towns, but there was no clear

recognition of the rights of the burghers nor definite check on the tyranny of either king or feudal lord. By the close of the thirteenth century the feudal system had, as its natural products, sprinkled the country over with lords' castles with heavy walls and moats to resist attacks, and walled towns. Feudal wars and the lack of any general authority capable of affording protection to the weak made it necessary for the burghers to defend their towns and the knights their castles. In 1329 Edward III of England, being thereto summoned, paid homage to Philip of Valois, as king of France, for the duchy of Aquitaine, but in 1337 Edward himself laid claim, though without any very plausible ground, to the crown of France, and commenced what is sometimes called the hundred years' war. It was cruel and destructive and unproductive of benefit to either combatant. Edward courted the aid of the Flemish towns and alliances with disaffected nobles, from some of whom he claimed and received homage as king of France. Opposing claims of different vassals to the duchy of Brittany led to the king of France supporting one and the king of England another, and, though a truce had been agreed on between the two kings, they fought in Brittany for their vassals, though still claiming to observe the truce. This was spoken of as the war of the three Joans, owing to the leading parts taken by wives of the claimants to the dukedom, and exhibited the mixture of fierceness and barbarity with occasional bursts of generosity and virtue so characteristic of feudal society. From 1347 to 1349 the "black death" took off a great part of the population. In the early period of the hundreds years' war the English gained advantages. At Crecy the French were defeated and again at Poitiers, where on Sept. 19, 1356, John II of France and his young son Philip were taken prisoners by the English under the prince of Wales. They were treated as distinguished guests, though the arbitrary execution of prisoners or obnoxious subjects was a frequent occurrence under both sovereigns. Before this unfortunate battle, in 1355, John had found it necessary to convoke the States-General, from which he received liberal grants of supplies and the levy of new forms of taxes that occasioned great discontent. After the battle of Poitiers John's eldest son Charles assumed the

direction of affairs under the title of lieutenant of the king and summoned the States-General to meet at Paris on Oct. 15. The clergy appeared in full force and about one hundred deputies from the towns, but so many of the nobility had fallen in the battle that the representation of that order was very light. Each order at first held separate sessions, but they soon chose commissioners from each to sit together. These numbered eighty in all. Charles, who is styled the Dauphin, appointed some of his officers to be present at their meetings, but they refused to proceed in their presence and the officers thereupon withdrew. After a few days they made their demands on Charles "that he should deprive of their offices such of the king's councillors as they should point out, have them arrested, and confiscate all their property." Twenty-two men, including the chancellor, president of parliament, king's steward and some officers of this household, were named. They also demanded that deputies called reformers should traverse the provinces as a check on the royal officials, and that twenty-eight delegates chosen from the three orders, four prelates, twelve knights and twelve burgesses should be constantly placed near the king's person "with power to do and order everything in the kingdom just like the king himself, as well for the purpose of appointing and removing public officers as for other matters." The Dauphin asked time to consider and left Paris for Metz. During his absence the populace of Paris under the lead of Stephen Marcial became exasperated at an order for the debasement of the coin and compelled its suspension till the Dauphin's return, when they again rose and forced him to accede to the principal demands made by the States-General, and they were authorized to meet when they pleased. At a subsequent session of the States-General in March, 1357, a grand ordinance in sixty-one articles, enumerating the grievances complained of and prescribing redress for them, was drawn up, and a grand commission of thirty-six was appointed to meet together at Paris for ordering the affairs of the kingdom, whose orders all classes must obey. A period of turbulence followed, during which the populace of Paris took a leading part in public affairs. In February, 1558, under the lead of Marcial they entered the palace and killed the

marshals of Champagne and Normandy in the presence of the Dauphin. Marcial soon became dictator at Paris, and the Dauphin escaped to Senlis. He soon after convoked the States-General to meet at Compiegne. In response to his call the nobles and partisans of the murdered marshals turned out and demanded the execution of the murderers. While matters stood in this attitude there was an uprising of the peasants in Normandy and other provinces. They took and demolished many castles and killed many noblemen and their families. Marcial sent out a body of three hundred burghers to aid in taking the castle of Ermenonville, which was demolished and all the nobility in it put to death. The nobility under the lead of the Dauphin soon made common cause against the peasants, who were overcome and great numbers of them massacred. Marcial, as a last desperate expedient to save himself, called in the aid of the English and admitted a body of them into the city, but a quarrel broke out between them and the Parisians, in which a number of the English were killed. On July 31, 1358, while attempting to open the gates of the city to admit the king of Navarre and the English, Marcial was killed by the Parisians. The crude attempt of Marcial and his coadjutators to curb the tyranny of the king and nobility served only to show the lack of capacity for organization and concerted action on the part of the burghers and peasants. They were utterly wanting in regard for the rights of others and that self-restraint which is so essential to popular government. The authority of kings and feudal despots may be supported and maintained over an ignorant and debased multitude merely by armed force and regardless of mercy or justice, but, as Montesquieu ably points out, popular government can only rest securely on justice to each and to all. Marcial and Callet, the leader of the peasants, started out in a just cause, but soon adopted the methods of the authors of the wrongs of which the people complained. If they could have restrained their own passions and those of their followers, they might have accomplished great good, but the people of that age were not prepared for popular government. After Marcial's death, on the return of the Dauphin, the popular leaders were taken and summarily executed.

In the fall of 1359 Edward invaded France. After roaming about and pillaging the open country without laying seige to any of the strong towns he concluded the treaty Bretigny, May 1360, with the Dauphin, by which Aquitaine with enlarged boundaries was acknowledged as an English province freed from French sovereignty, and a ransom of 3,000,000 crowns was to be paid for King John's release. War over the succession to the throne of Castile was participated in by the French on one side and the English on the other, and in 1369 war was again declared by Charles V of France, which resulted in the recovery by the French of most of the territory ceded by the treaty of Bretigny without any decisive battles. Charles V died in 1380 and was succeeded by his son Charles VI then only twelve years old. In his reign civil discord as well as foreign war harassed and impoverished the country. The Burgundian and Orleans factions, with the foreign and domestic alliances peculiar to that age, kept up constant strife. The Flemish cities, in spite of their wars, grew and preserved much of their local freedom. In 1415 the famous battle of Azincourt was fought, in which the French sustained a crushing defeat and the loss of a great host of the nobility. The invention of gunpowder and changes in the military system, from the armored knights fighting on horseback without order or discipline, all serving for limited periods without pay in accordance with feudal law, was gradually changing into a more orderly system of paid and systematically organized troops. Gunpowder deprived the armored knight of most of his superiority over the unprotected and poorly armed foot soldier. The war between English and French dragged on under Charles VII, a very weak prince. The Burgundians aided the English. French fortunes reached a very low ebb till during the siege of Orleans by the English Joan of Arc appeared and with a magnetic force unique in history roused the spirit of the French and led them to victory. Though Edward III might treat a worthless prince like King John, while a prisoner, with such marked consideration as to make him really enjoy his captivity, when the pure-minded and lofty souled Joan fell into his hands, they burnt her as a witch and

heretic in 1431. With the withdrawal of the Burgundians from the English side the fortunes of the latter declined, and they were forced to withdraw from the interior. The long period of internal discord and English dominion in France drew toward its close. In 1439 the States-General were convened by Charles VII and a start was made toward the organization of a standing army and a regular system of taxation for its support. This aroused the hostility of the nobles, but Charles persisted and organized fifteen companies of one hundred lancers each which he set to work clearing the country of the robbers with which it was infested. In 1453 the English were driven from all their possessions except Calais, Havre and Guines Castle. The long struggle had tended to develop a national sentiment in France, and all the brilliant campaigns of the English were barren of profit.

After the close of the reign of Louis XI France entered on a career of contests and diplomacy with foreign states, with the details of which we are not concerned. Although the administrative system had not reached its full development, the structure of the French monarchy was already settled. The king was the state, and his authority was backed by military power. Under Charles VIII began those Italian wars, based on a claim to Naples and Sicily, which were productive of so much bloodshed and so little advantage. From this time forward the field of military operations widens and France plays a leading part among the nations of Europe. The distinct progress accomplished was the formation of a compact state, developing an orderly though not a just system of intercourse with and knowledge of the other states of Europe, under which industry increased and knowledge was sought. Not to a changing form or theory of government during this period, but to other causes, must we look for the signs of progress and the growth of those sentiments of liberty and equality which blazed forth in the eighteenth century. The feudal system was the rule of local petty tyrants, who had no respect for, nor sympathy with, any class of laboring or trading people. The stratification of society was into the various feudal orders, with the serfs at the base and the king at the head, a ruler

whom his greatest subjects defied, and the churchmen professing brotherhood, but rigorously ruled by church officials. The enterprises carried on by feudal barons led to no discussion of the principles of social organization. The establishment of the power of the king on a more firm basis and the opening of the era of wars between great states had taken place by the reign of Francis I, 1524 to 1547. Then came that revolution which affected Europe and especially France so profoundly, the religious reformation. For centuries the Pope and catholic clergy had enjoyed not merely the distinction of rank in the religious world, but great temporal power and vast revenues. Fondness of display and love of power had become quite as characteristic of the popes and prelates as of the temporal sovereigns. The creed was tenaciously clung to, but the moral teachings of Christ were often forgotten. The sale of indulgences to do wrong shocked the moral sense of great numbers, in an age when great crimes were common. The state of society in France in the sixteenth century was peculiar. The government was in a stage of transition from the anarchy of feudalism to a kingly despotism. The law was a mixture of the Salic law of the Franks, the feudal principles and the Roman civil law. Religion was no longer the ritual of the church, but a faith for which men and women unhesitatingly gave up all earthly possessions and even life itself. Contemporaneously with the opening of the new world to view and the discovery of a water route to India and the east, there was an awakening to new conceptions of all things. The desire to discover new truths, to look deeper into nature and know more of man and of the moral obligations resting on him, was growing. This desire prompted inquiry, which at the same time produced turmoil and advancement. Though without any system of public schools for the multitude, France then occupied a leading position in its educational institutions. The great University of Paris, which had its beginnings in the twelfth century, had developed into a large institution, where many branches of learning were taught. Other universities had also been established at Montpelier, Toulouse, Orleans, Angers, Avignon, Cahors and Grenoble,

some of which were in a flourishing condition. The civil law, medicine and religion were taught. From all these schools some light was diffused through the intellectual darkness, and most important of all, a growing appetite for truth and an increasing perception of the vices and immoralities of the age. The printing press had come to give its powerful aid in spreading information. While the high clergy were often intent only on their own personal aggrandizement, there were many students who in reading the scriptures discovered, not merely the alluring promise of bliss in a life to come, but also the practical lessons of morality and the sublime virtue of the golden rule as a means of improving man's condition here on earth. The sixteenth century exhibits, often in the same individual as well as in the contentions of parties and factions, the struggle between the old savagery and barbarism in their most vicious forms, and conscience newly awakened to the command to love your enemies. The religious struggle in France was not between different states or sections of the country, but between neighbors. Men either followed the path of the reformation or adhered to the dogmas and the mastery of the established church, according to their mental bias and surrounding influences. It is difficult in this age to comprehend the feelings of Protestants and Catholics in those times. Protestants were appalled at the immoralities of the church and believed that nothing but eternal damnation could be meted out to those, who under the guise of religion were guilty of so many misdeeds. Catholics felt that Protestants were seeking to tear down that church to which they looked for protection and safe passage into a life of bliss to come. Generation after generation had lived and died in blissful confidence in the ability of the priest to pass the dying soul safely through purgatory into heaven, and the belief that without the aid of the church man was without hope. Deadly strife always develops hardness and cruelty, but religious wars and persecutions are always more cruel and unrelenting than others.

During the reign of Francis I there were eighty-one executions for heresy in accordance with judicial decrees. In

1545 a great number of Vaudians, estimated at 3,000, were ruthlessly massacred because of their religious opinions. During the twelve years reign of Henry II there were ninety-seven convictions and executions for heresy. Though in some cases the proceedings were very summary and execution followed arrest quickly, in most the proceedings were deliberate, and it cannot be doubted that many people believed that heresy was a crime meriting death. The study of the law had made such progress that the lawyers were already an important factor in the state. The highest court was the parliament of Paris, which not only exercised judicial functions, but was the medium through which all edicts of the King or Pope having the effect of laws were registered. Parliament itself was not a law-making power, but it sometimes interposed obstacles to obnoxious enactments by refusing to register them. The kings overcame the difficulty by causing registration to be made without the sanction of Parliament, but when in 1557 the papal bull was issued establishing the Inquisition in France, the Parliament refused to register it. In 1559 this Parliament was composed of one hundred and thirty members and in 1602 when Biron was condemned one hundred and twenty-seven voted for the conviction. The religious struggle attained its most fierce manifestation in the Massacre of St. Bartholomews Eve on Aug. 24, 1572, when the Protestants in great numbers were butchered by the order of Charles IX. The number is variously estimated from 10,000 to 100,000. It was the purpose of Charles to exterminate the Huguenots at one stroke and thus end the religious strife, but in this he signally failed. The moral sense of the Catholics was violently shocked, and all Christendom condemned in unmeasured terms the bloody butchery. The religious struggle continued throughout the reign of Charles IX, which ended with his death in 1574, and of his successor Henry III, 1574 to 1589. To the influence of Catharine de Medici, the Italian queen mother, was charged many of the evils with which the state was afflicted. In 1575 the Holy League, which had been first conceived in 1562, came into prominence, and on the other side the Protestants were not wanting in numbers or

leadership. At Paris the Catholic League partitioned the city into five districts with a head man for each, who soon added to their number eleven others. This formed the committee of sixteen, which played an important part in the religious war. In 1588, when Henry III undertook to garrison the city, this committee, under the leadership of the Duke of Guise and backed by the populace, barricaded the streets of Paris and caused the king to seek safety in flight. On Oct. 6, 1588, the States-General, composed of one hundred and eighty nobles, one hundred and thirty-four clergymen and one hundred and ninety-one members of the third estate, were convoked at Blois. Nothing of importance was accomplished by the session, which ended Jan. 10, 1589. The King caused the Duke of Guise to be murdered, but the death of the leader did not destroy the league. The Parliament of Paris sided with the Leaguers, and the parliaments of other chief cities did likewise. The Duke of Mayenne, who succeeded to the Catholic leadership, organized a council general of the League, composed of forty members, for the general direction of its affairs. The struggle between Catholic and Protestant was popular in character and not merely the quarrel of leaders. The league had its committee and was backed by the populace at Paris. The Protestants on the other hand were asserting their right to religious liberty, and in doing so were forced to deny the temporal power of the king when exerted to compel submission to the established form of worship. It was an assertion of individual liberty, though without a clear conception of the significance of the claim.

The assassination of Henry III by a fanatical monk made Henry of Navarre, a Protestant, heir to the throne. The Catholics were still largely in the majority and Henry, who had been the recognized head of the Protestants, had a difficult task before him; but with the force of the sentiment of loyalty to the legitimate heir to the throne and a wise policy of toleration of religious differences, he accomplished good for the state and the substantial restoration of domestic peace. His principle of toleration was a principle of liberty of conscience, religious thought and expression. The edict of

Nantes, which he published on April 13, 1598, was a great stride forward, though it did not accord entire equality or freedom in religion. By it the Protestant form of worship in the castles of the lords high justiciary, who numbered 3,500, was allowed, and also in the castles of simple noblemen, provided the number present did not exceed thirty. The state was charged with a provision of 165,000 livres for salaries of Protestant ministers, and donations and legacies for their support were permitted. The children of Protestants were admitted to the schools and universities. The Parliament being intensely Catholic there was great difficulty in obtaining justice by the Protestants, and a special court, called the edict chamber, was established for the trial of causes in which they were interested. Catholic judges could not sit in this court, except with the consent of the parties. In the Parliaments of Bordeaux, Toulouse and Grenoble, the edict chambers were composed of two presidents, one Catholic and one Protestant, and twelve councillors equally divided. The Protestants retained control of the towns then in their possession, numbering great and small about two hundred, and their garrisons and fortifications were maintained at the public charge. After his accession to the throne Henry found it easier to rule as a Catholic than as a Protestant, and in 1593 became a Catholic and was received into the Church. He issued this edict as a Catholic monarch for the pacification of his kingdom, and as a measure of justice to his subjects. Henry is also credited with a comprehensive plan for the pacification of all Europe by confederating all the Christian states, Catholic, Luthern and Calvanist, with equal rights. The plan contemplated independence in local affairs, the care for common interests through central authority and the pacific settlement of all disputes between states. The recent Hague conferences are steps toward the realization of a world wide union of this kind. The barbarism of a division of the continent into so many hostile camps must some day be generally recognized the simple remedy of efficient coöperation and combination for the general good be adopted, and all the vast armies which now sap the life of each nation and periodically spread death,

destruction and misery over the land, be disbanded to aid in promoting the general welfare. The curse of militarism may be removed merely by the extension to national disputes of the principle of the decision of controversies by reason and the judgment of disinterested men, as controversies between individuals and subdivisions of a state are now settled. In Henry's foreign policy the principle of religious toleration played an important part. To check the power of Austria he allied Catholic France with Protestant Germany and England against Spain and Austria. Under his rule there was a growing respect for law as well as an increased measure of liberty. When he became convinced that Biron, who had long been a favorite with him, plotted against his authority, instead of directing his execution arbitrarily, as Charles IX had commanded that of Coligny and the Huguenots and Henry III that of the Duke of Guise, he caused him to be publicly tried. The inquiry lasted three weeks, and the one hundred and twenty-seven judges in the Parliament of Paris unanimously condemned him. Doubtless the accused stood at great disadvantage in a trial with the king as accuser, and the tribunal could hardly be called an impartial one, but strict impartiality, absolute freedom from all bias, is hardly to be found, unless the matter tried is of utter indifference to the judge. It is greatly to be regretted that in his private morals Henry was conspicuous for weakness rather than strength of character, yet in spite of this blemish he stands out as a truly great public character, who labored earnestly and successfully to protect the public good, not only of his own kingdom but of all Europe. During the regency of Marie de Medici, widow of Henry IV, and the reign of Louis XIII, Richelieu promoted the system of absolutism, which attained its highest stage under Louis XIV. The power of the feudal lords had been waning for more than a century. Under the ministry of Richelieu all eyes became steadily fixed on the king as the fountain of all power in the state, and the ambitious nobles were taught to seek advancement through the favor of the king, rather than the power of their armed retainers. Though Henry IV had had his councillors, no ministry with a distri-

bution of well defined powers and functions had been established. Nor did Richelieu develop such a system. His policy was directed toward the advancement of the kingly authority at the expense of the nobility, and to the exercise of power through officers appointed by the king for their fidelity, rather than their rank. The Parliaments, of which at the accession of Richelieu to power there were nine namely of Paris, Toulouse, Grenoble, Bordeaux, Dijon, Rouen, Aix, Rennes and Pau and to which he added Metz, at times manifested some degree of independence and assumed powers to regulate taxation and give advice to the king. In 1641 Louis XIII published an edict prohibiting the Parliaments from interference in affairs of administration and confining them strictly to judicial functions. Though there were refusals to register edicts by some of the Parliaments, opposition was crushed and the king's unrestricted power enforced. There were, besides the states general of the whole kingdom, states provincial in Languedoc, Brittany, Burgundy, Provence, Dauphiny and Pau, through which these districts levied the taxes on themselves. These states provincial were convoked by the king and varied in their composition according to the district. Richelieu's policy was to curtail the power of the states and take away all restriction on the kings control of his finances. He established in each province overseers of justice, police and finance, chosen mostly from the burgesses, into whose hands the whole administration of local affairs was committed. By an edict of July 31, 1626, all the old castles of the great nobles were demolished, and through these overseers the powers of the nobility in local affairs were effectually curtailed. Only twice in his time did Richelieu convoke the Assembly of Notables, in 1625 and 1626. On Feb. 24, 1627, the last Assembly separated and was never again convoked till the revolution of 1789.

On the death of Richelieu another cardinal, Mazarin, an Italian, took his place and, though he encountered intense hostility and much internal commotion and external war, he died with the full confidence of Louis XIV and as primier wielded the actual power of the king. On his death in 1661

Louis assumed the duties of his office and notified his ministers that they were only to act on his command. In his reign was commenced the systematic distribution of administrative functions, with a secretary for foreign affairs, one for war and the army and another for finance. Neither of these had independent authority, but all worked under the king. Louis XIV had ideas of order and method superior to those of his predecessors. He labored to gather information and to direct the action of all his officers. He was the sole source of authority, and in the selection of his agents he sought to humble rather than elevate the great folks. The nobles however still held title to the land, and through its ownership were able to grind the poor to starvation. Louis with the aid of able ministers greatly curtailed the diversion of moneys collected as taxes into private pockets. By this means his revenues were increased and taxes lightened. The beginnings of the actual exercise of kingly power by Louis contained much that was good. He did much to develop an orderly government, with a head laboring daily for the welfare of the state, as he understood it. But Louis sought first of all his own aggrandizement. He was lavish in the expenditures of his court, but he built palaces and public works that were both useful and ornamental. Like most despots however, he sought to extend his power over his neighbors. The Netherlands, Germany, Spain and Italy were subjected to his encroachments, and no sooner had his country begun to feel the advantages of his firm rule than he plunged it into war. The early period was one of glory (so called), for France. Her boundaries were advanced, and she took her place as the first power in Europe. But however great the successes in battle the drain of men and money in great wars necessarily impoverishes the nation, and the later years of the reign of Louis were years of misery among the people and disaster, defeat and loss of prestige in war. Religious toleration, established by the edict of Nantes and which had done so much to pacify France, came to an end in 1685, when Louis revoked the edict and drove out the Huguenots, to become either soldiers in the armies of his enemies or industrious

workers, furnishing money and supplies to them. The long reign of Louis was one of thoroughly recognized right of the king to rule, freed from all dictation and interference by the aristocracy. Obedience to him was considered the duty of all. The plentitude of the king's power and his love of displaying it drew to his court all the rich and high born of the kingdom. The magnificence of his court was noted throughout Europe. Nowhere else was there such an exhibition of wealth and luxury. Internal peace was the marked evidence of advancing views of social duty. Foreign war and military glory still offered the most alluring field for the ambitious, yet the age was one of intellectual awakening and the great names are not alone of soldiers, but of authors, artists, scientists and philosophers. Though nothing like attacks on the established system was tolerated, writers and teachers did not fail to discover and declare some of the moral truths bearing on the obligations of the ruler to the ruled. Priests taught virtue a little more and persecuted heresy far less. The luxury and magnificence of the court, to which all the great landowners gathered, withdrew from their estates whatever advantage might have resulted in their management from the education and intelligence of the owners, and left them to the care of impoverished peasants. To maintain great houses at Paris and Versailles, buy the gorgeous and expensive costumes of the time and give costly banquets, required the whole product of the estates. The peasants who did all the work were mercilessly robbed of the fruits of their toil, in order that the butterflies at the palace might appear in dazzling brilliancy. Order, obedience and law prevailed, but applied law in its aggregate results meant monstrous injustice, systematically and mercilessly enforced. Unfortunately this is by far too true of all systems of human laws. The idle favorites, who swarmed about the court fawning on the king for favors, were mostly quite without merit. True there were some such lofty natures as Fenelon, Pascal, Bossuet, Madame de Sevigne, La Bruyere, Moliere, Corneille, Racine, La Fontaine and other thinkers and writers, who were more or less about the court, whose plantings in the moral vineyard have

borne good fruits, but the recipients of the great bulk of royal bounty were worse than mere idlers. They were conspicuous examples of the corruption of a despotic system, living not merely useless, but debauched and vicious lives, not from the bounty of a rich king as the historians usually state it, but from the fruits of the labors of the needy poor, wrung from them either by the public tax gatherers on pretense of payment for public service, or as the share of the produce belonging to a landowner through a most unjust legal theory of ownership of the earth. Viewed at large the nation exhibited a brilliant court, permeated with moral pestilence, and a vast multitude of ignorant and spiritless toilers, who labored and died in misery and degradation. Happiness had no abiding place. At court all was a fever of hopes and fears, hanging on the smiles and frowns of a king.

Though Louis was king till his death, and though he never ceased to give personal attention to public affairs, the idea contained in the memorable expression "I am the state," gained a constantly increasing force in his mind, till the welfare of the people he should have served ceased to be a matter of consideration, and France became in his eyes but a setting to display his grandure and power. As his life drew towards its close he witnessed without profit the necessary results of his policy. The peasants, artisans and traders were impoverished and reduced in numbers by wars and oppressive burdens. The court demanded increased favors to sustain its gaieties. Foreign enemies combined against him, and his exhausted armies retired before them. Lack of troops and of money paralyzed the state, and famine and pestilence scourged the people.

In 1715 after reigning seventy-two years Louis XIV died, leaving the crown to his great grandson, a child five years of age. The will of the King, which made his illegitimate son, the Duke of Maine, guardian of the young King, and appointed a council or regency, was promptly swept aside by the Duke of Orleans, who, with the approbation of the Parliament of Paris and the populace, assumed the regency, freed from the restrictions with which the late King sought to cir-

cumscribe it. The regent attempted to organize a ministerial system with six boards, for foreign affairs, army, navy, church affairs, home affairs, and finance. To these were afterward added one for commerce. At the head of these, instead of men chosen on account of their fitness for work, he selected persons of rank, under whom men of inferior degree, but more capacity, were placed. The plan proved unsuccessful through lack of merit in his appointees. The scheme of Law to relieve the financial difficulties of the time, which has met with such severe and oft repeated condemnation, and which was productive of so many imaginary fortunes and so much real misery, yet had within it the idea, which has since been often utilized, of substituting credit paper for coin. His disastrous failure resulted more from the avidity with which the people took his shares and turned in their money, than from the inherent vice of the scheme. Most of the business of today is transacted on the theory that there is coin on deposit to pay credit balances due from banks and other financial institutions. As a matter of fact there is ordinarily about one dollar for every ten of debt in the aggregate of the banks, but this in ordinary times is sufficient. Confidence now supplies the place of coin. In Laws time confidence was excessive at first, but the panic quickly followed, and against panic there is no security. The Mississippi company might have been given a basis of real value equal to the wildest dream of Law, but it was in fact but a bubble too frail to stand the first prick of criticism.

In 1724 an edict was issued in the name of the young King, ostensibly as a tribute to the memory and to carry out the design of Louis XIV to extinguish heresy. This edict condemned "Preachers to the penalty of death, their accomplices to the galleys for life, and women to be shaved and imprisoned for life. Confiscation of property; parents who shall not have baptism administered to their children within twenty-four hours and see that they attend regularly the catechism and the schools, to fines and such sums as they may amount to together, even to greater penalties. Midwives, physicians, surgeons, apothecaries, domestics, relatives,

who shall not notify the parish priests of births or illnesses, to fines. Persons who shall exhort the sick, to the galleys or imprisonment for life according to sex; confiscation of property. The sick who shall refuse the sacraments if they recover, to banishment for life; if they die, to be dragged on a hurdle." Notwithstanding this savage language the bloodthirsty spirit of St. Bartholomews Eve no longer prevailed in the land, and there was little disposition to rigorously enforce this edict. It was only here and there that its barbarities were carried into effect. The general sentiment of the people had moved forward to higher ground. Louis XV exhibited in marked degree the inherent weakness and vice of absolute rule. He was indolent and voluptuous, though not cruel as despots go. It is always impossibe for a single man to know the needs of a great country, no matter how energetic and earnest he may be, but when that man is inert the state is left to drift, and always drifts into confusion and misfortune. Though France coveted dominion in India and America, there was no strong combination of vigorous men working in concert to maintain it. An idle king and ministers, whose main purpose was to live in ease and luxury, neglected giving needed support to the adventurous spirits, who labored to extend French power, trade and influence in the east and west. England with its navy had become master of the sea, and a dissolute court had not the foresight and self-denial to expend the revenue in building a navy, but it was squandered in luxurious living. India, Canada and the valley of the Mississippi were lost, and passed under the rule of its great rival, England. Continental wars wasted blood and treasure without profit. The Seven Years' war, formally declared by France against England in January 1756, involved before its conclusion Austria, Prussia, Russia, Spain and Italy and, though fought mainly in Germany, impoverished and exhausted all Europe. Prussia bore its heaviest brunt and Frederick the Great estimated that the participants lost 800,000 men. The French court is well described by Montesquieu.

"Ambition amidst indolence, baseness amidst pride, the desire to grow rich without toil, aversion from truth, flattery,

treason, perfidy, neglect of all engagements, contempt for the duties of a citizen, fear of virtue in the prince, hope in his weakness, and more than all that, the ridicule constantly thrown on virtue form, I trow, the characteristics of the greatest number of courtiers, distinctive in all places and at all times."

The very firmness with which the doctrine of absolutism had been riveted on the French people, under a weak and indolent monarch such as Louis XV, afforded the example and the opportunity for successful attack upon it. King and court were morally and intellectually weak, but there was growing strength among the people. Students and philosophers were already looking behind and beyond the written edicts, canons and decrees, for the living truth as the only just basis of authority. Enlarged intercourse with the people of other European states, with the new world in America and the old in India and the east, stimulated inquiry and research into every field of knowledge. There were many active brains in France busily at work. Montesquieu, Buffon, Voltaire, Rousseau, Diderot, Alembert, Fontenelle are great names. In seeking new truth they discovered old error. The falsity of the claims to dominion over mens thoughts and consciences, their lives and property, became apparent. The falsity of the claim of superiority, which had so long supported the king and those who thronged his court, could no longer be concealed. Vice and immorality appeared as such though practiced by kings, cardinals and courtiers. The courts too, where questions of right were daily discussed, though blinded by adherence to established rules by which they were bound, whether right or wrong, at least perceived that the king ruled only by force of law, and that he too was therefore inferior to law. The first internal struggle leading up to the great revolution was with the Parliaments and over questions of taxation. This led to the arrest of the judges and finally to the dissolution of the Parliaments and the complete reorganization of the judiciary in 1771. Louis brooked no questioning of his power. He had said to the Parliament of Paris, "The magistracy does not form a body or order separate from the

three orders of the kingdom, the magistrates are my officers. In my person alone resides the sovereign power, of which the special characteristic is the spirit of counsel, justice and reason; it is from me alone that my courts have their existence and authority." How little did he understand his own weakness and the growing strength and increasing knowledge of the people.

He died in 1774, and his grandson Louis XVI at the age of twenty came to the throne with Maria Antionette, daughter of Maria Theresa of Austria, as his queen. He was a weak but kindly man, neither great or strong enough to direct the affairs of so great a state. He had the fortune to call to his aid some strong and honest ministers, who introduced reforms in the finances beneficial to the state, but correspondingly destructive of the system by which the court favorites obtained their greatest incomes. Turgot first and then Necker were able men, who sought to do the country honest service; but the corrupt courtiers gave them no rest and finally obtained their dismissal. The American Revolution, following on the discussions of such writers as Voltaire and Rousseau, produced a profound impression on the public mind. The opportunity for checking the growing ascendency of England, even though to do so required an alliance with rebels, who in declaring their independence had denied the doctrine of the divine right of kings and in its place asserted that all governments derive their just powers from the consent of the governed, was too tempting to be neglected. Bourbon France and Spain, exponents of the doctrine of unlimited monarchy, joined forces with the freemen of America against England. The result in America was the birth of a great republic, which became the model of all the states of the new world. Not less profound was the impulse given to the growing conceptions of liberty in France. Already disgusted with its decaying despotism and longing for a new national life, the nation seized with avidity the inspiration and sought at one bound to gain the lofty pinnacle of "liberty, equality and fraternity." The King was a reformer but without much knowledge of affairs or steadiness of purpose. At the in-

stance of Necker he abolished mortmain and serfdom on the royal estates, put an end to the preliminary tortures to which defendants were put by the soft name of the "preparatory question" and caused more humane treatment of those confined in prisons.

The age of intrigue for mere power had passed, and the love of wealth and display was the overmastering passion of courtiers. Financial difficulties, arising from the inordinate demands for money to waste in vain display rather than for legitimate governmental uses, were sources of anxiety to the King and his ministers. The nation was vitally interested in the reforms proposed by Turgot and Necker, but the favorites were equally interested in defeating them, and were an active force. Public sentiment was without coherence or steadiness. The court constantly called for more money. The people resisted increased taxation. On Dec. 29, 1786, Louis announced in council that he would convoke an assembly of notables on January 29 "to communicate to them my views for the relief of my people, the ordering of the finances and the reformation of abuses." The session did not open till Feb. 22, 1787. It was not a representative body, but composed of one hundred and forty-four members, all named by the King as follows: seven princes of the blood royal, fourteen archbishops and bishops, thirty-six dukes and peers, twelve councillors of state and masters of requests, thirty-eight judges, twelve deputies of states districts and twenty-five municipal officers. When this assembly convened the fact that France had outgrown despotism became apparent. The public demanded an account of the conduct of affairs, and to know what became of the revenue before undertaking to provide a greater one. An annual deficit of 100,000,000 livres a year had been steadily forcing the treasury into deeper and deeper embarassment. The session closed on May 25, 1787, without any other result than increased publicity of the financial situation and a more widespread understanding of the nature and extent of the abuses which prevailed and by which the privileged nobles, tax farmers, monopolists and court favorities grew rich at the expense of all the industrial classes. The Assembly left

the King to deal with his difficulties the same as before. His edicts relating to the stamp tax and territorial subvention were registered, and then the registration was declared null by the Parliament of Paris. The King sent the Parliament away to Troyes. The growth of the idea that all were subject to law was expressed by a decree of the Parliament, in which it was said, "The monarchy would be transfigured into a despotic form if ministry could dispose of persons by sealed letters, property by beds of justice, criminal matters by change of venue or cassation and suspend the course of justice by special banishments or arbitrary removals." Though the principles thus declared may meet approval, they were invoked to sustain privilege rather than to enforce justice. But the idea that the land and the people belonged to and existed for the king and his court was fast being supplanted by the better one that the government, whatever its form, must serve the people and promote their welfare. Though we read so much of the difficulties with which the government was surrounded, those difficulties did not have their basis either in exceptionally bad natural or business conditions, nor in the ambitions of rebellious subjects, but in the fact that the nation had outgrown its governmental system and demanded better principles and more efficient execution of them. The nation clamored for the States-General, the ancient representative body of the kingdom. On Aug. 6, 1888, a decree was promulgated for their convocation on the ensuing 1st of May. There was much agitation of the questions as to their composition and the representation and mode of choice of the Third Estate, the only representative of popular elements. An Assembly of Notables was again convened Nov. 6, 1788, but adjourned on December 12 without accomplishing more than the discussion and agitation of the general subject of governmental and financial reform. The composition of the States-General was finally determined by the King as follows, 1. There should be at least 1,000 deputies. 2. That the number should be formed as nearly as possible in compound ratio to the population and taxes of each baliwick. 3. That the number of deputies of the Third Estate should be equal to that of the two other orders

together. They were convoked for April 27, 1789. Later the number was fixed at 1,200; citizens who were taxpayers were declared electors. The elections caused a ferment throughout the provinces, the like of which had never before been known in any country. The King desired to effect reforms, but was without a definite policy. He had called together representatives of the nation to consider and provide for its needs with no further preparation than a partial understanding of the gross abuses of the decaying monarchy. Naturally and logically the first inquiry was directed toward ascertaining what was wrong. The one overshadowing fact disclosed to even dull minds was the unmerited power and privileges of the nobles and high clergy and the lavish extravagance of the court. Bad harvests aggravated the distress of the poor, but never before had so much been done by the king and the rich to relieve them. Charity did not satisfy, when the poor laborer was taught by the agitators that his rights were equal to those of the idle court favorites.

Though it is not often mentioned, the American colonists derived their ideas of personal liberty and individual dignity to some extent from the Indians, who absolutely denied the authority of rulers. The dissemination of American ideas, thus taken from the savages, among a people of most lively sensibilities, was greatly facilitated by the students and admirers of Greek and Roman liberty. The philosophers had prepared the way for the repudiation of monarchial corruption. The nation was ready to condemn the bad government and the false theory of class superiority and robbery with which it was oppressed, but it was not prepared to construct a new system. When the States-General convened, separate rooms were provided for the noblesse and the clergy, but the Third Estate, equal in numbers to both, had only the throne room, intended for the joint meetings of the three orders, in which to assemble. The verification of credentials of members was left to the assembly itself, as well as the question whether the sittings should be in one or separate chambers. The Third Estate, representing the common people, was in possession of the assembly room, and after inviting the other

orders to attend proceeded to determine who were entitled to seats, admitting such of the inferior clergy and nobility as chose to come in. They chose the name of National Assembly, by which this most memorable gathering is known in history. When the session was opened by the King at Versailles on May 5, there were about 1,100 deputies present, of whom 595 belonged to the Third Estate; and of these three-fifths were lawyers.

The States-General had been summoned by the King to aid him with money and to still the complaints against abuses, but when convened it proceeded to act, not as an aid to a sovereign king, but as the representative of a sovereign people. On June 20, after having undertaken to annual all the decrees of the Assembly, the King caused the doors of their hall to be closed and decreed a royal session on the 22nd. The Assembly met nevertheless in a tennis court and passed a decree, "That the National Assembly considering itself called to determine the constitution of the kingdom, to effect the regeneration of public order, and to uphold the true principles of the monarchy, declaring that nothing shall prevent its continuing its deliberations, and that wherever its members are united, there is the National Assembly; Decrees that all the members of this Assembly shall this instant take a solemn oath never to separate, until the constitution of the kingdom be established and confirmed upon solid foundation." All the deputies but one took the oath. On the 22nd, the royal session not taking place, they assembled in the church of St. Louis, where the majority of the representatives of the clergy joined them, one hundred forty-eight in number. On the 23rd the King opened the session with a speech and caused a declaration to be read declaring null all acts of the Assembly and limiting their deliberations to certain subjects, mainly relating to taxation; adding, "None of your projects, none of your ordinances, can have the authority of law without my special approbation. I command you, gentlemen, to adjourn immediately, and to appear to-morrow morning, each in the chamber appropriated to his order, to resume there the usual sessions." The king left, followed by the nobility and part

of the clergy, but the third estate remained. The grand master of ceremonies said to Baillie, president of the Assembly, "Monsieur you have heard the King's orders"? Baillie replied "I cannot dissolve the Assembly until it has deliberated upon the matter. I believe that the assembled nation can receive no command." This was revolution. It denied the sovereignty of the King. On the 24th, forty-seven noble deputies with the Duke of Orleans at their head took seats in the Assembly, and on the 27th the King, overawed by the popular tumult at Paris and the desertion of the French guard, who sided with the populace, to secure his own safety requested the nobles to repair to the common hall, which they did.

Who can adequately describe the awakening of a great nation after many centuries of tyranny, maintained in accordance with rules called laws, which their teachers both spiritual and temporal have taught the people to obey as of divine origin and sanction, to a realization of the monstrous falsity of the whole system. The idols were broken and found to be but base impostures. The ferment spread throughout the nation as the great leaders of the Assembly boldly declared the self-evident truths of liberty and justice. The fruits of the teachings of Montesquieu, Fenelon, Rousseau and Voltaire ripened all at once in the hot house of the Assembly. In Paris the most exalted aspirations of pure patriots for an age of justice coöperated with the hatred and savagery of the dregs of society, who called for vengeance on those they deemed the cause of their degradation. The Assembly led the march of ideas grandly at Versailles, but the ferment went on in the multitude at Paris. The courtiers looked to the army to preserve the King's authority and protect them. The revolutionary forces in Paris organized. There were the electors, the Orleans party and the Breton, afterwards called the Jacobin Club. On July 11 the King dismissed Necker, the only minister in whom the people had confidence. On the fourteenth of July the Parisians broke into the Dome des Invalides, seized 2,800 guns and stormed the hated Bastile, the prison fortress, which stood as a symbol of tyranny, and at once proceeded to demolish it. There were lives lost in

the combat and faithless executions of prisoners taken, whose blood the mob demanded. The national guard was organized by authority of the Assembly and the districts of Paris with La Fayette at its head. Uprisings were not confined to Paris but spread throughout the provinces and were everywhere directed against those who profited by the abuses of the old régime.

The Assembly proceeded with its deliberations, which reached a climax on August 4, expressing at one session the condemnation of a vast system of oppression. From 1614 till 1789 the nation had not been consulted in regard to public affairs, despotism and privilege had flourished at the expense of the people. No wonder that the King and the representatives of the people were so wide apart in their purposes. The King looked only from the standpoint of long recognized power. The assembly was profoundly conscious of the gross and manifold abuses of that power. The King wished increased revenues and tranquil submission to authority. The people demanded relief from excessive burdens and some measure of justice. The many lawyers of the Assembly understood the laws and appreciated the inequity of them. Many of the nobility and clergy recognized the moral indefensibility of their great privileges. On the evening of this memorable session the Viscount de Noailles, speaking to the demand of the government that a decree be passed to put an end to the disturbances in the provinces by inviting the people to obey the ancient laws till modified, declared that the only means of restoring peace was to decree immediately a proportional levy of taxes on all citizens ratably, the adjustment of farm rents on the basis of income and the abolition of statute labor, mortmain and all personal servitude. This blow at feudal privilege was seconded by the Duke d' Aiguillon, the richest nobleman of France. No voice was raised in defense of feudal injustice. Then it was demanded that the recipients of royal favors, the court seigniors, should bear their part. The Dukes of Guiche and Mortemart replied that they were ready to renounce the king's benefits and share the common burdens. Then privilege after privilege was attacked in rapid

succession. Employments were opened to all citizens alike, and penalties for crime were made the same to all classes. Feudal courts, through which the nobles were judges over their vassals, were abolished. Hunting rights, enjoyed only by the nobility, were opened to all. Then came the turn of the clergy; the cures were shorn of their perquisites, and the bishops of their titles. Having disposed of the privileges of the nobles and clergy, those of the provinces and cities were brushed away, and the deputies for Brittany, Provence and Languedoc, and for Paris, Marseilles, Bordeaux and Lyons renounced all their great advantages with respect to imposts. Then came the suppression of the privileges of freemen and tradesmen in the monopoly of work. Thus in a single night sitting from 8 P. M. to 2 A. M. fell the whole system of privileges, and in its place stood the great French nation composed of citizens, each with equal rights before the law. Never in all time was an equal number of abuses exposed and laid low by any representative of a nation at a single session. Radical, thorough and far-reaching as these measures were, they were all clearly and unqualifiedly right, and this accounts for the celerity with which each abuse fell in its turn.

On the twenty-sixth of the same month the great work of the fourth was supplemented by the adoption of the following Declaration of the Rights of the Man and of the Citizen. "1. Men are born and remain free and equal in their rights. 2. These rights are : liberty, property, safety and resistance to oppression. 3. The principle of all sovereignty resides in the nation. No body, no individual can exercise authority not emanating directly from it. 4. Liberty consists in the power to do all that which does not injure others. 5. Law has the right to forbid only actions detrimental to society. 6. Law is the expression of the general will. All citizens have the right to concur personally or through their representatives in its enactment. It should be the same for all, whether it protect or whether it punish. All citizens being equal in its eyes, are equally admissible to all dignities, public places and employments, according to their capacity, their virtue and their talents. 7. No man can be accused, arrested

or imprisoned save in cases determined by law and according to the forms it has prescribed. 8. The law should establish only penalties strictly and evidently necessary, and no one can be punished save in virtue of a law established and promulgated before the offense and legally applied. 9. Every man being presumed innocent until he has been proven guilty, if it is judged indispensable to arrest him, every rigor not necessary to secure his person should be severely reproved by the law. 10. No one shall be disquieted on account of his opinions, even his religious ones, provided their manifestation does not disturb the public order established by law. 11. The free communication of thoughts and opinions is one of the most precious rights of man. Every citizen can therefore speak, write and print freely, except he abuse his liberty in cases determined by law. 12. The guaranty of the rights of the man and the citizen necessitates a public force. 13. For the maintenance of the public force and for the expenses of administration, a general tax is indispensable. It shall be equally divided among all citizens, in proportion to their ability. 14. All citizens have the right to aver of themselves or through their representatives the necessity of the public tax, to freely consent to it, to watch over its distribution, to determine its quota, its assessment its collection and its duration. 15. Society has the right to demand of every public agent an account of his administration. 16. Every society in which the guaranty of rights is not assured, nor the division of authority determined, has no constitution. 17. Property being an inviolable and sacred right no one can be deprived of it, unless when public necessity legally averred, evidently demands it, and under the condition of a just and previously arranged indemnity."[1] This was the grandest chart of liberty and justice ever proclaimed, but the struggle to enforce its precepts was yet to come. To give form to a reorganization of society, which should secure the enjoyment of these principles, was a task of far greater difficulty than to formulate and declare them. The heart of the nation responded admirably to the lofty sentiments of the Assembly, and, though

[1] Martin, 1-60.

there were conflicts in various quarters, the desire for a new order of things was general. Everywhere the people proceeded to reconstruct and organize. The cities chose their magistrates, and the national guard was organized throughout the provinces. The Assembly undertook to reconstruct the whole system of government. The old Parliaments were abolished and a graded system of courts, from justices of the peace with jurisdiction in petty cases to a court of cassation with jurisdiction for the correction of errors of law over the whole nation, was devised. Intermediate were the district courts, composed of judges elected by the people. Jury trial was provided for in criminal cases. Commercial tribunals for the merchants were also established. In place of the ancient thirty-two provinces the country was divided into eighty-four departments, each of which was divided into districts and these into cantons. Primary assemblies were to be held in the cantons, which were to choose members of the departmental assembly, and these were to name the members of the National Assembly. The suffrage was restricted to citizens twenty-five years of age, who had lived one year in the country, paid a direct tax amounting to three days labor and who were not hired servants. Local self-government was provided through representative bodies in the cantons, districts and departments. The king had the right to suspend local administrations not in accordance with his orders for the execution of the laws, but subject to confirmation or abrogation by the Assembly.

The spontaneous movement of the people in the direction of reorganization did not stop with the choice of local officers and the organization of the guard. To defend against lawless bands and apprehended dangers they formed leagues one with another. This movement began in September 1789 and continued till the Federation spread throughout all France as a pledge and bond of concord and union. On July 14, 1790, the anniversary of the taking of the Bastile, a grand festival was held at Paris, attended by 15,000 deputies representing the national guard and 11,000 soldiers and sailors from the army and navy. The event was a joyous one. La Fayette in

the name of the national guard took the civic oath, and the King said from his throne, "I King of the French, swear to uphold the constitution decreed by the National Assembly and accepted by me." A great banquet and fete followed. The revolution seemed to have been accomplished, and the spirit of concord and fraternity prevailed everywhere. This transport of lofty sentiment presented a spectacle not to be decried because of the terrible days that were to come. It was a day's realization of a possible future, only to be made permanent by a long struggle and much suffering. In December 1789, in order to supply funds for the pressing necessity of the state, it was resolved to sell the lands and buildings belonging to the Crown,—except the palaces and forests,—and part of the church property which had been declared to belong to the nation; but as this would require time, negotiable bonds amounting to 400,000,000 livres were issued and secured by a pledge of this property. As they were not readily accepted, they were given a forced currency. In September 1890, financial difficulties having still increased, a further issue of 800,000,000 was authorized. The scheme of Law in substance was thus again resorted to.

While the just principles of the revolution commended themselves to the moral sense of the people generally, ancient prejudices and the habits and opinions passed down from generation to generation could not be eradicated in a day or a year. The nobility had been accustomed to despise all useful labor, to scorn all activities but those of war and the court. Their personal following had been accustomed to look solely to them for employment and support. The structure of society could not be demolished and reorganized at a single stroke. More deep seated still was the reverence for the established church, to which a great majority of the people adhered. Religious habits are strong everywhere and among an unlearned people, such as the masses of the French then were, the influence of the clergy is very powerful. When confronted in the Assembly by the brilliant leaders of the revolution, the representatives of the priesthood had yielded to the demands of justice, but when the body of the clergy were

called on to give up the great properties and privileges they had so long enjoyed, selfishness again resumed its sway, and the sacredness of ecclesiastical rights was asserted in opposition to the authority of the Assembly. The Pope too interposed his authority against the destruction of ecclesiastical privilege. The great multitude of priests high and low had been accustomed to a certain scale of living at the expense of the people. To adjust themselves to a complete change of system was no easy task, and all the inertia of a great and long dominant religious establishment was opposed to the new order of things. Though many individuals among the priesthood were most zealous and intelligent reformers, and though a large portion of the representatives of the clergy had joined with the Third Estate in the most radical measures, of the Assembly, the great church organization still stood riveted to the traditions and prejudices of the past and hostile to the attacks on its great abuses of privilege.

The nobles, though many of them had been carried along by the waves of lofty sentiment that ruled the Assembly, and though among them were earnest and thoroughly determined reformers like La Fayette, were still as a class tied to all that was bad in the structure of society. Deprived of their great privileges, many of them were simply contemptible as men. Without a habit of useful effort or a desire to do good in the world, they found themselves cast down from their positions of superiority and rated at their true value. Intrigue for unmerited advantage had been in large measure their occupation under the monarchy, and intrigue to regain their privileges was their natural recourse when the revolution came.

These powerful forces, the nobles and their dependents and the clergy, were to be overcome within the state before the fruits of the revolution could be made secure. Without the state dangers threatened on every hand. The spirit of the revolution was opposed to the spirit of class and church privilege, which prevailed everywhere in Europe. All the ruling forces of all the neighboring states were vitally interested in maintaining the abuses of power which the revolution had overthrown. The claim of the right of the people to rule

was destructive, not only of monarchical authority but of all that vast, false and vicious system of lay and ecclesiastical aristocracy, which for so many ages cursed and oppressed the multitude. The leaders of the revolution soon perceived that all these forces were to be reckoned with. Distrust, often well founded, caused the patriots to closely watch the old aristocracy. The Jacobin Club became the most potent organization of the enemies of privilege. Its headquarters were in Paris, where most of the leaders of the Assembly were members; it established branches in every part of the kingdom, with which it kept up an active correspondence.

The Assembly reorganized the clerical establishment and required the clergy to take the civic oath. The Pope interposed his authority and by his letter suspended from their functions those priests who having already taken the oath did not retract it within forty days. Refractory bishops and priests sought to arouse their flocks to oppose the authority of the Assembly. The Assembly had usurped functions long regarded as belonging exclusively to church authority. Louis had his Easter services in 1790 performed by a refractory priest. This was denounced as treason. On the night of June 20, 1791, the King and Queen fled from the Tuileries through an unguarded gate, leaving a proclamation protesting against all the acts to which he had assented during his captivity. Great was the commotion at Paris. At Varennes the fugitive King and Queen were arrested on the night of the twenty-first and the next day they were taken back to Paris. General Bouille, who had undertaken to guard the King's flight, found himself unable to do so. The whole country rose against him, and many of the troops sided with the Assembly, which had ordered that the King be brought back. By order of the Assembly the King and Queen remained at the Tuileries under guard. The King expressed himself as satisfied that the people of France supported the Assembly. On July 17 there was a most unfortunate tumult at the Champ de Mars, the scene of the festivities of a year before, during which the national guard fired on the multitude and killed many. On Sept. 3, 1791, the Assembly, having completed the revision of its work,

bore the constitution to the King for his approval. He sent his acceptance ten days afterward, and on Sept. 14 he went to the Assembly and there swore to be faithful to the nation and to the law. On the thirtieth he attended its closing session, and the great National Constituent Assembly ended its labors. Of it La Fayette said, "The Assembly dissolved voluntarily, without any of its members having won either fortune or place, or titles, or power; and we confidently affirm that never was an association of men led by a truer devotion to all pertaining to the liberty and consequently to the real honor of a nation."

The elections for the new Assembly had taken place in September. It opened October 1, 1791 with seven hundred and thirty members, including many young men twenty-five to thirty years old. On the seventh the king attended and made a short address, favorable to the principles of the constitution. Many of the nobility had fled from France and gathered upon the German frontier, where they constantly plotted and solicited foreign aid to overthrow the constitution. Decrees were issued recalling them, and complaints were made against the governments which sheltered them. On April 20, 1792 the Assembly declared war against the King of Hungary and Bohemia. The approach of foreign enemies and the dread of internal conspiracies kept the nation and the capital in a ferment. The undisciplined army at first met with reverses, which ardent revolutionists were disposed to charge to treason. The radicals clamored for the deposition of the King. On Aug. 10, 1792, the mob invaded the Tuileries, from which the King and Queen took refuge in the Assembly. The Swiss guard, having fired into the throng, were massacred. The Assembly overawed by the mob passed a decree, "That the French people is invited to form a National Convention. The chief of the executive power is suspended from its functions until the National Convention has spoken. Every public functionary and every soldier, who in these days of alarm shall abandon his post, is declared a traitor to the country." The right of suffrage was extended to all citizens over twenty-five living from the proceeds of their labor. On the next day the

primary elections were fixed for August 26 and the meeting of the convention for September 20.

The power that had directed the attack on the Tuileries and that now rose into unenviable prominence was the representative of the sections of Paris. At a new election their number was raised to 288, who assumed the general powers of the Paris Commune. Never was there such a lamentable exhibition of the evil effects of mutual distrust and threats of vengeance as at this time. Ardent republicans clamored for the execution of the political prisoners. Royalists in bravado threatened death to the revolutionists when the power of the king should be restored. The air was filled with talk of blood and the passions of the most brutal became thoroughly aroused, while even the more humane lived in an atmosphere filled with the contagion of violence and malice. The Paris Commune appointed a Committee of Surveillance, composed of violent, bad men, including Marat the Madman. On September 2 twenty priests, who refused to take the oath, were, while being transferred to the Abbaye prison, nearly all massacred by their guards. Then followed the slaughter of other prisoners under the direction of this Committee, backed by a bloodthirsty mob. No public authority interfered. All seemed paralyzed. The general public conscience, which had been warped by the intemperate language of extremists, did not awaken to the enormity of the crimes which were being committed till it was too late. The slaughter went on through the second and third and did not cease till the sixth, during which time more than 1,300 victims suffered death. Only about one-third of these were political offenders. The rest were prisoners charged with crime.

By the seventeenth the Assembly began to reassert its authority. It ordered new elections for members of the Convention in Paris, where Marat and other leaders of the massacre had been chosen through intimidation of the better elements, prohibited all night searches, authorized all persons to resist violation of their domicils by force, and required the mayor's signature to all orders of arrest. It further decreed that in any town where the legislative body was in session,

whoever sounded the tocsin or fired the alarm gun without order should be put to death. On September 21, the Assembly passed out of existence and the National Convention took its place.

The first important act of the Convention, passed by acclamation on that day was, "The National Convention decrees the abolition of royalty in France." It was further decreed that all public enactments should date from September 22 as the first day of the year 1 of the Republic. On the borders the armies of France were gaining victories, not so much by force of numbers as of ideas. The liberty held out to people everywhere was gladly accepted in Belgium, Savoy, Nice and along the Rhine, and the spirit animating the army gave it a new force to which the soldiers of kings were unaccustomed. On December 15 the Convention decreed that in territory occupied by the armies of France the generals should proclaim the abolition of existing imposts, titles, feudal claims, chattel or personal servitude, and exclusive rights of the chase, and all privileges, and "proclaim the sovereignty of the people and the abolition of all existing authorities; they shall convoke the people into primary assemblies to organize a provisional administration."

The trial of the King on the charge of treason by the Convention had been in progress, and on January 15 and 16 a vote was taken on three questions. On that of guilt 683 out of the 721 members voted in the affirmative. On the question of submitting the decision to ratification by the people there were 424 votes against to 283 for. On the penalty 387 voted for death against 334. On the twenty-first he was executed. Following a levy for 300,000 men to meet the enemies of France, there was a bloody revolt on the lower Loire in La Vendee. Dumouriez, who commanded the army in Belgium, turned traitor and sought to deliver the army to the enemy. England, in which there had been some sympathy with the revolution, was shocked by the execution of the king, and its interests were attacked by the course pursued in the Lowlands. It began preparations for war. Distrust grew among the republican factions. On March 9 the Convention established

the revolutionary tribunal to pass sentence on conspirators and counter revolutionists. On April 6 a committee of safety composed of nine members, to deliberate in secret, was established, to take the place of a prior committee of twenty. This, the Committee of Public Welfare, became the executive head of the nation, with Danton and Cambon as its leading members. It was to be changed every month. On May 18 a committee of twelve was appointed by the Convention to inquire into the conduct of the Commune. This met with violent opposition from the radicals of the city, and the commission was soon abolished. The radicals were not appeased and on June 2 the Parisian mob, under the lead of Marat, invaded the convention and by intimidation forced it to vote the arrest of thirty-one of its most patriotic members, who opposed the violent measures of the Eveche and the Jacobins. Nothing can better show the prevalence of a genuine spirit of progress than the fact that, amid all the turmoil and violence with which they were surrounded, the Convention on the third and fourth of June appointed special committees to prepare the civil code, to offer rewards to authors of good elementary school books, and to regulate the division of the public property. On June 23 a new constitution was adopted, which contained among others a provision, that laws should be submitted to a vote of the people in case within forty days after passage by the Assembly one-tenth of the primary Assembly in half the departments plus one objected to the law, otherwise the law would stand. This constitution never became operative. Counter revolutions within the state at Lyons, in La Vendee and at other places and war with foreign powers called for the utmost vigor. On August 23 the Convention decreed a levy for active service of all unmarried citizens and childless widowers from eighteen to twenty-five years of age, and called on all citizens en masse to aid in their organization and equipment. On August 15 Cambon presented a plan, which the Convention adopted, for the consolidation and recording in "The Great Book" the items of the public debt, to bear five per cent interest. Under the monarchy all had been confusion. This became the foundation of an orderly sys-

tem of public finance. On June 26 Lakanal presented a scheme for the primary education of both sexes, and on October 26 a decree for the establishment of schools on this plan was passed, but war internal and external and lack of means rendered it impracticable to carry the decree into effect. On August 1 the Convention adopted the metric system of measurements and weights. The Convention also in this time of strife within and without proceeded with the great work started by the Constituent Assembly of collecting into a single code the civil law of France. A committee of five was appointed and allowed three months to make its report. It brought in its draft at the end of the first month, and discussion on it went on at sixty sessions. Here the substance of that great work, which bears the name of Napoleon, was given form. Its materials were taken from the ancient Roman civil law, and from the products of the labors of the Constituent Assembly and moulded to meet the views of the Convention. Influenced by the counter revolution at Lyons, Marseilles and elsewhere, and greatly exasperated by the treason at Toulon, by which it was surrendered with all its naval and military stores to the English, Paris was again in a violent ferment. A vote carried for the division of the revolutionary tribunal into four sections, in order to expedite its work, and the terrible motto "Let the reign of Terror be the order of the day," was seconded by a decree for an armed force to restrain counter revolutionists and protect supplies. On September 17 a law for the arrest of suspected persons was passed, which left the utmost latitude to the revolutionary committee entrusted with its execution. The only condition imposed was, that the names of persons arrested should be sent to the Committee of Public Safety. The killing of Marat by Charlotte Corday tended to inflame the radicals. On October 14 Marie Antoinette was condemned and executed. Then came the trial of the Girondist members of the Convention, whose arrest had been ordered on the third. Twenty-one of them, really innocent of any crime, but courageous men, who opposed the wild excesses of the rabble, were condemned and executed. This however was not the light in

which the matter was then viewed. The Girondists' uprisings throughout France were charged against them, and they were sacrificed. There was little attention to forms of procedure or evidence of guilt by the revolutionary tribunals, which now extended their work over France. Vigorous military operations were carried on against counter revolutionists, and before the end of 1793 La Vendee, Lyons and Marseilles were overpowered and Toulon was recovered from the English. The bloody tribunal followed, wreaking vengeance on those singled out for punishment. Trials were summary and execution quickly followed condemnation. Madame Roland, a most brilliant and pure minded leader of the revolution, with many others of the best people of France, fell a victim to the fury of this bloody tribunal. Yet, while all this terrible work was going on within, France was triumphing over her enemies without, and along the eastern border the enemies were driven back. Though the reign of terror went on, after the end of the year 1793 the baneful power of the Paris Commune was checked by requiring the committees of the sections to report directly to the Committee of General Safety. The Committee of Public Welfare was placed above the ministers and vested with the general direction of the government. This divided into three groups of three each, exercising distinct functions, and being composed of men of great energy gave to the administration needed vigor, though it failed to protect the innocent. The year 1793 also brought to view the man who was to deluge Europe with blood and be the central figure in its history for many years to come, Napoleon. On June 10, 1794, in order to expedite the work of executing prisoners, on motion of Robespierre it was provided that witnesses against the accused should not be required, if other means of proof existed. The pace of condemnation was greatly accelerated. In a little over a year prior to that time 1256 persons had been condemned. In six weeks thereafter 1361 suffered. Nowhere else has bloody retribution overtaken those guilty of bloody deeds with such promptness and certainty as during the Reign of Terror. On July 28, 1794, Robespierre, Saint Just and Couthon, who three days before had felt so secure in

the control of affairs as to call the other members of the committee to account, were condemned and executed with nineteen others, most of whom had taken part in their bloody work. The next day the seventy members of the general council of the Commune of Paris, many of whom were guilty of no offense, were guillotined en masse. The commune had clamored for blood, and its leaders and the Paris mob had often menaced the convention and its predecessors, the Constituent Assembly and the Legislative Assembly! Following the custom of the times there was in this instance no discrimination between innocent and guilty. After the suppression of the revolt in La Vendee there had been great slaughter by order of the revolutionary tribunal. Courier and others, who had directed it, were brought to trial and he and others executed. Some were acquitted.

On Dec. 28, 1794, the Convention changed the mode of procedure before the revolutionary tribunal so as to protect the rights of the accused and promote justice. The Jacobin club, which had done so much to promote the revolution and also the reign of terror, had been closed by order of the Convention a few days before. The tremendous energy of the revolution was not manifested merely in bloody strife, but in an intellectual and physical activity never before exhibited. Deprived of its supplies of steel and saltpetre from foreign ports by war, new processes were invented, steel was made and the cellars of Paris were made to yield saltpetre for powder. A system of signals was devised by which communication was had almost instantly from one part of France to another. A central school of Public Works was established, which afterwards became known as the Polytechnic School, and a Normal School to teach teachers, together with other institutes for special education. On Dec. 26, 1794, a commission of twenty-one was appointed to examine into the conduct of ex-members of the Committees of Public Works and General Safety. On March 2, 1795, this committee reported an indictment against Billaud, Callot, Barere and Vadier, who constituted the ultra revolutionary faction of the committee. Their arrest was ordered by the Convention, and soon thereafter the excluded

Girondists were recalled to seats in the Convention. Seventy-three representatives, held on suspicion, were restored to office, and on March 8, twenty-two Girondists, who had been outlawed, were recalled. But the days of blood and arbitrary punishments were not over. Distrust still lurked everywhere. Billaud, Callot, Barere and Vadier, were ordered by the committee to be transported at once without trial. Fouquier-Tinville the prosecutor who had prosecuted to their deaths so many illustrious men and women, Hermann the president of the court, and the judges and jurors who had condemned them, were themselves brought to trial, but not in that summary manner to which they had resorted. Forty days were consumed in the trial. Fouquirer-Tinville, Hermann and fourteen others were condemned to death and guillotined on May 7, 1795. In the southeast, at Lyons, Marseilles, Toulon and elsewhere the reaction took a more violent form, and there was much slaughtering of those who were charged with participation in the reign of terror. After this there were bread riots, due mainly to the scarcity of provisions, and some summary executions, but the general sentiment was opposed to further bloodshed. A decree was passed abolishing the death penalty except as to the emigrants and for forgers of assignats, but civil commotion was not yet at an end. On May 16 a treaty of alliance was entered into with the States of Holland, and Belgium was annexed to France. On April 5 peace was made with Prussia and on July 22, with Spain. Liberal principles had fought the battles of France as well as her armies and, despite internal troubles, France had come out of the struggle with the allied monarchs greatly increased in territory and power. England and Austria alone remained in active hostility, and but for the treason of Pichegru the Austrian army might have been crushed.

On August 22 a new constitution was adopted by the Convention, subject to the peoples' approval. Frenchmen above the age of twenty-one, who paid a direct tax, or who had fought for the Republic through one campaign or would give three days' labor to the government, were made citizens. It contained a declaration not only of the rights but the moral

duties of man. Primary meetings were to choose one elector for every two hundred citizens. Electoral assemblies then elected the legislative body, tribunals and officers of the departments. The Legislature was divided into the Council of five hundred, who initiated all laws, and council of two hundred and fifty Ancients forty years old and upwards, who might veto proposed laws; one-third to be elected each year, and taken from each department in ratio of population. The executive power was placed in a Directory of five members, chosen by the Councils, one to be elected each year, under whom should be responsible ministers. Freedom of the press, of commerce and industry and the inviolability of the home were declared. All Frenchmen who had abandoned their country were forbidden to return, and their goods confiscated. It was estimated that more than 30,000 royalists had left France. Religious toleration was decreed, and no one was to be compelled to contribute to religious worship, nor was any payment to be made therefor by the government. On Sept. 23, 1875, this constitution was ratified by a majority of 50,000. At the riots of Oct. 5, 1795, largely the work of royalists and reactionists, Napoleon came to the front as a leader of the forces of the Convention and dispersed the mob. On Oct. 26, 1795, the Convention, which had for a little more than three years steered the ship of state amid mutiny through stormy seas, passed out of existence, and the new Legislature came into power.

The new directory chosen by the Legislature was La Reveillere-Lepeaux, Carnot, Rewbell, Barras and Letourneur. The issuing of assignats had gone on till they were almost worthless. A new issue of three billions produced only twenty millions. Resort was had to the payment of taxes in kind, and in this manner wheat was obtained for the relief of Paris. Forty-five billions of assignats were issued, and besides the genuine the country was flooded with counterfeits. The falling values of assignats, given forced currency, and the instability of all values gave great opportunities to the speculators, resulting as usual in corresponding suffering among the poor. A striking illustration of the reduced pace at which state trials

went forward was in that of Babeuf, who had instigated an uprising and advocated community of property, which began February 20, 1797 lasted three months and resulted in his sentence to death with one other person. Seven others were sentenced to transportation and the rest acquitted. The reign of terror had passed away, in 1796 the civil war in the Vendee came to an end, and Bonaparte led the army in Italy. Much blood had been shed by order of the revolutionary convention, but the numbers who had suffered were altogether insignificant as compared with those who fell in the bloody wars waged by Napoleon. Members of the Convention gave up their lives as sacrifices to the good of France, but for each one of these many thousands fell in battle. The civilized world has never ceased to condemn the excesses of the revolution, but it still applauds the wholly indefensible butcheries of war. Much of the bloody work of the reign of terror resulted from too intense devotion to the cause of liberty. Distrust followed the overthrow of the monarchy, which had ripened and rotted through so many centuries. If moderation of language could have been maintained, much crime would have been avoided. Intemperate demands for the blood of opponents and counter threats caused blood to flow when popular tumults occurred. Never was there a time when intemperate words led to bloody deeds so quickly and frequently. But the heroic work of those who braved death at the guillotine gave an impulse to governmental reform which can hardly be measured. The peculiar sadness of these executions is augmented by the nobility of soul displayed by so many of the victims. The Girondists and Madame Roland gained a pure fame, which will grow in lustre as true liberty spreads its light over the world. Even Danton, Robespierre and Saint Just were sincere republicans. The great lesson of the reign of terror is, that in times of great excitement intemperate language is as dangerous as sparks in a powder house, and that those who unjustly take the lives of others may expect that retributive justice will soon return upon their necks the unmerited strokes which have destroyed others. Compared with blood spilled in the many causeless wars waged by the kings to gratify their mere personal pride

or ambition, all the blood spilled by the revolutionary tribunals was as a drop in a great tub full. But the blood of the revolution was to water a plant of incalculable value to mankind, while that spilled at the command of the kings was not only to no good purpose, but passed a legacy of oppression and hatred down from generation to generation. Europe and America claim to believe and follow the teachings of Christ, yet the savage Mars, the war God of ancient Greece and Rome, still holds sway. Kings and states still send their men forth to do wholesale murder to gratify the pride and ambition of kings and rulers, and when great battles are fought and many thousands meet death, and many more thousands live in the agony of mutilation, the multitude applauds and the fierce leaders become worshipped as heroes. France achieved her true and great glory through her three great assemblies and during the time of her bloody travail. Napoleon led her back into the old train of Mars and watered the fields of Europe with innocent blood. For this rulers of England and Austria especially must share the blame, and of Prussia, Spain and Russia also a part. Napoleon sought, not liberty or the happiness of the people of France, but that false phantom, glory, which leads so many to the grave over a path smoking with pestilential fumes of war and reeking with the corruption and miseries it engenders. Europe has neither accepted the rich fruits of the deliberations of the patriots of that memorable period, nor ceased to worship Mars, Woden and Thor. These are still the gods of the palaces and many of the homes of the most advanced nations of Europe, in fact though not in name. The time of intense activity of the pure republican sentiment ended with the Convention. The new legislative chambers were largely reactionary. With the exception of Carnot, that most able and worthy patriot, the Directory was made up of poor or bad material. Napoleon was already plotting to gain arbitrary power, though professing the most profound devotion to republican principles. He sent his emissaries to Paris to further his ends. The army was rapidly becoming the ruling force of the state. The clubs, which had wielded such vast influence, had lost

their hold on the people, and the most powerful ones had been closed and dispersed. The treason of Pichegru, which had come to light, was made a pretext by Barras, La Reveillere and Rewbell for a *coup d'etat.* On Aug. 18, 1797 the Directory addressed a message to the Five Hundred, calling attention to plots and violations of the constitution. It was referred to a special committee to direct prosecutions against all plotters against the constitution and soldiers holding political councils. On the night of September 3 the Tuileries was surrounded by 12,000 soldiers with forty cannon. The assembly was prevented from holding a session the next day, and Barthelemi, one of the Directory opposed to the *coup,* was arrested, while Carnot escaped and fled to Switzerland. Thirty members of the Council of Ancients attempted to hold a session at the house of their president and were arrested and imprisoned in the Temple. Eighty-five of the Five Hundred, holding a session near by, were dispersed and many of them arrested. A session of those members of the councils favorable to the three Directors, the Triumvirs, was then held. A resolution in thirty-nine articles was voted, annulling the elections in fifty-one departments as being falsified by royalist emissaries, thus destroying the opposing majority. The political rights which had been restored to the relations of emigrants were taken from them. Forty-two members of the Five Hundred and eleven of the Ancients were ordered to be transported with Carnot, Barthelemi and other prominent men, including Pichegru. The law recalling transported priests was repealed and all newspapers were placed under police inspection. The law against clubs was repealed, though they were forbidden to attack the constitution. These resolutions were first passed by the Five Hundred and then by the Ancients on September 6. The directory was filled by adding Merlin and François. On October 17 Napoleon concluded a treaty of peace with Austria, contrary to the instructions of the Directory, but which they ratified. This left England as the only country with which war still continued. The Directory made Napoleon commander-in-chief of the army of England, and he came to Paris, where he

affected modesty and was accorded great distinction. His next project was the invasion of Egypt.

When the elections of 1798 were held, the Directory again interposed to maintain their ascendency in the Councils and annulled such of the elections as they deemed most unfavorable. Treilhord succeeded François on the Directory. While Napoleon was prosecuting his war in Egypt, public sentiment in France grew hostile to the Directory, and the elections of 1799 were carried by the reactionists. Sieyes succeeded Rewbell in the Directory. The newly elected one-third of the Councils infused life and independence into them. Liberty of the press and of assemblage and free elections were ordered. Conscriptions were ordered and a forced loan of one hundred millions from the well-to-do classes. War was renewed and went on in Italy, Switzerland and the low countries against the forces of Austria, England and Russia, as well as in Egypt, with varying success. Napoleon left his army in Egypt and arrived in Paris Oct. 25, 1799, where he at once commenced to plot to overthrow the Directory and assume dictatorial power, backed by his military followers. The pretext of a Jacobin plot was invented. A decree of the Council of Ancients removing the session to St. Cloud was obtained, and Bonaparte was commissioned to command the military forces and execute the decree. The Council of Five Hundred met four hours later and were disinclined to go to St. Cloud, but Lucien Bonaparte, the president, ruled that the matter could not be discussed till next day. Three of the Directory resigned. Gohier and Moulin, the remaining directors, who remained steadfast in support of the constitution, were kept confined in the directoral residence in Luxembourg by troops under Moreau, who followed Napoleon. The leaders of the Councils met at night with Napoleon and Sieyes, when Nopoleon declared that the constitution must be changed and a temporary dictatorship established. There was also a meeting of representatives opposed to his schemes to devise means of resistance. Nov. 10, 1799 the two councils met at St. Cloud. A letter from the secretary general of the Directory was read announcing the resignation of four directors,

though neither Gohier or Moulins had resigned. Napoleon appeared in the Council of the Ancients and made a speech, in which he talked of liberty and equality, while he demanded the dictatorship. He then went to the Five Hundred and entered, escorted by some of the legislative guard. Being met by protests at the appearance of swords and bayonets in the Council, he was taken from the hall by General Lefevre and the soldiers. Then Lucien Bonaparte went out and addressed the troops as president of the Council in the interest of his brother, after which Murat led in the genadiers, who drove the representatives from the hall. At nine that night Lucien assembled thirty of the members of the Five Hundred, who assumed to be a quorum and approved the course taken by Napoleon and the troops. Three consuls were nominated, Napoleon, Sieyes and Roger-Ducos. All swore to support the republic. Two commissions to assist the consuls in changing the constitution were chosen, and the exclusion of fifty-seven of the representatives and an adjournment of the Councils for three months was ordered. This order was ratified by the Ancients. The new consuls professed devotion to the republic and to liberty. Napoleon was popularly looked on as a Washington, but at best he was one of the coldest of military despots. The adoration of the multitude was mainly based on the ancient worship of the war god, as whose representative Napoleon was acknowledged and glorified. The decree which formed the provisional consulate invested them with full power and charged them to restore order and peace. Two commissions of twenty-five members each took the place of the Councils, and their powers were to continue three Months till the Councils should meet again. Napoleon's great strength lay in his judgment of the capacities of men and in his ability to have them carry out his will. He at once selected as his principal ministers three men of great executive ability. Talleyrand for foreign affairs, Berthier for war and Gaudin for finance. Many political prisoners were released, but the sale of the goods of the emigrants was confirmed. On November 16 a harsh measure was adopted, by which thirty-seven citizens were arbitrarily transported and twenty imprisoned on

the Isle de Ri. Some were guilty of bloody crimes, but others only of having opposed Napoleon's usurpation of power. On Dec. 15, 1799, the new constitution, mainly the work of Sieyes, was made public. It placed the executive power in three consuls, to hold for ten years, and eligible to reëlection. Of these the first alone could promulgate laws, appoint ministers, ambassadors, and officers generally. The second and third consuls could consult with, but not control the action of, the first. 500,000 electors chosen by universal suffrage elected 50,000 persons, who in turn chose 5,000 names from which a senate made up of eighty life members chose the consuls, tribunes and legislature. The legislative body was composed of three hundred members. A council of state was charged with drafting laws, its members to be named by the first consul. The laws thus formed were to be presented to a tribunate of one hundred members, which after discussion was to pass them on in the hands of three orators, who should discuss them against three councillors of state, nominated by the consuls, in the presence of the legislature, which should then adopt or reject the proposed laws by secret ballot without debate. Vacancies in the senate were filled by the senate from a list of three candidates for each vacancy furnished one each by the legislature, the tribunate and first consul. The senate had power to veto any law or governmental act it deemed unconstitutional. Municipal officers were to be taken from the first list of 500,000 electors, departmental from the second of 50,000 and national from the third. There was no declaration of the rights of man and no guaranty of liberty of the press. Personal liberty only was assured. The new constitution was adopted by a large, almost unanimous, vote. Napoleon, Cambaceres and Lebrun were chosen consuls. The legislative session of the new government was opened Jan. 3, 1800. A law was passed abolishing the cantonal municipalities and substituting larger units called *arrondissements*. Officers were appointed by the government instead of chosen by the people. Over the departments prefects were appointed and subprefects over the *arrondissements*, and the commune had a mayor named by the prefect. Corresponding changes were made in

the judicial system, and jurors were named by the prefects. All judicial officers except justices of the peace were appointed. Under this system France was again ruled by one head. On Feb. 9, 1801, peace was made with Austria. July 16, 1801 a concordat with the Pope reëstablished the Catholic as the religion of state in France, and on March 25, 1802, a treaty of peace was concluded with England. The emigrants, of whom there were said to have been 145,000, were allowed to return and restored to such of their property as had not been sold. The educational scheme of the Convention was replaced by another, which failed to give general primary education, but did provide military schools. By vote of the people Napoleon's term of office was extended for the term of his life. La Fayette, who after long confinement in Austrian prisons had finally returned to France, voted no, but very few others had the courage to do so. There was a brief period of peace and prosperity, which unfortunately soon came to an end through the fault of bad rulers in France and England. In 1803 that long and fearful war commenced, which was to cause such frightful sufferings and loss of life. The year 1804 witnessed the completion of the Code, which bears the name of Napoleon, and for which he claimed the credit, but it was of course mainly the work of lawyers, and most of the material for it had been prepared by the Convention. (A summary of the provisions of this Code with its modifications contained in the Civil Code of France will be found in the Appendix.) This great work became a model followed by neighboring states in the codification of their laws, and presents systematically arranged and concisely stated the civil law of France. On May 18, 1804, Napoleon, having obtained the sanction of the Senate, was proclaimed Emperor with succession in his heirs, a civil list of 25,000,000 and the use of the royal palaces and estates. With the advent of Napoleon to power the internal struggles of parties, clubs and factions soon came to an end. He introduced order and system and carried on useful public works. In the collection of the revenue there was thoroughness and in its expenditure economy. Restored order and prosperity were placed to his credit and gladly accepted. But

this gain was at the expense of a military despotism, in which the blood and treasure, the peace and happiness of a great nation weighed as nothing against the ambition and the criminal folly of a single heartless despot. Thenceforth the young men of France were called from their homes to be sacrificed to the fierce war god, whose high priest was Napoleon. Despotism in France and despotism in England, Austria, Prussia, Spain and Russia must be charged with the lives of the millions who were slain in the long struggle, which deluged Europe with blood till Napoleon's fall at Waterloo.

With these long and fearful wars and the bloody battles which gave Napoleon such renown as a military commander we have nothing to do, save to call attention to the frightful suffering they caused and the needlessness of them all. Never was there a more wanton crime committed against a people who had confided their destines to a ruler than that of Napoleon in leading a French army into Russia in 1812 to perish without a cause. The hundreds of thousands of lives, sacrificed in battle or to the rigors of a severe northern winter, were offerings to the war god and chargeable to Napoleon. From this time on disasters multiplied, and by the winter of 1814 France was literally drained of young men capable of military service, and the vast accumulation of arms and military stores, which had been provided with so much care, was in the hands of the enemy in Italy and Germany. Never in all the history of France was there a stronger illustration of the folly of entrusting the power to make war to a single man. Never did a despot live who cared less for human life or human happiness than Napoleon. His mad desire for military glory and conquest dominated every act and doomed to an untimely death most of a generation of brave men. So long as the young are taught to admire and emulate the conduct of such human monsters, and to look on war as the avenue through which fame and glory must be sought, so long will humanity suffer the horrors and miseries of needless wars. When murdering by wholesale shall be viewed in its true light, as private murder now is, and when the duels of nations shall be weighed as private duels are, the world may breathe a

purer air and the worship of Mars give way to the spirit of genuine Christianity.

Exhausted France could oppose no effectual resistance to the allied powers, who, profiting by the lesson so often taught by Napoleon that time is of prime importance in military movements, pushed steadily forward without allowing time to Napoleon to concentrate the scattered remnants of his forces or to organize and equip the few new recruits France yet could furnish. On March 31, 1814 the allies entered Paris. They demanded the overthrow of Napoleon. On April 2nd the remnant of the Senate decreed the deposition of Napoleon and his family; on the next day the legislative body confirmed the decree, and on the 6th Napoleon abdicated. The allies allowed him to retain the title of Emperor with the island of Elba as his empire, and his wife Marie Louise of Austria was given the duchy of Parma. Ample pensions were allowed to him and the members of his family. A new constitution was formed, afterward modified, and Louis XVIII was made king. The executive power and the initiative of all laws was conferred on the king. The peerage was restored, a house of lords taking the place of the Senate, with unlimited power of appointment in the king. The legislative power was confided to the King, Senate and Chamber of Deputies. The Constitution sanctioned individual liberty, freedom of worship and of the press, confirmed the sale of national property, the public debt, and accorded amnesty for acts committed during the revolution. The senate was to be composed of not less than one hundred and fifty nor more than two hundred members, chosen by the King, but one hundred of the senators then in office were to be continued. The Catholic was retained as the religion of state. The right of suffrage was greatly restricted. Electors were required to be thirty years old and pay an indirect tax of three hundred francs. Deputies were to be elected for five years and one-fifth renewed each year. The right to make war and peace was vested in the king, with that of making all arrangements necessary for the execution of the laws and the safety of the state. A responsible ministry was established. Conscriptions were to be regulated by

law. The Constitution was dated from the nineteenth year of the reign of Louis XVIII, as if the republic and empire had never existed, and was called the Constitutional Charter, as if granted by grace of the king. The Charter was proclaimed June 4, and eighty-three senators and forty dukes from the nobility of the old régime were made members of the new house of peers. The rule of the Bourbons, which again placed in authority those who had so long been the enemies of France, though at first accepted with hope, because of the intense longing of the people for peace and security, soon produced irritation everywhere. The King and his followers were wanting both in moral purposes and in business capacity. The treaty of Paris, which diminished the territory of France, was a source of national humiliation. Discontent grew, and Napoleon, learning the situation, set sail on Feb. 26, 1815, with about 1,100 soldiers and landed near Cannes on March 1. He was received everywhere with enthusiasm, the soldiers sent to oppose him deserting the Bourbons and joining his little army. On March 19 he reached Fontainbleau, and the Bourbons fled. On the 20th he entered Paris and took possession of the Tuileries. Again the Constitution was changed, Napoleon seeking the aid of the republican sentiment. It was in main the Charter of Louis XVIII, the principal change being in the lower house, which was called House of Representatives, and in the mode of election. Primary meetings were to nominate for universal suffrage 100,000 electors for life, forming two classes, one of the departments and the other of the districts, each of which were to elect representatives at least thirty years of age. The peerage was declared hereditary. This constitution, called the supplementary act, was ratified by the people. The two chambers met on June 3 and Napoleon set out on June 20 to be defeated at Waterloo. The representatives of the people again had to face the situation of submission to foreign powers. In the Chamber of Representatives Lucien Bonaparte strove to maintain Napoleon in power. To his appeal La Fayette answered: "Prince, you slander the nation. It is not for forsaking Napoleon that history will blame France, but for following him so long.

She followed him in the Egyptian sands and the Russian deserts, on fifty fields of battle, in reverses as in his triumphs. Fidelity too long continued has cost France three million men!" The net result of all this enormous sacrifice was, that exhausted France lay at the mercy of its many foes, some or all of whom might have been friends if Napoleon had striven for peace with half the zeal he prosecuted war. Napoleon again abdicated, proclaiming his son emperor. On July 4 the representatives signed the capitulation, turning the destinies of France over to the allies, but on the same day a declaration of rights was presented to the House which was adopted on the next. On July 7 Prussians and English took possession of Paris and Louis XVIII entered it the next day. The inundation of foreign soldiers, who pillaged and preyed on France, was overwhelming, amounting to as high as 1,240,000 men. The French army was disbanded and disorder, pillaging, murder and excesses of all sorts prevailed over the country. On July 15 Napoleon surrendered to the English and went to Plymouth, expecting to be allowed to live in retirement, but he was sent Aug. 8 to St. Helena as a captive. The elections in 1815 were carried by the royalists, and a law was passed creating special courts for the trial of political offenders. The peerage was reconstructed by the addition of one hundred and ninety-four peers, declared hereditary. Louis reigned as a constitutional monarch in comparative peace. In 1819 the electoral laws were revised so as to require the election of all the deputies once in seven years, instead of a portion each year, and increasing the number. The policy of a protective tariff on foreign goods was adopted, and with peace and industry France advanced in prosperity. The many-sided civilization, contributed to by the millions of people, moved forward. Political parties developed, but there were no great out-breaks causing bloodshed. Louis XVIII passed away on Sept. 16, 1824, and Charles X took his place. The rule of Louis XVIII was not that of a Bourbon despot, but of a constitutional monarch, governed in great measure by the principles developed by the revolution. Charles observed the restrictions on his power imposed by the charter in the main

until 1829, when he named a very obnoxious ministry. On July 25 four ordinances were signed by the king and countersigned by the ministers, the first suspended the freedom of the press, the second dissolved the Chamber of Deputies, the third reduced the number of deputies and altered the electoral law, and the fourth convened the new electoral college on Sept. 6 and 13. When these arbitrary acts became known Paris was again in a ferment. On July 28 the streets were barricaded, the tocsin was sounded and all Paris rose to resist the king's usurpation of authority. There was fighting in the streets between the troops and the citizens, but many of the soldiers were disposed to side with the people. Though 5300 persons were killed or wounded in the fight, there were no exhibitions of such barbarity and blood thirstiness as in the revolution of 1789. The people realized that the soldiers fought from a sense of duty, and the soldiers really felt in sympathy with the people. On the 29th two regiments went over and joined them. The king was without efficient support and left the city. La Fayette, that grand character, who had taken part in the stormy scenes of the American Revolution and of 1789, again came to the front in command of the national guard of France. The King abdicated and left France on Aug. 3, 1830. On the same day the Legislature convened, two hundred and forty deputies and sixty peers being present. The Constitution was again changed, the Catholic religion ceased to be recognized as the religion of state, censorship of the press was abolished and its inviolability established, commissions and extraordinary courts for the trial of offenders were prohibited, the tricolored standard was resumed, the age of deputies was fixed at thirty to serve five years, hereditary peerage and all peerages created by Charles X were abolished. The throne was declared vacant and the Duke of Orleans was chosen king, on condition of acceptance of the amended Charter. Though there was much republican sentiment, many ardent republicans like La Fayette deemed it wisest to choose a king. Louis Philippe came to the throne as a citizen king. The difference between his case and that of ancient monarchs was expressed by M. Thiers, who took

part in this revolution, in the words, "The king reigns, he does not govern." Louis Philippe was not content however to merely reign, he sought also to govern. On June 5, 1832 there was an outbreak in Paris which assumed considerable proportions and seemed formidable, but on the next day it was suppressed. Many of those implicated were arrested and tried. Some were sentenced and others acquitted, but there were no executions, thus showing a marked advance from the bloody days. Though Louis Philippe was charged with weakness in his foreign policy, he avoided disastrous foreign wars, and France prospered in peace. His reign witnessed the introduction of the railroad and telegraph and marked advance in manufactures and commerce. Though there were many attempts to take the King's life, he always exhibited courage when attacked and clemency toward those implicated. Nothing more surely proves the advancing moral tone of the people than the improved administration of justice. Trials no longer meant mere formal procedure preliminary to bloody executions, but there was a decided leaning toward clemency, and even those guilty of political offenses were sometimes acquitted. The King no longer used the courts as tools for the execution of his arbitrary will. The public were becoming accustomed to submit to law and reject claims to arbitrary power.

On Feb. 24, 1848, as a result of an order prohibiting the holding of a banquet, all Paris rose against Philippe, who in the morning believed himself secure, yet abdicated at noon in favor of his grandson. Barricades were thrown up all over the city. The national guard, when summoned, sided with the people, and the regular troops, though numerous, were not able to contend with the mob. Public sentiment was so strong against the king and his ministers that a revolution was effected with very little bloodshed. A provisional government was formed by naming a new ministry, the Chambers were dissolved and an election ordered to choose a new National Assembly. The ministry were confronted with conditions urgently demanding relief. Great numbers of laborers were unemployed and in want. They looked to the state to afford them relief. On February 25 a workman rushed into

the council chamber with a petition crying for, "the right to labor in an hour." "Such is the will of the people." This was not a very disorderly demand, though difficult to comply with on a large scale under such circumstances. The election for members of the National Assembly was finally fixed for April 23, and nine hundred representatives were to be chosen by departments and to receive twenty-five francs per day. All titles of nobility were abolished. The political discussions preceding the election, disclosed a great diversity of ideas and schemes for the betterment of social conditions. The relations of labor and capital and the fundamental questions concerning rights of property were much discussed, and socialists and anarchists advanced their theories. The ministry established banks of discount and public warehouses and resorted again to paper money. Great numbers of laborers were employed on public works, the list including by the end of April nearly 100,000. On April 27, 1848, the government proclaimed the abolition of slavery, including the colony of Algiers. The elections passed off peaceably with a few exceptions, the new National Assembly convened on May 4 and on the 8th approved the conduct of the provisional government. On June 23 rioting commenced in Paris and barricades were erected. No very well defined purpose animated the rioters, but they were led by agitators who opposed the measures of the Assembly, and a great number of needy laboring men followed them. Serious conflicts ensued, continuing through the 24th and 25th, when the rioters were finally overcome by the troops. More than 1500 persons were killed and 2500 wounded in this conflict, which was wholly wanting in good results, and was followed by the arrest, imprisonment and trial of a great number of persons who took part in it. It is encouraging to note that the days of summary and bloody punishments were over, some were transported and some imprisoned after trial, but none were executed. On Nov. 4, 1848 the Assembly completed its work in the adoption of a new Constitution, which was read to the people in the Place de la Concorde on November 12. It provided for a President to be elected for four years by the people and ineligible to re-

election till after four years more. The Assembly of 750 members was to sit in a single body with power to choose a council of state to hold for a term of six years, and to draft all laws. Magistrates were to be named by the executive power, mayors by the town councils, and justices of the peace elected by the people. Among the clauses of the Constitution exhibiting an advanced appreciation of the obligations of the state to its weaker members and to the outer world were the following: "The French Republic respects foreign nationalities . . . it will never employ its powers against the liberty of any people." "The republic should by fraternal assistance insure the support of its needy citizens either by procuring them work to the extent of its means or by giving the means of existence to those who are unable to work and have no family." The duty of the state to furnish education was recognized.

The election was fixed for Dec. 10, 1848, and resulted in the choice of Louis Napoleon Bonaparte as President. On December 20 he took the oath of office, professing devotion to the cause of liberty and the principles of the republic. The Constituent Assembly held its last session on May 27, 1849 and the new Legislative Assembly opened on the next day. Louis Napoleon began his career as President by overturning the little Republic of Rome, which had driven out the Pope, and restoring him to his temporal possessions, in violation of the Constitution. On March 15, 1850 the Assembly passed an educational law which gave to the Catholic clergy the principal supervision of primary schools. The election law was changed so as to require a three years' residence to qualify a voter. This disfranchised a large portion of the laborers. On Dec. 2, 1851, Napoleon, having gathered about himself and placed over the army men on whom he could rely, caused the arrest of sixteen of the most prominent members of the Assembly, without any lawful pretext, and issued a decree and three proclamations. The decree dissolved the Assembly and restored universal suffrage. Paris was declared in a state of siege. One proclamation accused the Assembly of plots and appealed to the people to adopt a new form of constitution,

the leading points of which were: First, A President chosen for ten years; second, Ministers responsible to the President; third, A council of state to prepare laws and discuss them before the legislative body; fourth, A legislative body elected by universal suffrage to discuss and pass laws; fifth, A Senate to guard the Constitution and public liberty. To the army a flattering proclamation was issued, demanding passive obedience to orders and assuming full responsibility to the people for all his measures. The third proclamation was by the prefect of police warning all that attempts at revolt would be severely repressed. The Assembly was forcibly prevented from again convening. Though the Constitution gave the supreme court power to call a grand jury to try the president in case of high treason, no action was taken because of "the material obstacles to the execution of any decree that might be issued." Attempts at resistance to Napoleon's usurpation of power were made at Paris and throughout the provinces, but they were mercilessly crushed. In Paris some barricades were erected, but the people were not able to hold them against the army, and those offering resistance were mercilessly slaughtered. As the resistance was overcome great numbers of arrests were made, and while the guillotine was not again set actively at work, there were many arbitrary orders of transportation and imprisonment without any observance of legal forms. Hostility to the usurper was an offense punished by his emissaries at discretion. The election held on December 20 and 21 resulted in an overwhelming endorsement of the usurpation. On Jan. 14, 1852, Napoleon promulgated a new Constitution. It began with a "recognition, confirmation and guarantee of the principles proclaimed in 1789," but "The government of the French Republic is intrusted to Prince Louis Napoleon Bonaparte for the term of ten years," who was made responsible to the French people. The president was given command of the army and navy, power to declare war, make treaties and alliances, fill offices and make rules and regulations for the execution of the laws, Justice should be executed in his name and he alone could issue, sanction and promulgate laws. All public functionaries must swear allegiance to him. "The

wheel within the wheel of the new organization will be a state council of from forty to fifty members, chosen and revocable by the president of the republic, discussing the laws in private session, then presenting them for the approval of the Legislature." The Legislature was to consist of 262 members, chosen for five years by universal suffrage, to vote on laws and taxes. The Senate was composed of eighty members, liable to be increased to one hundred and fifty, chosen by the president, except that cardinals, marshals and admirals were senators *virtute officii*. The president might give senators an income of 30,000 francs. The senate was to oppose the promulgation of laws contrary to the Constitution, to morality, religion, etc. All mayors were chosen by the executive. There was no guaranty of liberty of the press or security of the person against arbitrary arrest. The new constitution created a despotism based on a written constitution and universal suffrage. The new government closed many of the schools and changed the faculty of the university and the course of study. On the other hand its energies were devoted to the development of industrial enterprises and commerce. Railroad companies were organized and roads constructed. Banking institutions were organized and the Bank of France grew in importance. November 20 and 21 the people restored the Empire with Napoleon as hereditary ruler under the title of Napoleon III by a nearly unanimous vote. March 27, 1854, the war with Russia broke out with the somewhat novel combination of Turkey, France and England as allies against Russia, while Austria armed but remained neutral. This strange combination prosecuted a war which cost France the lives of 95,000 men, besides those who lingered on, suffering from the effects of wounds, exposure and disease, and from which France gained nothing.

On May 3, 1859, the emperor announced to the Chambers that Austrian troops had invaded Piedmont and proclaimed that Austria must rule to the Alps or Italy be free to the Adriatic. A brief campaign resulted in overwhelming defeats for the Austrians, followed by a peace quickly concluded by Napoleon, by which Piedmont gained Lombardy at the

expense of the cession of Nice and Savoy to France. This war, although bloody while it lasted, ended July 8. It gave Napoleon prestige, restored to France a part of its natural territory and imparted an impulse to the idea of Italian nationality and unity, which soon resulted in the union of the whole peninsula under the Sardinian king and the expulsion of the Austrians. Operations in China and Algeria were also productive of the extension of French power, but the attempt to place Maximilian on the throne of Mexico during the civil war in the United States, cost that unhappy prince his life, along with that of many thousand others, and brought disgrace on the empire. Neither of these wars was long or very exhausting to France. On the other hand the peaceful activities of the country were stimulated under the reign of Napoleon as they had never been before. A liberal trade policy, by which many ancient restrictions were abolished and trade with foreign countries encouraged, together with the development of shipping interests and improved means of internal communication by railroads, canals, and wagon roads, resulted in rapid development of manufactures and domestic and foreign commerce. Though the rule of Napoleon III was a despotism, it was a despotism based on the popular will and with energies directed toward the material development of France. In adapting such a government to the tastes and prejudices of the French people Napoleon III manifested great tact, and on the whole his system was not altogether unsuited to the conditions then existing. But the inevitable attendants of despotisms are corruption and injustice. Arbitrary power is never effectually held within the even course of justice merely by a sense of right. The unrestrained power to act on impulse, without external restraint, inevitably results in departure from right conduct. There is also a strong tendency for the official instruments, through whom the despot executes his will, to adopt systems and methods of administration which are essentially and inherently bad in their effects on the general public, but agreeable and profitable to the interested supporter of the throne. Whether a realization of the growth of such conditions influenced him, or other motives,

in 1860 he granted to the Legislature publicity of debate, freedom of speech and some measure of control over the expenditures of public moneys. Legislation for the betterment of the conditions of laboring men was also attempted. While looking to the people through universal suffrage for his support and authority, he really took some interest in the welfare of the great multitude. In 1869 he proposed still more sweeping reforms, by creating a ministry responsible to the Senate as well as to the Emperor, and otherwise materially extending the power of the Legislative Chambers. In accordance with his prior policy his new constitutional measures were submitted to the people and approved by an immense majority on May 8, 1870, 7,300,000 voting for to 1,500,000 against. The particulars of the changes thus effected in the framework of the government were rendered unimportant by following events. The greatly increased power of the Prussian monarchy, elevated to the leadership of Germany after military successes over Austria, caused intense popular jealousy in France. Napoleon, relying on the reports of his ministers as to the condition of the army and its equipments, rashly and rudely provoked war with Germany, without any real ground for a quarrel. War was formally declared on July 19, 1870, but here the weakness of his despotism became evident to Napoleon and to the world. The effects of corruption and inefficiency were apparent in all departments of the military service. Instead of a state of readiness for immediate action, it was found that the army was in no condition to move. Arms, wagons, ammunition and equipments of all kinds were so stored and distributed as to be unavailable for immediate service. On the other side Germany was ready, and by September 2, a month after the opening of the campaign, Napoleon and his army were prisoners of war as the result of the fatal battle of Sedan. On Sunday September 4 the Legislature met, declared the Imperial Government at an end and proclaimed the Republic. A provisional government with General Trochu as President was formed. Though this government struggled desperately to rally the forces of France and resist the invading host, no sufficient amount of energy or

effort could be exerted to counterbalance the superior preparations of the Germans. On January 28, after enduring the horrors of a siege with its vast population, Paris surrendered to the invaders. On February 26 peace preliminaries were settled, France ceding Alsace, except Belfort, and part of Lorraine, and agreeing to pay 1,000,000,000 francs as war indemnity. During the first week of February elections were held and a new Assembly of 653 members was chosen, which convened at Bordeau on the twelfth and on the seventeenth chose M. Thiers President, who named an able ministry. When Paris surrendered the National Guard were allowed to retain their arms. After the terms of peace had been accepted the old turbulence of the Parisian mob again manifested itself, it rose in revolt against the government, and the National Guard joined forces with it. A bloody conflict followed, but this time France dictated to Paris, not Paris to France. For once the government supported by the provinces was able to force the turbulent city to submit, though not without much bloodshed and many barbarities, all too similar to those of the reign of terror.

The government drifted without the adoption of a definite constitution. The Assembly, which had moved from Bordeaux to Versailles was monarchically inclined, but legitimists, Orleanists and imperialists were not able to combine. In May 1873, the Thiers government sustained a defeat in the Assembly, as a result of which Thiers resigned. Marshal McMahon was elected to succeed him, and at the session which began in November 1873 his powers were prolonged for seven years. The matter of settling the constitution dragged on till Feb. 25, 1875, when the proposition was finally carried by a majority of only one vote, that "the President of the Republic is elected by an absolute majority of votes, by the Senate and Chamber of Deputies united in National Assembly. He is appointed for seven years, and is eligible for reëlection," and also that the power of dissolving the Chamber should be granted to the President of the Republic. A Senate was created consisting of three hundred members, not under forty years of age, one third to be chosen every three years, with

powers equal to those of the Chamber of Deputies except in matters of finance. The Senate was made a court for the trial of the President and ministers in case of impeachment. The Chamber was elected by universal suffrage, and had power to propose amendments to the constitution, which must be adopted by both houses. During McMahon's term no revision was allowed unless proposed by him. The President was the executive with power to appoint civil and military executive officers, nominate the Council of State, dissolve the Chamber of Deputies at any time with the consent of the Senate, and to be responsible only for treason. The ministers were made responsible individually and collectively to the Chambers. Thus the existing republic was established. The assembly ended its existence on March 7, 1876. The elections which ensued resulted in a large Republican majority. On June 25, 1877, owing to a controversy between the President and Chamber of Deputies over the Ministry, the Chamber was dissolved and an election ordered. The result was an increased Republican majority. A ministry still out of harmony with the majority having been named by the President, composed of persons not members of the Chamber, a resolution passed that body to "hold no relations with this Ministry," and the Chamber refused to vote the Budget. The President found it necessary to yield. In January 1879 he came in conflict with the ministry over army appointments, which he allowed to continue longer than the legal limit, and the President resigned. Jules Grevy was thereupon elected by the two Chambers assembled in congress as his successor. Since the establishment of the Republic the energies of government have been directed more than ever before toward the development of an orderly system, based on the will of the people. Under the law of 1885 the representation is on the basis of one representative for each department and an additional one for every 70,000 or fraction thereof of population, and the deputies are chosen by universal suffrage. The Senate consists of three hundred members, one-fourth of whom were at first chosen for life by the Assembly, and each vacancy among these to be filled by the Senate. The remainder are chosen

for nine years by special bodies in each department and in the colonies, a third of the number being renewed every three years. The President receives a salary of 600,000 francs per year and an allowance for expenses of 162,400 francs. Senators and deputies receive 9,000 francs per year. The allowance is not large compared with those to past kings and emperors, who were granted 12,000,000 to Louis Philippe, 32,000,000 to Louis XVIII and his family, and 25,000,000 besides many special revenues to Napoleon III. At the head of the executive department is the president, with a cabinet of nine ministers, namely of justice and keeper of the seals, foreign affairs, interior, finance, war, marine and colonies,—instruction, ecclesiastical affairs and fine arts,—agriculture and commerce, and public works. These ministers are appointed by the president, but responsible for their acts to the chambers. Aside from the responsible executive and legislative departments of the government there is a council of state, whose business it is to give advice on projects of law proposed by the executive or the chambers and on administrative regulations and by-laws. They also exercise jurisdiction over administrative officers. All disputes arising in matters of administration and all complaints against administrative officers are cognizable by the Council, whose decision is final. The composition of the Council is a president and vice-president, twenty-two councillors in ordinary service and fifteen extraordinary, twenty-four masters of requests, twenty auditors of the first class and ten of the second, a general secretary and a secretary *du contentieux*. The auditors are appointed after competitive examination, the ordinary councillors by the chamber of deputies and the others by the president. For administrative purposes France is now divided into eighty-seven departments, subdivided into three hundred sixty-two arrondissements, 2,865 cantons and about 30,000 communes. The chief executive officer of each department is a prefect appointed by the president, and of each arrondissement a sub-prefect. A prefect is charged with the maintenance of order, and for that purpose is at the head of the police and may summon the military force; he superintends

the collection of taxes, issues local decrees, appoints and dismisses his agents and is charged with the duty of executing the orders of the government. There is also in each department a general council elected by universal suffrage, and a council of prefecture nominated by the executive. The business of the councils is to assess taxes, manage local property, roads, railways, canals, charitable institutions and other matters of local interest, decide legal questions and advise the prefect when he so requests. They are also designed to place a check on any attempt at usurpation of power, and in case of a *coup d'etat* they must immediately assemble and choose members of a new assembly. The duties of the sub-prefect correspond in the arrondissement with those of the prefect in the department, and he is assisted by a council of the arrondissement, to which each canton elects a member.

The commune is the administrative unit, with a mayor at its head assisted by deputy mayors, varying in number according to population. In the large towns the mayors are named by the government from the members of the municipal council elected by the people. This council has powers similar to those of the departments. The mayors are registrars of births, marriages and deaths. In every canton there is a commissary of police, who acts under direction of the mayor. In towns of less than 6,000 inhabitants he is chosen by the people, and in larger ones appointed by the president.

At the foot of the judicial system is a *judge de paix,* judge of the peace, in each canton with jurisdiction in civil causes involving 200 francs or less and in criminal causes where the fine cannot exceed fifteen francs. An appeal lies from judgments for over 100 francs. In every arrondissement is a primary court of general original jurisdiction in civil cases. An appeal lies to the court of appeals from a judgment for more than 1,500 francs. There are twenty-six courts of appeals, which are located at certain chief towns. There are also tribunals of commerce, whose judges are chosen from the merchants by themselves, in the principal cities. Their decisions in cases involving over 1,500 francs are also subject to appeal. For offenses next above the jurisdiction of judges

of the peace there is a special section of the tribunals of first instance, called the *tribunal correctionnel,* to which appeals lie from the judge of the peace, and its judgments are subject to revision by the court of appeals. For the trial of felonies there is the *cour d'assises,* consisting of three judges and twelve jurors. These courts sit in each chief town in the department once in three months. In criminal cases a private preliminary inquiry is conducted by a *judge d'instruction,* who either ends the proceeding by an order of *non-lieu* or passes the case over to the court, to be thereafter conducted by the public prosecutor. At the head of the entire judicial system stands the Court of Cassation, composed of three divisions *chambre des requetes, chambre civile* and *chambre criminelle.* It reviews the proceedings of the other courts, which are appealed to it, and corrects errors of law, but does not review the findings of fact. When a cause is reversed, it sends it for a new trial to such court as it thinks fit.

There are also military tribunals, maritime tribunals and councils of discipline for lawyers and other professions. An important institution is the *cour des comptes,* consisting of three chambers with a president in chief and a president of each chamber, a general procurator, a chief *greffier,* 102 councillors, twenty auditors, and eighty-one clerks, which supervises the accounts of all government officials. One of the chief functions of the *juge de paix* is to bring parties to an agreement before suit, and no suit can be brought in the courts of first instance till he has made an unsuccessful effort to bring the parties to an agreement.

The history of France suggests the question why despotisms have lasted so long and republican forms of government proven so short-lived. Nowhere else have higher ideals of the relations of man found expression than in France during the revolution and prior to the advent of Napoleon, yet the republic vanished and the empire followed, supported by the people before whom such high ideals had but just been proclaimed. Little of good existed in the system of Louis XIV, yet his despotism endured to be continued under his successors for the greater part of a century. His was a system of

extorting from the great multitude the major part of their earnings to waste it on idle courtiers or in wars for the glory of the king. Not only were the multitude deprived of the products of their labors through theories of land tenure and taxation, but they were deprived of all access to the great store of knowledge which is at all times the treasure of greatest value. It is difficult to point out any benefit which the Bourbon dynasty conferred on the common people, save a little restraint from harming one another. It is difficult to point out moral qualities in the king or his courtiers which commended them to the support of the people. What then influenced the multitude to submit to their authority? They and their ancestors had been educated through many centuries to do so. The doctrine of the divine right of kings to rule and that their acts as rulers, however lacking in moral quality, were right and not open to criticism, had been taught, not only by state officials of all classes, but by the clergy, who came in close contact with the multitude. A great system had been built, to which all classes had become accustomed. In matters of religion the multitude looked to the clergy for guidance. In matters of state the king was all powerful. The great toiling multitude of peasants were too ignorant and too poor to either appreciate the injustice they endured or make any concerted effort to relieve themselves of it. The mechanics and laborers in the cities were a little better informed, but still without organization or well defined common purposes. The so-called higher classes, those who did not work but profited from the prevailing conditions, had most knowledge of the system under which they lived and least inclination to change it. The great landholder appreciated the advantages he derived from the system of land tenure, which made his tenants his servants. The courtier rejoiced in the system which squeezed revenue from the impoverished multitude, for the greater the sum collected the more there was for the king to lavish on unworthy favorites. The courtiers looked to the king for their incomes and knew that favors were only to be gained by subserviency to his will and pleasing his vanity. Thus at the court of France the art of pleas-

ing came to be studied as of first importance with little less than oriental servility toward the monarch. The clergy as a class found it to their interest to uphold the prevailing system, because it protected them in their vast privileges. Whence then came the impulse of the revolution? From the scholars and thinkers, from those who sought truth rather than personal advancement, from men in whatever station in life who had consciences keen enough to be moved by the abuses of the times and sufficient discernment to comprehend them.

The great schools were centers of advanced investigation. The study of the learning of the Greeks and Romans necessarily carried with it knowledge of their political ideas, and when a great mind like that of Montesquieu proceeded to analyze the prevailing system, he could do no less than condemn the moral basis of it. The art of printing had come to aid in the preservation of knowledge and the dissemination of ideas, and while rigid censorship of all publications was maintained, works like Montesquieu's Spirit of Laws, believed not inimical to monarchical institutions, produced profound effects on the minds of students. The church too furnished its quota of reformers. Not all the clergy were content with mere ritual and revenue. Many sought the real meaning of the religion they professed to teach, and perceived how utterly wanting in Christian fraternity was the despotism under which they lived. The spirit of brotherly love and self-denying helpfulness to others, which pervades the teachings of Christ, was altogether wanting in the court and among most of the higher clergy, but there were many in the more humble stations, who took the true spirit of Christ's teaching to heart and sought practical application of them.

When Louis XVI convened the States-General for the first time in 175 years to aid him in his financial difficulties, he brought together moral forces which had been gaining strength through those years, with which his government was unacquainted. The abuses of the kingly government were perceived and condemned, and the true principles which should govern the state were proclaimed. No representative bodies

have ever formulated better statements of the true purposes of government than those which carried on their deliberations during the stormy period of the revolution. The formula of "Liberty, equality, fraternity," caught the hearts of the multitude and was approved by the consciences of many who had profited from the old régime. How then came it that, instead of an era of real good will and fraternity among men, a reign of blood and terror followed? Surely the poison did not inhere in the principles advanced, but rather in the lack of general understanding of them and inability to suddenly substitute a just system for one of arbitrary power. It is one thing to lay down the fundamental principles on which all governments and laws should be founded, and quite another thing to perfect a system of organized society, which shall be able to enforce them in spite of the opposition of the selfish and cunning. Not only is it necessary to formulate just principles as the basis of the social structure, but also to place the enforcement of them in hands that both can and will be just and do right. The great multitude were accustomed to stand in awe of the king and of the great men of his court; they were unaccustomed to participation in the selection of the men who should direct public affairs; they were ignorant of state affairs and of the practical methods by which one class of officials may be made to check the abuses of another. They were accustomed to the abuses of unrestrained power, and the first impulse naturally was to overthrow the king and his courtiers who had oppressed them. If the necessity for doing so be conceded, it was but the lesser task. The far more difficult one of constructing a new and better system for the management of public affairs remained. This new system must be fitted to the then existing society with its inherited ideas and prejudices. The leaders of the revolution made the grand mistake of assuming that a system founded on lofty ideals could be made readily acceptable to a nation whose leading spirits were bitterly hostile to it, and in which a vast majority were too ignorant to form definite opinions or to give expression to their wishes. The government did not fit the people.

In a despotism the habit of obedience to the established authority furnishes the bond which maintains social order. In a republic there must be a feeling of general confidence in the moral purposes of those placed in power, and a prevailing disposition to tolerate sentiments honestly entertained, no matter how erroneous they may appear. The leaders of the opposing political factions soon made the fatal mistake of imputing bad motives to each other, and then of indulging in threats. The reign of terror was preceded by mutual distrust and wild threatenings. The talk of intemperate leaders prepared the ground for the guillotine. If statesmen could be made to know that in morals the crime of advocating war and wholesale slaughter is far greater than that of participation in it by those who become soldiers from a sense of duty, there might be hope for the peace of the world. In France there was distrust by one faction of another, then threatenings then bloody butcheries. The principle was similar to that on which the more excusable wars come about, mutual distrust, fear, hatred and then open violence. The wars instituted by rulers, merely to gratify their ambitions, have been far more numerous and their authors far more criminal. The most pernicious man in public affairs is he who advocates violence either between factions at home or with a foreign power. Though in a defensive war for the preservation of the homes of the people against either a foreign invader or a domestic oppressor the noblest qualities of courage and self-sacrifice for the good of others have often been displayed, the ordinary business of the soldier is to fight, kill and make desolate. War is always brutalizing and demoralizing.

There were leaders of the revolution who did not teach peace, concord and mutual confidence, without which there cannot be liberty, equality and fraternity, but sowed seeds of dissension and advocated bloodshed as a remedy for social ills. Here was the mistake which rendered a republic impossible in their time, for the bloody military spirit naturally and usually leads to a military despotism. Napoleon was the incarnation of the bloody ideals of those who condemned their

countrymen to the guillotine. His hypocritical professions of devotion to popular rights and hatred of kings and tyrants caught the fancy of the multitude and blinded them to his real qualities and purposes. The ideals of the great leaders of the assembly and convention, though generations in advance of the people, were not wholly lost however. Some immediate advantages resulted. The first and most important perhaps of the material gains came from the breaking up of the great estates of the nobility and a vast increase in the number of independent peasant proprietors. The extension of the educational system so as to greatly increase the number of children taught was perhaps of equal or even greater permanent value, and the propagation of fundamental principles of justice and human rights, though for the time productive of many ills, exercised a profound influence for future good not only in France but throughout Europe. Eighty years later these principles had become so generally understood and recognized that a republic was established and has since been successfully maintained.

France is to be congratulated, not only on the great progress made within the last century, but also on the possession of the high ideals of the revolution, which still stimulate to continued improvement.

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CHAPTER XXIV

The British Empire

The earliest inhabitants of the British Isles of whom we have any accounts are styled Britons and are not classed as Aryans. The first settlers of the latter stock are said to have been Celts. Caesar says that in his time the inhabitants of the interior were accounted descendants of the natives of the island, while the maritime portions of the island were peopled by invaders from Belgium, who had settled down and commenced to cultivate the soil. He says the country was very populous and the buildings similar to those of Gaul, that they had many cattle, that they used brass or iron bars for money, that the inhabitants of Kent (*Cantium*), did not differ much in customs from the Gauls, that many of the inhabitants of the interior did not sow grain but lived on milk and meat and wore skins for clothing, that they painted themselves dark blue, wore their hair long, and shaved all but the upper lip, that ten or twelve brothers or even father and sons had wives in common. They used not only horses but also a kind of chariot in battle and were brave and strong. It is impossible to tell what race of men first inhabited the island. In the earliest accounts we read of Britons, Picts and Scots as antedating the advent of the Romans. Sometimes all are classed as Celts, and again the Britons are spoken of as allied to the Basques of the Pyrenees. Ireland was peopled by Celts and, while authentic history of it in the time of Caesar is wanting, popular traditions, handed down apparently with more than ordinary trustworthiness, indicate that the people of Ireland were at that time better organized and more prosperous than those on the larger island. In religion the people of both islands were Druids, with rites corresponding with those of the Celts of France. The organization of society was essentially tribal, with the authority of chiefs enlarged or con-

tracted according to individual capacity and the exigencies of their wars. The Druid priests exercised much influence and authority, of which, however, we have no very accurate account.

The subjugation of England and of that part of Scotland south of the Clyde and Forth was completed by Agricola about A.D. 84. He even extended his operations into Sterling and Perth and constructed a line of forts from the Clyde to the Forth. In his conquests he employed five legions, which with auxiliaries and cavalry are estimated to have made an army of 50,000, indicating much resistance to the Roman advance. The period of Roman occupation was barren of any events of interest in the line of our investigation. Christianity was introduced into the island, and the people seem to have accepted the religion of their conquerors much as they did their system of government. No peculiarities of administration and no modifications of Roman law to conform to the peculiar circumstances or genius of the natives are mentioned, nor was literature worthy of mention produced. Britain was merely a Roman province, deemed of minor importance. About A.D. 400 the Roman legions were withdrawn from the island and the natives were left free.

The Roman occupation of Great Britain was unproductive of beneficial influence on the native population. It did not come till the republic had departed and the military despotism had taken its place. The principal end sought by the Romans was the collection of taxes. Landowners were required to pay a state rent on their estates of one-tenth, afterward increased to one-seventh and even one-fifth the annual produce. In addition to this corn for the soldiers and entertainment for officials on their journeys were required, and the burden of maintaining the roads and bridges fell on the landowners. Traders were taxed on their goods and craftsmen and laborers paid poll taxes. Customs were collected on imports and exports and one per cent on produce sold in market. Percentages were often greatly increased by the officials who gathered the taxes, the excess going to their private use. Rome merely gave the people such protection and order as a

military despotism affords. It did nothing to educate or elevate, save as the Christian religion followed the legions toward the close of the period of Roman rule. The quality of this Christianity may have been somewhat higher than the religion of the Druids, but it was closely associated with the slavery and grinding oppression of imperial Rome.

In military organization they do not appear to have profited from contact with the Romans. The Dutch tribes from the low countries soon commenced the conquest of the island, the Jutes being the first and gaining a permanent foothold in Kent under the leadership of Hengest and Horsa. The date of their landing is given as about 449. The Saxons then came and settled around them in Sussex, Essex and Wessex. Later came the Angles and made way farther north in East Anglia, Mercia and Northumberland. Historians speak of the establishment of kingdoms, but the territory occupied by and the number of people included within the so-called kingdoms hardly warrant the use of such a term. The system of organization appears to have been a modification of that which had prevailed among the Germanic tribes, adapted to the enterprise of gaining a foothold in a new country. Each band of invaders came with wives, children and chattels and had its leader and chief men, but the power of the state resided in the whole body of freemen. They did not seek the subjugation of the native tribes and the establishment of a government over them, such as the Romans had maintained, but lands for themselves. They therefore killed or drove out the natives who opposed them. The settlements they established were mainly devoid of admixture with the native people, except from captive women and a few British slaves. The movement was a transplanting of Germanic tribes on English soil and crowding the native population out, in much the same manner that their descendants came to America and took land for occupation from the Indians. The process of settlement in each case was gradual and accompanied by exterminating wars. New territory was conquered as the numbers of Saxons and Angles increased. They came as heathens worshipping Woden and the other

German gods. The process of conquest was slow, but continuous till about the beginning of the seventh century, when the Saxons and Angles had become dominant over the greater part of England and southern Scotland. The introduction of Christianity among the conquerors is mentioned as contemporaneous with the change from a process of extermination of the Celts and Britons to one of more civilized conquest. Though the whole island is now under the rule of the same government, the descendants of the ancient inhabitants, who preceded the Saxons and Angles, still abide in Wales, Cornwall, Scotland and to some extent in other parts, with surprisingly little admixture of Dutch blood. The invaders preserved their own language, laws and customs, as well as purity of race, taking but little of either from the ancient inhabitants or the remnants of Roman civilization. They brought with them the German system of land tenure, the title resting primarily in the community, which annually assigned to each his special holding for purposes of tillage and habitation, reserving the pastures and timber lands to be used in common. The custom of changing private allotments did not long continue. The mark or township was the primary political division, having its assembly of freemen by which its affairs were regulated and its common property managed. The division of the country into tithings, hundreds and counties did not take place till later, after a central authority had been established. The invading Saxons and Angles came under the leadership of their *Hertogen* in war who in peace were their *earldormen*. There were the freemen, who were recognized as entitled to take part in all public assemblies as well as to fight in the wars, an intermediate class not members of the tribes, and the thralls or slaves. Some distinctions existed among freemen, forming the germs of future nobility. The military leader, there as on the continent, had his immediate personal followers, who gave him added strength and importance, and on whom he conferred special favors as a result of successful military operations. No right of hereditary leadership was recognized, but the free choice of the people usually fell on members of the chief families, reputed

descendants of Woden. As the successful leaders extended their conquests and increased their followings a greater measure of authority was naturally assumed. The public assembly of a mark might well include all the freemen, but when the authority of a single man was recognized throughout a large district and by a great number of people, only the principal men attended the national assemblies. The development of kingly authority among the new masters of the soil was slow and gradual, and came as a result of military combination. In course of time the forces of many communities, led by their separate chiefs, were united under a superior leader, who was styled a *cyning* (king), but this authority came from the people who chose him, and his influence depended largely on his personal qualities. In consonance with the prevailing ideas of equality of rights among freemen, the law of inheritance gave to each male child an equal share in the possessions of the parent. No rule of primogeniture was thought of. Captives and their offspring were slaves, without political or property right.

There were no written laws. Custom and tradition alone furnished the rules to be observed. These recognized payment of *weregeld* for the killing of another, the amount depending on the rank of the person slain. Of the elaborate system of feudal tenures or of the nice legal rules which developed later, the earliest settlers knew nothing. They were neither town builders nor traders, but each primary community occupied its small district, tilled the soil, tended its herds and lived on the products of domestic industry. The assembly of the freemen of the mark exercised primitive legislative, executive and judicial functions and regulated local affairs. It may be here noticed that in Kent, which was first occupied and soon shielded by the Saxons on the north and west from the attacks of the natives, primitive customs and ideas were better preserved and more persistent than among those who came later and fought harder. The custom known as gavelkind, by which the lands of the father are divided among all his sons instead of descending to the eldest alone, may be mentioned as a significant one. This first conquest under the leadership of Hen-

gest and Horsa is spoken of sometimes as the establishment of a kingdom, but it was a kingdom in which the assembled freemen ruled. The west Saxons, who settled in 495 in Hampshire under the leadership of Cerdic and Cynric, their *earldormen,* took the lead in developing a central authority from which the first kings of England came into being.

For brevity let us term all the Dutch invaders,—Jutes, Angles and Saxons—as Saxons, though the name be not strictly correct. These with the Celts are the main progenitors of the present population of the British Isles. It is difficult, and in fact impossible, to give a full and definite description of the organization of the Celtic tribes at or prior to the Saxon invasion. The accounts we have of them are, to a considerable extent, deductions from much later observations and the accounts of the Celts in France at a considerably earlier date. That polyandry existed among them seems well established, both by the direct statement of Caesar and the prevalence of the custom in later times. Polygyny was also allowable. The Saxons, in common with the other Germanic tribes, were monogamists, and the comparative purity of their domestic relations is beyond doubt one of the greatest sources of their national strength. Among the Celts, however, women were not enslaved, but their relative position seems to have been about as high as with the Germans. Relationship was traced by the female line and female leaders, and later rulers, were not uncommon. The women were also often accorded the privilege of going to war along with the men, and were not wanting in courage. The joint family (Irish *fine*) owning and cultivating a family estate under the general direction of an elective head, usually the oldest or most capable male member of the house, is sometimes mentioned as the political unit in Celtic society. This family was a kind of general partnership with a common estate, protecting its members and answering for their conduct, and might include several generations and persons removed several degrees from a common ancestor. From this joint family the petty tribe or village (*tuath*) developed, and from the combination of more or less of these according to circumstances, the vicissi-

tudes of war and the possession of land, the tribe was formed. Over the village (*tuath*) a chief was chosen and over the tribe a king, who might be deposed. His authority was small, but grew with time, the increase of contributions and the exercise of military power. A singular custom was that of following the installation of a king by the election of a *Tanist,* who would be his successor. In case the *Tanist* died before the king another was chosen at once, so that there was always a successor to watch the king, often chosen from a rival line. The most substantial basis for the king's power in early times was his possession of a portion of the tribal lands in addition to his private property. To this was added a right to quarter on his subjects and a system of tribute in kind from the family to the village king and from him to the over king, amounting in later times to a sort of feudal system of land tenure. The whole system seems to have been based on the idea of relationship and the selection of heads of the households. Provision for every member of a household was recognized as incumbent on the joint family, and the chief or king was but the head of the enlarged household. Neither popular assemblies nor judicial tribunals were known, the gatherings were domestic or tribal, and general law was wanting. Family and tribal customs furnished the rules for the enjoyment of property and for the domestic relations. The tribal or clan system continued in full force among the Celts of Scotland to a much later time than elsewhere. In Ireland the standing of the individual came, at a comparatively early date, to depend on his possessions. The representative citizen was a landowner or member of a land-owning family, the possessor of twenty-one cows and styled aire, or *bo-aire* where he had only the cattle. A higher rank was that of *flath,* based on superior holdings in severalty. The general system, however, was one of common tenure and cultivation by a greater or less number of kindred people.

The Saxon invaders came as pagans seeking an abiding place. They brought with them their families, their customs, and their race characteristics. Purity of domestic relation is mentioned as one of these. Though monogamy was the

rule, there were those among the rich and powerful who indulged in a plurality of wives, but such cases were exceptional in any class. It seems beyond doubt that women were more highly respected by them than among most barbarous and some more cultured nations, yet it must be remembered that they were a coarse and brutal people and the mating was not in accordance with refined or romantic notions. The husband bought his wife, paying a part of the price to her father and a part as a provision for her. If she misconducted herself after marriage, the husband could expel her from his home, if another man ran away with her, he was required to pay the husband the same penalty as for taking a life and in addition to buy him another wife. Over his children the father had full power, but over his wife his authority was limited by the claims of her relatives. If she was murdered, they were entitled to the *were-geld,* and if she committed murder they were required to pay for it. A marked difference between the parental authority of the Roman and of the German father was that, while that of the former continued through life, that of the latter ended when the son was invested with shield and spear and became a warrior and citizen. For crimes committed the right of redress was in the injured party's own hands, subject to exemption from his vengeance by payment of money. For murders a scale of prices was fixed, graduated according to the rank of the person killed. The principle of the *lex talionis* was recognized, if payment was not made, and life for life, eye for eye, etc., were exacted.

In the social scale four orders are mentioned. There were slaves, *theows* or thralls, but these were not numerous, nor was their condition one of great hardship. They were assigned homes and required to till the land and return part of the produce to the master. Offenses against slaves were punishable by fines, graded according to the rank of the master. Next in order above them were the *loet,* theoretically free but bound to the land and the service of the lord. Their persons could not be sold as could the slaves, but they could neither desert the lord nor his land, which they were bound to till for his benefit in part and also to do him services of various kinds.

The *ceorl* was the freeman and the soldier, entitled to his allotment of land and to his vote in the public assembly and bearing his share of public responsibility. At the top of the social ladder was the *eorl,* for whose life triple the sum of *were-geld* paid for that of a *ceorl* was required. Just what formed the basis of this distinction at first, it is hard to tell, but later it was based on land tenure. This rank does not appear to have carried with it any political power, but merely a higher social status and protection by higher fines for injuries sustained. Political distinction among the tribes at the time of the invasion began and ended with the *ealdormen,* called in war *hertogen,* chosen leaders of the free warriors. In considering this organization of society it must be borne in mind that the principles of its construction were not declared by any great recognized legislative or governmental authority, but resulted from the environments and peculiarities of the people. The petty kings and the feudal system, which developed later, came as products of new environments and continued military operations. Arbitrary powers are rarely conferred by the people, but are usually assumed by military leaders having a sufficient organized force to compel obedience to their authority and submission to the terms imposed. In studying the evolution of kingly rule in Britain we shall make better progress, if we wholly disabuse our minds of the idea that in its inception it rested on any moral basis. The Saxon invaders came seeking homes for themselves at the expense of the natives. They offered no price but took the lands by force. They killed or drove away the ancient inhabitants, robbing them of land and all other property they could find. The utmost limit of their mercy was to let a few live in slavery. The leaders of these invading tribes were bloody and merciless, and their followers shared the same spirit. Of justice based on any moral foundation they had little if any conception. Might was the sole test of right in the struggle with the Celts, and soon became the basis of rights asserted by the leaders. There, as on the continent, favorite leaders were surrounded by followers closely attached to their persons and interests, classed as *gesiths,* comrades, or *thegns,* servants.

These gave the chief his neucleus of power and were often the cause of his selection as leader of the tribe in war. The *gesiths* ate at the lord's table, lodged in his house, were his companions in battle during war and in hunting, drinking and gambling in times of peace. The *thegns* were necessarily instruments of his will and dependants on his table. For the support of these dependants the leader required an increased allotment of land, and with their support he was in a position to enforce his demands for a large share of any newly acquired territory. Early in the history of the Saxon conquest there came to be two classes of holdings, those of the freemen with their system of common tenure, changing allotments for cultivation and regular rotation of crops; and the holdings of the favored leaders and their immediate companions. There soon came to be *folk-lands,* and *boc-lands.* The *folk-lands* descended to the heirs and could not be devised away from them, while the *boc-lands,* book lands, could be given by will to whomsoever the owner pleased. *Boc-lands* again were often exempted from the common burdens by the terms of the grants. In the earliest periods of Saxon occupancy the new lands were disposed of by the assembly of freemen, and the share of the leader, as well as of the *ceorls,* was determined by the general voice, but, as the following of the *Hertogen* increased and their powers grew, they assumed the kingly title and consulted only the *witan* or council of leading men. At first the holdings of the leaders did not differ from those of other freemen. They had land for their cattle and for cultivation, but no power of taxation and no system by which the tribe was required to contribute to their support. As they came into possession of large allotments of lands, they gradually evolved a system of granting portions to their followers on terms of service and of payment of certain dues. The leaders also naturally became the principal slave owners, and were thus enabled to cultivate larger tracts than the common people. One of the earliest perquisites of the petty kings was derived from fines and forfeited estates. Sometimes these were imposed for real transgressions of just laws, but perhaps more frequently because the king wanted revenue or estates. As the kings

extended their power over greater districts and more people, the influence of the popular assembly on the general affairs of the tribe or petty kingdom diminished and that of the military head grew. The *witan* was more clearly allied in interest with the king than with the freemen. Law-making began, and its purpose was to increase the power and the privileges of the king and his trusted followers. The leading purpose of laws, promulgated as a result of military organization or conquest, is rarely if ever the promotion of justice between all classes, but rather the reverse, the establishment of rules of special privilege casting burdens on the many for the enrichment of the few. The Saxon leaders soon assumed the title of kings and, while still elected and sometimes deposed by vote of the assembled freemen, their powers and privileges grew rapidly. They summoned the national meetings and called out the military force. On their journeys they were entitled to entertainment and could call on the people for carts and animals to transport them. Their *earldormen* and officers might also do the like. The judicial power, which primarily rested in the assemblies of freemen, was assumed by the *witan* in important matters and then by the king. In the earliest stages of the growth of kingly power the concurrence of the *witan* was necessary, for on its members the king relied for the enforcement of the decision, but with the growth of his power came greater recognition of his right to rule, till he alone decided and others executed his will. The division of the people for state purposes was into townships or tithings and hundreds, containing theoretically and at first perhaps actually ten and one hundred freemen, respectively. The terms, however, soon came to denote territorial divisions rather than actual numbers. In each of these in primitive times public affairs were regulated by public assemblies of the free warriors, who chose their local head men. The township assembly laid off the common land for tillage, assigned to each his share of the common field and ordered the succession of crops and fallow. The hundred was accountable for the preservation of order, the punishment of crimes and came to be the unit for purposes of finance and police. A monthly *gemot* or court was held, at which all the

freemen sat as judges. Later these were presided over by officers appointed by the king the *gerifa,* reeve or sheriff. Above these were the county courts or general assemblies of the people of the counties. These in early times corresponded with general assemblies of the tribes and exercised the sovereign political and judicial power. This power soon passed to the king and his *witenagemot,* which was not a representative body selected by the freemen, but the companions of the king and the richest and most daring members of the state. With the transfer of political power from the body of freemen to the king and his council of followers, in an age when might alone made right, came naturally a change of the purposes of legislation. Common ends and interests were no longer objects to be attained, but special interests and personal privileges. As the various bands of Saxons and Angles followed after the Jutes and drove back the more ancient inhabitants from a large part of the island, jealousies among leaders and a desire for each other's possessions brought on wars between the invading tribes as well as with the Celts, and after the introduction of Christianity and long contact between the races, alliances were sometimes formed in which Scots, Picts and Saxons fought other Saxons for mastery. By the end of the sixth century we read that the Heptarchy had been established, and also that there were seven kingdoms among the Picts, but these cannot be regarded as permanent. War was the favorite pursuit of the leaders and largely of the people. The morals of the times were essentially those of barbarous tribes. Drunkenness and gambling were common vices. The primitive idea of united action against the native Celts for the common benefit faded away as leaders gained power and fought for personal aggrandizement rather than tribal advantage. The democratic customs, which had prevailed on the continent, were not extinguished at a blow, nor entirely at any time, but the growth of kingly power and its necessary attendant, the power of his chief supporters, came rapidly at the expense of primitive democracy. When the law-making power fell into the hands of the kings and their henchmen, they took good care to add to the burdens of the people and increase their

own revenues and powers. Injustice was the purpose of the lawmaker and continued to be for centuries, till an intricate system of most unjust laws was evolved and taught as divinely ordained and devised for the common good. In England, though there have been times when temporal and spiritual power were opposed, in the main the kingly oppressors have found their best and strongest support in the clergy, who have diligently taught obedience and submission to king and church. Education is the sure foundation of any system, whether of government or religion. The people must be taught to obey and to believe. In England the increasing armies of the petty kings became schools, in which free men were taught obedience to the commands of leaders. The churches became schools, in which the divine right of rulers was inculcated and the duty of submission and contribution to the treasury of the king and of the church was constantly proclaimed. In course of time the rights of kings to oppress and of high church officials to enjoy great revenues came to be the only rights discussed, and the fundamental moral principles affecting the just relations of man to man were often entirely lost sight of. Some good men there were in power in church and state at times, but the early rules of advanced and enlarged organization of society were almost exclusively in the interest of the promoters of the organization. The laws of King Ethelbert, who ruled in Kent and the south at the advent of the mission of St. Augustine and was converted under his preaching, are not much but a classification of fines to be paid for murders and thefts committed, graded according to the rank of the party injured, and according the church and clergy protection, even greater than that afforded the king and his officers, that is, punishing offenses against them with even higher fines. The power of the church was rapidly extended, and the spiritual rulership of Rome became a substantial exercise of actual power through the medium of the officials of the church. It would be foreign to our plan to attempt to follow the details, more or less questionable, of the struggles of the kings of Sussex, Wessex, Kent, Mercia, Northumbria and Anglia with each other or with the Celtic population, or the schemes by

which the papal power and the importance of Bishops and priests was advanced. It is a dreary tale of cruelty and wrong. Wars ceased to partake of the characteristics which prevailed in the early days of the Saxon advance into England, and became merely struggles for the ascendency of leaders, where the common people on both sides of the contest suffered, without substantial ground for hope of gain. As time wore on Saxon became opposed to Saxon more than to Celt, and the principal object was to subjugate Saxon states to covetous leaders. The heptarchy was ruled by a varying number of kings till Egbert, trained in the military school of Charlemagne, came to the throne of Wessex and about 827 succeeded in extending his power over all the other states and Wales. His government of the other kingdoms was not through an official system acting under his direction, but by tributary kings, who acknowledged him as their sovereign. The union of all the petty kingdoms, thus effected, was not productive of the advantages of one central government as a protection against outside foes, for he failed to establish a system of military organization adapted to defense against invaders by sea. When Egbert became sovereign of all the Anglo Saxons, nearly four hundred years had elapsed since the advent of the Jutes in Kent. Before this event a new movement of people bearing a different name set in from the Jutland peninsula, whence the Jutes had come. In 793 there was a landing of Northmen at Lindesfarne, perhaps not the first of their incursions. This was followed by landings of Danes and Norsemen at various points in England, Scotland and Ireland and by 832 Thorkel had established himself as king in the north of Ireland at Armagh. The first attacks were merely by marauding bands, but in England, as in Ireland, they came in increasing numbers. About 850 a party wintered on the island of Sheppey, and in the following year, reinforced with 350 ship loads of warriors, they sailed up the Thames, sacked and burned London and Canterbury. Permanent settlements were effected about 866, and the Danes in large force invaded East Anglia and thence overran Deira and Northumbria. The invaders were worshippers of Woden and the heathen gods, whom the Saxon

invaders of four hundred years before had worshipped, and they were merciless to the clergy as well as the laity. Mere piratical plundering and murdering in course of time became converted into the greater devastation of continued war with merciless destruction of all who came in their way. By 876 a disposition to settle down and till the soil began to manifest itself among the invaders, after they had made a great part of England desolate, and Halfdene began parcelling out lands among his followers. The reign of Alfred, 871 to 900, has been a favorite basis for romantic tales of which he was the hero. From the Saxon forces in a condition of utter dispersion he organized armies and extended his power over southern England, defeating the Danes in many battles. The devastating wars had resulted in the extinguishment of all learning. Alfred has the credit of establishing schools and aiding the clergy. As a military organizer he exhibited energy and capacity and not only prepared for the defense of his country by land forces but built ships and met the Northmen at sea, where he gained some victories. His schools were necessarily dependent on monks and priests, whom he invited from other parts of the island and the continent to instruct the nobility. He also caused the Winchester Chronicle to be written. His fame is doubtless largely due to the scholars whose services he employed. He published a code of laws, compiled from the previous codes of Æthelbert, Ine and Offa, with extracts from the book of Exodus, thus making a single system of laws for his kingdom, which, however, contained no original legislation. By this time kingly power had made considerable advance. The king in person exercised the supreme judicial power and heard appeals from the inferior courts, which had become sore oppressors of the lower classes through the forms of judicial proceedings. He is credited with having been inclined to curb the nobility and award some measure of justice to the common people. The *ealdormen* and reeves had ceased to be elective officers and held by appointment of the king. They exercised their judicial functions mainly to establish rules increasing their own privileges and those of the wealthier order. Taxation had made some progress and Al-

fred had his civil list of expenditures for his household, for public works, and gifts to foreigners. He was a zealous churchman, imported monks to found a monastery and appointed his own daughter abbess of a nunnery. He reconstructed in some measure the system by which the country had been divided into townships, hundreds and shires. Over each ten householders was a tithing man and every man was required to register in some tithing. The whole tithing was made accountable for the conduct of each member. No one could change his habitation without a certificate from the head of the tithing to which he belonged. This was rendered necessary by the great numbers of robbers and vagrants, caused by the breaking up of bands of Danes and Norsemen and the disorganization of Saxon society resulting from the wars. The hundreds were held accountable for crimes committed within them, and courts were required to be regularly held in tithings, hundreds and counties for the administration of justice. In nothing is the growth of royal power better shown than in his dealings with public lands. From his reign dates the exercise by the king of sole power to grant *boc*-lands by charters in his own name without consultation with his *Witan*. Alfred had visited Rome in his youth and was a devout adherent of the pope, with whom he kept in correspondence.

Though Alfred made much headway against the Danes, he did not drive them from the island, but they retained their holdings in the north until the reign of Athelstan, an illegitimate son of Alfred's son Edward, when the Saxon's sovereignty was acknowledged by the Danish kings. Edward made a law requiring all sales of goods to be made in walled towns in presence of the Port-reeve. The *gerifa* or sheriff was made the primary judge in criminal causes and required to hold a court of the hundred once every four weeks. In the period from Alfred to Athelstan the system of trial before the freemen of the hundred is said to have been modified to a trial before a jury of twelve, though it is impossible to fix definitely the date at which this system was first established. That it has its foundation in the ancient custom of administering justice by judgment of the assembled freemen there seems no

doubt, but the power of the king and his subordinate officers grew and that of the freemen waned correspondingly. Athelstan is given credit for a law giving each merchant, who had made three long voyages, the rank of thane. He is said to have imposed an annual tribute on the Welsh of twenty pounds of gold, two hundred pounds of silver and twenty-five thousand head of cattle, apparently a heavy burden for those times. He enjoys the distinction also of having contracted marriages for his sisters with distinguished foreign princes, one with the father of Hugh Capet, another to Otto, afterward Emperor of Germany, a third to Louis, king of Provence, and a fourth to Charles the Simple. A king of England had thus attained a standing among crowned heads and a desire for alliances with them for members of his family.

With this growth of kingly power came also increased severity of rule and heavy punishments for petty offenses. Theft of property worth over eight pence by a person over twelve years old was made punishable with death. The growth of the feudal system was promoted by requiring that "lordless men, of whom no man can beget his rights" be required to find them a responsible lord in the *folkmote*. Trial by ordeal as a possible escape from punishment for crime had come into use. The ordeal by hot iron was conducted with religious ceremonies, one method involved the carrying by the accused of a hot iron in his hand, previously sprinkled with holy water, a distance of nine feet, where he might drop it. The hand was then bound up, and his guilt or innocence was declared after three days by the appearance of it. The ordeal by hot water required him to put his hand in boiling water and take up a stone immersed in it to the depth of the wrist or even the elbow. In the ordeal by cold water he was immersed in a pool, if he sank he was innocent, and if he floated he was guilty. The trial by ordeal was supposed to be a method of obtaining a divine judgment and the acquittal of an innocent man by special miracle wrought in his favor. Its use shows the barbarity and gross superstition of the age. In keeping with this were laws regulating the payment of church dues, some of which were newly devised. Not only were there tithes, but

kirk shot, plough alms, and soul-shot, the last named a burial fee. Yet there began to be thoughts of charity, and Athelstan directed that one poor Englishman be fed from each two of his farms.

In the reign of his successor Edmund a universal oath of fealty to the king was required, showing the growth of feudal ideas. There were no marked changes in the system or the general conditions of the kingdom till 980, when fresh Danish invasions from over the sea began in the old manner with pillaging and slaughter. These were followed by others, until in 991 King Ethelred paid tribute to the invaders, without thereby obtaining protection from further marauding. The growth of kingly power and of privileges of the nobility had not resulted in much but corresponding oppression for the multitude. The people did not even gain the advantage of protection from foreign enemies through an efficient military organization. The Danes and Norwegians continued to come and to gain victories till in 1016 Cnut, the Dane, established his power over all England. He fortified his position by making the clergy his friends and increasing the already grossly oppressive power of the great landholders over their dependents. He was politic as well as warlike and summoned a great *Witenagemot* to settle his right to the throne. They promptly acknowledged him as their lawful sovereign. He had the good sense to accept the system of laws substantially as he found it, and to adapt his policy to the prejudices of the people. He was remorseless in removing obstructions to his power and did not hesitate to kill those whose influence he feared. He enforced the demands of the clergy for tithes and dues in order to secure their hearty aid in maintaining his authority. He strengthened the power of the nobility by enlarging their judicial functions over their dependents. There was a distinct increase in the severity of punishments. The infidelity of a wife was punished by loss of her nose and ears, perjury by death, confirmed offenders were mutilated by cutting off feet, hands, putting out their eyes, or other horribly cruel mutilation.

The growth of the power of the clergy is indicated by the grant to the bishops of final jurisdiction in cases of murder.

That the king, who claimed all forfeiture of *boc-lands,* had become a great land owner is shown by the fact that he required his reeves to keep him supplied from the produce of his own lands, without levying involuntary contributions. Cnut ordained that the lord should not take more than his proper heriot on the death of his vassal, and that the rest should be distributed under the lord's direction to widow and children or other relatives. The lords, being the judges, seem to have been inclined to extend the amount of the heriot, but Cnut limited it to a fixed scale according to the rank of the deceased. This scale, however, only fixed the charge on the estates of the nobility, leaving petty tenants still at the mercy of their lords. Cnut's power did not depend on the voluntary support of the nobility or clergy or both. He kept at his back a strong body of armed men, his house carles, under pay, estimated all the way from 1,400 to 6,000 men. To support these he imposed *Danegeld,* a direct land tax.

Though Cnut had ruled England, Denmark and Norway, on his death his empire fell in pieces. His son Harold took England's throne from 1035 to 1040, followed by Harthacnut, another son, from 1040 to 1042, with whom the Danish dynasty ended.

The reign of Edward the Confessor, 1042 to 1066, followed by Harold January to October 1066 concluded the period of Saxon dominion. Though the system of laws had undergone nothing termed a radical change of the constitution, and though there were still the same classes of society as in the early days, the social structure through changes in proportions had become altogether different from that of the fifth century. There were still freemen, owning their lands without being subject to the payment of rent or tribute to an overlord, but they were few in number and even these were subjected under the Danes to a tax of *Danegeld* on their lands, which no early Saxon paid to any ruler. The scheme of legal title to the face of the earth was made to work out the result of giving to the king and the nobility dominion over the multitude. The law of inheritance, so subtle and far reaching in its effects, steadily fortified the power of the

nobility. The ownership of a large tract of land, assigned to him by the *Heretog* or king as his part of the spoils of a newly conquered district or an estate seized by the king from some subject, was passed down by inheritance from generation to generation, giving to the heir the same wealth, social position and political influence as that which his ancestor had held. The weak freeholders were led to seek the protection of powerful neighbors and in return for that protection did homage, pledged feudal service and thus fell, not within the protection, but under the power of the lord. Ambition to rule, gain wealth and greater power was the dominant passion of the leaders, and wars for the aggrandizement of lords temporal, and often of lords spiritual, became common. Murder, robbery, wholesale burning and desolation of districts in the name of the so-called right of some earl, duke, bishop or king were common occurrences, and to this day the questions as to the technical legal foundations of the claims of the respective leaders are gravely discussed, as if matters involving some principle of justice. It was in fact merely a question as to which man should be permitted to take of the earnings of the people inhabiting a district all above a bare subsistence, and stand in a relation to them which should give the power to enforce the performance of military services. Though there were assemblies of the people under much the same names as in early times, the meaning of terms had been greatly changed. The *witan* or *witenagemot* of the kingdom had wholly lost its ancient popular character. It meant merely a gathering of earls, bishops, abbots and such of the kings *thegns* as he saw fit to summon. These lords came to the great assembly, often followed by a large number of retainers, but it was the lords only who had any voice in the *witan*. Though there were still meetings of the towns, hundreds and shires, it was only petty concerns that they were allowed to decide. In the *folkmote* of the county not all the freemen assembled, but the small towns sent four men and their reeve, and the large twelve. Twelve *thegns* were appointed as a committee to transact the business. The earl, the bishop and the sheriff, all deriving their appointments from the king, were

present and really directed the proceedings. Through the county courts the demands of the clergy, and of the landlords, were enforced in accordance with the rules they had succeeded in having established, which were called laws. Criminal causes were tried and offenders punished. From the decisions of this court an appeal lay to the king. The sheriff appointed by the king convened the court of the hundred and presided over it. While the whole body of freemen were still the judges, twelve selected men actually decided the causes. The direct taxes, the *Danegeld* and ship *geld,* were assessed against the hundred as a unit, and a part of the business of the court of the hundred was to apportion it among the townships. In the township meetings the nearest approximation to popular rulership was still retained. Matters relating to the repair of roads, the rules for the cultivation of lands and the enjoyment of what still remained of common property, were disposed of at these meetings. In these the lord of the manor soon dominated, and his steward presided at the meetings, which were converted into the Courts Baron, Customary Courts and Courts Leet of later times, as the feudal system grew in strength. Cities and towns had begun to grow, but there was little trading or manufacturing, and the organization of town and country was practically the same, the largest cities ranking as counties, the medium ones as hundreds and the villages of sufficient importance as townships. Of a total in round numbers of 283,000 adults, it has been estimated that there were 1,400 full owners of land, 7,800 mesne lords, holding under a superior, 1,100 clergy, 8,000 townsmen, 15,000 freemen, 2,600 merchants, craftsmen, bailiffs, etc., 25,600 (male and female) slaves, and the balance about 222,000 were so bound, either to the soil or to the service of a lord, as to be practically under his power and at his mercy.[1]

Of course strictly accurate figures are not to be had, but the fact is beyond question, that the great mass of the population had become subject to the power, under more or less limitation in practice, of the great landholders, who through their title to the soil enforced by their house *carles* or personal followers,

[1] Ramsey's Foundations of England 512.

seized also substantially all political power. Thus the foundations of feudalism in England were well advanced before the advent of the Normans, and lawyers had already begun to thrive on litigation over land tenure, but questions of title affecting large districts were usually decided by the sword and battle-axe, rather than by any tribunal.

The church had brought in some little knowledge of letters, and our histories of the times come from native writers of that age. But neither the learning of the church nor the moral teachings of Christ had extended very far or made a very deep impression. No moral obstacle was recognized as standing in the way of the strong leader, who could take what he wished by force. To kill an enemy was still laudable and glorious, rather than otherwise, and in doing this to kill a multitude of his underlings but added to the murderer's renown. To ravage, burn and destroy, and thereby expose women and children to the elements and to starvation, were regarded as necessary attendants of the enforcement of the demands of a lord, and even to butcher them aroused no general condemnation from other lords. Some progress had been made in the organization of society, and the church had brought in an advanced code of morals, but neither the kings, lords nor clergy had much thought about justice among men, or the actual application of Christian morals to human affairs. The power of kings and lords was established for this benefit and regarded as their property. The high clerical positions were similarly esteemed. The rank of a lord was measured by the extent of his land, and of a priest by his income. Neither was rated according to the services he rendered to others or the value of his moral teachings. The clergy, in return for the tithes and other payments they received, gave title only to possessions for the disembodied spirit. They took the temporal benefit and promised in return the spiritual in the life to come. The rule of the kings and lords was established by force and bolstered up by fraud, that of the clergy by fraud aided by force.

William the Conqueror came from his duchy of Normandy with a claim of right to the crown of England. He took

good care to fortify this claim with a strong and well equipped army for those times, and with the moral (?) support of the Pope. The battle of Hastings, in which Harold was killed, left England without a recognized head or an organized force to defend it. William possessed the essential qualities of a ruler of men; he was an efficient organizer. He was also politic in the methods he pursued to attach leading men to his interests. He went to England burdened with no philanthropic motives and hampered by no conscientious scruples. He took the land to parcel it out among his followers or retain it as his own. A few of the old Saxon lords, who rendered homage, were allowed to retain their holdings, but most of the great estates were transferred to his Norman followers. The great church appointments, with a little more respect for form and a little more ceremony, were then taken from their English incumbents and also conferred on Normans. This was rendered easy by his alliance with the Pope, who sanctioned the changes. Toward those who quietly submitted he was somewhat gracious, but resistance of his authority was most mercilessly crushed. Nothing could exceed the heartless barbarity with which he desolated York, Cheshire, Shropshire, Derbyshire and Staffordshire, for rebellion against his authority. Men, women and children were ruthlessly slaughtered, all buildings burned and the country made a desolate wilderness, swept clean of all means of subsistence to insure the destruction of its presumptuous people, whose lords had refused to bear him allegiance. In William's eyes only the rich and powerful were entitled to any consideration. Nobles who though guilty of rebellion afterward submitted and did homage, were pardoned, but their poor followers were slaughtered. William proceeded at once to fortify his power by the construction of strong castles at all important points, in which he stationed his most trusty followers. The feudal system, which had already made much progress under the Saxons, was now given its more advanced form, as it existed in France. The king assumed the title of lord paramount, to whom all must do homage and swear fealty for their lands. The whole claim of authority was based on a theory of ownership of

land. The great vassals held title to their estates under the king and parcelled them among their chief retainers. The men who actually tilled the soil became menials, whose rights were regarded as of very slight concern. In the fourth year of his reign he published a code of laws, which in main were the same as those of his Saxon predecessors. He however, took care to protect his Norman followers by requiring that the hundred, in which a Frenchman was killed, must produce his murderer within a week or pay a penalty of forty-six marks. In 1085, when threatened with an invasion by the Danes, William brought over mercenary troops from the continent, levied a land tax and laid waste the coast where the enemy would be likely to land, so as to deprive them of subsistence when they came. William was superior to his Saxon predecessors in that he took a more general view of his kingdom's situation, but in its defense the preservation of his own power and position was the main object. He did not hesitate to sacrifice the people in advance of the time of need. His capacity for gathering information by systematic methods was most strikingly exhibited by the great survey of the kingdom, compiled in Domesday book. This was no less than a great census and assessment roll of the country. Commissioners were sent into each shire, who made a list of all the lands, with the names of the owners in the time of Edward and at that time, the character of the tenure by which they held, whether by *boc* or otherwise, the conditions to which they were subject, and the value in the time of Edward and at the time of the survey. In order to ascertain these facts they were directed to go into each hundred and take the evidence of sheriffs, landowners, priests, bailiffs, and six selected villeins from each township. They were required to ascertain the extent of each holding, measured in the old way by hides, and also by the standard of a fair year's work by an eight ox plow team, rated at about one hundred and twenty acres, with details as to the population, whether free or slave, the character of the soil, extent of meadows, woods, pastures, etc., the buildings, mills and other improvements, with the numbers of cattle, pigs, horses, etc. The largest cities and some of the

northern counties were not included. This was a remarkable example for that age of that fondness for figures and definite information, which has since been so characteristic of the British nation. It was William's method of taking an invoice of the property he had acquired by the conquest. His next important step was to impress the fact of his ownership on the people by requiring all landowners, holding any considerable tracts, to assemble on the plains of Salisbury, pay him homage and swear allegiance. In this he overlapped the continental system of infeudation and required homage and fealty from those holding mediately from his vassals, as well as directly from himself. Thus the feudatories of the lords were required to do homage and swear fealty to the king, though also bound to their immediate superiors. This was contrary to the prevailing system both in England and on the continent, by which the tenant was bound to the king only through his immediate lord, whom he could not desert even at the command of the king. By parcelling out the lands of the kingdom among his bloody and remorseless followers in great tracts, William completed the establishment of that landed aristocracy, which was the source of so much pride, arrogance, selfishness, bloodshed and cruelty through succeeding centuries. The theory was simple and easily taught to the ignorant multitude. The king or his vassal high or low owned the soil, and whoever else dwelt on it must do so on such terms as the owner imposed. The personal freedom of the poor landless man was not denied, but in order to have an abiding place he must have a lord and serve him. William loved to hunt, and in order to provide a hunting ground and make what was termed the New Forest, he drove the people off some 17,000 acres of tillable land and converted it into a wilderness to breed game, which he protected from others by savage laws. "Whoso slew hart or hind had to be blinded." This was but another exhibition of his extreme selfishness and utter disregard for the rights of the humble people.

The leading incidents of the feudal system were, on the part of the lord an obligation, kept or not according to circumstances, to protect the tenant in his possessions; on the

part of the vassal to render military service and furnish one mounted and equipped soldier for a given quantity of land, bound to forty days' service in each year; to aid his lord by a payment of money when his eldest son became a knight, or his eldest daughter was married, or to pay his ransom in case of his captivity; to give a relief on the transmission of an estate from ancestor to heir, which at first was a sum fixed at his pleasure by the lord on taking possession by the heir, but later was fixed at one year's profits. The lord was the guardian of the lands of the heirs of his vassals during their minority; as such he took the products of them, and rendered no account of what he received. When a tenant in chivalry, deemed the most honorable tenure, came of age, to get possession of the lands of his ancestor he must sue out livery of seizin and pay a further half year's profits. Wardship also gave the lord power to dispose in marriage of the ward, male or female, on pain of heavy forfeiture for refusal. Forfeiture of estate for treason or felony and escheats on failure of heirs in the designated line, afforded pretexts,—often taken advantage of,—for the lord to dispossess a tenant and take the lands to himself. One of the innovations introduced by William was the division of the ecclesiastical from the civil courts, and another was the decision of causes by wager of battle. In the exercise of their jurisdiction the bishops assumed the right to determine all causes affecting their own interests and to decide them in accordance with the Canon Law. Thus, in building up their power, the clergy were allowed to enforce their will through the forms of judicial proceedings. The High Court of Justiciary, the original court of Kings Bench, was established by William, and he also established a chancery and treasury, the Chancellor keeping the king's seal, conducting his correspondence and acting as his general secretary. Though William courted and obtained the sanction of the church for his deeds, he did not concede papal supremacy in England, but retained authority over ecclesiastical affairs in his dominions and laid down as rules, that no Pope should be recognized without his leave, no papal letters should be delivered till shown to him, nothing should be done in Synod or

Council except by his permission, and no tenant in chief should be excommunicated or censured, except by his orders. The rapid progress made in castle building is shown by the fact that forty-nine castles are named in Domesday. A conspicuous one was the Tower of London. Many cathedrals were also erected. William gave to England a system, destined to endure in most of its chief points for many centuries. He died in 1087 and was succeeded in Normandy by his eldest son Duke Robert and on the throne of England by his second son William Rufus, who ruled till 1100, when he died from an arrow shot received while hunting in the New Forest made by his father. In his time there were many uprisings against his authority and private wars among his great vassals. Duke Robert joined the first crusade and mortgaged his duchy to William for money to defray his expenses, thus for the time uniting England and Normandy under one head. He was succeeded by his younger brother Henry, who followed his coronation by publishing a charter, in which he recited that he had been crowned by the common council of the Barons of the Realm. This was a marked departure in name from that of an assembly of the freemen, though not essentially different in composition from the *witan* of the later Saxons. He promised to abstain from unjust exactions and liberated the church, agreeing to neither sell nor farm out vacant benefices nor to seize vacant sees, and to refrain from divers other obnoxious practices. Though this charter made no effectual provision for its enforcement against the king, it is a notable step in the direction of government in accordance with fixed principle. A special copy of it, addressed to the sheriff, was sent down to each county. The basic system, which denied the multitude all right to the face of the earth, had been gotten well under way by the Saxons and was fully established by the two Williams. It was not devised to do justice among men, but was expressly designed to enable the organized few to rule the many and extort from them the fruits of their toil without return. The charter of Henry makes no attack on the principle, but promises slight relief from some of the abuses which excited discontent among the barons and clergy.

Henry was more politic and less bloody than his father or brother, and under him there was some progress in the organization of the state, especially in the development of the judicial and financial systems. From his time the king's justices began to go down and sit in the county courts with the sheriffs, and the King's Court (*Curia Regis*), took jurisdiction of causes relating to lands between tenants holding directly under the king. From his reign dates the use of the term exchequer to designate the royal treasury and accounts were regularly kept, though in a most primitive way, with the sheriffs whose duty it was to collect and semiannually return the taxes from the counties.

The lack of moral foundation to support the feudal system was well exhibited by the period of anarchy during which King Stephen fought to maintain his authority. He was not heir to the throne according to any accepted doctrine of inheritance, nor was he elected by any representative body. The Londoners, a few nobles and an archbishop, with some other churchmen, gave him their support, and he was crowned with the usual rites. Matilda, the daughter of Henry, claimed the crown, and the nobles supported either party, according to their interests or inclinations. Feudal oaths were easily broken. Pride, greed and mere love of strife caused the barons to war with each other, with the king or any other opposing force that was at hand. Among the Barons no calling was deemed honorable but war. All useful labor and all forms of true service for others were deemed contemptible, and the business of killing human beings in fight, destroying property and spreading desolation, was alone considered honorable. The rapid construction of strong walled castles, from which the lord and his murderous band sallied and into which they retired, tended greatly to promote the personal warfare of the age. The poor tillers of the soil, who dwelt without castle walls, were all the time exposed to destruction at the hands of the enemies of their lord, and were little better off when left merely to his mercy. The disorders of the times tended to the growth of the influence of the church, and Stephen by appealing to the Pope weakened the authority of

the Crown. The clergy came to deny all jurisdiction over themselves and their land by the civil power and to insist on their right to finally determine all matters affecting their interests. Though many bishops and other high church dignitaries maintained their power by armed forces and fought at the head of their retainers like the temporal barons, they were generally more inclined to use the peaceful weapons of judicial and papal decrees, enforced through the superstitious fears of the people. There was less danger and more certainty of results when priests passed on the merits of the claims of priests.

Stephen was followed by Henry II, whose right to the throne was universally recognized. He was a prince of far greater capacity and more inclined to gain his ends by pacific means. So great had been the encroachment of the ecclesiastical on the temporal power, that the greatest task and most prominent purpose of Henry's reign was to recover the power and influence which the clergy had engrossed. He fully appreciated the necessity of organization and of the support of the leading spirits of his kingdom in his contest with the church. He therefore called a great council of the nobility and prelates at Clarendon to settle the boundaries between the authority of the king and that of the church. This appears to have been the first great parliament under the Normans. The barons naturally sided with the king, and with their help he overawed the bishops and enacted the Constitution of Clarendon, which declared that all suits concerning advowsons and presentations of churches should be determined in the civil courts; that churches belonging to the king's fee should not be granted in perpetuity without his consent; that clerks accused of crime should be tried in the civil courts; that the laity should not be accused in spiritual courts except by reputable witnesses; that all appeals in spiritual causes should be from the archdeacon to the bishop, from the bishop to the primate and from him to the king, and should go no farther without the king's consent; that archbishops, bishops and other dignitaries should be regarded as barons of the realm and entitled to the privileges and subject to the burdens incident to

that rank; that the clergy should no longer pretend to the right of enforcing payment of debts contracted by oaths or promise, but such suits should be left to the civil courts; and that the sons of villeins should not be ordained as clerks without the consent of their lord. These and other provisions tended greatly to curb the overgrown pretensions of the church in matters of purely temporal concern, but the provision last noted clearly shows, that it was not for the purpose of securing greater freedom for the lower ranks of society, but to strengthen the positions of the king and barons. These articles, reduced to writing and sealed by barons and bishops, are a most notable instance of an early attempt to set bounds to the ruling power. Though leveled against the pretensions of the clergy, it was an instance of opposing the kingly force to the clerical. The Constitution of Clarendon dealt with the opposing forces of temporal and spiritual power. By the adoption of this constitution Henry did not by any means settle the controversy, but his whole reign was a continued struggle against the Papal power, of which Thomas à Becket, Archbishop of Canterbury, stood as a most renowned champion. To enforce his power Henry issued orders to all his judicial officers prohibiting all appeals to the archbishop or pope, or the receipt of any mandate from them; declaring it treason to bring from either of them an interdict into the kingdom, under penalty, if a secular clergyman, of loss of eyes and castration, if a regular of amputation of the feet, and if a layman, of death. Henry found the struggle a difficult one, and on several occasions was forced to humble himself and make terms with his adversary, yet he persisted in his adherence to the principles of this constitution. In his reign there was a marked advance in the exercise of judicial power in lieu of private warfare. He divided the kingdom into four judicial divisions with justices in each, who held courts in each of the counties. A strange phase of the criminal law of the time was, that a clergyman, guilty even of murder, could be punished by degradation only, if he were murdered the slayer would be subject only to censure and excommunication, and

the crime might be atoned for by penances and submission. The murderers of so distinguished a prelate as Becket, on submission to the penances imposed by the Pope, were not only left with their lives but also with their titles and estates. Henry and his council promulgated a law, that the goods of a vassal should not be seized for the debt of his lord unless the vassal was surety for the debt, and that the rents due from the vassal should be paid to the creditors of the lord instead of to the lord himself. The enactment of such a law indicates the prevalence of the condemned practice and a growing sense of the rights of vassals.

Henry invaded Ireland and overran it with little opposition, but the dominion he established was not enduring. He also compelled the Scotch to do him homage. His rule was thus extended over all the British Islands, as well as over Normandy, but it was merely the rule of a feudal monarch, dependent on individual capacity for its maintenance and doomed to fall whenever passed into weak hands.

The reign of Richard, 1189 to 1199, exhibits in the strongest light the barbarity, the gross superstition and bigotry, of the times. The crusade to free the Holy Land from the dominion of the Infidels was a war waged by the fanatical Christians of the west against the far more enlightened, cultured and humane Mohammedans of the East. Richard taxed his kingdom to the utmost and sold great estates in the most reckless manner to raise money to defray the expenses of his army to invade Palestine. It was the first distant expedition undertaken by a British army and was productive of some good in an educational way, though based on no moral purpose. A superstitious veneration for a particular spot of earth and a hatred for the followers of a different priesthood furnished the pretext for it. Nothing could have been more romantic or foolhardy than Richard's career in the East, nor much more disastrous to his followers, most of whom perished either on the march, in camp or on the battlefield. Richard's detention in captivity by the German Emperor and Duke of Austria, Christian princes, is but one of many exhibitions of the prevailing lack of real Christian fellowship

among the crusaders; but his own act in causing the slaughter of five thousand prisoners, taken at Acre, is a far more striking proof of the utter barbarity of the professed Christians. While Richard was leading his vassals to destruction in the East, his kingdom was exposed to all the disorders incident to the feudal system when free from the restraint of a master like Henry II. Normandy and England both suffered from the jealousies, hatreds and ambitions of the Barons, and the inefficiency of the clerical regents, whom he left as guardians of the realm. Prince John after putting an end to their rule did no better. Richard lost his life by refusing to accept the surrender of the garrison of the castle of Chalus near Limoges, preferring to take it and hang its defenders for presuming to resist him. He was struck in the shoulder by an arrow, causing a wound from which gangrene ensued and occasioned his death. The peculiarities of his temper are well illustrated by his treatment of the garrison, all of whom were hanged except the archer who shot him, whom he pardoned; but this did the archer no good for his followers flayed and hanged him.

Though Arthur, Duke of Brittany and son of Geoffrey the eldest brother of Richard, was in the regular line to inherit the throne, John, the younger brother, was named his successor by Richard in his will, and to make sure of his authority murdered the young Arthur. Such exhibitions of selfishness, heartless criminality, and utter disregard of the ties of blood, have alas been all too common in princely families. The struggle between the Pope and the King for temporal power went on during John's reign as in that of his father, but with far different results. John was neither politic nor capable of gaining his ends by force. He was cruel, deceitful, fickle, a tyrant by nature, without ability to attach any class of people to his interests, except through payments or favors. He therefore had to struggle against his barons, and against the church. At last he allied himself with the Pope and even yielded so far to papal pretensions as to agree to hold England as the feudatory of the church of Rome and to pay a tribute annually of 1,000 marks. His abject submission to

Rome, in such marked contrast with the stand taken by Henry, was utterly distasteful to the barons, with whom he was perpetually in conflict; nor was his conduct toward the clergy such as to hold their good will, but by his oppression of all classes of men and his gross immorality and cruelty he aroused the hostility of the spiritual as well as the temporal lords. The archbishop of Canterbury took the lead in organizing the bishops and barons to curb him. At a meeting convened in London they demanded of him a renewal of the charter of Henry and the laws of Edward. He temporized and took time for reply, during which he called in the aid of the Pope, but in spite of all his efforts the coalition grew in strength, and an assembly of 2,000 knights with their followers forced him at Runnemede to sign the Great Charter, so much regarded through later times. With characteristic perfidy on his part and assumption on the part of the Pope, he procured a Bull annulling the charter and prohibiting the barons from exacting the observance of it. John thereupon repudiated it and, having gathered a force of foreign mercenaries, he waged war on the disbanded and disorganized barons, laid waste their estates and butchered their poor vassals. In the ninth year of his reign John granted the city of London an important charter, giving it the right of electing annually a mayor and common councilmen and to elect and remove its sheriff at pleasure. Thus the disquiet reign of a vicious ruler contributed materially to the foundation of a better ordered society in later times, though the fruit was exceedingly slow in ripening.

The far-reaching value of the Great Charter does not lie in any purpose to relieve the lower orders from the tyranny of the barons and priests, nor of the king himself; but in the fact that a written chart was made, which set bounds to the authority of the king and his officers, and also to that of the barons, and marked out a method of enforcement against the king. The feudal system with its unjust basis and its vicious tendencies was left undisturbed, but abuses beyond certain expressed limits were prohibited. A full copy of this charter is given in the Appendix.

The importance of this great charter lies not so much in the intrinsic merits of its provisions, as in the pertinacity with which succeeding generations have insisted on the observance of such as tended to the protection of the subjects against the unwarranted demands and acts of the king and nobles. The Charter accepted an organization of society which denied justice and invited private wars and turmoil. A favored few were in possession of most of the lands of the kingdom. They and their ancestors for generations had been accustomed to extort from their tenants a large share of the products of the soil, for which nothing was given in return. This system had continued so long that it was accepted without question in its main essentials. The transmission of the privileges and powers of the great landlords from father to son by inheritance was accepted as an established law, and the great multitude held in servitude to the barons accepted their lot as that to which they were born, with no suspicion that the general system of land tenures was responsible for the grossest injustice to them. The lord was born to pride, arrogance, disdain of all useful employments, love of war, and in peace of the savage sport of the hunter, drunkenness and debauchery. The poor villein was born to a narrow life of ignorance and servitude, from which only one of remarkable spirit and capacity could raise himself. The Great Charter, in framing which the hands of the clergy evidently performed a great part, accepts all those forms of injustice, which were fortified by long established, settled rules, with which people were familiar and in which they acquiesced, and made provisions against the exercise of exceptional and arbitrary powers at the caprice of the king or of the barons. It did not seek to better the condition of slaves or villeins in any marked degree. It is notable that thus early a provision should be made in favor of the freedom of trade, a policy which in modern times has contributed so bountifully to the prosperity of the people. The mere circumstance of granting a charter in that age was not at all remarkable: Prior kings of England had granted them, as did also John's successors. But such charters were not peculiar to England. The German emperors granted them

in great numbers to their dependents and often violated them without compunction. This charter accorded with the spirit of the times in main, yet breathes a spirit of justice in advance of them. Subsequent generations caught the spirit and fought for an enlarged application of it. The great importance of the Charter lies in the fact that it became the point around which the forces contending for human rights rallied, and the seed from which popular rights in England have been propagated.

Henry III under the guardianship of the able Earl of Pembroke granted a new charter in 1216 containing forty-two sections, mostly copied from that of John. In 1217 he followed it with another in forty-seven sections which he renewed in substance in 1224. The main difference between the charters of Henry and that of John is in the omission of the provision requiring aids and scutages to be granted by the barons. The provisions of the latter charters are not of so much importance, for the reason that in after times the Great Charter of John was appealed to as the authoritative expression of the limitations of the king's power. At the time of granting his second charter Henry also granted another, called the Forest Charter, regulating the government of the forests and providing for the restoration to their owners of lands unjustly seized by his father, uncle Richard and grandfather, to make forests. This charter, though deemed of much importance at the time, dealt mainly with conditions peculiar to the time and has left little if any impression on modern institutions. Henry began his reign by swearing fealty to the Pope as his father had done, and much of the trouble of his reign was due to the gross venality of the Pope and clergy. The thirst for power, which had been so strong, had changed into a desire for wealth and luxury, and the demands for more money grew and could never be fully satisfied. This reign is especially notable for its parliament. At first, as in preceding reigns, only such of the barons and prelates as the King saw fit to summon were consulted, but in Henry's time these sessions were more frequent and more numerously attended. In 1258 Henry summoned a Parliament for the purpose of rais-

ing funds for his project of conquering Sicily for his second son Edmond. The barons came in arms, backed by their vassals, and proceeded to name twenty-four barons with authority to reform the state. The king was forced to submit to their authority. At the head of the council thus formed was the Earl of Leicester, an able man. This council at once took charge of the administration of the government. They removed the chief justice, chancellor and treasurer, and appointed others of their own selection. To further extend their power they caused the barons to appoint, as a committee of the Parliament, twelve persons, to possess the authority of the whole Parliament when not in session. In this manner the power of the king was reduced to a mere shadow, and the great barons assumed substantially the whole political power of the state. But the spirit of the times and the lack of any moral bond holding the barons together or checking their excesses soon enabled the King to recover his ground. The Pope, in accordance with the established policy at Rome, absolved Henry from the oath he had been forced to take to support the new constitution, and the King thereupon issued a proclamation resuming authority and followed it with appointments of new officials in all positions of importance. He summoned a parliament which ratified his acts, but the struggle did not end here. Leicester and his party rose again in opposition and, to avoid bloodshed, the singular expedient was adopted of submitting the matters in dispute between the king and these barons to the arbitration of Louis, King of France, distinguished for his virtue as well as piety. King Louis quite naturally decided in favor of King Henry and, with the same want of faith that the King had exhibited, the barons refused to abide by the award. Civil war ensued, in which the barons were successful and the King fell into their power. Leicester was again at the head of the government. In 1265 he convened a new parliament, to which he summoned, not only such of the barons and ecclesiastics as were of his party and two knights from each shire, but also deputies from the boroughs. This was the birth of the House of Commons, being the first recorded instance of any representation from the bor-

oughs. The number of the barons in the forty-seventh year of Henry's reign is given roundly at one hundred and fifty temporal and fifty spiritual. The long reign of Henry, from 1216 to 1272, was a period of great turbulence, exhibiting in marked degree the evils of feudalism. Yet this period of turbulence marks the origin of that system which has ruled England through so many succeeding centuries, and under which its power and prosperity have expanded so greatly. This reign is notable as being that from which the preserved statutory law, now so voluminous, starts. The statute of Merton, ordained in 1235 by the king with the approbation of the lords spiritual and temporal, treats of remedies for widows deprived of their dower, of disseisins, tenures of woods, wastes and pastures, usury, wardships and marriages, limitations of writs, and allows attorneys to appear in suits. In 1266 a statute was made regulating the price of bread and ale according to the price of corn. Several statutes were also enacted regulating process and procedure in the courts, one of which, relating to leap year, is in form an order addressed by the King to "his Justices of the Bench." The statute of Marlbridge 1267 relates mostly to subjects connected with feudal tenure and to writs for relief in the courts, the names of many of which are familiar to lawyers versed in the common law. The summary method of collecting the landlord's rent by distress without legal process is treated of. Dower, darrein presentment, quare impedit, mort d'ancestor, replevin, waste, voucher to warranty, entry sur disseisin in the post, and other kindred writs and rights are regulated; showing that even in those turbulent times people looked to courts and law for escape from robbery and violence. These statutes were all in Latin, while some of those of the succeeding reign of Edward I were in Norman French and others in Latin.

At the time of the death of Henry Prince Edward was crusading in the Holy Land. On his return he dallied nearly a year in France. Being challenged to a tournament at Châlons in which he was successful, he was forced to follow the mock battle with a real one, in which many knights were slain. At Paris, Edward did homage to the French King for

the lands he held in France and then returned to England to be crowned. To repress the robberies and murders which were so common throughout the country, he appointed a commission empowered to deal summarily with such offenders, who zealously condemned suspects and confiscated their estates, thereby greatly adding to the King's revenues. Some persons were guilty of debasing the coin of the realm and, as Jews were smart and hated by the multitude, he caused two hundred and eighty of them to be hanged in London at one time and many others elsewhere in the kingdom. This also added to the king's revenues, and probably was merely a false pretext devised as a justification of the murder and robbery of the more peaceful and thrifty Jews. This cruel act he followed with the confiscation of the estates of all Jews, except enough to pay their transportation out of the kingdom, and banishment of all of them to the number of 15,000. Edward was thrifty. He obtained from his parliament a grant of one-fifteenth of all chattels, from the Pope one-tenth of all ecclesiastical revenues for three years, and from the merchants half a mark on each sack of wool exported and a mark on each three hundred skins. He made close inquiry into the titles of the nobility to their estates and caused the seizure of all for which he could find a pretext. The purpose of the law was to support the power and pretensions of the king, the nobility and the clergy. The judges added a further purpose, to enrich themselves, and their corruption was most gross. Edward brought them to trial before parliament and fined them so heavily as to bring him a large sum of money. Thus he succeeded to their ill-gotten wealth. The decay of the feudal system of warfare and the resort to paid troops made it necessary for Edward in carrying on his wars with the Welsh, the Scotch and the French to call on his subjects for frequent contributions. To obtain these he found it necessary to call the parliament together to grant him funds. Though the Earl of Leicester had summoned representatives of the boroughs in the time of Henry III the practice had not been continued, but in the twenty-third year of Edward's reign he summoned representatives of all the boroughs, and this is

regarded as the real date of the first House of Commons. In summoning the knights and barons the practice grew of calling such as the king chose and of having the knights and barons of less wealth choose representatives from each county to attend, whose expenses were borne by the others. Though these representatives came from the more humble orders of the state, they there, as in so many other countries, at first gave their support to the king in order to curb the power and pretensions of the great barons. At first the commons did not assume legislative functions, but merely assented to such demands for money as the king made and they felt unable to resist. They might, however, petition for a redress of grievances, and the king might grant it if he thought best. In Edward's reign the barons many times had recourse to the Great Charter and required the king to swear to observe it. He often violated it and repeated many times his promise to be governed by it. All classes of subjects found some provisions in it tending to protect them and insisted on the observance of them. The power of the clergy began to decline, and the demands of the king for money steadily increased. The holdings and revenues of the church were so great, that it was no longer the policy of the Crown to exempt them from taxation, and Edward insisted on large contributions out of ecclesiastical revenues. The clergy at first resisted, but the King placed them outside the protection of the law by depriving them of any remedy in the courts for wrongs done them. As plenty of his subjects were ready to rob them, the clergy soon found it to their interest to yield. He also placed a check on future acquisitions of land by the clergy by a statute of mortmain. In his reign there was much legislation, and the courts grew in importance. He established the office of justice of the peace, abolished the office of chief justiciary and divided the court of the exchequer into four with coördinate jurisdiction. The perpetuation of the power of the nobility was facilitated by the statute allowing the entailment of estates, so that the owner could not alienate lands away from the heir. Edward tried to break away from the annual payment of 1,000 marks as tribute to the Pope, but was unable to

do so and preserve the support of the head of the church, which he often found needful. England's King therefore continued to be a vassal of the Pope, but the clergy felt his heavy hand and were no longer able to oppose his will. Commerce grew in volume, and in 1296 the society called "Merchant adventurers" was formed for the improvement of woolen manufactures and the sale of cloth abroad. A charter was also granted for the protection of foreign merchants, but on hard terms. In his wars Edward exhibited great vigor and succeeded in the permanent subjugation of Wales and the temporary conquest of Scotland. The reign of Edward I is chiefly notable for the great development of the system of courts and rules for the administration of the law. Nearly every topic affecting proceedings in court and feudal tenure of land received attention. Sheriffs were prohibited from holding prisoners without an indictment by a grand jury of twelve or more. The qualifications of jurors for the trial of causes were fixed by law, and the number to be summoned limited to twenty-four. Terms of court were regulated, forms of writs were authorized to be issued out of chancery and all writs were required to be under the great seal. The statute of *"quia emptores"* provided that vendees of land should hold under the lord paramount as the vendor had held. The period of savage punishment of persons charged with crime had not yet arrived; aside from an act making rape punishable with death, there were no savage penal statutes. Most of the acts related to land tenure or to the recovery of it or of rents and profits, but there were also statutes for the collection of debts and of damages for wrongs suffered. Most of the laws are models of clearness and brevity, in strong contrast with the verbosity of later periods. Whatever his faults or misdeeds, Edward is well entitled to the name of the great lawgiver, for from his reign that system of administering the law, so long boasted of by Englishmen, took definite form. While courts, juries, writs, sheriffs, bailiffs, etc. existed and had been used long prior to his time, he more than any other king, gave form and completeness to the system, and, though there was little justice, there was much of statu-

tory law and of courts and officials of the law at the conclusion of his reign in 1307.

Edward II was a weak prince. The system of parliamentary rule grew in strength during his reign and that peculiarly English characteristic of demanding established rules in government found expression in acts of parliament, many of which were forced on the king against his will. He was compelled to give up his favorite, Gavaston, a Gascon, who was murdered by jealous earls, and the king was induced to pardon the murderers. Scotland under the lead of Robert Bruce established its independence at the decisive battle of Bannockburn in 1314. The spirit of turbulence still prevailed, and in the treatment of captured rivals there was an apparent lowering of the standard of morality, for many instances occurred of the slaughter of prisoners of distinction. On the other hand we do not read of quite so much murdering of the poor and defenseless. Though laws were passed, they were obeyed only by those who were powerless to resist. The whole reign was one of turmoil and disorder, yet the superstitious reverence for the clergy declined, and men called, though in vain, for a government by fixed rules. Edward II, a man far more humane and forgiving than most of his barons, fell a victim to the cruelty and perfidy which prevailed. Having been taken prisoner by rebellious barons, he was murdered by thrusting a red hot iron into his bowels. In this and numerous other reigns prior and subsequent the barons, who enjoyed so many great privileges at the expense of the multitude, not only performed no service useful or beneficial to others, but were murderers, robbers and traitors by nature and by education. Such is the so-called gentle blood of the noble houses of that time. With such a want of morality among the rich and powerful it is no wonder that there was crime and brutality among the so-called lower orders. Security for life or property could not be found, and as a consequence there was general poverty, distress and degradation.

During the fifty years' reign of Edward III the resources of the kingdom were exhausted in great wars to maintain the extravagant and groundless claims of the king to dominion

over Scotland and France. The country was repeatedly burdened with ruinous taxation and drained of its able-bodied men to carry on the struggle. The war with Scotland served only to strengthen the prejudice of the Scotch against British rule, and though Edward was able to lead great armies into France and lay waste great districts, though he gained the renowned battles of Crecy and Poitiers, though the Black Prince became a warrior renowned not only for his courage and capacity but also for his humanity, the net result of the long struggle was merely a little shifting of boundaries, destined soon to be again changed, and the bloodshed, vice and misery of a great war. The nobility, still true to the instincts which had ruled them in the acquisition of their unmerited possessions, were constant law breakers, robbers and protectors of robbers. The chief seats of vice and crime were in the great castles, where the barons, backed by their armed retainers, defied all rules conflicting with their purposes. Yet in spite of all these evils some progress was made toward the evolution of a more orderly state of society. Foreign wars begot a national spirit and the organization, equipment and maintenance of the great armies, which invaded France and Scotland, required a more systematic management of state affairs. In order to raise money Edward found it necessary to frequently assemble Parliament and obtain its assent to his measures. He repeatedly recognized and promised to maintain the great charter, though he still more frequently violated it. Nevertheless Parliament came to be regarded more and more as a great representative of the nation, and the house of commons, superior in morals though inferior in wealth, steadily gained in influence. In the later years of Edward's reign Parliament assumed the right to impeach the king's ministers, and the idea of the accountability of the ministers began to grow from the jealousy of the barons of the king's favorites, on whom he conferred authority. Though the king called on Parliament for grants of taxes, he did not abstain from arbitrarily imposing them on his own authority. He still asserted the right to promulgate laws, formulated by himself and his privy council, without consulting the Parlia-

ment. In his reign the papal power was still further reduced, and a statute was enacted making it a penal offense to procure a presentation to a benefice from Rome, and by another statute persons who appealed causes to the Pope were outlawed. The influence of the clergy over the laity had declined, and the old weapons of excommunication and interdict had lost their edges. The war with France stimulated the English national spirit, and the use of the French language in public acts and documents was abolished. Though Edward, being a man of great energy and ability, ruled despotically, the three forces, of king, nobility and commons, began to assume the respective functions which so long tended to hold each other in check. The king and nobles stood for war, robbery and unmerited privilege, the commons for some small measure of justice. In a depraved and disorganized state of society, physical power and military combination without regard to moral right lead in the formation of states. It is only by slow degrees and countless martyrdoms that the moral force, which protects the helpless and innocent, gains mastery and makes possible a truly great state. The moral purposes of the commons were superior to those of king and barons and therefore contained the stronger vital principle. Their influence has grown and must inevitably continue to grow, as the general moral tone of the people advances. It was during the French wars of this reign that artillery first came into use, and the result of the great battle of Crecy is said to have been determined by the English guns.

The reign of Richard II shows an increasing tendency to resort to judicial decisions of controversies, without any well defined disposition on any part to do justice. Parliament condemned those at the time out of favor without a hearing, and caused many summary executions and forfeitures. Laws were passed but not observed. Lawyers multiplied and business in the courts increased, but decisions were not given with much regard either for law or justice. Though the feudal system was decaying, no firm organization had taken its place. In this reign we find the first reported instance of an uprising of the grievously oppressed common people. John Ball, a

preacher, went about the country preaching the doctrine of the common origin and brotherhood of man and their equal rights to the bounties of nature. The imposition of a capitation tax of three groats per head on all persons above fifteen years of age was regarded by the poor as a most grievous burden. The tax-gatherers proceeded in its collection with usual harshness and indecency, and for an insult to his daughter a blacksmith knocked out the brains of one of them with his hammer. By-standers applauded and the populace came to his defense. Sedition spread like wildfire; there was a general uprising against the dissolute and tyrannical nobility, and much violence was done them. A vast multitude assembled on Blackheath under the leadership of Wat Tyler and Jack Straw, some of whom insisted on kissing the King's mother as she passed through their midst, though without further insult or injury. They demanded an interview with the King, but he, being afraid to trust himself in their hands, went back to the tower for safety. They broke into London, burned the palace of the Duke of Lancaster and cut off the heads of such of the gentry as fell into their power. The King finally asked for their demands, and in response they asked a general pardon, the abolition of slavery, freedom of commerce in market towns without toll or imposts, and a fixed rent on lands instead of villeinage service, all certainly reasonable and less rather than more than their natural rights. The King granted the demands and made a charter to that effect, whereupon the multitude dispersed. With that want of good faith so characteristic of the ruling class through all those disorderly times the King, having gathered an army strong enough to enforce his will, convened a parliament, which revoked the charters and pardons and again reduced the people to the same slavery as before. Many were arrested and executed without trial. Want of an organization through which all might continue to act in concert for their own protection after their separation, left the multitude at the mercy of the King and their lords backed by their mercenary followers. Richard himself afterward fell a victim to the faithlessness of the barons, who combined for his overthrow under the leadership of Henry,

Duke of Lancaster. Having secured custody of the King by treachery, Lancaster issued writs in the King's name convening a parliament, taking care to fill it with those only who were devoted to his interests. The King was impeached and condemned to be deposed, without any real hearing, by a vote of both houses. Thereupon Lancaster stood forth and made a declaration recorded as follows:

"In the name of Father, Son and Holy Ghost I Henry of Lancaster challenge this rewme of Inglande, and the crown, with all the membres and the appurtenances; als that I am descendit by right line of the blode, fowing fro the gude king Henry therde, and throge that right that God of his grace hath sent me, with help of kyn, and of my frendes to recover it; the which rewme was in point to be on-done by defaut of governance, and ondoying of the gude lawes." In this form of jargon he assumed the kingly office. Richard, being a prisoner in his power, soon came to his death, whether from violence or starvation remains an unsettled point. England had now fairly entered on that period of its history, when the villainous deeds of kings and barons were largely perpetrated with the aid of judicial forms, supplemented with cowardly murders of those whom it was deemed dangerous to execute publicly. Substantially all these villainies stand charged to those of so-called gentle, noble blood.

The manners of the times of Richard are indicated to some extent by the make up of his household, which consisted of 10,000 persons, requiring three hundred people in the kitchen. All this multitude was fed from the king's tables at the expense of the state. The reign of Henry IV is not noted for marked constitutional changes. The clergy had lost their mastery over king and nobles and now sought to perpetuate their influence over the multitude by cruelty. In 1401 William Santre, having been condemned as a heretic by the clergy at Canterbury and the sentence approved by the House of Peers, was burned at the stake under a writ issued by the King. The King, having no well recognized title to the throne, sought by such means to draw the clergy to his support. The clergy before his reign had been exempt from capital punish-

ment, but in 1405 Henry caused the archbishop of York to be summarily condemned for treason by a judge specially appointed for that purpose, who without indictment or trial pronounced sentence of death on him, which was promptly executed. The weakness of the King's title caused him early in his reign to court the favor of the commons. In the first year a law was passed at their instance that no judge, arraigned for giving an unjust decision, should plead in defense the orders of the king. In the second year they insisted on the practice of not granting the king any supply until they received an answer to their petition, thus in effect imposing a condition precedent to their grant. In the sixth year they appointed treasurers of their own selection to receive the public moneys, see that they were disbursed for the intended object and render an account to the house. In the eighth year they established various regulations, which they required the members of the king's council and all the judges to swear to observe. In the later years of his reign Henry, having established his position, again asserted his prerogatives, yet on the whole there was a marked extension of the power and influence of the commons. The savagery of the times is well indicated by the passage of a law making it a felony to cut out any person's tongue or put out his eyes, barbarities then perpetrated so frequently as to call for repressive legislation.

Henry V, who during the life of his father had led a wild and dissolute life, exhibited some rare qualities on coming to the throne, chief of which was a regard for law and respect for those who, acting in subordinate capacities, enforced it. The chief Justice, Gascoigne, had sent Henry to jail for insolent conduct in his court, certainly a remarkable exhibition of judicial courage and authority for those times. Henry on coming to power not only exhibited no ill-will on account of it but continued him in office, as well as the other counselors of his father who had frowned on his disorderly conduct. To insure his popularity at home he adopted that expedient so often employed by kings, a foreign war with France, on the pretext of right to sovereignty there. This war brought him great glory at the battle of Agincourt but without profit to

England. On his death the succession passed to his infant son, during whose minority the "protector" named by Parliament continued the war with France with great success, until the appearance of Joan of Arc at the head of the French army turned the tide of battle and caused the English to lose all the territory which they had spent so much blood to acquire. When she finally fell into their hands, fighting in defense of the town of Campeigne, she was accused of witchcraft, condemned by an ecclesiastical court and burned at the stake. Though this appears an exceptionally atrocious act, it accorded fairly with the cruel and treacherous spirit which then prevailed among the leading characters. The assassination of prisoners, either with or without the pretense of a trial, was of frequent occurrence. The Duchess of Gloster was accused of witchcraft in 1447, and, while she escaped with a sentence of imprisonment only, her associates, who were jointly charged with the same offense, were condemned and executed. The title of the kings of the House of Lancaster to the throne, coming through a junior son, had been regarded as questionable, and the Henry's IV, V and VI courted the support of parliament. In the reign of Henry VI, a weak, almost an imbecile prince, the Duke of York began to assert his title to the crown, and at last the flames of that barbarous struggle, termed the war of the roses, between the adherents of the Houses of York and Lancaster broke out. The most important act of parliament in his time was one restricting the suffrage for members of parliament to persons possessing lands yielding forty shillings per year, free of all burdens and within the county. It seems that all freeholders had exercised the right before that time. This reign is also noted for the construction of the first national debt by authority of Parliament.

During the early period of Norman rule the barons, though they slaughtered the poor and defenseless on occasion most ruthlessly, were yet generally considerate in their treatment of men of their own class, who fell into their power. The spirit of caste prevailed, and the lives of prisoners of rank were generally safe in the hands of their enemies. The prin-

ciples of the feudal system were such, that men of rank fought each other in the open and for the glory of the combat, but despised all secret assassination and treachery. By the time of Edward IV a great change had taken place. The barons, whose ancestors for generations had been accustomed to oppress the common people on their estates to the last point of endurance, could take nothing more from them than they were accustomed to receive. The only chance to augment their possessions and increase their importance was to deprive some rival of his property. It was found that to do this effectually, it was usually necessary to deprive him of his life also. A race of men accustomed to take the fruits of the toil of others without return and to despise all useful employments, naturally had no moral code. The frightful barbarity with which the leading nobles of that period murdered each other, renders the history of the time a dreary and disgusting record, yet the fact is usually overlooked that in the main it was a process by which society was relieved of a most cruel and vicious element. Instead of continuing to join their forces to keep the multitude in subjection, they fought each other, and as the varying fortunes of war and intrigue placed one murderous baron in the hands of an enemy, he was murdered, usually to be avenged later by the slaughter of one or more of the same class, who had caused the deed to be done. The war between the branches of the royal family known as the Houses of York and Lancaster shows the crudity and weakness of a system of government based merely on a theory of the inheritance of power. All systems of this kind have their root, not in any desire to promote the public welfare, but in the desire of rulers to transmit their power to their own posterity. They are established by educating the multitude to believe that there is such a thing as royal blood, differing in quality from that of common mortals, and that regal power should be transmitted from the reigning monarch to one of his blood according to a fixed rule. The supposed convenience of this mode of designating a king has led to its acceptance by a large part of the people of the earth in all ages. Though the history of many nations is filled with instances of infant

rulers, utterly incapable of governing the state, of imbeciles on the throne, of idle, dissolute, depraved descendants of great kings, of cruel monsters in human similitude who have scourged the earth, and of the overthrow of weak dynasties by usurpers mounting the throne, usually after wading through blood and smoking ruins; so persistent is the tendency to adhere to this system, that it still prevails in most countries of Europe and Asia. Though Henry IV might trace one line of ancestors back through John of Gaunt, Duke of Lancaster, to Edward III, the title to the throne by the rule of inheritance was undeniably in Richard II at the death of his father. Richard was then a boy only twelve years of age, but lack of years was not his only deficiency in qualification for the administration of the government. He was wanting in force and vigor to rule so turbulent a nation, and Henry seized the throne because he was strong enough to do so. For three generations the succession continued in the House of Lancaster, until the young Edward IV of the York line came to the throne sword in hand. At the battle of Towton Edward followed victory with an order to give no quarter and caused the summary execution of the Earl of Devonshire, who fell into his hands as a prisoner. When Parliament assembled Edward's title to the throne was affirmed. All grants made by the kings of the Lancaster line were annulled and all attainders were revoked. On the other hand they passed an attainder of Henry VI, his Queen Margaret, their infant son Edward and a long list of nobles who adhered to their party, and declared all their estates forfeited to the crown. The form of a parliamentary decision was used, but the spirit of enmity and covetousness, not of justice, dictated the judgment. A court martial condemned the Earl of Oxford and his son, Sir William Tyrrel, Sir Thomas Tudenham and John Montgomery, and caused their execution and forfeiture of their estates. In the north when the Duke of Somerset and Lords Roos and Hungerford fell into the hands of Edward's followers at Hexham they were immediately beheaded, and in like manner Sir Humphrey Nevil and others were executed at Newcastle. The scaffold and the axe of the headsman com-

pleted the work of destruction left unfinished on the battlefield. A rebellion having broken out in Lincolnshire, Lord Welles, who took sanctuary fearing he would be charged with treason, having been promised safety left his retreat and was seized and beheaded along with Sir Thomas Dymoc by Edward's orders. The leaders of the rebels, being soon taken prisoners, were similarly executed. Edward, when not warring with his subjects to maintain his authority, gave himself up to licentiousness and debauchery. In 1470 the Earl of Warwick drove Edward from the kingdom and taking Henry from the tower of London, in which he had been confined and contrary to the general custom of Edward allowed to live, proclaimed him King. A Parliament summoned by Warwick reversed all the acts of Edward's Parliament. Executions did not follow this change in such numbers. The victim of distinction mentioned is the Earl of Worcester. The Yorkists seem to have been more fortunate in getting away. Within six months Edward returned and recovered his kingdom and Henry again became his prisoner. Warwick was slain in battle, and his followers were given no quarter but slaughtered in great numbers. After the forces of Queen Margaret were defeated at Tewkesbury with much slaughter, the Duke of Somerset and many other men of distinction were dragged from the church in which they had taken sanctuary and beheaded. Queen Margaret and her son Edward, heir to the House of Lancaster, were taken prisoners, and being brought before the King, young Edward was stabbed to death by the Dukes of Clarence, Gloster and others. Margaret was confined in the tower, where King Henry expired a few days afterward. Whether he was murdered or died naturally is not known, though the Duke of Gloster is charged with his murder. After a season of rest and dissipation Edward invaded France without accomplishing any notable result. The condemnation and execution of Thomas Burdet for saying, that he wished the horns of a white buck, which the King had killed while hunting in his park, in the belly of the person who had advised the King to commit that insult on him, was but one of his many cruel deeds. The deer belonged to and was a great favorite of

Burdet, and his expression was uttered under the smart caused by its loss, yet judges and jurymen were found servile enough to condemn him, and he was beheaded for his language. It is a most singular fact that with the growth of judicial power and increased study of the law there was a marked increase of severity and heartlessness in the treatment of persons charged with real or fancied offenses. John Stacy, a clergyman, was charged with necromancy, tried, tortured, condemned and executed with the approval of many of the nobility. These men were friends of the King's brother, the Duke of Clarence, of whom the King was jealous. The Duke, having protested against these executions and asserted the innocence of the men thus judicially murdered, was arrested, and a parliament was summoned, before which he was tried on a charge of having arraigned public justice. The King appeared personally as his accuser and prosecutor, and both houses of parliament were so base as to condemn him and petition for his execution. The King's clemency toward his brother extended no farther than to allow him to choose the manner of his execution, and he was thereupon drowned in a butt of malmsey. On the death of Edward IV in the twenty-second year of his bloody reign the succession in his line again fell to an infant, incapable of exercising kingly powers, and Richard, Duke of Gloster, brother of the deceased King, was made regent. Gloster first proceeded to cause the murder of the near relatives and friends of Edward's widow. Though Richard was one of the most conscienceless beings that ever appeared in human form, he yet sought pretexts and arguments to support his grossest villainies and was able to find men vile enough to do the most infamous deeds. To furnish a basis for a claim of right to the crown he caused a preacher, Shaw, to preach a sermon in St. Paul's, charging that Edward IV was a bastard and also his brother the Duke of Clarence and asserting that Richard, Duke of Gloster, only was the son of his father. Here was a most remarkable exhibition of the uncertainties of the transmission of power by inheritance. First there was the question as to whether the House of York or of Lancaster was in the true line. If York, then was the

incapable minor a legitimate heir? On no generally accepted theory of inheritance could Richard claim the throne, yet his cunning and his villainy brought him a brief possession of it. By false promises to their mother Richard obtained the custody of her children. The infant King and his brother were thereupon confined in the tower, soon murdered by Richard's orders and buried in the ground at the foot of the stairs under a heap of stones. The Duke of Buckingham, who headed a revolt against the usurpation of Richard, being taken prisoner was summarily beheaded, as were others of less note. Richard, having established his power, summoned a parliament in 1484 and sought to gain the support of the nation by governmental reforms. The system of extorting money under the name of benevolences was condemned and prohibited, and this king, who ruled in spite of all law, resorted to legal reforms to fortify his authority.

It was impossible however for Richard to blind the nation, either to the fact of his usurpation or the many murderous villainies he had perpetrated, and the Earl of Richmond, backed by a small force brought over from France, but far more by the general hatred and distrust of Richard causing supporters to come to his aid from every side, defeated him at Bosworth, where Richard was killed in battle. Many of the King's supporters died with him, and others, taken prisoners, were beheaded for participation in his bloody work. Richmond, having succeeded on the field of battle and being recognized as the sovereign, was yet at a loss to know on what legal ground to base his title to the throne. Parliament when convened obsequiously declared, "that the inheritance of the crown should rest, remain and abide in the King" without taking trouble to point out a title by descent or to recognize his right merely as a victor in possession. An act of attainder, condemning all the leading noblemen who had fought on the side of Richard, was passed and their estates seized. His reign was disturbed by impostors pretending to be heirs to the throne rather than by persons of the blood. The first was one Simnel, a boy chosen and put forward as the second son of Edward IV alleged to have escaped from confinement

in the tower and to be the true heir to the throne, as Duke of York. His pretensions were first made public in Ireland, where he was accepted as the King throughout the whole island, and a force was raised to invade England in his interest. A landing was made in Lancashire, and some support came to him from Margaret of Burgundy, who sent his 2,000 Germans, and a few Englishmen joined their fortunes with his. A bloody battle was fought in which he was defeated, and being taken prisoner he was deemed so contemptible that he was made a scullion in the King's kitchen. He had no estate to confiscate, so there was nothing to be gained from his execution. A more skillful imposter, said to bear a strong resemblance to Edward IV, was Perkin, who also personated the Duke of York with considerable success and received the support of Margaret of Burgundy. Many English noblemen gave countenance to his pretensions, and Henry, having obtained information of their doings, caused a considerable number of them to be arrested and condemned for treason; part of whom were executed and the rest pardoned. Among those condemned and executed was his own lord chamberlain, Stanley, whose great wealth afforded ground for his destruction. Perkin succeeded in gaining a considerable following, but was defeated and taken prisoner. Henry did not at first cause his execution, but he was soon accused of having conspired to escape from the tower and hanged at Tyburn. The Earl of Warwick and several other great lords were executed for complicity in his treason. Henry's policy was to use the lawyers and the machinery of the courts to destroy the most rich and powerful lords and seize their estates. His avarice was his most marked characteristic. His principal agents for the extortion of money from his subjects were two lawyers, named Empson and Dudley, who used the forms of law and the instrumentality of the courts to rob the people and fill the King's treasury and their own pockets. People having property were falsely or truthfully charged with all sorts of offenses and thrown into prison, from which they could escape only by the payment of heavy fines or commutations. It was in Henry VII's reign that the odious Star Chamber

received the sanction of Parliament, though it had been in existence long before. The secrecy of its proceedings and the arbitrary methods it pursued were the leading grounds of objection to its authority, but Empson and Dudley had little difficulty with ordinary courts and juries. Trials were not had either before an impartial court or jury. The judges were the creatures of the King and the juries were packed to do his work. During this reign much was done to obliterate the feudal system. Numerous acts of parliament were passed against engaging retainers and giving them badges and liveries to wear; thus prohibiting the great lords from keeping up their private armies to aid them in their outrages. The alienation of entailed estates by means of a fine or common recovery was authorized by statute. Henry was probably the most absolute and despotic king England had ever had, but he did most to break the power of the feudal aristocracy. The invention of the art of printing greatly facilitated the dissemination of learning, and the discovery of America stimulated the spirit of inquiry and adventure and brought into play those activities, which have resulted in so much material and moral progress.

The reign of Henry VIII 1509 to 1547, affords a most interesting study for the student of governments and legislation. No more absolute despot ever ruled England and few any other country, yet he exercised his power through the instrumentality of a parliament and of courts and juries. He found no difficulty in condemning to death whomsoever he willed, yet for the most part the condemnations were for a real or pretended offence and under the form either of a bill of attainder or a judgment of a court. He continued the practice, which had prevailed in past reigns, of destroying the obnoxious noblemen, rather than the indiscriminate slaughter of the poor, and the wholesome principle of punishing leaders rather than their more ignorant followers was applied in dealing with the few popular uprisings which disturbed his reign. It is exceedingly difficult to comprehend how Henry maintained even his power, and much more so how he preserved a measure of attachment from his subjects, with all the rank injustice and

barbarity he exercised. Doubtless the destruction of the old nobility and the continued policy of taking off the head of anyone who plotted against the King had much to do with the submissiveness of the lords of his day, many of whom were newly created and received their dignities at his hands.

Ten parliaments were summoned in the thirty-eight years of his reign and held twenty-three sessions. Law-making went on at accelerated pace, and lawyers and numerous courts were constantly employed in administering the law, though with very little regard to justice. Penal statutes multiplied and capital punishments followed not only the crime of murder but a long list of offences. Treason came to head the list of capital ones and with misprision of treason added afforded a basis for charges against any subject, who for any cause was obnoxious to the King. By means of a prosecution on an accusation of this kind the King could, in what passed as a lawful manner, destroy his enemy and take his estate. Persons against whom there was evidence could be tried before the courts, and those against whom there was none were attainted by act of Parliament without the form of a trial. Severe punishments were also inflicted on thieves and robbers to an appalling extent. It is said that 72,000 of these were executed during this reign. But the most conspicuous instances of the use of legal forms to effectuate the will of a despot were those involving Henry's wives. First he tired of the Spanish Catharine, who, when he married her, was the widow of his brother Arthur. After living with her for twenty years he pretended that he had conscientious scruples as to the validity of a marriage with the wife of a deceased brother. He first tried to obtain a divorce from the Pope, but failing there he procured an act of parliament prohibiting all appeals to Rome in causes of marriage, divorce, wills and other suits cognizable in the ecclesiastical courts. He then had Cranmar, archbishop of Canterbury, who owed his place to the King, organize a court and pronounce a judgment annulling the marriage. Previous to this decree Henry had married Anne Boleyn, a younger and more attractive woman than Catharine who was his senior by six years and now quite

faded. After a little time he became suspicious, probably without just grounds, of Anne and caused her to be tried by a jury of twenty-six peers. Though there was no proof of any real criminality on her part, this obsequious jury condemned her to death, and she was beheaded. The next morning he married her maid, Jane Seymour, who had the fortune to die after the birth of a son. Henry rejoiced over the birth of a son and did not deem it necessary to mourn over the loss of a wife. His minister, Cromwell, who had risen to remarkable wealth and influence, fell out of favor, was attainted by act of parliament and beheaded. Then Henry married Catharine Howard, who in turn was attainted by act of parliament and beheaded for unchaste conduct. Though Henry succeeded in carrying out his horrible purposes, the method pursued was a precedent more favorable to the security of life than secret murder or execution by the arbitrary order of the King. Later parliaments and juries were not so subservient, and later despots were not able to dictate bills of attainder and sentences of courts with such ease.

The period of Henry VIII's reign covers the time of the great religious struggle, styled the Reformation, and of his public acts those affecting the church and the religious establishments were of the greatest importance and most far-reaching consequences. Though he professed adherence to the established faith, he denied the temporal power of the Pope in his dominions. But he went much farther, and in 1534 he obtained an act of parliament conferring on him the title of Head of the Church of England, and acknowledging his inherent power "to visit and repress: redress, reform, order, correct, restrain or amend all errors, heresies, abuses, offences, contempts and enormities, which fell under any spiritual authority or jurisdiction." Parliament also made it a felony to imagine or speak evil of the King, Queen, or his heirs. Acting under this authority Henry made his own selection of what he deemed the essential tenets of religion. In 1539, by the Stat, 31, Henry VIII ch. 14. Six articles of faith were established, and a denial of the first article, which declared the real presence of the body and blood of Christ in the

sacrament, subjected the person to death by fire with forfeiture of estate, without the privilege of abjuring the error. Denial of either of the other five articles subjected the offender to forfeiture of goods and imprisonment at the King's pleasure. The cause of religious freedom was greatly advanced by Henry through the translation and publication of the Bible in the English language. Henry seems to have had an idea that the book itself furnished a definite standard of faith. He however was not able to find an abiding interpretation for himself. Parliament was so complaisant as to grant a ratification in advance of such tenets as his commissioners with his approval might formulate, and he soon afterward published a small volume, called the Institution of a Christian Man, which was made the standard of orthodoxy. He soon became dissatisfied with this and published another, styled the Erudition of a Christian Man, changing the standard in some respects. Most important of all his public acts was his destruction of the monasteries, which had become numerous and rich. He began first on the lesser ones, then swept them all away and seized their property; 645 monasteries, ninety colleges, 2,374 chantries and free chapels and 110 hospitals were abolished and their property seized. Though some disorder was occasioned by these acts, Henry found means to conciliate the laity by the uses he made of the property seized. Only in one particular did he meet with any resistance during his whole reign from his parliament, namely that of the granting of taxes, and in this they sometimes made terms with him by which his demands were modified, yet he did not hesitate to force the payment of benevolences. The complete abandonment of all the restrictions imposed on the king by the Great Charter is perhaps best illustrated by Stat. 31, Henry VIII, Ch. 8, by which parliament recognized the king's proclamation as having the same force as an act of parliament. By a later act they provided a court for the enforcement of the king's proclamations. It was during this reign that trade with the Netherlands began to develop, and skilled workmen from Flanders in large numbers came over to England to carry on their trades. In response to popular

prejudices against these more skillful foreigners restrictive laws were made against them. Many clumsy and ineffectual efforts were made to regulate wages, the prices of food and commodities, and the style of apparel. Physicians, barbers and surgeons and various tradesmen were made bodies corporate with special privileges. In 1546 the first law recognizing interest on money as lawful and limiting it to ten per cent was enacted. Fierce religious controversy and persecution for mere opinion began in this reign, and that spirit of martyrdom, which has appealed so strongly to succeeding generations, was manifested by those who from the flames at the stake gloried in death for what they believed to be religious truth. It cannot be said that either Henry or the mass of the people of England in his day exhibited any signs of advanced morality. They did, however, while upholding arbitrary power to an unprecedented point, proceed by better methods. The parliament passed severe and arbitrary laws, visiting death on offenders great and small, but all this was in an effort to evolve order out of chaos and regulate the conduct of men by fixed rules to which all were to conform. The religious struggle was an attempt to extract the real truth from a multitude of errors. Fundamental moral principles were little studied or regarded. The all engrossing motive was personal interest, to be furthered by the possession of property on earth and the luxuries of heaven hereafter.

At the time of Henry's death his son Edward was but nine years of age. By his will Henry appointed sixteen executors, to whom he entrusted the regal power during Edward's minority, which he limited to the age of eighteen. He further appointed twelve councillors to aid them with advice, but on whom no authority was conferred. The Earl of Hereford, afterward made Duke of Somerset, maternal uncle of the King and appointed as one of his executors, was named protector, and as such assumed the actual rulership of the kingdom. The religious controversy went on and Protestantism continued to grow, countenanced and supported by the protector. War with Scotland and with France came on as usual. Lord Seymour, a younger brother of the protector, plotted

against his authority and was thereupon attainted by parliament and beheaded on a warrant issued by Somerset. Notwithstanding the growth of Protestantism the burning of heretics went on, and women as well as men went up in smoke for opinions sake. Insurrections having occurred because of the destitution of the common people, an act of parliament was passed making it treason for twelve or more persons to meet on any matter of state and fail to disperse at the command of a lawful magistrate. The foreign trade of England had been carried on from the time of Henry III mainly by agents of the Hanse Towns, to whom he gave a charter of incorporation with special privileges. These privileges were taken away by this administration and native traders were placed on an equal footing. An advantageous commercial treaty was made with the King of Sweden, which stimulated trade with that country. Somerset, having made himself distasteful to the leading spirits of the kingdom, was displaced from power and after a short interval put on trial before a jury of twenty-seven peers, among whom were his chief enemies and accusers, condemned for treason and executed on Tower Hill. Early in this reign under the influence of Somerset a bill had been passed mitigating the severity of the law against treason, but later under Northumberland's rule another rigorous act was passed, to which the House of Commons appended the important safeguard of a requirement, that the crime should be proved by two witnesses, confronting the accused. Afterward when a bill to attaint Tonstal, bishop of Durham, was passed by the House of Lords, the Commons rejected it because of the non-production of the witnesses. Edward died in his sixteenth year after a reign of seven years, which again illustrated the folly of the transmission of kingly power by inheritance to infants utterly incapable of exercising it. Various acts were passed for the purpose of regulating trade and manufacturers. One prohibited victuallers and craftsmen from combining to raise prices, another made minute provisions regulating the manufacture of woolen cloth, and another denounced regrators, forestallers and ingrossers. Ale and tippling houses also called for regulation, and justices

of the peace were empowered to put them under bond for the maintenance of good order. Thus we see that the law-making power then as now was troubled with questions growing out of trade combinations and the sale of intoxicants.

Mary, eldest daughter of Henry by Catharine, succeeded Edward. She was a bigoted Catholic and a sour old maid. Her brief reign of five years again illustrated the folly of passing supreme power by inheritance in accordance with an inflexible rule. She had no quality of head or heart fitting her for such a station. Narrow bigotry caused the revival of religious persecutions, and 277 persons were burned at the stake. To do this horrible work a commission of twenty-one persons was named, any three of whom could act. Spies, informers and torture were employed to discover victims, and trial by jury was denied. Aside from these persecutions the cruel beheading of Jane Gray, her husband and a number of other prominent men, bore witness to the barbarity of her character. At the age of thirty-seven she married Philip of Spain, son of the Emperor Charles V, her junior by eleven years, an alliance distasteful to her subjects, and which involved England in foreign wars resulting in the loss of Calais, so long held by England as a door of entry into France. In the matter of granting supplies, parliament was not so pliant as in the time of her father, and her demands were refused or modified with novel firmness. Nevertheless she forced contributions of money from her more wealthy subjects without authority of law, to be squandered in the wars of her husband, who had regard neither for her nor the people of her kingdom. As far as lay in her power she restored the authority of the Pope, but was unable to execute his command to restore the church lands, which had passed into other hands.

The long reign of Elizabeth, from 1558 to 1603, is looked on as one of the most prosperous in the whole history of England, and many have been inclined to accord the credit to her. It is one of the arts of the statesman to claim credit for all good fortune that may come from any source and to point out some cause other than his own fault for every evil. Similar craft has been resorted to by the clergy in all superstitious

states for strengthening their authority. Elizabeth was quite as absolute and arbitrary a despot as her father, yet she adhered even more closely than he to the forms of law. For supplies she summoned parliaments, but haughtily rebuked them when they exhibited any disposition to legislate in the public interest, claiming as her sole prerogative the general care of the public welfare. Trials and executions for treason were numerous, the most noted being those of her rival, Mary Queen of Scots, the Duke of Norfolk, Earl of Northumberland and her former favorite the Earl of Essex. She professed great reluctance and sorrow for the executions of Mary and Essex, but whether real or feigned is doubtful, for the writs were signed by her and the convictions were at her instance. In state trials juries were generally called, but in those times afforded no security for a defendant. A verdict of acquittal in opposition to the wishes of the Queen was followed by fine and imprisonment of the jurors. The period of her reign was one of awakening of the activities of the people, not because of her rule but in spite of it. The discovery of America, the great impetus to learning imparted by the art of printing, the spirit of investigation, profoundly stimulated by the reformation, and of adventure in distant seas, all contributed to that mental and physical activity which alone can elevate a nation. In her wars Elizabeth is entitled to more credit than most despots. Though sometimes aggressive and though her battles with foreign enemies were all on foreign soil, her general policy was defensive rather than aggressive. Spain having become the greatest power in Europe, she allied herself with the Netherlands in their struggle for liberty and then with France to curb Spain. The fortunate storm, which disabled the vast armada built by Philip for the purpose of invading and conquering England, followed by the defeat of the great fleet later on, gave her renown and tended to direct British energies in the course which has since made England mistress of the sea. Shipbuilding and sea ventures were induced largely for private gain, in enterprises which might fairly to be designated as piratical. Long before war had been declared between the two countries, British vessels

made many rich prizes by capturing Spanish vessels and pillaging Spanish towns. Her wars, like all others, were expensive, destructive and resulted in main merely in leaving the sovereignty of territory without great change. The effects of the peaceful activities of preparation for war in building, arming and equipping ships, were of the utmost benefit. The art of shipbuilding was greatly advanced, and the people were taught to look out upon a new world, from which in time the ships were to bring in peaceful and beneficial trade vastly greater profits than it was possible to obtain by the capture of all the prizes then floating on the water. Another great benefit came through the barbarous cruelty of the Spaniards in the Netherlands, which caused many skilled weavers and mechanics to go from that country, where the arts were much more advanced, into England. From this period a more rapid improvement in mechanical arts dates. The gain was not so much in the acquisition of a few skilled artisans, as in the knowledge of their arts which was imparted to others and transmitted to succeeding generations. The religious agitation went no farther than an investigation, which assumed the Bible to be the sole authentic evidence of religious truth. The Reformers denied that the book warranted the pretensions of the religious system of Rome. The bigotry of many of the Reformers was not less than that of the Catholics, and heresy against their interpretation of the Bible was as deadly a sin in their eyes as their own opinions were in those of the Catholics. The search after religious truth led directly to an inquiry into the foundation of the claims of the clergy to temporal power and revenues. It was a movement distinctly hostile to the temporal power and earthly advantages of the church officials, priests and monks. This search after the basis of authority naturally led to an inquiry into the basis of the King's authority and the right of the people to freely discuss matters of public concern. In 1576 Peter Wentworth, a Puritan, made a set speech in the House of Commons on the subject of liberty, and especially on the privilege of members of the house to freely discuss public questions, maintaining that the Queen's prerogative was subject to limitation of law.

Strangely enough the house itself took offence at his bold utterances, committed him to the custody of the sergeant at arms and appointed a committee to consider his case. After a month the Queen graciously ordered his release. Elizabeth achieved a great success by getting the discordant factions in Scotland to submit their differences to her for arbitration, but the treatment of Queen Mary, her long imprisonment and final execution, bear witness to the malignant enmity of Elizabeth and exhibited a great moral defect in her character. Though the influence of Elizabeth in Scotland was greater than that of most of her predecessors, that kingdom was in constant turmoil and civil strife. Ambitious men and women murdered and robbed each other remorselessly to gain power and place. It is probable that Queen Mary was privy to the murder of a husband, but her accusers were many of them guilty of bloody deeds of little less atrocity. Elizabeth sent troops into Ireland to make the nominal sovereignty of the English crown, which had been recognized for four centuries, real and effective as a governing force, but her generals met with very little success. Instead of yielding revenue, the Irish possessions entailed a burden of expense. Aided by the Spaniards, the Irish, who still adhered to the church of Rome, were able to elude her generals. It was in her reign that the first British settlement was planted in America by Sir Walter Raleigh in Virginia, but it was abandoned and the discontented settlers taken back to England by Drake. Various bold seamen sailed along the American coast and into the West Indies. The impulse which started men out on the seas came, not from the rulers, but from the oppressed multitude. The freedom of life on the ocean had its influence on the habits of thought of the navigators, and the spirit not only of adventure but of individuality and independence was profoundly stimulated. Elizabeth is sometimes given great credit for having stimulated commerce and promoted intercourse with foreign countries. It is true that advantages of this kind accrued from her foreign wars and alliances, but they came as incidents and not as results of a settled policy of trade expansion. On the contrary no other British sovereign did so much to burden com-

merce with tyrannical exactions. To reward her courtiers and favorites she issued letters patent granting monopolies of trade to divers persons in a great number of articles, including salt, starch, potash, vinegar, lead, steel, coal, iron, glass, paper, tin, sulphur, calf skins, brushes, pots, bottles and a great number of other articles. This resulted of course in the grossest extortion by the monopolists and the greatest hardship to the general public. For the purpose of enforcing their monopolies the patentees were given extraordinary powers of search and seizure, which enabled them to act with the utmost oppression. Though there was very little of law or justice for the common man, there had grown up a general disposition to submit to authority and to respect the judgments of the courts, no matter how oppressive. The Spanish war profoundly stimulated the patriotic sentiment and feeling of national unity. For the treatment of all disputes and dealings with foreign countries the Queen's government possessed the full confidence of the country and was therefore at the head of the whole public force of the nation. At home the power of the nobility, who in times past had provoked so many civil wars, was broken, and while rank injustice lay at the foundation of the whole system, there was better order, greater industry and more prosperity than before. Elizabeth did not summon parliament frequently, yet there was much legislative activity in spite of her vigorous and haughty assertion of her prerogative. The early statutes of her time are notable for their verbosity. There was a long one regulating with great particularity artificers, laborers, servants and apprentices, and one, ostensibly for the maintenance of the navy, but really regulating the use of fish and meat and the exportation and importation of various commodities. The spirit of the time found expression in the many criminal statutes, among which were acts punishing perjury, embezzlement, coin-clipping (declared treason) forging, fantastical prophesies, buggery, vagabonds calling themselves Egyptians (punished with death), unlawful taking of fish, deer or hawks, counterfeiting foreign coin, bastardy, rape, burglary and horse-stealing; and making wandering persons pretending to be soldiers or mariners,

felons without benefit of clergy. There were numerous acts relating to procedure in the courts, among which was the statute of jeofails, relieving suitors from some of that extreme technicality, which the courts had observed with reference to pleadings and writs. Religion came in for its full share, and the effort to compel uniformity of religious thought and observance was continued with severe penalties for violations of the acts. More liberal in tendency were acts relating to the transfer of lands by deed of bargain and sale and fines and common recoveries, and with reference to fraudulent deeds and conveyances. It seems to have been thought necessary to regulate everything by law, and numerous acts, regulating the manufacture of cloth, of hats, caps and various articles and the measurement of wood sold for fuel, were passed. There were laws enacted for the collection of debts from receivers of public money, relating to bankrupts, usury, sewers, navigation, and a number of them relating to repairs of highways. The exportation of various articles, especially sheep and pelts, was prohibited. The two great universities of Oxford and Cambridge were incorporated by act of parliament, and authority was given for the establishment of hospitals or abiding and working houses for the poor. The erection of iron mills within twenty-two miles of London was prohibited, as was that of a cottage with less than four acres of ground, if built outside a city or town. Some thought of the public welfare was exhibited in an act for the relief of the poor, one to reclaim marsh lands, one creating a special court for insurance causes, and another to prevent extortion by sheriffs and bailiffs.

In 1600 the Queen granted the first charter to the East India Company with a capital stock of £72,000, which made a successful venture with four ships. In 1582 the number of seamen in England is given at 14,295, and of ships 1,232, of which 217 only were of over eighty tons. The process of emancipation from the ancient personal slavery during this reign reached its end, and after Elizabeth's time there were no more slaves, though the system of land tenure left many in a condition very little removed from servitude.

On the death of Elizabeth the crown passed to James, King of Scotland, thus uniting the two countries, so long intensely hostile to each other, under the same monarch. Though the title of James was very generally and cordially acknowledged, the fact that he came from Scotland contributed somewhat to the growth of that spirit of freedom in the House of Commons, which was manifested in his time. In prior reigns attendance in parliament had been regarded rather as a burdensome duty than a privilege. Returns of elections were made to the chancellor, who assumed the right to decide who were elected. A controversy having arisen over the right of Sir John Fortesque, who had been outlawed, to sit in the house by virtue of an election, the house asserted its right to determine the question and reversed the chancellor's decree excluding him. At the King's suggestion the House of Lords asked a conference on the subject, but the commons absolutely refused and asserted that the question was solely of their own privileges. In another instance they established their right to punish any persons causing the arrest of members of the house, including the officer making the arrest. In 1605 the great Jesuit plot, to blow up the parliament house with gunpowder at the opening of parliament and thus destroy the King and members, culminated in discovery and the arrest, trial and execution of a number of persons implicated. The King inclined to leniency and checked rather than encouraged numerous prosecutions. The spirit of independence and importance continued to grow in the house, and in 1607 the commons for the first time began keeping a regular journal of their proceedings. The boldest and best act passed during the whole reign was Ch. 3, 21 James I, by which all grants of monopolies by patent or otherwise were condemned and declared "utterly void and of no effect and in no wise to be put in ure or execution." An exception however was made in favor of inventors, to whom patents for monopolies of their inventions for twenty-one years were allowed. It is also noticeable that further exceptions were made in favor of certain individuals, who had sufficient influence to control parliament. Corporate charters, not only to cities and towns but

also to crafts, fellowships, manufacturing and trading companies, were also allowed with special privileges and rights of monopoly. There was during this reign much legislation relating to courts, some of which tended to diminish and some to increase the abuses committed in the name of law, and there were further acts to regulate religious opinions. The discovery of the new world and the far east occasioned claims of sovereignty by European kings over distant lands. For the adjustment of these claims the Spaniards and Portuguese applied to the Pope, who in the plenitude of his pretensions granted the east to the Portuguese and the west to the Spaniards with a reservation of his spiritual mastery over all. Against this sweeping claim the English, Dutch and other Protestant nations claimed sovereignty over such parts of the world as were first discovered by any of the nation. During James' reign the first permanent settlements in America were made. The East India Company received a new patent and increased its capital stock to £1,500,000. Factories for trading were established and conflicts with the Dutch traders began, notwithstanding the political alliance of the two countries. Trade increased and from Christmas 1612 to Christmas 1613 we are told that exports were £2,487,435 and imports £2,141,151. This was the age of those literary and intellectual prodigies, Shakespeare and Bacon, the latter a strange combination of moral obliquity and brilliant intellectuality, to whom some give the credit of completely revolutionizing the system of reasoning and methods of investigation in all scientific researches. The reign of James is generally characterized as weak and inglorious, but it was one of real progress, and though not a strong man, he was not so bad at heart as most of his predecessors, and gave the awakening forces in his kingdom a better chance to grow. He loved peace better than war, and though he did not entirely avoid bloody conflicts with other nations, his wars were of minor importance. The Puritans grew in number and in influence in Parliament and were leaders in asserting its independence.

When the effects of educational influences on the efficiency and usefulness of governments and governmental agencies

are fairly understood, we shall have made great progress in the science of social organization. No period better illustrates the potency of such influences than that of the reign of Charles I 1625 to 1649. As his father James was less of a tyrant than his predecessors, so Charles was even a more mild and far less absolute ruler than his father, yet influences were at work on the public mind which caused him to be condemned to death for his despotic acts. Magna Charta had ceased to be read or remembered through the despotic reigns of Henry VII, and his successors down to James. Its forms were observed in some particulars, but its spirit was utterly ignored. When Henry VIII threw off the domination of the Pope and took on himself the title of head of the church in England, he laid the foundation for that religious struggle between the reformers and the crown, which culminated in the reign of Charles. In the Catholic states of Europe the reformers attacked the papal authority, primarily for its own abuses, without entering on any inquiry into the grounds for the king's temporal power. Hostility to kings was often manifested because of the support given to the Church of Rome, but this hostility led to little or no inquiry into the rights of temporal rulers in purely temporal matters. In England however the kings, having successfully resisted the Pope and established the independence of the state in ecclesiastical matters, turned their attention to the enforcement of their own creeds and ceremonials on the people. The spirit of the Reformation was a spirit of inquiry after religious truth. During prior centuries the multitude, following the temporal rulers who were almost as ignorant and bigoted as themselves, had been content to receive their religion in such form as it was given to them by the priesthood. The reformers sought a purer source of instruction in the Bible, on which the church claimed to found its authority. They did not seek truth in the open and accept it on its own credit, but assumed that all of religious truth that had been revealed to man was contained in the one book. The reformers, especially the Puritans, were most earnest and zealous students of the Bible, and sought to conform their lives rigidly to its teachings.

They found that there was little that was common in the simple purity of Christ and the elaborate ceremonial of the Roman Church. They therefore became bitterly hostile to the images, the genuflections, and pomp of the cathedral, and insisted on a simple, austere form of devotion. It was the misfortune of Charles in 1633 to place at the head of the religious establishment, as archbishop of Canterbury, William Laud, and commission him to reduce the English Churches to a complete uniformity of ceremonial. It was yet more unfortunate that Laud was devotedly attached to the forms of religion and insisted on a most elaborate ceremonial and the use of all those symbols and postures, which were so obnoxious to the Puritians. These he undertook to enforce by virtue of the authority he held under the King. This naturally led to an inquiry into the right of the King to dictate and enforce a mode of worship which the Puritans found to be utterly at variance with the simple beauties of the life of Christ. It was not far to pass from an inquiry into the spiritual authority of the king to one into the basis of his temporal power, and Magna Charta afforded a basis of challenge of the king's right to levy arbitrary taxes. We have seen that in James' time the commons under the lead of the Puritans began to assert their independence and authority with a spirit never before shown. Charles found his first parliament disposed to advance rather than abate its claims. To his call for money to carry on the war to recover the Palatinate for his brother-in-law, the elector, the House of Commons responded, that it had no confidence in Buckingham, whose counsel Charles followed, and asked that before they granted a further supply than the very small one they had already voted, the King would name counsellors whom they could trust. Charles answered by dissolving parliament, but not till after an act had been passed for the observance of Sunday, a point very much insisted on by the Puritans, and to restrain tippling in inns. A second parliament was summoned, which convened March 17, 1627, with the same element still dominant in the House of Commons, notwithstanding the efforts of the King to obtain a majority favor-

able to his views. The first act done was the formulation of a petition "concerning divers rights and liberties of the subjects," in which they recited violations of Magna Charta and of numerous statutes for the protection of the citizens against arbitrary power, and complained especially of arbitrary levies of taxes and contributions by the King without the authority of parliament; of arbitrary arrests and imprisonments and denials of the writ of habeas corpus where arrests were at the King's command; of summary convictions and executions without due trial, by commissioners exercising extraordinary powers; of the quartering of soldiers on private citizens contrary to law; and of other denials of justice, and concluding with a prayer, "That in the things aforesaid all your officers and ministers shall serve you according to the laws and statutes of this realm." To this petition the King graciously responded in full parliament, *"Soit droit fait come est desire."* Let right be done as is desired. This was followed by another act for the observance of Sunday. Nothing could better evidence the tendency of the human mind to cling to mere form and outward show than this and kindred acts. Professedly in the interest of religion, it had no substantial bearing on the observances of the duty of man to man, which after all is the way in which obedience to divine law can be shown. Another act prohibited the sending of children beyond the seas to be educated in popish doctrines. Attacks on the favorite Buckingham continued, and the commons sought to impeach him. Charles, finding parliament so intractable, dissolved it, but further grants of funds being necessary to carry on his foreign wars he summoned another, which met in 1629 after Buckingham had been murdered. During the interval between the second and third parliaments the King had proceeded in the old way to collect taxes and otherwise continue the grievances complained of in the petition of rights. When parliament assembled complaints were at once renewed with increased emphasis, and the King to be rid of it dissolved the parliament without any act being passed. He then undertook to rule without a parliament, and it was eleven years till the next one convened. During this time he went on in

the old way, exercising arbitrary powers under claim of right by virtue of his royal prerogative. Though he was far less arbitrary and tyrannical than either Henry VIII or Elizabeth had been, the state of the public mind had become such, that acts, which attracted little attention and met with no resistance during those reigns, called forth the most vigorous protests and were generally condemned when perpetrated by his authority. The court of Star Chamber; which was established in the third Henry the VII as a court made up of the chancellor, lord treasurer, and keeper of the privy seal or two of them with a bishop, a lord of the council and the two chief justices of the King's Bench and Common Pleas, for the trial of specified cases; had greatly extended and abused its powers by condemning persons secretly, without allowing a jury trial, and therefore was very obnoxious. Another court, called that of High Commission, which exercised a similar arbitrary authority in ecclesiastical matters and the power of punishing offenders charged with heresy and other offenses of a religious character, was equally unpopular. When Charles finally yielded to necessity and summoned a parliament in 1640, the first business undertaken was an attack on Strafford his chief minister. The Protestant Scots were in open rebellion against the efforts of archbishop Laud to impose his system of formal worship, and the majority of the Parliament were in sympathy with the Scotch rebels. Thus the peculiar spectacle was presented, of a British Parliament backed by a Scotch army in its controversy with the King. Finding Parliament far more intent on redressing public grievances than on granting him supplies or upholding his authority, the King hastily dissolved it. He found it necessary, however, to soon summon another, which convened on Nov. 3, 1640, and is known in history as the Long Parliament. It began by pushing the impeachment of Strafford and caused him to be condemned and beheaded. After the passage of some acts of minor importance, by Ch. 10-16 Charles I the Court of Star Chamber, which had become so hateful, was abolished, and by Ch. 11 of the same session the court of High Commission was also put out of existence.

Chapter twenty prohibits the summoning of persons to take the order of knighthood, by which great extortions had been practiced by the King. By these acts the most potent instruments of arbitrary power were destroyed with the concurrence of Charles. Prior to that time all the judges had held office during the pleasure of the king and were his chief instruments of oppression, both in taking the lives of those he wished to destroy and in robbing people of their property through judgments rendered in the name of law. At the request of parliament all the judges were given new patents to hold office during good behavior, thus rendering them to some extent independent of the King. A rebellion of the Irish, who still adhered to the Catholic faith, was attended with great barbarities on their part, resulting largely from religious zeal. Parliament was more intent on remedying grievances than on subduing the Irish rebellion. A committee appointed for that purpose brought in a remonstrance against many abuses, which was published and vehemently discussed throughout the nation. The King published an answer to it. The Commons sought to limit the King's power by numerous restrictions and declared that the interposition of the Peers in the election of members of the House of Commons was a breach of its privileges. A majority of the Peers sided with the King, and the two houses could not agree on legislation. The clear preception of a multitude of abuses of governmental powers, which the sovereigns had long been accustomed to exercise, and the free discussion of them, led at once to a remarkable ferment of the public. Hatred of ecclesiastical usurpation could only find full expression coupled with hatred of civil tyranny. An abuse of power was seen to be an abuse whether under the guise of spiritual or temporal government. The pent up protests against the oppression of ages burst forth in all its gathered force, and the democratic spirit daily gained in strength and boldness. The King was slow to realize the force of the current and, when he did, he took rash measures to check it by causing a charge of treason to be lodged in the House of Lords against Lord Kimbolton and five of the leading members of

the House of Commons. A sergeant at arms in the King's name demanded the five members from the house, but the house asserted their privilege from arrest. The King then went in person to the house and demanded them, but as they were not present he got no answer. The excitement continued, and the claim of Privilege of Parliament suddenly grew into one of vast and continuing importance. The multitude sided with the House, and the King found himself without support. Not only the men but the women also joined in tumultuous denunciation of the Papists and in support of the Commons. The King retired to York and refused his assent to the acts of Parliament. The leaders formulated their demands and submitted them to the King, by which they sought to place the executive power in a ministry responsible to parliament, to secure the judges against the influence of the King, and wreak vengeance on the Catholics. The King, perceiving that the real purpose of Parliament was to effectually curtail his power, refused to make further concessions. Both sides prepared to use force and civil war ensued. The advantage was generally on the side of the King in the first stages of the conflict, but at the hard fought battle of Marston Moor the parliamentary forces under Cromwell gained a great victory. Attempts were made to come to a settlement of the controversy, but no basis of accommodation could be agreed on, and the Commons found time to proceed with the impeachment of Archbishop Laud whom they caused to be condemned to death by the vote of a shadow of the House of Lords, seven only of whom voted on the final decision. At Naseby the King met with a defeat which proved decisive of the war, and from that time on the success of the parliamentary forces was continued, until the King adopted the desperate expedient of delivering himself up to the Scotch forces, then assembled near London. After much negotiation the demand of the Scots of pay for their troops was acceded to by Parliament and £400,000 was agreed to be paid. Thereupon the King was delivered to commissioners appointed by Parliament. Then followed the usual difficulty ensuing after a civil war, the disposition of the

victorious army, clamorous for arrears of pay, and which Parliament desired to disband. Cromwell now shaped events. He first seized the person of the King and became the champion of the cause of the soldiers, at whose head he assumed authority. Dissensions had grown up between Presbyterians and Independents, in the House and out of it. Cromwell placed his dependence on the army. The King had the indiscretion to attempt escape from Hampton Court, where he was detained, but fell into the hands of Hammond, governor of the Isle of Wight, a devoted adherent of Cromwell. Various uprisings occurring in England and Scotland, Cromwell at the head of the army proceeded to restore order by the strong hand of military power. While he was thus engaged, the Parliament attempted to act independently and make a settlement with the King, by which the monarchy would be restored with limitations of power dictated by Parliament. Cromwell, having crushed opposition without, proceeded to enforce his mastery on the Parliament by purging it, *i.e.* excluding from its sittings the Presbyterian members who opposed him. The remaining members then proceeded with a high hand and having wholly ignored the lords, whom they could no longer control, they charged the King with treason and organized a court of 133 members, named by the Commons, to try him. The twelve judges were at first appoined among the number, but as they denied that the King could be tried for treason, they were left off the list. Like many other courts organized to take men's lives, it condemned the King, contrary to all established doctrines of English law, and he was executed. Other persons obnoxious to the dominant power in parliament were tried by a newly organized court and condemned to deoth. In the exercise of their newly acquired power Cromwell and his followers pursued substantially the same tyrannical methods that had been followed by the kings, and sentenced men to death by court martial and other judgments, when it suited their convenience to do so. In levying taxes they raised far greater sums than any king had ever obtained with or without the concurrence of Parliament, and much by methods as irregular as any of which

they had complained so loudly. Nothing could better illustrate the proneness of men intrusted with power and restrained by no effectual check to abuse it. The Parliament having killed the King assumed full governing power and under Cromwell's guidance exhibited remarkable vigor. Not only were all the adherents of the king in England forced to submit, but Ireland was reduced after a barbarous warfare, in which many people were ruthlessly slaughtered and refused quarter after defeat. The Scotch having refused to submit to the British rule and invited Charles II to take the throne on most humiliating conditions, war was waged against them till Charles after many adventures by the aid of loyal friends escaped through England to Normandy. Scotland was reduced to submission, and war was then waged on the sea against the Dutch with varying success. The Parliament having shifted attention from the achievements of the army to those of the navy, and having determined to reduce the land forces, Cromwell backed by his grenadiers entered the house of parliament, ordered its members to disperse and declared it dissolved. Soon afterward he convened a body of 128 persons, designated by himself from England, Scotland and Ireland, to whom he entrusted all powers of state, but he soon dismissed them after their having by a formal deed of assignment restored the supreme power into his hands. A council of army officers then bestowed on Cromwell the title of Protector and prepared what was termed "the instrument of government," which provided for a council of not more than twenty-one or less than thirteen to hold during good behavior. The Protector was given full executive powers, and he was to summon a parliament every three years and allow them to sit five months. A standing army of 20,000 foot and 10,000 horse was established. The war with the Dutch resulted in further successes for the British, and a peace was concluded on favorable terms. Cromwell then summoned a parliament, chosen at an election at which the franchise was restricted to those having estates of £200 value, of 400 members from England, thirty from Scotland and thirty from Ireland. After a session in which all the articles

of Cromwell's governmental scheme were discussed with great freedom, he became disgusted and dissolved the parliament. Another was summoned in which he secured a favorable majority by excluding many of those chosen who were opposed to him. This Parliament proposed to make him King, and he was very desirous of accepting, but such had been the force of his own teachings, that the army, on which he had at all times relied, would not consent to it; nor would the members of his own family consent, and he felt forced to decline. In 1658 Cromwell died, having ruled the three kingdoms with more vigor and achieved more success on the sea than any of the so-called legitimate rulers who had preceded him, without any settled system of government or recognized basis for his authority. He in fact gained general respect for his abilities and knew how to control an army, ever the surest support of despotic power. The judges he chose to administer the law are given credit for integrity and impartiality, virtues little known by their predecessors. The system of government administered was not a very radical change from that to which the people were accustomed. That part which always comes nearest the people, the courts, was a continuation of the old system with the most obnoxious tribunals, namely the Star Chamber and High Commission, eliminated, and with judges of more integrity and juries of far more independence. Parliament had always been regarded as an institution of the government, representative of the people. The great change was in the exaltation of its prerogatives and power, but even as to this the real power was still wielded mainly by Cromwell, styled protector, rather than king. By the religious agitation and the teachings of the Protestant preachers the multitude had been educated to deny the right of any human authority to dictate forms of worship, and the questioning of the right of the king to take his subjects' lives or property followed almost as a necessary corollary. Cromwell's rule, though tainted with many moral blemishes, was in all essential points an advance and improvement on what had preceded it. He was placed at the head of the state, not from the accident of birth but by capacity to organize and

rule. Parliament became a living force, exhibiting the intellectual power and impulses of many vigorous minds, instead of being a mere instrument of the king's will. Judges began to think of doing justice instead of seeking merely their own advancement by subserviency to the king. The House of Lords, which since the beginning of the war of the roses had been always filled with favorites and dependents of the king, faded into nothingness in a time when the foundation of their claims to power was scrutinized. Cromwell's great capacity was exhibited more strongly in the organization of the army and in the efficiency of his administration of civil affairs than in the destruction of ancient abuses. Efficiency of organization is equally essential in every form of government. Coöperation for the accomplishment of common ends is essential to all great achievements, and this implies, either that the multitude must follow the dictates of a leader, or must move in concert in accordance with established rules thoroughly comprehended by each so far as his conduct is affected. The former is the simpler combination, the latter the more advanced and efficient. Cromwell was a despot, who resorted to educational methods in the exercise of his power, as all great leaders necessarily do. He taught the soldiers obedience and mutual confidence. He taught the citizens obedience to law, which still lived on though the king's head was off. In these comments doubtless far too much is attributed to Cromwell, the leader. Many men of less note wielded potent influence in that period when capacity, rather than title, made leaders.

On the death of Oliver Cromwell the council recognized his son Richard as his successor. A new parliament was summoned and also a general council of officers of the army, but discord prevailed, no leader having either the ability or the authority to direct the councils of the nation, and no common tie existing of sufficient strength to induce harmony. Parliament was dissolved and Richard's authority was no longer regarded. Whatever existed of governing power was in the council of state. It was decided by them that the Long Parliament, which had been dispersed rather than dissolved

by Cromwell, should be reconvened, and about seventy of its members were gathered into a session designated as the Rump Parliament. Charles II prepared to invade the kingdom and assert his right, and the royalists everywhere made ready to support him. The rivalry between the officers of the army and Parliament increased, till it reached an open clash of authority, and the army under Lambert forcibly turned the members away, when they attempted to meet in the Parliament House. General Monk having succeeded in bringing the army under his command from Scotland and the Parliament having reconvened, it finally voted its own dissolution and issued writs for the election of a new one.

The elections resulted overwhelmingly in favor of the royalists. Parliament assembled and received a letter from the king, in which he promised liberty of conscience, recognition of the authority of Parliament in certain particulars, pay for the army, and a general amnesty, with such exceptions only as Parliament should make. The House of Lords again convened, the King was solemnly proclaimed and invited to return and take possession of the government. During the protectorship taxes were levied in the form of monthly dues, excise and customs. In 1653 the post house had grown to sufficient importance to be farmed out at £10,000 a year. The Puritans, to escape the persecutions of Laud in the time of Charles, had emigrated in large numbers to New England, where at the outbreak of the civil wars they were estimated to number 25,000. Among the zealous reformers of the commonwealth was John Milton, whose fame, like that of Shakespeare, was reserved for later ages. Charles on his accession named chief officers, who were generally satisfactory to the people. These were a chancellor, steward of the household, high treasurer and secretary of state. As the king had been recognized by the Parliament, the compliment was returned and the Parliament, though not summoned by him, received his recognition by formal act of Parliament. (Ch. 1. Charles II.) All judicial acts of the commonwealth were confirmed. Parliament excepted from the general amnesty those who had taken an immediate part in the execution of the king, and six

of his judges were tried and executed. In its grant of tonnage and poundage the Parliament fixed the rates to be charged on each article in a long schedule alphabetically arranged and published with the act, thus establishing a definite system of customs.

The spirit of independence, which had dominated the Parliament during the reign of Charles I, still lived under Charles II, notwithstanding the general feeling of loyalty to the king. The disposition to freely discuss all public matters in the House of Commons was manifest at each session. The king and the nobility were no longer the sole nor even the main representatives of the nation. There was a growing public sentiment among classes which in former years had taken no part in governmental affairs. Merchants, farmers, and mechanics, had their convictions in matters of religion, and were discussing state affairs. The attention of the public was now fairly turned toward foreign colonies and trade abroad. Rivalry with the Dutch, who had led both in manufacturing and ship building, brought on a naval conflict for the mastery of the sea, injurious to both and indecisive in result, one of the consequences of which, when peace was made, was the transfer of New York to the British. Though there was so much public discussion of public matters, it seems surprising that there could be such adherence to forms in the trials of persons charged with offenses, and so many cruel and unjust executions by judgments of courts. The virulence of religious prejudice must be charged with most of it. In attempts to enforce the acts for uniformity of worship many Scotch and other convenanters and noncomformists were cruelly murdered. On the charge of a popish plot to kill the king and reinstate popery many distinguished men were tried and condemned on the testimony of vile informers, and much innocent blood was shed. With the spirit of individuality and freedom, which had become so prevalent, there was a fierceness and brutality of a peculiar order, which perpetrated monstrous injustice in strict accordance with established legal forms. Here and there glimmerings of light appeared, and occasionally a jury acquitted an innocent man, but harsh and bloody

vengeance on those charged with an offense seemed to accord best with the fierce spirit of the age. From this reign the organization of those great political parties known as Tory and Whig dates, the former attached to the Crown, the latter asserting the rights of the commons, though in later years divisions have occurred of a wholly different character. From this reign also dates the assertion by Parliament of the right to direct the application of public moneys and be informed as to the use actually made of it. The independence manifested by the commons led to the bribery of members by the ministry in order to carry their measures through Parliament. This, though bad, was a better condition of affairs than that under the kings who secured the passage of their measures by intimidation and constraint of members, for it left the honest ones still free to act and to speak. In levying taxes the old systems were largely abandoned and new expedients adopted. Land taxes were based on value and taxes on incomes, bankers, money and stock were levied, with excise taxes and duties on imports. The first Parliament passed an act declaratory of a policy long pursued. It is entitled, "An act for the encouragement and increasing of shipping and navigation," and prohibits the importation of merchandise from the colonies in Asia, Africa and America, in any ships but such as belonged to people of the British Isles, under penalty of forfeiture of all of them, and excludes aliens from dealing as merchants or factors in the plantations. The same provisions were extended to importations from Russia and Turkey. By Ch. 24 of the acts of the first session the court of wards and liveries was abolished, and the feudal incidents to land tenure of wardships, liveries, primer seisins, ousterlemanis and forfeitures by marriage, were taken away, as was also all tenure by knight service, and all tenures thereafter to be created by the king were required to be in free and common socage. Purveyances were prohibited and, in lieu of the feudal revenues which had been enjoyed by the king, a far better source was provided in the excise taxes. Chapter thirty-five provides for the establishment of a post office, recites that several public post offices have been heretofore erected, and provides for the

appointment of a postmaster general. This was the beginning in England of that great postal system, which is now world wide and has become the most economical and efficient business establishment ever organized by man. Among the other important acts passed were ones, for the government of ships and forces at sea; for regulating corporations; to prevent vexatious arrests and delays in suits at law; against the Quakers; regulating the militia; requiring uniformity of public prayers and religious ceremonies; to prohibit printing seditious pamphlets, ect.; for the encouragement of trade; for the holding of Parliaments once in three years at least; prohibiting the importation of cattle from Ireland; for rebuilding the city of London (which had been nearly destroyed by fire); to prevent and suppress seditious conventicles; to prevent the planting of tobacco in England and regulating the plantation trade; against popish recusants; for the prevention of frauds and perjuries (the substance of this act, which requires certain contracts to be in writing, has been reënacted in substantially all English speaking states); for taking away the writ *de heretico comburendo;* requiring corpses to be buried in woolen, and providing the writ of *habeas corpus* to secure the liberties of subjects. Other acts relating to the king's revenue, and restrictive acts arbitrarily regulating manufactures or restricting trade, were passed, as well as some tending to a better administration of justice. It is to be observed that the best acts are usually either those repealing an existing law, or those prohibiting an abuse of his power by the king. Of the beneficial constructive acts that creating the post-office is the most notable, the others are of more dubious value. The marked progress of the nation went on, partly by reason of, but more in spite of the government. Restrictive acts affecting trade and manufactures were passed in the interests of favored persons and classes but the spirit of the nation was sufficient to go forward in spite of such obstacles. The capacity for combination and coöperation steadily developed in connection with the building of ships and the prosecution of trade and manufactures. Organizations of men to do useful things were formed outside the governmental system with

little assistance from it and often in spite of its interference. In these fields the great lords and landed proprietors had little part, but the landless younger sons and their descendants and the more humble traders and artisans, joining in gainful occupations, promoted commerce and its instrumentalities, and thereby made manufacturing on a larger scale practicable. It is of the nature of each useful and productive employment, that an exchange of products with those engaged in other industries is essential to a high degree of prosperity, while the wars of kings are destructive of the products of industry and restrict commerce. Yet through jealousy of their rivals in trade the British merchants encouraged war with Holland to their own great detriment, and the inordinate greed of traders has often since sought aid from the destructive agencies of the state.

James II came to the throne with an unquestioned title, but distrusted by the people because of his leaning to the Catholic religion. Though at first received with a strong feeling of loyalty, he was wholly wanting in tact as well as in steadiness of purpose. He not only offended the religious prejudices of the people by attending mass, in violation of the act of Parliament prohibiting its celebration, but placed Catholics in office without exacting the required oath. He proclaimed toleration of all religious beliefs, but this was in violation of the law, and as it was believed to be done solely in the interest of the Catholics, though applying in terms to the persecuted dissenters, it offended the latter as well as the adherents of the established faith. He also attempted to assert a prerogative right to taxes without a grant by Parliament. The most abhorrent acts of his reign were those following the attempt of the Duke of Monmouth, an illegitimate son of Charles II, to enforce a claim to the throne, backed in Scotland by the Duke of Argyle. The rebellious forces were quickly and easily overcome and cruel butcheries followed, but more cruel and cold blooded than those perpetrated by the soldiery were the executions for treason under sentence of that monster of judicial cruelty, Jeffreys, chief justice of England, who in a very brief time caused the death of 251 persons, many of

whom were innocent, but all of whom were found guilty by packed and coerced juries. James attempted to restore the Court of High Commission, and for that purpose appointed seven commissioners with unlimited authority over church affairs. Nothing more obnoxious could have been done by a Papist. When the storm of public indignation had been raised by the arrest, trial and acquittal by a jury, of six bishops, who remonstrated against his order to read his declaration of indulgence in all the churches immediately after divine service, and his eyes were open to the fact that he was without support in any quarter, he hastened to correct his errors by revoking all his most unpopular acts, but it was too late.

His son-in-law, the Prince of Orange, who had long been looked to by the Protestants, was invited into England, and having gathered and brought over a large naval force, was cordially received by all classes, even the army deserting and going over to him. James, finding himself deserted by the nation and his own family, was allowed to escape into France, and by his flight was regarded as having abdicated the throne. The succession of James I, King of Scotland, to the throne of England had been followed by the rapidly increasing independence of Parliament. James came as the legal heir to the throne and was recognized as such. The case of William, however, was different; he himself had no hereditary claim, and his wife was not then the heir, because of the birth of a male heir. But the son was not yet entitled to rule because James still lived and had not formally abdicated. The theory of the inheritance of kingly power was for the time definitely set aside. William and Mary had no foundation on which to rest their claims but that of the will of the nation expressed through Parliament. A distinct advance was thus made in recognition of the rights of the Houses of Parliament to represent the nation, and in the statute establishing the coronation oath the supremacy of the law over the king, as well as his subjects, was recognized. The ceremony prescribed required the administration of the oath by an archbishop or bishop in the following form: "The archbishop or bishop shall say, 'Will you solemnly promise and swear to govern

the people of this kingdom of England, and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same.'

"The king and queen shall say, 'I solemnly promise so to do.'

"Archbishop or bishop, 'Will you to your power, cause law and justice in mercy to be executed in all your judgments?'

"King and Queen, 'I will.'

"Archbishop or bishop, 'Will you to the utmost of your power maintain the laws of God, the true profession of the gospel and the Protestant reformed religion established by law? and will you preserve unto the bishops and clergy of this realm, and to the churches committed to their charge all such rights and privileges as by law do or shall appertain unto them or any of them?'

"King and Queen, 'All this I promise to do.'

"After this the king and queen laying his and her hand on the holy gospels shall say, King and Queen, 'The things which I have here before promised I will perform and keep, so help me God.' Then the king and queen shall kiss the book."

As the impulse which placed William and Mary on the throne was mainly a religious one, the early legislation was leveled against the papists and, while test oaths were still required, there was toleration of divergence of opinion among Protestants within certain limits fixed by statute. The people were not yet willing to leave the matter of religion to the free conscience of the individual.

With the accession of William and Mary came no radical change in the theory of government or the system of laws. There was merely an advance toward representative government. The great multitude were still deprived of all right of suffrage as well as of ownership of the soil. The ruling force was still the great landowners and the titled aristocracy. Those who had acquired wealth in the cities were accorded some representation, both in municipal affairs and in the election of members of Parliament, but the poor ignorant laborers everywhere were still excluded from all participation in public affairs and deprived of all facilities for gaining an education.

Privileged classes maintained their complete ascendency in accordance with a system of laws designed to accomplish that end. Inheritance of lands by the rule of primogeniture preserved great estates in the hands of a landed aristocracy. While the war of the roses and the barbarities of those times had resulted in the extermination of many of the leading families among which the kingdom had been divided by William the Conqueror, there were still as many titled aristocrats as ever. The king always had power to make them, and increased his own importance by raising his favorites to the peerage, for it has always been true that,

"A king can make a belted knight, a Marquis, Duke and a' that."

The great landholders whether titled or not have generally been the champions of privilege, which must always be synonymous with injustice. In England the landed aristocracy followed no useful employment, but regarded every useful citizen, who labored in any field other than politics, as an inferior. Idling, drinking, gambling, hunting and fighting in the early days, and horse-racing and other sports in later times, have been the principal employments of those favored with the privilege of taking a large share of the products of the labors of others without compensation. A great retinue of servants to do nothing but wait on the lord and magnify his importance, also supported by the labors of others, has always been deemed a mark of greatness. In times when the multitude were too poor to attend schools, wealth afforded a chance for further distinction from education. Some advantage has accrued to the nation from the studies of those who despised labor generally, but probably far less than if the opportunities had been better distributed, for many of the country gentry were too ignorant to read, and drunkenness and debauchery have at all times been more attractive to many of them than the strain of study. No country illustrates better than England the steady potency of that great moral law, which commands man to labor and promises due reward for it. Though for many generations the burden of supporting a vicious aristocracy and a more or less dissolute and pretentious priesthood

had been imposed on the multitude of ignorant and none too industrious or moral laborers, the advancement of England from its barbarism was due entirely to the efforts of artisans, merchants, teachers and other useful people. The idle and dissolute classes, who claimed superiority and enjoyed such extensive privileges, were always an incubus, retarding prosperity and often invoking the dire calamities of war and desolation. That useful activities are the source of all progress is so self-evident that it would seem that all men ought to recognize it from the slightest consideration, yet the strange fact exists that the privileged classes in all countries look down on and despise the useful ones. It was and still is so in England; yet the beginnings of its real prosperity were the introduction of useful arts from the continent, the advancement of knowledge concerning manufactures and trade, the building of ships and sailing to distant lands, and the exchange by the merchants of surplus British products for the surplus products of different sorts from other countries. The manufacturer, the ship builder and the merchant had already done much toward building England, when William and Mary came to the throne, not aided by but in spite of the dissolute aristocracy. Many of the aristocratic families had gone to ruin and poverty as the penalty imposed by nature on idleness, improvidence, debauchery and extravagance, and many great landed estates had already passed into the hands of those who had organized industrial forces and performed truly civilized services in the useful fields of industry and commerce. The ruling force of the nation no longer reposed exclusively in the robber kings and nobles, but the more enterprising and useful classes in the towns had some representation in the house of commons, now rapidly advancing into the position of the dominant political force in the kingdom. It need not be assumed that the motives actuating those employed in gainful callings were so superior. They too often asked and obtained from the kings and Parliament special privileges giving them unmerited advantages. The trade monopolies granted in such numbers by Elizabeth and other sovereigns were as unjust and faulty in principle as the

land monopolies of feudal times, and merchants and manufacturers have at all times been just as willing to receive them. The fundamental superiority however still remained with the industrialists, for no profit could be made without carrying on their useful activities, which were still of some value to the public though coupled with monopoly and extortion. No great reform in the direction of the abolition of privilege was accomplished when William and Mary took the throne, but an advance in the idea of government was made. Instead of a continued recognition of the ownership of the kingdom by the king as his property, the right of the people to choose a king was asserted and exercised. The many centuries of education in the law of land tenure and inheritance, of ecclesiastical tithes and privileges, of titles, preëminences and inherited right to rule, had done their work so well, that no attack was made on any of these, save the king's excessive prerogative.

The principal officers named by William, after he assumed authority, were the members of his privy council, two secretaries of state, privy seal, master of the horse, of the robes, of the ordinance, and twelve judges. Commissioners were named for the treasury, the admiralty and chancery, and to remove doubts as to this procedure an act of Parliament was passed authorizing the appointment of commissioners in lieu of a chancellor. The first act of Parliament in William's reign was one "for removing and preventing all questions and disputes concerning the assembly and sitting of this present parliament," which had not been regularly summoned. William and Mary were not the lawful heirs of the throne. The House of Lords was really the only constitutional body of recognized authority, but King and Commons joining with the Lords in an act of Parliament settled their own authority in a manner which the nation approved and sustained. A long act was passed levying a tax of twelve pence on the pound of annual revenue from lands and other property, and providing a mode for its collection and payment into the exchequer. The last section of this act contained the requirement, that an account should be rendered to the Commons in

Parliament of the use made of the money so levied. This was a new and striking recognition of the authority of the Commons and of the principle that taxes were levied for public purposes rather than as gifts to the king. Another act was passed containing elaborate regulations for the collection of an excise tax on beer, ale and other liquors. The Scotch Parliament also accepted William and Mary and tendered them the Crown of Scotland. In the British Parliament political parties had become arrayed against each other, and the struggle of Whigs and Tories for ascendency went on in parliament and at the elections for each succeeding parliament. James, having gained the support of France, invaded Ireland, where he received the support of the Catholics but was opposed by the Protestants. James met with such success at first that he was able to summon an Irish Parliament, which, being made up only of his adherents, was of course favorable to his interest. In Scotland he was supported by the Highlanders under the lead of Dundee, who gained a great victory, but lost his life, at Killicrankie. The battle of the Boyne, participated in by William in person, settled the question of supremacy in Ireland, and James again embarked for France, though his adherents continued the struggle for some little time thereafter. The massacre of the Jacobites of Glencoe by William's order evidences his willingness to maintain his authority by the most cruel and bloody deeds. No more cowardly or unwarranted massacre is recorded in history. The position of William as King was not such as that of Henry VIII, holding an undisputed title to the throne, for he held contrary to the theory of hereditary right. He therefore could not safely force Parliament to do his will by arbitrary arrests of recalcitrant members or other methods of coercion. He chose bribery as his system of control. By inviting a Hollander to rule England, Parliament placed on the throne a man far more intent on furthering the interests of his native state than those of England, and in the long and expensive struggle with the French King the resources of Great Britain were used to further the interests of their Dutch rivals, with whom they had been at war so shortly before, or at least what

were supposed to be their interests, for war rarely benefits the masses of the people of any country. By the bribery of members of Parliament of either party, as occasion required, William secured a majority for all his most important demands. The increase of foreign trade afforded new subjects of taxation, and custom duties were charged on all imported goods brought from India and China, and on numerous other articles brought from Europe or other foreign ports. An excuse was found in the necessity for protecting the shipping engaged in foreign trade from the attacks of the French, with whom they were at war. Peace would of course have been a far better protection, but the kings of these great countries did not choose to make peace. The era of trading companies was fairly begun. The East India Company sought, but was not accorded, a monopoly of the eastern trade. In 1692 a corporation named "the company of Merchants of London trading to Greenland" was created by act of Parliament with a stock of at least £40,000. The war with France afforded an excuse for a system of annuities, which were allowed to be purchased from the exchequer by payment of a gross sum to be used up in the war. The principal business of Parliament was still that of imposing burdens of taxation and calling out soldiers, sailors and mariners for the great war with France. The old parliaments had mainly followed the pay as you go system, but it was now found that by means of loans and annuities the money might be raised for immediate use and the burden of payment postponed. In 1694 Parliament passed "An act for granting to their majesties several rates and duties upon tonnage of ships and vessels, and upon beer, ale, and other liquors, for securing certain recompenses and advantages in said act mentioned, to such persons as shall voluntarily advance the sum of £1,500,000 toward the carrying on the war against France" by which certain taxes were levied, and provision was made for the incorporation of the Bank of England with a capital stock of £1,200,000. The leading purposes of Parliament in this act were to facilitate raising a loan for the war and at the same time furnish a desirable investment for subscribers to the stock. The act expressly allows members of Parliament to be stockholders. In this

manner a new form of combination was established, by which the government of England entered into a combination with certain citizens to carry on the business of banking and conduct the financial operations of the government. The idea was not new, as similar institutions existed in Italy and Holland. By a subsequent act provision was made for enlarging the capital stock of the bank, with many long and complicated provisions difficult to summarize. In 1698 a new rival East India Company was incorporated with exclusive privilege of trade to the East Indies, reserving a right to the old company to continue until Sept. 29, 1701. The two afterward consolidated during this reign. Another great company was chartered for the African trade. An inspection of the many acts relating to trade discloses the great attention it received and the efforts of individuals and companies to gain advantages by restrictive legislation, tending to secure to them either a complete monopoly of some branch of trade or some undue advantage in it. Sometimes the act took the form of an out and out monopoly as in the trade to India, sometimes by preventing the importation of foreign goods in competition with domestic, and again by prohibition of the exportation of raw materials like wool, hides, etc. Occasionally acts are found abolishing some special privilege, against which there was an outcry, but in more instances the motive of the law was to confer a special advantage on some favored ones. The corruption of the members of Parliament is much condemned by historians, as also is the system followed by William of carrying his measures by bribing members with money or by appointing leading ones to office. In considering the moral turpitude of these acts they should be compared with preceding rather than subsequent conditions. The idea of treating moneys voted to the king as merely trust funds to be used for the public good, had its beginning only in the reign of Charles II. Elizabeth did as she liked with the funds granted her. She bestowed public land or money on whomsoever she pleased, for service or out of mere favor, and scorned to account to anyone for it. Under William the trust fund theory had gained firm hold on the public, and the practice was

adopted of raising money by taxation and at the same time making express provision for its application. It had been started under James I but did not become a settled system till the reign of William. The fact that questions of this sort could be and were freely discussed, of itself evidences a marked advance in the public comprehension of the limitations of authority and the legitimate purposes of government. Though William obtained larger contributions than any of his predecessors, he took them under greater restrictions. Parliament had become the ruling force, and the king's prerogative had been greatly reduced. The policy adopted by him of changing his chief ministers in such manner as to have men in accord with the party majority in Parliament, though started as a mere expedient to accomplish his own ends, was the foundation on which ministerial accountability was built, which in time took substantially all power out of the hands of the king and vested it in the ministry, as representatives of the party having a majority in Parliament. The ruling class was divided into Whigs and Tories, and party strife became very intense. The real power of the kingdom was in the landed aristocracy and the men who had gained wealth by trade and other enterprises. The great multitude were still ignorant and poor and allowed neither a share of the face of the earth or of the accumulated knowledge of the past, nor were they given any voice in the government.

The adherence of the Irish people to the Roman church and to King James afforded an excuse for the confiscation of the greater part of the lands of the island, and was the starting point of that great system, through which a title to the soil of Ireland was vested in certain English favorites, to whom it was sold at a low price or given as a mere matter of favor; thereby placing all the native population dwelling on it at the mercy of foreign owners, who have often exhibited little or no regard for the rights or welfare of their tenants. Nowhere are the workings of theories of hereditary ownership of land, disconnected from occupancy, better illustrated than in the case of these Irish estates. Through the accident of birth the heirs of these first proprietors, who got a paper title

to vast estates without giving an equivalent, have from generation to generation been protected by the law, the courts and the army in whatever measures of oppression and extortion they have seen fit to adopt and enforce on the generations of native people born on the land. Nowhere else is the utter want of moral foundation for such a legal theory and system more strikingly exhibited. The tiller of the soil, who alone has done anything to make it produce, has often starved, while the crops he has raised have gone merely to gratify the pride and minister to the luxurious living of distant favorites of the law, who have done no service meriting any return whatever. Thus mere accident of birth is by law made the highest merit and given the greatest reward. The same system prevailed in England with the modification, that in most instances the owners lived on their estates more or less of the time and squandered their revenues on servants about them and neighboring tradesmen, while all was taken away from Ireland. The making of the laws was still quite as much in the hands of those favored by this system, after the House of Commons came to be a leading factor in the government, as before. The great landowners and men of great wealth chose the members, mostly from among their own number. Nevertheless real reform went on, the method of administering a fundamentally unjust system of laws was considerably improved. Procedure was gradually made a little less technical; sheriffs, bailiffs and other court officials were held to a mere strict performance of duty; contracts and such rights as the law gave were better enforced. Above all freedom to perceive the truth in relation to any matter and to express it steadily came to be regarded as less dangerous to the good order of society. The great educational process, through which errors are detected and discarded, was going on among the people, and the contentions of political parties and religious factions caused a continual challenging of the basis of claims of privilege and authority.

The essential division of the powers of state in England as subsequently maintained fairly dates from the reign of William and Mary. The House of Commons, as the direct rep-

resentative of the ruling class in the nation, was the leading force, the House of Lords held second place as a law-making body, the King was still the executive head, but required to act through ministers accountable to Parliament. The judges were liberated from the dictation of the king by holding tenure of office during good behavior, and subject to removal only by Parliament. In the act regulating the succession to the Crown, Ch. 2-12 and 13, William III, it is provided that no person to whom the crown shall pass shall engage in any war for the defense of any territory not belonging to the crown of England without the consent of Parliament, nor shall he go out of the three islands without such consent; that resolutions of the privy council shall be signed by such of the members as consent thereto; that no foreigner shall be made a privy councillor; that no officer or pensioner holding under the king should serve in the House of Commons; that judges should hold office *"quamdiu se bene gesserint"* with salaries ascertained and established; and that the law-making power shall rest in the king and two houses of parliament. These provisions, though not so often mentioned as the Magna Charta, were of far more real importance, in that they balanced power against power and made one arm of the government a check on the abuses of another, and especially because they effectually curbed the arbitrary power of the king.

On the death of William in 1701, Anne, Princess of Denmark, though not the heir in the regular order of succession, was proclaimed Queen; Charles being excluded on account of religion and she having been declared the next in the Protestant line. Among her first acts was a declaration of war against France, which continued until a treaty of peace was concluded at Utrecht in 1713. Many great battles were fought and great victories won under the leadership of the renowned Marlborough in the low countries, Germany, Spain and Portugal, but the main result of the war was vast expense, much bloodshed and misery. At the conclusion of peace England gained territory in America, which she has ever since retained. The public debt, which at the revolution in 1689 was £664,263 grew under William to £16,394,702 to which Anne added

£37,750,661 more, notwithstanding unusually liberal grants of revenue during both reigns. The wars and the voyages of the sailors were valuable in an educational way by bringing Englishmen in contact with the people of other countries and teaching them the geography, products and arts of other lands. The discovery of America and the opening of eastern trade had introduced many articles of food, clothing, etc., which had been unknown to Europeans before. Potatoes, maize and tobacco from America, spices, tea, coffee and eastern manufactures, had become important articles of commerce. While war went on the struggle for wealth continued and the spirit of adventure grew. The most valuable achievement of the reign of Anne was the union of Scotland with England, which was brought about by a treaty framed by commissioners appointed by the queen for each nation under authority of their respective parliaments. The leading features of the treaty were, that the crown of the united kingdom of Great Britain should be vested in the Princess Sophia and her heirs, as had been before settled by act of the English Parliament; that the United Kingdom should be governed by a single Parliament; that the subjects of each country should have equal privileges and share the public burdens under certain adjustments of customs and excise provided for; that the coin of Scotland should be made the same as that of England; that the laws concerning public rights, policy and civil government should be the same throughout the united kingdom, but that no alteration should be made which concerned private rights, except for evident utility of the subjects in Scotland; that the courts in Scotland should remain as before, subject to such regulations as Parliament might thereafter make; that heritable offices in Scotland should continue to the owners as property; that Scotland should be represented in Parliament by sixteen peers and forty-five commoners, to be elected in such manner as the then existing Scotch Parliament should provide; that Scotch peers should rank next after English and before those thereafter created, but should not be allowed to sit in Parliament unless chosen as provided. This treaty was ratified by the parliaments of both countries, though not without oppo-

sition, and on Oct. 23, 1707, the first British Parliament assembled at Westminster. The genius for organization, adventure and speculation continued to manifest itself among the people, and in 1711 the famous South Sea Company was incorporated with a monopoly of trade to the South Seas. The charter was granted to persons holding navy bills, debentures and other public securities. Although the reign of Anne was burdened with the moral reproach of a long continued and exhausting continental war, it stands greatly to her credit that no subject's blood was shed for a charge of treason.

On her death in 1714 the elector of Hanover was proclaimed King under the name of George I. He began his reign by dismissing the Tory officials and selecting Whigs. The adherents of the pretender, as he was styled, raised a revolt with considerable head in Scotland, but were crushed without much difficulty. The barbarous spirit again manifested itself in prosecutions for treason, both by impeachment and trials in the courts, and many persons were executed with customary barbarities of hanging, drawing and quartering, while others in large numbers were transported over the seas. As usual the martyrs included in their numbers some of the best men of the time. The desire for the fruits of the labors of others was still active among those near the throne, but the old method of seizing great estates and forcing the occupants to labor for the possessor had largely given way to newer and more refined methods of using the governing power for the benefit of the favored few. The public debt, incurred in foreign wars, had become the basis of the formation of great companies, which were given the countenance and support of the government in return for loans of money on public securities. Public revenues became payable to such corporations for interest on the public debt, and the people were induced to take their stocks on the faith of the support of the government and of the power and influence of the boards of directors, in which were included many of the leading men of the kingdom. The greatest of such corporations were the Bank of England, the East India Company and the South Sea

Company. Among others of less note were the Royal Assurance and London-Assurance companies. About 1720 the managers of the South Sea Company succeeded in arousing a spirit of wild speculation in its stocks. It had become the holder of a large part of the public debt, and through the arts of its managers came to be regarded as a source of unlimited profit. The craze became so great that £100 shares sold as high as £1,000 without any substantial reason for such a valuation. Other speculative corporations, projected to carry out more or less useful purposes, were formed in great number. The spirit of speculation took possession of great numbers of all classes and callings, and the most shrewd and unscrupulous for a brief time gained enormous profits, not from the fruits of legitimate business ventures, but from the sale of stocks in these corporations. Industry was abandoned by many and luxurious living and the vices, crimes and follies peculiar to the rich became prevalent. But prices of shares could not be advanced forever. When they began to fall, people awoke from their dreams to see the true character of the scheme in which their money was invested, and the inevitable crash and misery followed. Parliament acted with a vigor and effectiveness seldom exhibited there or elsewhere. An investigation was ordered through a committee, which discovered the gigantic frauds of the directors and their friends, who were required to disgorge their ill-gotten gains for the satisfaction of the defrauded stockholders. The tedious processes of the courts were dispensed with, the directors were required by Parliament to bring in inventories of their estates and an act was passed confiscating them to make good the damages resulting from their frauds. The practice of bribing members of Parliament to carry the king's measures through continued, and large sums were required to be raised by taxation to pay pensions and bribes given by the king. The principal business of Parliament continued to be to grant the king supplies of men and money for foreign wars, either entered on or threatened. The nation was both warlike and eager for gain. Foreign affairs had come to be a matter of great concern to the merchants, who found that in many in-

stances wars were destructive of their profits, while in others they imagined that their interests could be promoted by force. The division into Whigs and Tories and the constant presence in Parliament of a minority opposed to the ministry, caused public discussion of matters of interest, the discovery of the truth and adoption of an advanced moral standard. Though each party was violent and unscrupulous in its attacks on the other, the people judged between them, and a very small minority were influenced mainly by the truth. The multitude followed their blind prejudices most of the time. George, though not a man of either great ability or high moral purposes, maintained his power and was exceptionally successful in obtaining the support of his Parliaments.

The reign of George II was similar in main to that of his father. There were the same political parties and corruption. The government was still looked to by that class of crafty men, who everywhere surround the ruling force, as a means of obtaining wealth without meritorious service. Pensions were paid to favorites out of money collected by taxation, and the most venal and undeserving of men were rewarded with incomes they did nothing to earn. In the efforts to gain party advantage moral principles were appealed to to condemn adversaries, and though the evil practices continued, the public slowly gained some perception of the true principles of government. On the whole the reigns of the first three Georges were periods of increased power in the king and his ministers, though maintained by corrupt practices rather than by general acknowledgment of prerogatives. The morals of the people in the times of George I and George II are said to have been very low, but commerce and industries continued to expand. The impulses that pushed civilization forward came from active brains employed in useful callings, rather than from those more prominent persons, who in the king's councils or in Parliament merely sought wealth they did not earn and power to do evil. Under the Georges it is difficult to detect much of use to the public in the functions of government. The courts, though considerably improved through greater independence of royal favor, were still prin-

cipally employed in enforcing the privileges of the landed aristocracy, the demands of monopolists and other favorites of the government and the barbarous punishment of persons charged with crimes. Of the sums raised by taxation war took the major part, court favorites came next, and roads, bridges and public works a comparatively insignificant part. Foreign trade grew, rather in spite of governmental restrictions and burdens than because of its fostering care and protection. The enterprise of the merchant constantly found ways of utilizing the wealth of the distant quarters of the globe, notwithstanding the trade monopolies and the taxation imposed for the benefit of favored persons. The real progressive Britain was in the merchants' counting rooms, the factories abroad, the industrial establishments, on the sea, and among the truth seekers, who by speech and writing condemned the immoralities of the age. Though the king and his ministers continued to bribe members of Parliament to vote for their tax bills, the established system of inquiring into the use made of public money tended to check inordinate expenditure and to repeatedly call public attention to the fact that the money raised by taxation was mostly worse than wasted. The system of administration through a ministry accountable to Parliament was still in a tentative stage. The king claimed the right to choose his ministers and many supported his claim. The accountability of the ministry was essential to any effectual check on the king's conduct of the government, for the king himself could only be reached by revolution. It is a strange circumstance that in a country so far removed from Rome, by geographical position, by race, and yet more by the peculiar spirit of its institutions, the Latin language should have been so long used in the courts. It was not till 1731 that a bill was passed providing that thereafter all pleadings and processes should be in the English language. The Seven Years' war from 1756 to 1763, which involved not only the rival kingdoms of England and France, but also Austria, Russia and the rising power of Prussia, was known on its American side as the French and Indian War and invoked a cruel and bitter war between the colonists of the

respective countries in America and India. The result on sea and land was exceedingly favorable to British supremacy. In America Canada became and has ever since remained a British possession and in India the French were overpowered and British ascendency established. At sea British naval victories made England the first naval power of the world. To its mastery of the ocean Great Britain mainly owes its wealth and power. The surplus products of all lands are floated to its harbors for the use of its people. The expenses incurred in the war in America led to the question as to the share to be paid by the colonies and the method of imposing taxes on them.

The right to regulate the commerce of the colonies and all foreign possessions had always been claimed and exercised by Parliament, and was not seriously questioned, though the burden of the restrictions on exchanges in the most favorable markets was felt to be very heavy. In 1764 by Ch. 15, acts of 4 George III duties were imposed on various articles imported into the American colonies from Great Britain; on white sugar £1 2s. per one hundred pounds in addition to the duties imposed by former acts. On indigo 6d. per pound, coffee £2 19s. 9d. per one hundred pounds. Calico made in Persia, China or India and imported from Great Britain 2s. 6d. per piece of ten yards or less. Like duties were imposed on wines, silks and other cotton stuffs. The same act contains a prohibition on the importation of sugar into Ireland except from Great Britain and many elaborate provisions designed to secure to British merchants a monopoly of trade with the American colonies. Among other acts passed at the same session of Parliament was one giving a bounty on hemp and undressed flax imported from America; one permitting the exportation of rice from South Carolina subject to duty, and another prohibiting bills of credit issued in the colonies from being made a legal tender. All these acts were acquiesced in as the exercise of legitimate power. At the next session held in 1765, Parliament passed an act which met with a different reception. It is published as Ch. 12-5 George III and imposed stamp taxes, not only on all paper and parch-

ment used in legal proceedings in all the different courts in the colonies, or on which were written wills, deeds, contracts or bills of sale, but also pamphlets, advertisements, almanacs and many other publications. A tax of £10 was imposed on the parchment on which a lawyer's license to practice was written. Courts were prohibited from receiving in evidence any paper not duly stamped, and a penalty of £10 was imposed on any person executing an instrument without causing it to be stamped. The act was very long (twenty-four pages), and minute in its regulations. It provided for commissioners to sell the stamps and enforce their use. Unlike the duties on imports and exports these stamp taxes called for a direct contribution from each citizen, when it became necessary for him to use paper or parchment for almost any purpose, and the act was such an assertion of the sovereignty of Parliament as to challenge the attention of the people. Nothing could better exhibit the lack of understanding on the part of British statesmen of the spirit of the colonists, than the passage of so vexatious an act to be enforced on the liberty loving Americans. The ministry soon learned their mistake and found how utterly impracticable it was to enforce the law. In the next session of Parliament, held in the same year, Ch. 11-5 George III repealed the whole act, but this was most unwisely followed by Ch. 12, entitled "An act for the better securing the dependency of His Majesty's dominions in America upon the Crown and Parliament of Great Britain," which is sometimes called the declaratory act; in which it was provided "That the said colonies and plantations in America have been, are and of right ought to be subordinate unto and dependent upon the imperial crown and Parliament of Great Britain, and the King's majesty by and with the advice and consent of the lords spiritual and temporal and commons of Great Britain, in Parliament assembled, had, hath and of right ought to have full power and authority to make laws and statutes of sufficient force and validity to bind the colonies and people of America subjects of the crown of Great Britain in all cases whatsoever," and that all acts of colonial legislatures to the contrary are void. Though the vexatious stamp act had been

repealed, this act asserted the power of parliament to reimpose it or enact any other law or impose any other tax it might see fit. The colonists denied this power, because they were not represented in parliament. They asserted that taxes were grants made by the taxpayers through their chosen representatives to the king, and that this was a fundamental principle of the British constitution. At the same session of Parliament certain duties were removed. At the next session Ch. 46-7th George III was passed imposing duties on a few articles imported into the colonies. On white or red lead 2s. per one hundred pounds. Tea 3d. per pound. Glass, clear or white 4s. 8d. per one hundred pounds, green 1s. 2d. per one hundred pounds, paper of different grades at various rates.

The attention of the colonists having been aroused to the principle of taxation, even this mild measure was stubbornly resisted. The attempt to compel obedience to parliamentary authority by force was met by force. France and Spain seized the opportunity of the revolt of the colonies to cripple an hereditary foe and joined their forces against Great Britain. The result was the loss of the most valuable possessions of the British nation. The ideas of government entertained by the colonists were largely those prevailing in England in the time of Cromwell. The reaction which had ensued in England had not been felt to such an extent in America, where there was no distinctly aristocratic element of society. The adoption by the colonies of a republican form of government had no marked influence on British institutions. The laws of England, except as modified by legislative action, were adopted by the colonies, and the theories of government were generally the same, except as to the hereditary king and nobility. When the French revolution came, England was not affected as were the countries of continental Europe. Through its Parliament the nation had representation in the government, and there was a peaceable method for reforming the evils of government. The judiciary also was far more independent and enjoyed in a much higher degree the confidence of the people than in continental states. Above all much greater freedom of speech and of business combination and

enterprise was allowed in Great Britain than on the continent. In Parliament members were accustomed to freely express their views on all public matters, and pamphleteers made attacks in print on whatever they saw fit. This measure of liberty the ruling power of Great Britain, which now rested in the great landholders and capitalists, accorded to the masses. The descendants and successors of the ancient feudal barons still claimed most of the face of the country, which they held by descent or purchase in large tracts, but they were no longer the only wealthy class. Trade, industries and speculation had produced another wealthy and more active class, who gained seats in Parliament and often added to their wealth by special acts in the interest of themselves and their associates. Parliament had always been an aristocratic body. Ch. 20, 33, George II, enforcing the act of 9th Anne, required members of the House of Commons to swear that they were qualified to sit for the places for which they were returned. If elected as a knight of the shire, the member must have £600 a year income from lands, if a citizen, burgess or baron of the cinque ports £300. All the forces of a government thus constituted were arrayed against the principles of the great National Assembly of France, which proclaimed liberty, equality and fraternity. Some liberties the English people had long enjoyed, which were unknown in France and Continental Europe generally, but equality and fraternity were utterly repulsive and abhorrent to those who not only conducted the British government but also shaped public sentiment. The general effect in England of the French revolution was to strengthen the hands of the aristocratic element and to place the country in an attitude of intense hostility to French revolutionary ideas and to the French nation. Throughout the long struggle which ensued, England, the most liberal and progressive of the great European states during the preceding century, took its dogged stand as the most conservative and bitter foe to French liberty. For the long and destructive wars which devastated Europe and caused so much good blood to be poured out on the great battlefields, England is justly chargeable with

a large measure of responsibility. From that war the English people suffered far less than those of the continental states, over which the great armies under Napoleon and the combined forces of his foes fought. To the sea and the British navy the people of the isles owed security from invasion. British armies fought on the continent, and many good men were slaughtered in distant lands, but war's desolation on English soil was avoided. The policy of increasing the navy had been pushed with such success that, long before the final overthrow of Napoleon, the French fleets were destroyed and Great Britain was master of the seas. In 1800 the Irish Parliament, which was not much of a representative of the Irish people, consented to a union with Great Britain with a representation in the British Parliament of four lords spiritual, twenty-eight lords temporal, elected by the Irish peers for life, and one hundred members of the House of Commons. The semblance of Irish nationality disappeared with the termination of the Irish Parliament. This followed a rebellion, which had been crushed and punished with great barbarity, chargeable in some measure to religious prejudice and the bitter hatred existing between the Protestant Orangemen and the Catholics. Throughout all time it has been a part of the trade of rulers, civil, military and ecclesiastical, to claim the credit of all advancement in material interest of the nation, and to attribute all calamities and misfortunes of the people to their refusal to follow the guidance of the constituted authorities. During the long reign of George III the rulers provoked the disastrous war, which resulted in the independence of the American colonies. They also engaged in the long and bloody struggle carried on to crush the political truths promulgated by the leaders of the French revolution. Numberless good men were sacrificed in the strife, and a vast national debt was incurred which, though somewhat reduced, still burdens the English people. By the American war £121,267,993 was added to the principal of the debt and £601,500,343 during the French war. These items stand charged in the account against the rulers. There were other heads at work in the na-

tion, which wrought out far different results. In 1763 Wedgewood established the great Staffordshire potteries, in 1767 Hargreaves brought out the spinning jenny, and Compton's mule was finished in 1779. Cartwright conceived the idea of the power loom, and Watt's steam engine was made in 1768. Through these great aids to human effort the English people were greatly benefited, the productiveness of their labors multiplied, and industries and trade powerfully stimulated. In 1776 Adam Smith published his Wealth of Nations, in which he attacked the narrow, selfish policy of the government with respect to trade, and exhibited in its true light the manifold benefits of free and unrestricted exchange of products. The lessons he taught were not learned and digested sufficiently to be utilized till more than half a century had elapsed, but the time came when England profited immensely from the freedom of her ports. In 1815 the landholding aristocracy, true to their inherited narrow selfishness, obtained the passage of a law prohibiting the importation of corn till the price was above 80s. a quarter. With the growth of manufacturing interests came an ever increasing demand for a larger measure of political influence and better compensation for the mechanics and laborers. The great manufacturing towns of Birmingham and Manchester were without representation in Parliament. The laboring classes were no longer willing to be treated as of no importance, but the ruling classes resisted their demands and resorted to force to repress them. A great meeting having been called at Manchester in 1819, an attempt was made to arrest a popular speaker, followed by a charge of cavalry on the multitude, the killing of six persons and wounding of a far larger number. Free speech among those who have real grievances to complain of is always dangerous to those who profit from the wrongs, and in this case an effort was made to suppress it by force. The effect of the cruel slaughter was to further the cause of the laborers far more than any agitator's speech could have done.

In the reign of George III there was a remarkable increase in parliamentary activity. Long acts were passed on

a great variety of subjects, though with but a faint manifestation of a desire for justice. By Ch. 25-24, George III, the King was empowered to name six commissioners for the affairs of India, with power to superintend and control the civil and military government of the East Indies. The details of the government, however, were still left with the directors of the East India Company. This system of government by a corporation organized for profit had grown up and developed with the aid of the military power of Great Britain. The profits of the company were derived partly from trade and partly from taxation of the natives in various forms. The great British Empire of the East was started by the agents of a corporation, the primary purpose of which was to make money. The exercise of political and governmental powers grew as it was discovered that they could be wielded profitably. By the act above mentioned the British government assumed some powers of supervision, through the courts as well as the commission, over the affairs of the natives and the company. In the published statutes at large the acts of the reign of Edward I, called the great law-giver, cover 258 pages: those of Elizabeth's reign of forty-five years 413 pages, while in the sixty years of George III thirty-seven volumes, many of them of large size, were required to contain the acts of Parliament. It might be thought that so much legislation would result in radical changes of the system of laws, but it was not so. A very large portion of the space filled is taken up with tax bills, regulations of the excise, duties on imports and exports, land, income and other taxes, and directions as to the use of public moneys in repairing roads, bridges, harbors, etc. There are acts in great number designed to regulate, encourage or restrict various lines of trade and manufacture which have been repealed, renewed and amended to meet the changing views of Parliament or to favor the men or party in power at the time. It may occasion surprise to find how much has been attempted and how little accomplished by the many laws designed to affect trade and manufacturers. Real improvement in the laws came through the repeal of restrictive acts. Freedom in

commercial enterprise has stimulated trade and industry far more than any or all the laws designed to direct or encourage them. During the reigns of George III and George IV there was little regard paid by Parliament to the interests of the toiling multitude. The landed and moneyed classes were alone considered, though near the close of the reign of George IV there were growing demands for an extension of the elective franchise. The extreme selfishness and wanton cruelty of the ruling class is well illustrated by 9 Geo. 1 ch. 22 and 31 George II, ch. 42, which made it a felony, punishable with death, to break down the mound of a fish pond whereby any fish shall escape, or to cut down a cherry tree in an orchard. The indolent, cruel and selfish aristocracy did not hesitate to take the lives of the poor for so slight an interference with the unmerited privileges, which the law conferred on them by their exclusive license to fish and hunt and their artificial claims to the ownership of the face of the earth.

With the decay of the feudal system and the growth of the power of Parliament came increased severity in the laws relating to the punishment of crimes. In the early years the death penalty was never inflicted by the public authority, but only by the relatives of the murdered man in cases of homicide. Coke mentions only seven capital felonies, homicide, rape, burglary, arson, robbery, theft and mayhem. All these were originally subject to benefit of clergy, which in those times meant that the secular courts had no power to punish churchmen, and the church did not inflict the death penalty, but sought to purge and reform the offender. The privileges of the clergy began to be first reduced in the time of Henry VII, being taken away in cases of petty treason committed in the murder of a master. Under Henry VIII they were further restricted, and finally in 1827 by Sec. 6 Ch. 28-7 and 8 George IV, benefit of clergy was abolished, and by Sec. 7 the penalty was taken away, except in cases excluded from benefit of clergy or made capital by some subsequent act. Blackstone says (4 Com. 18) that, "among the variety of actions which men are daily liable to commit, no

less than one hundred and sixty have been declared by Act of Parliament to be felonies without benefit of clergy." This may possibly give an exaggerated idea of the number of capital offenses, for many particular offenses were made capital by Act of Parliament, which might naturally have been included under some general head. Ch. 27-9 George I, known as the Black Act, provided that if any persons armed or having their faces blacked or being otherwise disguised, should appear in any forest, etc., or in any warren or place where hares or rabbits were usually kept, or in any high road, open heath, common or down, or should unlawfully or wilfully hunt, wound, kill, destroy or steal any red or fallow deer, etc., they should be guilty of felony without benefit of clergy. This statute Stephens, in his History of the Criminal Law in England, says creates fifty-four capital offenses, yet it cannot be regarded as doing more than make it a felony to trespass on any game preserve. This act discloses very pointedly the cruel severity of the gentry of England, who to gratify their passion for slaughtering game made it a deadly offense for a poor man, really in need of it for food, to even go where he might get it, notwithstanding that by nature one man has as much right to take game as another. Most of the severe penal statutes were designed to protect the king, the nobility and the great landowners in that to which the law gave them an artificial claim. Treason, which was merely denial or resistance of the claimed right to rule, was most jealously ferreted out and cruelly punished. At the end of the seventeenth century of the crimes designated as felonies without benefit of clergy, there were high treason, petty treason, piracy, murder, arson, burglary, housebreaking and putting in fear, highway robbery, horse stealing, sheep stealing of a value above 1s. stealing from a person of above the value of 1s; rape and abduction with intent to marry. The whole course of the legislation of the eighteenth century tended to increase rather than diminish the severity of punishments, and no other country prescribed the penalty of death for so many petty offenses as Great Britain during that time. It is a noticeable fact also that a very large part of the

crimes are such as the unmerited privileges of the aristocracy invited. In acts passed in 1827, 1828 and 1830 the death penalty was still prescribed for robbery by force or threats to accuse of an infamous crime, sacrilege, burglary, housebreaking and stealing or putting any person in the house in fear, theft of £5 in a dwelling, stealing horses, sheep or cattle, arson, riotously demolishing houses, destroying ships, exhibiting false signals, murder, attempts to murder by poisoning, stabbing, shooting, etc., administering poison to procure abortion, sodomy, rape, connection with a girl under ten years old; forging the great seal, public securities, wills, bills of exchange or promissory notes; making false entries in certain public books of account, and forging transfers of stocks. This is a strange list of capital penalties to be inflicted by a Christian nation in the nineteenth century. Since then it is gratifying to note that the course of legislation has been steadily in the direction of repealing these savage penalties, until now only the crimes of treason, murder, piracy with violence, and arson of dockyards or arsenals are punishable with death.

The growing spirit of humanity was further evidenced by the acts 3 and 4 William IV, ch. 73 and 5 and 6 William IV, 4 ch. 45 abolishing slavery in the British colonies and providing payment to the masters. Doubtless certain private interests were promoted by the large expenditure of public money in payment for the liberated slaves, but the general purpose and effect of the acts were good. The slaves were first converted into apprentices and liberated after a prescribed term of service as such, not to extend beyond Aug. 1, 1840. Hours of labor were limited to firty-five in one week. By ch. forty-five 2 William IV, many important reforms in the constitution of the House of Commons were effected. Boroughs with very few inhabitants, which had theretofore had representation, were deprived of it, and the great manufacturing towns of Manchester, Leeds, Birmingham, Greenwich, Sheffield and others of importance, which theretofore had been without representation, were accorded two members each, and others of less importance one each.

The elective franchise in the counties was extended to all adult male freeholders, including copyholders having lands of the clear yearly value of £10, and also to certain tenants for years of lands yielding £10 net above the rent reserved. In the boroughs persons occupying as owners or tenants, houses of the rental value of £10 per year were allowed to vote for members of Parliament. The overseers of the poor were made registration officers and required to prepare lists of voters in the respective counties and boroughs, which were subject to revision by barristers named by the judges of the King's Bench. The expenses of the polling booths, deputies and clerks in charge of the election were required to be paid by the candidates, a provision which would be deemed very objectionable in the United States. In 1835 an act was passed as Ch. 76-5 and 6 William IV, entitled "An act to provide for the Regulation of Municipal Corporations in England and Wales," by which a general system of municipal organization in substantially all principal cities and towns except London was substituted for the special charters under which they had been governed theretofore. The franchise for the election of municipal officers was extended to all adult males, who should have occupied a house for the three preceding years and been rated and have paid rates for the relief of the poor during such time. The municipal government was placed under the control of a mayor, alderman and councillors. The councillors were elected by the burgesses by signed ballots, and from their number the aldermen were chosen by the councillors. One-third of the councillors were to be chosen annually and half the aldermen every three years. The mayor, aldermen, and councillors constituted the council, and the council chose a mayor annually. The election of councillors took place in November, and in March two auditors and two assessors were chosen. The council had supervision of the public property of the city and charge of police affairs. Though the elective franchise was greatly extended, a property qualification of £500 was required for members of the council, and occupancy of land and payment of rates was the basis of the qualification of voters.

It would be hard to imagine a law more unjust in principle than that by which taxes were imposed on the importation of food into a country usually requiring more than the home product. The effect of such taxation is necessarily to raise the price of all kinds of food so taxed, whether of domestic or foreign production. As Parliament was dominated by the great landowners, who were interested in keeping the price of grain as high as possible, it had long been the policy of Great Britain to collect a protective duty on imported grain. In 1846 after a great contest at the elections over this system, resulting in a majority favorable to its continuance, a famine in Ireland and great scarcity of food in Great Britain caused the ministry to propose and carry through a repeal of the tax. The justice and good policy of freedom in the purchase of food has been so obvious and the good effects of this repeal so generally appreciated, that Great Britain has steadily pursued a policy of throwing off restrictions on trade ever since. The Sepoy rebellion in India in 1857, which was suppressed with much bloodshed and barbarity, led to the assumption by the government of more direct rulership in India.

In 1861 by Ch. 67, 24 and 25 Vict. the government of India was vested in the Governor General and a Council, consisting of five ordinary members, three of whom were to be appointed by the Secretary of State for India in Council with the concurrence of a majority of the members present at the meeting from persons who had been in the service in India of the crown or company and crown for at least ten years, and the remaining two by the Queen, one of whom should be a Scotch barrister of five years standing, and the commander-in-chief in India might be added by the Secretary of State as an extraordinary member. When the council assembled in the Presidencies of Fort St. George or Bombay, the governor of the presidency became an extraordinary member, and when in the other provinces having a Lieutenant Governor, he also became an additional councillor for the purpose of making laws. The Governor General was also vested with power to appoint extraordinary members of the council for the purpose only of making laws, not less than six nor

more than twelve in number, one half at least of whom should be non-official persons and hold for two years. The Governor General was given power to fix the times and places of meetings of the council and to make rules for the conduct of business. He might assent to laws or refer them to the crown, but no law took effect without the assent of the Governor General or the Queen, and the Queen might disapprove of a law assented to by him and annul it. The legislative power so conferred was full and complete as to all matters except those covered by certain acts of parliament. Similar councils were provided for in the presidencies, to be presided over by the governors. Laws enacted by them were subject to the approval of the Governor General and might also be annulled by the Queen. The laws so made were operative only in the presidency for which enacted. In 1873 provision was made for winding up the affairs of the East India Company by Ch. 17-36 Vict. and for payment of the stockholders, whose stock was rated in the act as worth £200 for every £100 face. In this manner was terminated a most remarkable form of combination of private interests and governmental powers, and the government undertook the task of supervising the distribution among the stockholders of the proceeds of the great private enterprise, which had resulted in subjecting the vast empire of India with its hundreds of millions of people to the crown of Great Britain. For some generations it has been the claim and especial pride of Englishmen, that theirs was a government of laws, established by a representative Parliament or immemorial custom and administered by able and upright judges. Probably more power has been exercised by the courts, and their influence has been more general in England than elsewhere from remote times. The common law of England, which can only be found authoritatively stated in the decisions of the courts, has been often lauded, especially by the legal profession, and sometimes mentioned as the perfection of human reason. The courts have enjoyed the profound respect of the people generally, and the righteousness of their decisions has seldom been publicly questioned. Certain it is that there until recent times, the

people relied more on the courts for the enforcement of their claims of right, and that questions of law were given more consideration and weight than in the countries of continental Europe. It cannot be denied that judicial functions have been exercised by many able men in England for several centuries, and that a desire to do justice has been often manifested by them, but the genius of the whole system has required steady adherence to precedent and denied the judges liberty to do justice in cases where it has not been the custom to allow it. The fundamental purpose in early times was the enforcement of the privileges of the landed aristocracy, and later on of the clergy also. Though at first the barons maintained their dominion over the people by force of arms under a theory of ownership of the soil, and the clergy obtained their revenues partly through land tenure and partly through enforced contributions, the courts, acting in accordance with a fixed set of rules, were found convenient instruments for holding the poor in subjection and settling disputes between the privileged classes without bloodshed. The ideas on which the ancient landed nobility based their ascendency still prevail, so far as the theory of land titles is concerned, and the claims of the clergy to compulsory support by the people are still recognized in a modified form. The liberalizing influences, which step by step have advanced moral standards, have come mainly from the industrial classes and those engaged in legitimate enterprises for gaining wealth. Nowhere else, except perhaps in Holland, has there been such a general disposition to make foreign investments and promote new enterprises for profit. In the early explorations by sea all classes took part, and ever since then there have always been opportunities for men of ability in any social rank to gain wealth, and having acquired it to receive protection in its possession from the courts. Though using the most clumsy and inconvenient system of money, weights and measures, the British nation has always had a remarkable genius for computation of values and profits, and as an aid to such computations to gather statistics and information of all kinds. This propensity for gathering information, coupled with adherence to precedent and a pro-

found respect for everything British, has led to some peculiar results. The money center of the world has a barbarous, inconvenient and uncouth system of accounts, using pounds, shillings, pence and farthings to express values and sums of money, and the greatest commercial nation on earth uses units of measurements and quantities quite incomprehensible to many people instead of the decimal metric system in use on the continent. The country where courts were most regarded and resorted to, for centuries had a system of courts and methods of procedure in the disposition of causes so intricate and complicated, that a suitor could seldom tell to what court he should apply for relief nor, having chosen his court, could he safely rely on the ability of his lawyer to follow intricate legal forms and get to a decision of the case on its merits. There were ecclesiastical courts, lay courts, local courts of special limited and peculiar jurisdiction, admiralty, exchequer, probate, bankruptcy and other courts dealing with special subjects; then there was the great division into law and equity with power in the latter, in a great line of cases, to step in and deprive a suitor of his rights under the law, because other rules called rules of equity conflicted with the law. Thus in the early days a suit on a bond at law was always for the full penalty, though the bond in terms provided that it should be void on payment when due of a less sum which it was given to secure, and the law courts always gave judgment for the full penalty. But the chancellor, sitting as a court of equity, would always enjoin the plaintiff from collecting more on his judgment than the amount of money really due. Courts of law could give no relief from mistakes in written contracts. Courts of equity undertook to reform them in accordance with the original purpose of the parties. The courts of law for centuries paid more regard to form than to right. The forms of pleadings, the choice of remedies and mode of procedure were stumbling blocks over which any suitor was liable to fall. Following the rule that it is for the court to decide only the exact question before it, the plaintiff frequently failed to obtain relief because his attorney had chosen the wrong form of action, but the court would not indicate the

right one, and often a second suit would result similarly. The choice of courts might lead to the same result, if the wrong one was selected and he was forced to begin anew. There was the court of *"piepoudre,"* dusty feet, held by the steward of the person entitled to the tolls of a fair or market, with jurisdiction only to decide causes arising from dealings at that fair or market, a very summary court, which generally decided causes on the very day they arose. The court baron was incident to every manor, held by the steward within the manor, and dealt with the rights of tenants of copyhold estates. There was also a common law court bearing the same name, held by the freeholders of the manor with the steward as registrar, with jurisdiction over rights to lands within the manor and some personal actions involving less than forty shillings. The hundred court was similarly constituted with similar jurisdiction over the hundred. The county court, presided over by the sheriff, had a more general jurisdiction over minor causes and was much more frequently resorted to. In early times it was a court of much importance, presided over by the bishop and ealdorman, with the principal men of the shire as judges. The court of Exchequer Chamber was originally vested with jurisdiction over causes for the collection of the king's revenues and looked after the revenues of the crown, but it afterward came to exercise both common law and equity jurisdiction in nearly all kinds of causes. As a court of equity it was made up of the lord treasurer, the chancellor of the exchequer, the chief baron and three puisne barons. The treasurer and chancellor took no part in the exercise of the common law jurisdiction of this court. Its jurisdiction of causes between private persons was based on the fiction, that the complainant was a debtor to the king and his ability to pay was affected by the wrong of which he complained. Superior in rank to all the foregoing courts was the court of Common Pleas, sitting at Westminster with general jurisdiction over common law actions between private persons. Above this and highest of the common law courts was that of King's Bench, composed in Blackstone's time of a chief justice and three puisne justices, with general

jurisdiction of all common law cases, civil and criminal, and general supervision of all inferior courts and power to reverse their judgments. The king himself sat in this court in early times and was regarded as personally present by a legal fiction in all later times. It had appellate jurisdiction by writ of error, not only in causes arising in Great Britain, but also from the court of King's Bench in Ireland. The High Court of Chancery, presided over by the chancellor or lord keeper of the great seal, the highest officer under the king, was one of very extensive powers. It exercised common law powers in a limited class of cases and was the office of justice from which all original writs and commissions under the great seal were issued. Its equity jurisdiction was much more extensive and important than its common law powers. In early times it is said that the chief judicial employment of the chancellor was in devising new writs, to afford remedies where none were afforded by the writs in use, but later by subpoena the defendant, against whom complaint was made and equitable relief sought, was required to appear before the chancellor and the cause was determined by him. Blackstone gives the principal credit for the establishment of the system of equity practice to Heneage Finch, Earl of Nottingham, who became chancellor in 1673. Above all these courts was the House of Lords from which writs of error might issue to the Exchequer Chamber, the King's Bench and the High Court of Chancery, but which had no original jurisdiction. The great courts had their permanent seats at London, but circuit courts were held by the king's special commission in all parts of the kingdom for the trial of civil and criminal causes by jury and the determination of issues of fact. These courts were commonly called courts of assize and nisi prius. Besides these were the ecclesiastical, military and maritime courts and a great number of courts of special, local and limited jurisdiction, in the cities and towns, at the universities and elsewhere, to describe all of which would consume unnecessary space.

In 1873 a comprehensive reform of the whole system of courts and procedure was undertaken by parliament. Ch. 66-36 and 37 Vict. consolidated the old High Court of Chancery,

Court of King's Bench, Court of Common Pleas, Court of Exchequer, High Court of Admiralty, Court of Probate, Court for Divorce and Matrimonial Causes, and London Court of Bankruptcy into one Supreme Court of Judicature in England, divided into the High Court of Justice and the Court of Appeal. The High Court of Justice is constituted of the Lord Chancellor, Lord Chief Justice, the Master of the Rolls, Chief Justice of the Common Pleas, Chief Baron of the Exchequer, the Vice Chancellors, Judge of the Court of Probate and of the Court of Divorce and Matrimonial Causes, the puisne judges of the Courts of King's Bench and Common Pleas, the Junior Barons of the Exchequer, and the Judge of the High Court of Admiralty; except such of them as are made ordinary judges of the Court of Appeal. Vacancies afterward occurring are to be filled by appointment by the crown from persons possessing the prescribed qualifications. The Court of Appeal is constituted of five ex-officio judges thereof, and so many ordinary judges not exceeding nine as the crown may appoint. The ex-officio judges are the Chancellor, Chief Justice, Master of the Rolls, Chief Justice of the Common Pleas and Chief Baron of the Exchequer. The judges hold office for life, subject to removal by the king on address by both houses of Parliament. Judges are disqualified from sitting in the House of Commons. The ordinary judges are allowed salaries of £5,000 per year, and those of higher rank larger sums. Three of the judges are allowed secretaries with salaries of £500 per annum and all are given two clerks with salaries respectively of £400 and £200.

All the jurisdiction exercised by the various courts so consolidated and divers others named in the act is vested in the Supreme Court of Judicature, and all the judges are authorized to administer law and equity in any cause coming before them. Though the distinctions between the rulers of law and of equity are still preserved, the courts are authorized to apply them in any case and to administer both in the same action. All the old, narrow, technical rules which occasioned so many failures of justice were swept away, and a simple and comprehensive system established with modes of procedure de-

signed to afford speedy remedies. Plain rules for the distribution of business are laid down, with power in the court to correct mistakes with reference to the division of the court before which the cause is to be heard and to permit all amendments calculated to promote justice. Appeals may be taken from the High Court of Justice to the Court of Appeal. In 1875 a further act was passed, Ch. 77-38 and 39 Vict., to more fully carry into effect the reforms inaugurated by the act of 1873. Some slight modifications of the number of judges and constitution of the courts were made, and the London Court of Bankruptcy was restored as a distinct court, subject to appeal to the Court of Appeal. Provision was made for regulating the holding of assizes and sessions for the trials of issues of fact by Orders in Council and for the regulation of various matters by rules of court to be submitted to parliament and subject to be annulled by it. The Rules of Court appended to the act prescribe the practice to be followed in the courts. Every action in the High Court is commenced by summons, on which must be endorsed a statement of the nature of the claim made in the most concise and general terms and the address of the plaintiff's solicitor. The summons may be issued out of any registry and the cause assigned to any division of the court and to such judge by name as the plaintiff may think fit, subject to the power of the court to transfer it on motion to any other division. The defendant is required to enter his appearance in eight days after service of the summons, and, except in certain cases provided for in the rules, the appearance must be entered in London, and if so entered there the cause will proceed there. If a defendant resides in the district from the registry of which the summons issued, he shall appear in that district registry. If no appearance is made by the defendant, final judgment may be rendered against him. All persons in any manner interested in the controversy may be made parties, and great liberality is allowed in joining different causes of action, subject to the power of the court to try different issues separately where deemed best. After the appearance of the defendant, unless he states that he does not require a state-

ment of the complaint, the plaintiff must within the time fixed by the rules deliver to the defendant his statement of complaint and the relief demanded; the defendant then delivers to the plaintiff a statement of his defense, to which the plaintiff may reply. Where questions of law are presented by the facts stated in a pleading, the court may proceed to consider and determine the law questions before hearing proof as to the facts. All appeals to the Court of Appeal are by way of rehearing, and no bill of exception is required or other proceeding in error in ancient form. The court on hearing the appeal does not review the errors committed by the trial court, but may allow amendments, hear further evidence, give any judgent and make any order that ought to have been made by the trial court. The original papers and the notes of evidence taken at the former hearing may be used. The various points of practice are most fully and clearly covered by the rules, and to them are appended forms of the various writs and pleadings to be used, framed in simple and pointed language. After having had the most complex and in many respects absurd and unreasonable system of practice in its courts, England can now fairly claim to have the simplest, most comprehensive and excellent system of courts and code of practice of any country in the world. By Ch. 59-39 and 40 Vict. appeals are allowed from the Court of Appeal in England and certain courts in Scotland and Ireland to the House of Lords. No appeal can be determined in the House of Lords unless there are present three of the following persons: The Chancellor, the Lords of Appeal in Ordinary and such Peers of Parliament as hold or have held high judicial offices. The Queen was authorized to appoint two Lords of Appeal in Ordinary with salaries of £6,000 per year. The House of Lords was authorized to sit during any prorogation of Parliament or dissolution if authorized by the queen for the purpose of hearing causes. These acts were followed by that of 55 and 56 Victoria Ch. 43, which establishes a uniform system of county courts and prescribes a simple system of procedure therein. The Lord Chancellor is authorized from time to time to appoint not exceeding sixty

judges for these courts. Provision is made for the abolition of manorial and many other inferior courts, and the jurisdiction of most causes involving small sums is conferred on the county courts. While the excellence of this code is so marked, the fact should not be overlooked that the constitution of all the courts still accords with the aristocratic ideas which have so long dominated in England. The unearned and unmerited priviliges enjoyed by the nobility, the landed and moneyed aristocracy, are not likely to be diminished by any action of the courts. The judges are paid excessive salaries and thereby led to believe in the appropriation of public moneys for the benefit of the ruling class in unreasonable ways. The highest judicial officers are always added to the ranks of the titled nobility, and the final decision of all questions of law is still vested in the House of Lords, which stands as the representative and beneficiary of the injustice of the governmental system, and should be rated morally as an exponent of a moribund system of oppression. It has less of the spirit of progress and of the sense of natural justice due from man to man and from the state to its citizens than any other great representative body in England. The evil of conferring this final jurisdiction on a body wholly made up of persons accorded special, and for the most part wholly unmerited privileges and distinction, is not in practice nearly so great as might be expected, for the causes are decided mainly by the trained judges, who in matters relating to trade and commerce, on which the prosperity of Great Britain rests, exhibit a most enlightened sense of justice.

There is still another tribunal, unique in its composition and functions, which was established by Ch. 41, 3 and 4 William IV, in 1833 for the determination of appeals from India and the various colonies and dependencies of the British Empire. It is styled "The Judicial Committee of the Privy Council," and as first established was made up of the President of the Privy Council, the Lord Chancellor and such other members of the Privy Council as shall hold or have held the office of Lord Keeper or First Commissioner of the Great Seal, Chief Justice of the King's Bench, Master of the Rolls,

Vice Chancellor of England, Lord Chief Justice of the Common Pleas, Lord Chief Baron of the Court of Exchequer, Judge of the Prerogative Court of the Archbishop of Canterbury, Judge of the High Court of Admiralty, Chief judge of the Court of Bankruptcy, and the King might appoint two others. At least four of these were required to be present at the hearing of a cause. By the Act passed in 1908, 8 Edw. 7, ch. 51, persons having held the office of Chief Justice of the High Court of India and some others designated in the act, being members of the Privy Council, were added to the list. This tribunal has no jurisdiction of appeals from any domestic tribunals, but only from the colonies and dependencies. Controversies are decided by this tribunal in accordance with the law of the place where they arose which is applicable to them, whether it be the Code of Manu or the Koran in India, or the Acts of the Canadian, Australian, New Zealand or other colonial Parliament. The determination of the Committee is put in the form of a report on the case but has all the force and effect of a judgment, and Sec. 21 of the Act of 1833 provides for carrying it into execution.

Most of the leading nations of Europe and America have recognized the duty of providing for the education of the people as resting on the government. Though England has long had universities of very high rank and many schools of various degrees of usefulness, it has never established a complete system of free schools. The elementary education act of 1876 Ch. 79-39 and 40 Vict. makes it the duty of parents to cause their children to be instructed in reading, writing and arithmetic and provides for public assistance in the payment of tuition to the amount of 3d. per week, where parents not paupers are unable to pay. Excuses for failure to so educate are defined by statute, among which is one that there is no public school within two miles. By subsequent acts many further improvements have been made. From an early period England has been perhaps as well supplied with private schools as any country, and the education of children has always been looked on as mainly a private concern of parents. People of wealth have generally paid much attention to the instruction

of their own children, but the public policy, which provides instruction for all at public expense and enforces attendance, has never been fully adopted. Still the improvement in late years has been very marked, and the United Kingdom of Great Britain and Ireland now ranks in average attendance at school below only Scandinavia, Germany, Switzerland and the United States. Ch. 87-38 and 39 Vict. entitled "An act to simplify Titles and facilitate the Transfer of Land in England," provides for the registration of land titles and all interests and encumbrances on freehold lands and for the determination by a registrar as to the ownership of lands. This is not a recording act, in the sense in which the term is used in America, but makes provision for a record showing the present ownership of the land and the encumbrances thereon. It is a very radical change from the ancient system of transfers by verbose instruments, but aside from affording evidence of title it makes no change in the land laws of the kingdom. Though intended to simplify, the peculiarities of English land tenure make necessary elaborate and rather complex and confusing regulations, including an appeal to the courts for the determination of disputed titles. No change has been made in the rules of inheritance or the theory of land tenure. Ch. 36-38 and 39 Vict. Artizans and Laborers Dwellings Act, 1875, makes provision for the improvement of unsanitary districts in the cities in England, and Ch. 49 of same session in Scotland also, in accordance with a plan proposed by the local authorities and ratified by Parliament: for condemnation of the grounds, where the owners do not consent to make the improvement, and for the prosecution of the work at public expense. The details of each improvement are to be worked out by the local authority according to the needs of the particular district, no general system being attempted. The general purpose of the act is a most excellent one, and a most difficult problem has been dealt with in a manner calculated to, and which in fact has already resulted in much alleviation of the miseries of the dwellers in overcrowded sections of the great cities.

In its institutions for higher education Great Britain is even

farther behind the other leading nations, having but eleven universities with 13,400 students, to twenty-one in Germany with 26,680 students and three hundred and sixty in the United States with 60,000 students. In no other Christian country is wealth so unequally distributed. The late Queen was granted an income of £385,000 besides the revenues of the duchy of Lancaster of £50,000 per year, and other members of the royal family received £252,000, in return for which no valuable public service was required. These expenditures are merely to maintain the idea of united authority and the display of royalty. Mulhall states the incomes of the people as follows: Gentry 222,000 families with average incomes of £1,500, amounting annually to £333,000,000. Middle, 604,000 families with an average income of £400. Trades people 1,220,000 families with average incomes of £200 and working people 4,474,000 with incomes of £97 per year. Below these there were in 1889, 1,015,000 paupers and 25,100 criminals charged on the public. Though this showing is an exceedingly strong impeachment of the general system prevailing, there has been a marked improvement in the condition of the working classes during the last century. The last half of the century has been a period of great moral progress and many admirable reforms. Popular representation is no longer altogether mythical. The election laws go into many elaborate details but speaking generally the elective franchise for members of the House of Commons is now extended to freeholders owning property of the clear rental value of 40s. per year and householders, and lodgers paying an annual rent of £10 and to some other householders and lodgers who pay taxes, and the voting is by secret ballot. As we have seen the school system has been greatly improved, and while in 1830 at the time of the establishment of the Board of Education they were allowed but £30,000 to expend on schools, the expenditures of 1906 are given at £22,000,000.

Reference is often made to the British constitution, and judging from recent history no country has a more firmly settled form of government, yet there is in fact no written constitution, and the limitations on the powers of the king,

the Parliament and the officials exercising authority under them are nowhere clearly and authoritatively defined. Though the king now is generally regarded as a mere symbol of authority in fact exercised by the leaders of the party having a majority in the House of Commons, his ancient prerogatives have never been formally annulled. His assent is necessary to every act of Parliament, he is the fountain of honor and vested with power to appoint to the great offices. It is through his general sovereignty that the theory of unity of the vast colonial empire is maintained. A king, disposed to rule in fact, would have ample basis of law for the exercise of his authority. The marked peculiarity of the British government, however, is that this very indefiniteness in its constitution admits of the adaptation of the governmental system to the peculiar conditions prevailing in different parts of the empire. The United Kingdom is ruled in accordance with the laws enacted by Parliament, and generally legislation is moulded by the elective branch, the House of Commons. The refusal of the House of Lords to assent to tax bills and other legislation passed by the Commons occasioned the Parliament Act of 1911 below mentioned. In no recent instance has the king refused his concurrence. In practice the Ministry, representing the majority party of the Commons, introduces the important bills as government measures, and the defeat of such measures is usually followed by the resignation of the ministry thus left without the support of Parliament. The nominal head of the whole empire is the king, the actual head is the cabinet, which may be made up of the First Lord of the Treasury (Prime Minister), the Lord Chancellor (President of the House of Lords), the Chancellor of the exchequer, the Lord President of the Council, and the Secretaries of State for the following departments, Home, Foreign Affairs, Colonies, War, and India, the first Lord of the Admiralty, the President of the Board of Trade, the President of the Local Government Board, the Postmaster General, the first Commissioner of Works, Vice-President of the Council of Education, the Chief Secretary of the Lord Lieutenant of Ireland, the Secretary for Scotland and the Chancellor of the Duchy of

Lancaster. The constitution of the cabinet has never been regulated by any act of Parliament, and it has varied in recent years in the number of persons included in it, the first nine being nearly always included and one or more of the others often omitted. In theory and historical continuity these are the counsellors and advisers of the king, chosen by him to assist in the government of the kingdom; in fact they are the ruling power, not only at home, but also in those parts of the empire ruled from England. They lead the majority in Parliament and in the most essential particulars dictate the legislation. They are inferior to the House of Commons only from the fact that they are at all times dependent on its support. A vote of want of confidence in the ministry or the defeat of a government measure necessitates the retirement of the persons filling the cabinet positions and the choice of others having the confidence of the House. The number of members of the House of Lords fluctuates, being 515 in 1898, including a varying number of princes of the blood royal, two archbishops, twenty-four bishops, sixteen Scottish peers, elected for each parliament by the peers of Scotland, twenty-eight Irish Peers elected for life, and the balance peers of the United Kingdom. The House of Commons then had 670 members elected from the constituent countries as follows: England 465, Wales thirty, Scotland seventy-two, and Ireland 103. This gives to England a clear majority over all, and no measure can pass without English support.

Repeated refusals of the House of Lords to concur in the passage of acts sent up from the House of Commons after popular approval of the acts had been given through dissolution and election of new members of the House, led to an important change in the constitution in 1911. The Parliament Act, 1 Geo. V. ch. 13, makes provision for regulating the relations between the two Houses of Parliament. The Preamble states that it is intended to substitute for the House of Lords a Second Chamber constituted on a popular, instead of an hereditary, basis, but that such substitution cannot be immediately brought into operation; that provision will hereafter require to be made in a measure effecting such substitu-

tion for limiting and defining the powers of such Second Chamber, but that it is expedient to make such provision as appears in the Act for restricting the existing powers of the House of Lords.

If a money bill which has been passed by the House of Commons and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up, it shall unless the House of Commons direct to the contrary, be presented to the Sovereign and become an Act of Parliament on receiving the Royal Assent, notwithstanding that the House of Lords has not consented to it. The act defines what are money bills and provides for a certificate by the Speaker of the House which is conclusive of the character of the bill.

If a public bill (other than a money bill or a bill extending the maximum duration of Parliament beyond five years) is passed by the House of Commons in three successive sessions (whether of the same Parliament or not) and, having been sent up to the House of Lords at least one month before the end of the session, is rejected by the House of Lords in each of those sessions, it shall, on its rejection for the third time, unless the House of Commons direct to the contrary, be presented to the Sovereign and become an Act of Parliament on receiving the Royal Assent, notwithstanding that the House of Lords has not consented to it. This provision does not take effect unless two years elapse between the date of the second reading in the first of the sessions of the bill in the House of Commons and the date on which it passes the House of Commons on the third of those sessions.

A bill is rejected by the House of Lords if it is not passed by that House either without amendment, or with such amendments only as may be agreed to by both Houses. The House of Commons may on the passage of a bill through the House in the second or third session suggest any further amendments without inserting them in the bill. Any such suggested amendments are to be considered by the House of Lords, and, if agreed to by that House, are treated as amendments made

by the House of Lords and agreed to by the House of Commons; but the exercise of this power by the House of Commons does not affect the operation of the section in the event of the bill being rejected by the House of Lords.

Any certificate given by the Speaker is conclusive and cannot be questioned in any court of law.

The territories ruled by Great Britain may be divided generally into 1. Those having representative governments with ministers responsible to popular bodies, including Canada, Newfoundland, Queensland, New South Wales, Victoria, South Australia, West Australia, Tasmania, New Zealand, and Cape Colony. 2. Those having representative governments but subject to veto on their legislation by the home government and to the appointment of officials by the crown, including Isle of Man, Channel Islands, Malta, Cyprus, Ceylon, Mauritus, Bermudas, West Indian Islands, British Guiana. 3. Crown colonies, ruled by the home government, Gibraltar, India, Aden, Perim, Straits Settlements, Hong Kong, African possessions other than South Africa, British Honduras, New Guinea, Fiji Islands and Faulkland Islands. Besides these there are various districts over which Great Britain assumes a protectorate, without having instituted any settled government, including Borneo and much of Africa. Since the loss of the American colonies in 1776 Great Britain has pursued a most wise and liberal policy toward colonies settled by British and other European emigrants in distant parts of the world. Though there is some diversity in the relation of the colonies of the first class above named to the home government, they are generally accorded as much liberty of local legislation as the Parliament of the United Kingdom enjoys at home. The government of each of the colonies of all classes has at its head a governor general, appointed from England. In Canada there is a senate made up of members named by the Governor General in Council and an elective house. There is a marked similarity in the legislation to that of England, but full liberty is accorded the Canadians to regulate their local affairs as they please. Even greater freedom is allowed the more distant colonies in Australia and New Zealand, and

the last named country is now looked upon as the one having the most socialistic schemes in practical operation of any country in the world. Not only are its railroads, telegraphs and telephones owned by the state, and its express business carried on by it as in most European countries, but it also has public life insurance and a system of compulsory arbitration of disputes between employers and employees, a land policy calculated to assist the poor to acquire homes, provisions for securing employment to all, excellent civil service rules, and many other humane enactments designed to better the condition of the working class.

Australia, divided into various districts, is equally free to do as it pleases, and to it we owe the first draft of the law providing for an official ballot. No other government is so free to deal with all governmental problems, unhampered by either constitutional restrictions or abstract theories, as Great Britain. Most despotic governments fear to allow anything like the expression of popular will or local freedom of political action, yet under this monarchy the most radical reforms are permitted in the distant colonies by local representative assemblies, without any hindrance whatever from the home government. The United Kingdom is itself a strange combination of advanced social organization and mediaeval injustice. A few persons monopolize the land, which is mostly held in great estates, though England is one of the most densely peopled countries in the world. Mülhall gives the size and ownership of estates of over one acre as follows:

Acres in Holding	Number of Owners England	Acres Owned	Annual Rental
Under 50	194,620	2,230,000	£12,950,000
50 to 100	25,840	1,790,000	4,300,000
100 to 500	32,320	6,830,000	13,680,000
Over 500	10,070	22,010,000	39,310,000

	Scotland		
Under 50	12,940	110,000	2,270,000
50 to 100	1,210	90,000	380,000
100 to 500	2,370	560,000	1,680,000
Over 500	2,705	18,160,000	8,570,000
	Ireland		
Under 50	14,600	224,000	980,000
50 to 100	3,500	250,000	310,000
100 to 500	8,010	1,956,000	1,770,000
Over 500	6,500	17,720,000	8,990,000

From this it appears that of the lands held in tracts of such size as to be used as farms in England only 12.04 per cent is held in tracts of 100 acres or less, while 66.08 per cent is held by great landowners in tracts of over 500 acres, averaging 2,185 acres each. In Ireland only 2.3 per cent is owned in tracts of 100, acres or less, while 88 per cent is held in tracts of over 500 acres averaging 2,726 acres each. In Scotland but 1.1 per cent is in farms of 100 acres or under and 96 per cent in those with over 500 acres, averaging 6,713 acres. In England some large holdings have been purchased by successful merchants, manufacturers and others, who have acquired wealth by their own efforts, but most of them throughout the United Kingdom are survivals of the feudal system and based on kingly favor or successful private wars. The large holdings in Ireland mostly date from the time of William III, when the estates of the Irish Catholics were parcelled out to English favorites. In Scotland the great lords still hold the land as the heirs of their feudal ancestors. The average size of landed estates in the leading countries is given by Mulhall as follows:

France	32 acres		
Germany	37 "	Belgium	18 acres
Russia	31 "	Sweden	300 "
Austria	20 "	Norway	200 "
Italy	36 "	Denmark	115 "
Spain	95 "	U. S.	134 "
Holland	45 "	Great Britain	390 "

There is no fair approximation to justice in its distribution of the face of the earth, in its general system of land tenure, or in its theory of the descent and distribution of property. How then does it come that England has been so much praised for the liberality of its laws and the freedom of its people? First, England from an early day became the most tolerant of ideas and indulged the greatest liberty of speech. It took the lead in searching out the true sources of the wealth of distant lands and in securing to itself a share of it. It has from an early day indulged and encouraged its people in adventure, and was among the first to fully appreciate the true principles relating to the exchange of products and the vast benefits of commerce. Having opened its ports to all the world it has became its central market. No people understand better than they, that commerce is an exchange of surplus products, which would go to utter waste if left in the hands of the producers, so that the transfer from the producer who has no use for them to the consumer who does need them is a clear saving of the whole value. England owes its greatness, not to its mediaeval land tenure, but to the freedom of its people to engage in manufacturing and commercial pursuits. Though its school system has been so deficient, its vast navy and merchant marine and its remote trading colonies have from an early day furnished schools of practical instruction of far greater economic value than the monkish schools of the continent, where dead languages and dead theology were taught. No other people have had such a genius for statistics, for gathering information useful to the merchant, the manufacturer, and the seaman. Charts of all the seas, maps of all the lands, and useful information about all the various peoples of the earth and the countries in which they live, have been industriously gathered, printed and distributed among those who could profit from them. This is not merely an efficient system of practical education, but it is the path of progress and improvement. No other government is so closely allied with the business enterprises of its people. In the early days these alliances were mainly to aid favorites of the crown with trading monopolies, and

reached their culmination in the time of Elizabeth, when monopolies had become so numerous and trade a matter of so much concern that public attention was attracted to it. It was perceived that the general public suffered from all these monopolies, and that each monopolist paid tribute to each other monopolist. The last to yield their advantage were the great landowners, who sought to keep up the price of bread by prohibiting importations of grain, but famine came to enforce the demands of reason and justice, and trade monopoly was abolished so far as it could be done by opening the ports of the country freely to all who had goods to sell. The system of rulership by political parties has led to the steady growth of a public conscience. Criticisms of the conduct of the opposite party have brought to the attention of the country the moral standards and tests by which the actions of men are to be measured, and the English public opinion of to-day is far more enlightened and humane than that of a century ago. Moral standards though better observed are not yet accepted as guides to the conduct of public officials. The lower standard of profit is the one most followed. The party in power always seeks to further what are called British interests. Any combination of persons or interests sufficient in numbers or wealth to attract attention can ordinarily rely on the government to give it aid and protection. The government has from an early day attached to itself, not merely the great landowners, but also those having money to invest, and has in many ways encouraged money saving and investment in public or semi-public stocks and securities. The East India Company and the Bank of England are instances of a kind of partnership between the government and certain of its citizens. In the case of the first named company loans were made to the government in return for commercial and political favors and assistance. In the case of the Bank each aids the other in its monetary affairs, the Bank being the public depository and financial agent of the government as well as a great banking concern dealing with the public. But it is not in such institutions, which are common to other countries, that the peculiar bent of the British government is manifested. It has the great-

est navy of any nation on earth and pursues a general policy of advancing the commercial interests of its people in distant lands and among people living in a low social state by force of arms. It is frequently at war with some tribe or nation in some part of the earth to aid its merchants and capitalists in their enterprises. It seeks not merely political supremacy and revenues from the taxation of industrious people, such as those of India, but the more fruitful sources of revenue based on theories of property rights. Since the overthrow of Napoleon Great Britain has not engaged single handed in war with any great European nation. In the Crimean War most of the troops were furnished by her allies. Her armies have been employed in China, India, Africa and the islands of the seas, with a view to the profit of her merchants or investors. The elasticity of the British constitution is such that the cabinet, the actual ruling force, can be enlarged or contracted as may be found convenient in order to include recognized leaders of the majority in the House of Commons without taking in any objectionable person; colonies of Englishmen accustomed to take part in governmental affairs can be left to govern themselves, and the Asiatic multitude in India can be ruled after the manner of Oriental despots, without any representation in the government. The Governor General of India with his council is, so far as the people of India are concerned, the viceroy of the King of England with unlimited powers both of legislation and administration. The only checks on his authority are those imposed by the home government. The people of India have none. The Governor General in fact exercises very arbitrary powers, and the people of India are heavily burdened with taxation for people so poor. They support a great number of British officials at very high salaries with very little advantage from their presence. The only influence tending strongly to mitigate the arbitrary powers wielded by the officials are their education to respect the rights of others and public sentiment in England, which would condemn anything like barbarous treatment of the people. While the Governor General in council, subject to the approval of the home government, has full legislative power,

the system of laws by which the people are governed and the rules by which causes are decided in the courts are found in the ancient code of Manu, as modified by local influences; the Koran for Mohammadans, and local customs among tribes that do not accept either the Code of Manu or the Koran. The system of castes, which has so long prevailed and which rests on these ancient laws, affords a very convenient basis for the super-imposition of a military despotism. By taking the military caste into the army under pay of the British rulers no class is left with any genius for the organization of an opposing force. By shifting these troops from their native provinces to those in which they are strangers their fidelity is secured. Mohammedan troops can be relied on in Brahman districts and vice versa. In one particular at least British rule is beneficial; the aids to commerce are introduced more rapidly than they would have been. Railways and telegraphs, postal facilities, harbor improvements and the like have improved the means of communication with other countries and and between different parts of India. The revenue derived from land tax, railways, opium, salt tax, post office, irrigation and sundry sources in 1906-7 was £73,144,600; expenditures £71,555,200. The purposes for which this money is used are summarized as follows:

Debt, Interest on	£8,405,000
Army	21,586,100
Railways	10,676,200
Irrigation	2,736,800
Civil Works	4,358,700
Sundries	23,792,400

The advantages gained by Great Britain from sovereignty over India are not expressed by any direct contribution to the home treasury by way of taxation, but by the many ways in which British subjects are enriched through the administration of the government in India and profits of its commerce. It may be observed that no part of the money collected by the government is expended for the education of the natives. No school system has been established to

disseminate European ideas and information, but the native teachers are left to teach the code of Manu and the Brahman, Buddhist and Mohammedan doctrines, leaving to Christian missionaries the difficult task of demonstrating the superiority of a religion of peace, coming from a conquering nation ruling by force of arms. In some parts of India and in other portions of the globe, where the direct exercise of the governing power through British officials is not yet expedient, native rulers are utilized, and a protectorate is established over them, through which commercial advantages are secured without full responsibility for maintaining order.

In all its operations the British government is an intensely practical one, counting the money cost of everything and the profits likely to accrue to private citizens as well as the public treasury. In its legislation the British parliament wisely abstains from minute regulations of all administrative matters, leaving details to be worked out by those entrusted with the undertaking in accordance with the general plan formulated by Parliament. The new code of procedure in the courts was prepared by the judges and merely approved by parliament. The inability of a great representative body like the House of Commons to deal with the details of matters requiring long continued special study and exceptional opportunities for obtaining information is there better appreciated than in most legislative bodies. In considering the causes which have given to Great Britain the leading position it now holds, the encouragement of all sorts of voluntary organizations by the people for useful purposes must not be overlooked. Not only have corporations organized to carry forward great commercial enterprises and manufacturing schemes been permitted and often greatly aided by the government, but in recent years coöperative societies laboring men's organizations and friendly societies of all sorts, designed to bring about more just conditions and aid the poorer classes in their struggles for existence have been permitted and general laws passed granting them corporate powers. These societies have not only accomplished much material good for their members, but have also exercised a most salutary influ-

ence on public sentiment. To the various labor organizations is largely due the improvement in the conditions of the toiling millions and the growing sense of public accountability for unjust conditions. Notwithstanding the great activity of the British parliament in law making, and that 152 volumes are required to contain the enactments which have been preserved, but a very small part of the law administered by the courts is to be found in any act of Parliament. Like the British constitution the common law of England is unwritten. For authoritative expression of it the student must go to the reported decisions of the courts. In earlier times the text writers, Littleton, Coke, Blackstone, Chitty and others were much consulted and relied on, but, with the increased volume of business in the courts and the rapid multiplication of reports of decisions, lawyers now rely almost exclusively on the opinions of the higher courts for the exact rule in any case. Of these reports there are thousands of volumes and many new ones are coming out each year.

Note: For all matters of legislation I have consulted and relied on the published Statutes at Large. References to particular Acts of Parliament are made in the text.

For matters of history the works of Hume, Burke, Goldsmith, Macaulay, Lingard, Hodgkin, Holdsworth, and the Encyclopaedia Britannica have been consulted.

For Statistics

Mulhall: Dictionary of Statistics.
U. S. Statistical Abstract.
Encyclopaedia Britannica.

CHAPTER XXV

United States

The first voyages of discovery by Englishmen to America were undertaken by private adventurers, rather than by the government, and the first settlements were similarly effected. It was nearly a hundred years after Columbus made his discovery till the English made any well defined effort to gain a foothold on the American continent. In 1584 Queen Elizabeth granted to Walter Raleigh a charter "to discover, search, find out and view such remote heathen and barbarous lands, countries, and territories not inhabited by Christian people as to him his heirs and assigns, and to every and any of them shall seeme good, and the same to have holde, occupie and enjoy to him, his heirs and assigns for ever, . . . and the said Walter Raleigh, his heirs and assigns, and all such as from time to time by license of us our heirs and successors shall goe or travaile thither to inhabite or remaine, there to build and fortifie, at the discretion of the said Walter Raleigh, his heirs and assigns, the statutes or acte of Parliament made against fugitives, or against such as shall depart, remaine, or continue out of our realme of England without licence, or any other statute, acte, lawe, or any ordinance whatsoever to the contrary in any wise notwithstanding." License was given to all subjects to join in the enterprise and to take their goods with them. Raleigh was given leave to organize forces and fight and expel any one who might attempt to interfere with his possession, and to set up a government in the country occupied, including all the lands within 200 leagues of the settlements made by him, governing as nearly as may be in accordance with the laws of England. The only right reserved was that of sovereignty and one-fifth the gold and silver ore produced. The effect of this charter was to grant to Raleigh and such British subjects as might choose to go

with him, the right to establish a colony in any country, not inhabited by Europeans, which they could find, take and hold. Under this charter five voyages to America were made and the first colony was landed on Roanoke Island, Virginia, in 1585, but soon abandoned it and returned to England. In 1587 a second colony arrived at Roanoke, where it was left to make its way as best it could during the war between England and Spain. Three years later, when English ships again visited Roanoke, the colony had wholly disappeared. No permanent settlement was effected under Raleigh's charter.

In 1606 James I granted a charter to Sir Thomas Gates, and seven other persons by name, and such others (not named), as should be joined unto them to establish two colonies in Virginia, the first colony by Gates, Somers, Hackluit, Wingfield and other adventurers of and for London, to settle between latitude thirty-four degrees and forty-one degrees, with territory extending along the coast for fifty miles each way from their first settlement and 100 miles inland, and the second colony, by Hanham, Gilbert, Parker and Popham of Plymouth, for a district of equal size with the first, between latitude thirty-eight degrees and forty-five degrees, and the first settlements to be not less than 100 miles from any prior settlement. The charter provided that each colony should have a council of thirteen members to be appointed and govern the colony in such manner as the king should direct. Another council of thirteen in England was provided for, to have the "superior managing and direction" of these colonies and others that might be established between latitude thirty-four degrees and forty-five degrees. The grants to these colonies were buttressed with a provision that no grant should be made to others of lands behind their tracts without the express license or consent of the council of the colony. Leave was granted to all British subjects to emigrate to the colonies with their goods and arms, and to make war on anyone attempting to interfere with their possessions. Patents for the lands to such persons as the council of the colony or the majority of them might nominate, to be issued under the great seal, were promised. "To be holden of us our Heirs

and Successors as of our Manor of East Greenwich in the county of Kent, in free and common Soccage only and not in Capite."

The London company proceeded at once to organize an expedition and in the spring of 1607 the first permanent English settlement was made at Jamestown on the James River in Virginia by a colony of 105 men under Capt. John Smith. The following winter 120 men were added and in the fall of 1608, sixty-eight more, accompanied by two women, who came not as settlers but as visitors.

In 1609 a second charter was granted by which a great number of persons by name and many companies of Grocers, Tailors, Mercers, etc., were incorporated under the name of "The Treasurer and Company of Adventurers and Planters of the City of London for the first Colony in Virginia," and given all the rights before conferred on the first colony under the prior charter with a more extended territory running 200 miles each way up and down the coast from Point Comfort. The council in the colony was done away with, and a much more numerous council in England was named in the charter and given power to appoint a governor and such other officers as they might see fit for the government of the colony. The power to divide and convey the land covered by the grant was transferred to the corporation, and that of making laws and regulations for the government of the colony to the council named. The only reservation of revenue was one-fifth of all gold and silver and duties on merchandise improted into England of five per cent. The company was authorized to make war when necessary for the protection of its interests. This new corporation with its large membership, whose names cover three and a half large printed pages of the charter, proceeded vigorously with the work of promoting the settlement of the country and, in June, 1609, nine ships with 500 colonists sailed from England. The Colonists fell into difficulties when Captain Smith went back to England on account of a wound he had received. In six months after he left there were but sixty persons in the colony, and they had started down the river on

their way to the Newfoundland fisheries, when they met the new governor, Lord Delaware, with a large number of new colonists and fresh supplies. The cultivation of tobacco was taken up, instead of the unsuccessful search for gold, and became very profitable.

Law-making for the colony was undertaken by the council of the corporation in England, and in 1611 a set of very strict laws was sent over to Virginia from London. Theft and disrespectful language toward the king were made punishable with death, and swearing and absence from public worship were also made capital on the third conviction.

In 1612 the third and last charter to this colony was issued, providing for meetings of the company in England once each week or oftener for minor affairs and for general "courts" of the company, to be held four times each year, with power at any general court to elect members of the council, to nominate and appoint such officers as they should think fit for the government of the affairs of the company, to make laws for the government of the plantations not in conflict with the Laws of England, to admit and expel members for cause and to enforce the performance of their contracts by person bound to serve the company. These charters, it will be noticed, were not to the people who might settle in Virginia, but to people in England who furnished means and promoted the settlement of the colony by others. It was a corporate venture, organized in accordance with the general principles of business corporations, but with political powers added.

Acting under the powers of legislation conferred by this charter, the Company sent out a set of very strict laws, framed in accordance with the savage severity then prevailing in the laws of England. Theft and disrespectful language spoken of the king were again made capital crimes, and swearing and absence from public worship were also punishable with death at the third offense. The settlement of the colony thus far had been almost exclusively by men. In 1619 a ship load of ninety girls was sent over, who were very quickly married to planters and became the mothers of nu-

merous families. About 1200 other settlers went in the same year. Convicts were also sent from England and sold for servants for a term of years. In the same year a Dutch ship brought in the first cargo of African slaves and sold them to the planters. Legislation for the colony by the corporation in England was not found to be satisfactory and in 1619 "that the planters might have a hand in the governing of themselves, it was granted that a general assembly should be held yearly once, whereat were to be present the governor and council, with two burgesses from each plantation, freely to be elected by the inhabitants thereof, this assembly to have power to make and ordain whatsoever laws should by them be thought good and profitable." The first Council of Burgesses met in Jamestown in 1619. In 1622 the colonists suffered severely from a well concerted attack by the Indians and, in the fierce war that followed, nearly 2000 colonists were killed. In 1624 King James dissolved the London Company and took the government of Virginia into his own hands, but continued the system then in use, himself appointing a governor and council for the colony and allowing the people to elect the House of Burgesses, thus modelling the colonial organization very closely after the British home government, with a Governor representing the king, a council appointed by him and a popular body chosen by the people. This system continued down to the time of the revolution.

The next charter was granted by James I in 1620, as the charter of the second colony, covering the country from the fortieth to the forty-eighth parallels of north latitude, to be called New England, and created a body politic and corporate in the town of Plymouth, county of Devon, to consist of forty persons and no more "for the planting, ruling, ordering and governing of New England in America" and names forty persons, including many of the nobility, as the members of the first council established at Plymouth, with power to fill vacancies thereafter occurring. The corporate name was "the Council established at Plymouth in the county of Devon for the planting, ruling and governing of New England in

America" and they were given the usual powers of succession, to acquire and hold property in England and elsewhere, to sue and be sued and use a common seal. They were given authority to admit such persons into New England as they should see fit, to allow them to have and possess such lands as they should think fit, to trade there, to name governors, officers and ministers to attend to the business of the corporation and also for the government of the colony, to establish and ordain all manner of laws, orders and directions, fit and necessary for the government of the colony and plantations and on the high seas going and returning, as they should think for the good of the adventurers. Full liberty of emigration was allowed to all subjects with their goods without paying any custom or subsidy for seven years, and no customs or subsidies were to be collected in New England for twenty-one years, except only £5 per cent on all goods imported into England, with privilege then to export to other countries. Leave was granted the council to divide the land among the colonists and make wars on any enemies interfering with their possessions. All other subjects were prohibited from trading with the colony without license from the council, and the council were authorized to seize any goods brought into the colony or taken out without leave. All subjects inhabiting New England and their children were guaranteed the rights of Englishmen. The religious idea finds frequent expression and the exclusion of persons "suspected to affect the Superstition of the Church of Rome" was enjoined, and none were to be permitted to go there but such as should take "the oathe of Supremacy." This charter is very long and verbose. The first actual settlement in the territory named in it was made by a company of Puritans, who had emigrated to Holland and then returned to England with a view to going thence to America. They obtained a license from the London Company, but in the name of a person who did not accompany them, and so in fact went without any leave from the king or either of his chartered companies. Unlike the first settlers of Virginia, they took their families with them. Before landing at New Plymouth

they entered into the following rather novel covenant. "In the Name of God, Amen. We whose names are underwritten the Loyal Subjects of our dread Sovereign Lord King James . . . Having undertaken for the Glory of God and advancement of the Christian faith, and the Honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia. Do by these presents, solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil Body Politick, for our better ordering and preservation and furtherance of the ends aforesaid: And by virtue hereof do enact, constitute and frame such just and equal Laws, Ordinances, Acts, Constitutions and Officers, from time to time, as shall be thought most meet and convenient for the general good of the colony, unto which we promise all due Submission and Obedience. In witness whereof we have hereunto subscribed our names at Cape Cod the eleventh of November in the reign of our sovereign lord King James of England, France and Ireland the eighteenth and of Scotland the fifty-fourth. Anno domni 1620." To this instrument forty-one names were signed. Though they landed in the winter and endured great hardships, the colony maintained its ground and its descendants have played leading parts in subsequent American history. Eight years later two hundred English Puritans settled at Salem. On March 4, 1629, Charles I issued a new charter, granting to Sir Henry Roswell and twenty-five others named, and their heirs and assigns, certain lands along the coast of Massachusetts and extending to the "South Sea." The parties named and their associates were made a corporation under the name of "the Governor and Company of the Mattachusetts Bay in Newe England," with the usual corporate powers to have a Governor, Deputy Governor and eighteen assistants "to be from tyme to tyme constituted elected and chosen out of the freemen of saide Company." The Governor was given authority to assemble the company and hold a court or assembly once a month or oftener at their pleasure, at which seven assistants, with the Governor or Deputy Governor, should be a sufficient number to transact business, and that a

general court of the Company should be held four times a year, at which new members might be admitted, officers elected and laws and ordinances enacted for the good of the company and the government of the plantation, not repugnant to the laws of England. The Governor, Deputy Governor and Assistants were to be chosen by the general assembly annually. The other provisions of this charter are in substance a repetition of those contained in the New England charter, and all the privileges given by that charter are continued in this. The next year the company moved over to the colony, taking more than a thousand colonists along. In this manner the governing body of the colony came to be identified with the colony itself, and a self-governing state was established on the American continent, which not only chose its representative assembly, but also its Governor and council and all officers under them. The settlement of Massachusetts proceeded rapidly from this time and, by 1640, many towns were planted. Each town held its meetings at which all freemen voted for magistrates and delegates to the General Court. Education was recognized as a function of the state, every township was required to maintain a school for primary instruction, and every town of one hundred householders a Latin and Grammar school. Harvard College was established by the General Court in 1638, and in 1639 the first printing press was set up. Thus in the brief period of twenty years a flourishing little state had been established on a comparatively barren portion of the American coast.

In 1609, prior to the landing of the Pilgrims, the Dutch had sailed up the Hudson River as far as Albany. About four years later they established a trading post on Manhattan Island, and in 1614 a fort was built by them at Albany. In 1629 the Dutch West India Company was formed and emigrated to New Netherlands, as their possessions near the Hudson River were called. They encouraged immigration to their colony and gave great tracts of land to such as should bring out colonists. These grants were the foundations of the great landed properties of the Dutch patroons. The Dutch planted colonies on the Connecticut and in 1654 took from the Swedes

the colony they had established on the Delaware. In 1664 the English took New Amsterdam and changed its name to New York, and all the Dutch possessions there were ceded to England at the termination of the war between these countries.

Charters to lands they neither owned nor occupied were lightly made and easily disregarded by kings, who ruled by right divine, and who in contemplation of law could do no wrong. In 1632 Charles I, notwithstanding the fact that the territory was included in the Virginia charter, gave Maryland to George Calvert, Lord Baltimore, but he having died before delivery of the charter, another was made to his son, Cecil Calvert, a Catholic. The charter was written in Latin and differed from prior charters in the particulars, that it was for a definite territory, to a single individual, of which he was made *"verum dominum et Proprietarium"* subject only to his fidelity and allegiance to the king, with full power to govern the province and make laws, with the consent of the freemen or their representatives. Religious liberty was guaranteed and the usual permission of subjects to emigrate, fight their own battles and trade with the mother country. Under the liberal policy of Calvert, the colony increased rapidly, drawing many settlers from the earlier colonies.

Without any charter or other express license from the king, in 1633 a company from Plymouth established a trading post at Windsor on the lower Connecticut River. Two years later settlements were made at Hartford, Withersford and Springfield. Other towns were rapidly started along the sound by Englishmen.

The first American constitution was made by the Connecticut colonists and bears date Jan. 14, 1638. It provides that all freemen who inhabit the country and take the Oath of Fidelity shall be entitled to vote, that deputies shall be chosen at town meetings, each voter writing the names on a piece of paper and delivering it to persons chosen to count the votes, that the deputies shall meet in a general court twice a year, on the second Thursdays in April and September. The first session was called the court of election, at which a governor

and such magistrates, not less than six, and other officers as might be deemed necessary, should be chosen by the deputies by written ballot. At each court the deputies were authorized to make laws and dispatch the public business, the Governor presiding and having a casting vote in case of a tie. The Governor was required to be a former magistrate and a member of some approved congregation and could be elected only once in two years for a term of one year. In calling the General Court together the Governor issued his summons to the constables of the towns, who notified the members, and notices of town meetings were also given by the Constables. The General Court could only be adjourned by a majority vote, and a majority of the members could call a session if the Governor refused to do so when necessary. This early constitution is notable as furnishing, in rough outline, the leading principles of the constitutions of the future American States. The sovereignty, although in terms vested in the general court, was in fact in the freemen of the colony, who expressed their will through the medium of the ballot and annually appointed the members of the General Court, which was the active governing power.

Tolerance of religious ideas among the Puritans was tolerance of their own beliefs only. No people ever had a more bitter hatred of what they regarded as impure religions. In November 1635 the General Court of Massachusetts sentenced Roger Williams to banishment for his religious and political opinions, and in June of the following year he and a colony of others settled at Providence, Rhode Island, on lands granted him by the chiefs of the Narragansett Indians. Other settlements in that neighborhood soon followed. In 1643 the Earl of Warwick, as Governor-in-chief, and others as commissioners for the government of the provinces in America, executed an instrument reciting the settlements above named and the purchase of lands from the Indians and granting to the inhabitants of the towns of Providence, Portsmouth and Newport a free and absolute charter of incorporation under the name of the Incorporation of Providence Plantations in "the Narragansett Bay, in New England together

with full power and authority to rule themselves, and such others as shall hereafter inhabit within any part of the said tract of land, by such a form of civil government, as by voluntary consent of all or the greater part of them, they shall find most suitable to their estate and condition," provided their laws should be conformable to the laws of England, as nearly as might be, and reserving power to regulate their relations with the other colonies. This was in the reign of Charles I after the Long Parliament came into power. The instrument was not in form a royal charter but was signed by Robert Warwick and ten others. No other charter was issued till after Cromwell's time and the restoration of Charles II. In 1662 Charles II issued a charter to John Winthrop and eighteen others by name and all such others as are or shall be admitted free of the colony, to be a body politic and corporate under the name of Governor and Company of the English Colony of Connecticut in New England in America, to have a Governor, Deputy Governor and twelve assistants elected by the freemen of the company. Winthrop was appointed Governor and twelve others as assistants, to hold till their successors were chosen. The charter contains the usual provisions of prior charters with reference to trade, liberty of subjects to settle there and preservation of their rights as English citizens, with leave to fight their own battles. It grants them the lands of Connecticut and contains no reservation to the crown of power to appoint any officers for the colony. In the next year he gave a charter to William Brenton and twenty-five others by name, including Roger Williams, and all such others as now are or hereafter shall be admitted and made free of our "collonie of Providence. Plantations to be a corporation under the name of The Governor and Company of the English Colony of Rhode Island and Providence Plantations in New England" and to have a Governor, Deputy Governor, ten assistants and a general Assembly to be elected by the freemen of the colony, vested with full governmental authority. The other provisions are substantially the same as, though not identical with, those in the charter of Connecticut. This charter remained the con-

stitution of Rhode Island, not only through the revolutionary war, but till 1842. In the same year Charles II granted a charter of an altogether different character, to Edward Earl of Clarendon, George Duke of Albemarle, William Lord Craven, John Lord Berkeley, Anthony Lord Ashley, Sir George Carteret, Sir William Berkeley and Sir John Colleton, for the territory from the north end of Lucke Island in the south Virginia seas and within thirty-six degrees N. L. and to the west as far as the south seas, southerly as far as the river St. Mathias, which bordereth on the coast of Florida within thirty-one degrees N. L. and so west as far as the south seas, with the patronage and advowsons of all churches as amply as any bishop of Durham ever held, and as true and absolute Lords Proprietors of all the lands, saving only faith and allegiance to the king, for a yearly rental of twenty marks and one-fourth of all gold and silver ore. The territory was incorporated into a province, named Carolina, and the proprietors were given full power to appoint all necessary officers and govern the province with the advice and consent of the freemen of the province or their delegates or a majority of them. The proprietors were also given power to make ordinances, without assembling the freemen, and to establish ports and collect customs for their use, to confer titles of honor, to declare martial law in case of sedition, and to organize armies and fight enemies. In 1665 a second charter was granted, extending the boundaries to Latitude twenty-nine degrees. Under this charter a most peculiar scheme, called The Fundamental Constitutions of Carolina, was framed in 1669 by John Locke, containing 120 sections. It provided that the eldest lord proprietor should be called Palatine and the others Admirals, Chamberlains, Chancellors, Constables, Chief Justices, High Stewards and Treasurers. The province was to be divided into counties, each county into eight seigniories, eight baronies and four precincts and each precinct to have six colonies. An hereditary nobility was to be created, styled landgraves, casiques and barons, and provisions calculated to keep the great estates together were made. This instrument is rather curious than important, as it was never executed and

left no marked impression on future institutions. The spirit of favoritism was further exhibited by Charles in 1664 in the grant to his brother James, Duke of York, of Maine (which had been granted to Ferdinando Gorges in 1639), Long Island, the country between the Connecticut and Hudson rivers and from the west side of the Connecticut river to the east side of Delaware Bay, the islands of Martins Vineyard and Nantuckett, with "full and absolute power and authority to correct, punish, pardon, govern and rule all such of the subjects of us our heires and successors as from time to time adventure themselves into any of the parts or places aforesaid according to such lawes ordinances, direccons and instruments as by our dearest brother or his assigns shall be established and in defect thereof in cases of necessity according to the good direccons of his deputyes, commissioners, officers and assigns" but as nearly as may be according to the laws of England and subject to an appeal to the king. A yearly rental of forty beaver skins, when demanded, was reserved. No mention is made of any system of popular representation in the government of the grant, but full and arbitrary authority is given to rule with the usual privilege of subjects to emigrate, etc. In 1629 The New England Company made a grant of lands between the Merrimac and Piscataqua Rivers to Captain John Mason, and this grant was confirmed by another by the council "assembled in publick court" which gave the name of New Hampshire to the district granted. In 1680 Charles II issued a commission restraining the assembly of Massachusetts from exercising authority over New Hampshire and providing a President and council of nine, to be a court of record for the administration of justice in New Hampshire, from which an appeal in matters involving £50 or more might be taken to the king. The laws of England were to be followed as far as applicable and a general assembly was to be called with legislative power.

The next charter was that issued to William Penn in 1681 for Pennsylvania. He was made the proprietor with full power to govern the colony "by and with the advice assent and approbation of the Freemen of said Country or the

greater parte of them, or of their Delegates or Deputies," to be assembled as Penn might direct. The only reservation to the crown was fealty and one-fifth the gold and silver ore. A transcript of all laws passed was required to be transmitted to the privy council and might be annulled within six months, otherwise to stand. Power was conferred to establish ports of entry and collect Customs and Subsidies. An agent or attorney resident at London was required to be appointed and reported to the Clerk of the Privy Council, to appear in the courts at Westminster to answer for misdemeanors of Penn, his heirs or assigns. Full power was conferred on Penn to convey the land as he might see fit, notwithstanding the provisions of the statute of *"Quia Emptores Terrarum."* Penn and his grantees were authorized to erect manors and hold Courts Baron thereon. The charter further provides, "That Wee our heires and Successors shall at no time hereafter sell or make or cause to be sett, any imposition, custome or other taxation rate or contribution whatsoever, in and upon the dwellers and inhabitants of the aforesaid province, for their Lands, tenements, goods or chattels within the said province, or in and upon any goods or merchandise within the said Province or to be laden or unladen within the ports or harbours of the said Province, unless the same be with the consent of the Proprietary, or chiefe governor, and assembly or by act of Parliament in England." No provision similar to the foregoing appears in any prior charter. It will be noticed however that this authorizes taxation of the colony, either by the consent of their representatives or of Parliament.

William Penn was a remarkable man, a favorite of the king, though subjected to persecution because a Quaker in faith. Born in the privileged class, he was an ardent reformer. He kept in mind the great truth, so constantly disregarded by statesmen, that peace and social order are mainly dependent on confidence in the justice and friendship of those concerned, rather than on superior force. Though given a proprietory charter to the whole territory by the English king, he respected the rights, not only of the Swedes and Dutch who had already made settlements there, but of the

Indians as well, from whom he obtained by treaty the right to make settlements in their country. He drew up and published on July 11, 1681 "Certain conditions or concessions agreed upon by William Penn, Proprietary and Governor of the Province of Pennsylvania, and those who are the adventurers and purchasers in the same province" in which provisions were made with reference to the sale of the land and the laying out of towns, with various regulations calculated to secure just treatment of the Indians both as to occupancy of land and trading. In 1682 he published his "Frame of Government of Pennsylvania" with a preface in which he expressed briefly his views on the principles of government and said among other things:

"I do not find a model in the world that time, place and some singular emergencies have not necessarily altered; nor is it easy to frame a civil government, that shall serve all places alike."

"Thirdly, I know what is said by the several admirers of monarchy, aristocracy and democracy which are the rule of one, a few, and many and are the three common ideas of government, when men discourse on the subject. But I chuse to solve the controversy with this small distinction and it belongs to all three. Any government is free to the people under it (whatever be the frame) where the laws rule, and the people are a party to those laws, and more than this is tyranny, oligarchy or confusion."

"But lastly, when all is said, there is hardly one frame of government in the world so ill designed by its founders, that in good hands, would not do well enough; and story tells us, the best in ill ones, can do nothing that is great or good, witness the Jewish and Roman states. Governments like clocks go from the motion men give them, and as governments are made and moved by men, so by them they are ruined too. Wherefore governments rather depend upon men, than men upon governments. Let men be good, and the government cannot be bad; if bad, let the government be never so good, they will endeavor to warp and spoil it to their turn."

"That therefore, which makes a good constitution must keep it, viz., men of wisdom and virtue, qualities, that because they descend not with worldly inheritances, must be carefully propagated by a virtuous education of youth."

It would be difficult to compress more political wisdom into a single sentence than is contained in the last one quoted. The general frame of his government provided for a proprietary Governor, a provincial council of seventy-two, and a General Assembly, elected by the freemen of the province; the council to be divided into four committees charged with oversight of different matters, one of which was "a committee of manners, education and arts, that all wicked and scandalous living may be prevented." A body of laws, also prepared in England, in forty sections, was attached to the frame of government.

The settlement of the colony proceeded very rapidly, and during the year 1682 about 2,000 persons, mostly Quakers, came in. Penn obtained from the Duke of York a grant of the Delaware country and a release of his claims on Pennsylvania, and went over to America. He divided the country into six counties and summoned the first general assembly at Chester in December 1682. A modified frame of government reducing the number of members of the council to eighteen and fixing the representation in the assembly at thirty-six—six from each county—was signed by Penn and accepted by the members of the Council and Assembly on 2-2-1683. The active governing power was vested in the Proprietary Governor and council, by whom laws were prepared and submitted to the assembly for approval.

After the accession of William and Mary to the British throne, Benjamin Fletcher, Governor of New York, was commissioned Captain General and Governor of Pennsylvania, but the government was restored to Penn, who appointed William Markham, Governor. A still further modification of the frame of government was deemed necessary and adopted by the Governor, Council and Assembly. The Council was to consist of two persons chosen from each county and the Assembly of four from each county. The qualifications of

electors were that they must be free denizens, twenty-one years of age and have fifty acres of land, ten of which were "seated and cleared," or £50 clear in other property and have resided two years in the province. Much space is given to "attests" to be taken by public officers in lieu of official oaths. The principle that the legislative bodies should be the sole judges of the election of their members was incorporated, and members of the Assembly were allowed four shillings per day, the speaker and members of the Council five shillings and all of them two pence per mile for traveling expenses going and coming. Bonds from sheriffs and clerks were required. Two-thirds of the members of the Assembly were required for a quorum on the passage of a law or judgment of impeachment. The executive power was vested in the Governor and Council and also the management of the treasury, from which no payments were allowed, except "what hath been agreed upon by the Governor, Council and Assembly." Legislation might be initiated by the Governor and Council or the representatives of the freemen in the Assembly might propose such laws as should be agreed on by a majority of them. The last and final act of constitutional legislation by Penn was a charter given by him and accepted by the Council and Assembly on Oct. 28, 1701. It refers to the various grants to him, to the prior frames of government, states that they were found in some parts not suitable to present conditions, and contains eight articles. The first is a strong guaranty of religious liberty, and allows persons to hold office who take the attests provided for in existing laws, without oath. The assembly was to consist of four from each county with power to choose a speaker and their other officers and be judges of the qualifications and elections of their members, appoint committees, prepare bills and impeach criminals. The freemen in each county at the time of electing members of the assembly were authorized to nominate two persons for each of the offices of sheriff and coroner, from whom the Governor could appoint one each for three years, "if so long they behave themselves well." It was further provided "That all criminals shall have the same privileges of Witnesses and Council as their Prose-

cutors"; that persons licensed to keep tavern must be recommended by the Justices of the county, and that the estate of a suicide should go to his wife and children. In the closing paragraph it provides for a separation of Delaware from Pennsylvania in case either of them so desires within three years, and guarantees the liberties of the charter to each. This separation took place and Delaware was organized as a separate colony under the charter. This charter does not cover specifically nearly so many matters as the prior frames of government, but seems to have been intended to provide for a few matters then uppermost in his mind. It remained in force until the revolution, as the fundamental law of Pennsylvania.

Among the most conspicuous characteristics of the Puritan settlers of New England were religious intolerance and a determination to manage their own affairs without any interference from England. Quakers seem to have fared worst of all and some of them were executed. The settlers of New England suffered very little from the Indians till King Philip's War, which broke out in June, 1675, and finally involved the settlers in a fierce struggle with the confederated tribes of New England. About 600 whites perished, but the Indian tribes were nearly exterminated. Parliament had before that time levied duties of tonnage and poundage on the trade of the colonies and began to look to them as important possessions. The colonists fought the Indians in King Philip's War without the aid of the mother country, but this served rather to call attention to their power and independent spirit than to ingratiate them with the King. In 1683 he thought fit to take away their privileges, and in order to do so made use of the court of King's Bench, which issued a writ of *quo warranto* to the Governor and Company of Massachusetts, on which, at the Trinity Term 1684, a judgment was entered, "that the letters patent and the enrollment thereof be annulled." This was but one of the many instances of the subserviency of the judges to the power that appointed them. James II sent Edmond Andros as Governor to Massachusetts where he arrived in 1686 but, on the overthrow of James and

the accession of William and Mary, the people of Massachusetts rose in arms, imprisoned Andros and elected their own governor, assistants and deputies. In 1691 William and Mary issued a new charter, reciting the issuing of the former charters and the settlement of the colonies thereunder, and that at Trinity term 36th Charles II, a second judgment was given in our Court of Chancery then sitting at Westminster upon a writ of *Scire Facias* against the Governor and Company of the Massachusetts Bay in New England that said letters patent be cancelled, and then "wills and ordeynes" "that the Territories and Collonyes commonly called or known by the Names of the Colloney of the Massachusetts Bay and Collony of New Plymoth, the Province of Main, the Territorie called Accadia or Nova Scotia and all that tract of land lying betweene the said territories of Novo Scotia and said province of Main be erected united and incorporated into one reall Province by the name of Our Province of the Massachusetts Bay in New England" and then grants to them the land by particular boundaries, reserving one-fifth the gold and silver ore; preserving to private persons, towns, villages, colleges and schools the lands held by them under prior grants. The administration of the colony was placed under a Governor, a Lieutenant or Deputy Governor and a Secretary of the Province to be appointed by the king, twenty-eight assistants and a general court or assembly made up of two freeholders, elected from each town by freeholders owning land worth forty shillings per year or other property worth forty pounds. The twenty-eight councillors were to be chosen by the Assembly. The appointment of judges, sheriffs, marshals, justices of the peace and other officers was entrusted to the Governor with the advice and consent of the Council. Oaths of allegiance were required from all officers. The inhabitants of the province and their children were guaranteed the liberties of English subjects with liberty of conscience (except papists). Full governing power was conferred on the General Court, which consisted of the Governor, or Deputy, the Council and Assembly, with authority to establish courts of general jurisdiction, subject to an appeal to the king in

council in civil causes involving £300. The governor was given a veto on legislation, and all acts of the Assembly were required to be transmitted to the king, who reserved the power to annul them within three years.

A controversy having arisen with reference to the right of the Assembly to choose its speaker, in 1726 George I issued an explanatory charter giving the Assembly the right to elect, but the Governor might disapprove the choice, when a second election was required. The assembly was given power to adjourn, not exceeding two days, without the consent of the Governor, but the Governor was authorized to adjourn, dissolve and prorogue it. These charters seriously abridged the rights of the colonists to govern themselves and were never satisfactory to the people.

New Jersey, as we have seen, was included in the grant to the Duke of York with Maine and New York. In 1664 he granted New Jersey to Lord John Berkeley and Sir George Carteret. The government of the colony was then regulated in accordance with "Concessions" made by the Lords Proprietors of the province, which were amended from time to time till 1702, when the proprietors surrendered their rights to the crown and it was then governed as a royal province.

The territories of both North and South Carolina were included in the Carolina proprietary grants, and no separate royal charter was ever issued for either.

The last Royal charter issued was by George II in 1732 to John Lord Viscount Percival and nineteen others named, who were made a corporation under the name of The Trustees for establishing the colony of Georgia, in America, with power to hold land in England of not over £1,000 yearly value. Percival was made President, with a council of fifteen to be increased to twenty-four. The charter grants seven-eighths only of the lands from Savannah River to the Alatamaha and westerly from the heads of the rivers to the south sea, with power to sell and convey the same to purchasers, who were to be required to pay the king four shillings yearly per 100 acres, beginning ten years after the sale. The corporation was given power to make laws and appoint officers for the territory for

twenty-one years, to be approved by the king in council. The appointment of officers and employees of the corporation from its members was prohibited, and the corporation was also prohibited from selling land to its members and from selling over 500 acres to one person. The governor of the colony was to be appointed by the council of the corporation, subject to the approval of the king. After twenty-one years the government was to be such as the king should ordain. This being the nearest colony to the Spanish settlements in Florida, it was not long till hostilities broke out between the English settlers of Georgia and the Spanish of Florida. Probably owing to this situation and hostilities with the Indians, the settlement of Georgia progressed slowly and, at the end of the time limited in the charter, the king assumed the government through his appointees.

In some respects the early settlement of America resembles that of England by the Jutes, Angles and Saxons. Both were popular movements for permanent change of habitation, by which the natives were driven out to make room for the invaders. In both the invaders fought their own battles and made headway as best they could without the backing of the military force of the mother country. In other respects there were marked differences. The Saxons met a people of the same race, not greatly their inferiors in any respect, and on the whole more peaceful and civilized than themselves. To reach England but a short voyage was involved, and the invaded country was at least under as good tillage and as well supplied with domestic animals as that the invaders came from. The settlers of America found a strange race of indolent hunters, wholly unaccustomed to European modes of life. Though the early settlement of Virginia was attended with heavy losses from Indian hostility, the general rule was that there was comparatively little warfare between the English settlers and the Indians prior to the breaking out of hostilities between France and England in 1689. In New England there was peace with the natives till 1636, when the Pequot Indians killed a trader on the Connecticut River, for which in that and the following year the tribe was nearly exterminated.

The whole tribe was treated as responsible for the murder, of which most of them were of course entirely innocent. King Philip's War in 1675 was a much more serious affair and resulted in considerable loss to the whites, but this came fifty-five years after the landing of the Pilgrims at Plymouth, and resulted, as did all other wars with the natives, in their final crushing defeat. In Pennsylvania just treatment of the Indians secured peace for a time. The Dutch in New Netherlands had trouble with them mainly because of cruel treatment. The growth of ideas of self-government and real independence of the home government was entirely natural and a logical sequence of the system followed. While the Plymouth colony made its start without any royal sanction, home corporation or proprietary founder, the general rule was that a company was first formed in England to promote the founding of a colony or a single grantee from the crown undertook the task. The first steps taken in England were by private persons who raised the necessary funds, procured the ships and induced hardy and resolute men and women to make the long voyage, and settle in the strange land. The chief motive of the promoters and proprietors was private gain. The gold and silver brought over by the Spaniards from Mexico and South America excited the cupidity of the English kings, who expected to find these metals in their colonies also. It is a noticeable fact that in all charters, except that for Georgia, there is a reservation of a share of the gold and silver ore, but not of rental of the land. The true wealth of the new country was not apprehended, but the semi-barbaric notion of the value of so-called precious metals was uppermost in the minds of the English kings. The value of the food supply and other usable commodities, now obtained in such great abundance from the United States, was regarded as of far less importance than gold and silver. The gathering into the ships of the bold spirits who came across the ocean, was the primary work of founding the colonies. No great number ever came at one time or at the instigation of any one person or corporation, though several shiploads sometimes came together, and others followed at longer or shorter in-

tervals, according to circumstances. No powerful home corporation like the East India Company was evolved as a result of these operations. The settlers, once landed in America, were from the necessities of the situation forced to shift for themselves. The Virginia and Massachusetts colonists had to treat with the Indians on their own authority, and to organize their fighting forces whenever hostilities were threatened. This was true everywhere in the parts of America settled by the British. It is significant that, in all the charters from the king, express authority is given the grantees to organize armies and make war to maintain possession of the territory granted. The sovereign did not assume the function, usually so jealously guarded, of directing the military forces of the colonies, but left that to the proprietors or colonists themselves. They were without any other means of supporting their forces than such as they contributed for that purpose. Now the primary functions of all the governments of the earth, from their inception, have been the gathering and commanding of armies and the raising of supplies for them. Even at this day the principal functions of the governments of Europe are connected with the organization and maintenance of military forces. By these charters such functions were transferred to private hands. The effect of this policy it would seem might easily have been foreseen. The colonists found in America illiterate savages, indolent and filthy, yet exceedingly proud of their independence and individuality. The Indian owed allegiance to no ruler. He followed the chief of his choice. He roamed where he pleased through the forest. He paid no tax, he served no master. He was slothful and improvident to the last degree, and this, rather than wars, accounts for his destruction. In the long course of time the natural process of evolution exterminates the warrior, the idler, the improvident and filthy. The warrior, though he may kill many, kills warriors mostly and is himself the target for his adversaries. The idler and the wasteful man or tribe sooner or later perish from famine. The filthy fall a prey to contagious and epidemic diseases, which spread and fester under conditions so favorable. Thus the Indian, partly

by war, but more by famine and disease, wasted away before the advancing whites. His powers of organization were limited. Confederacies of tribes were effected at times, but hunters, accustomed to supply their daily wants from the chase, could not organize and feed an army. An Indian raid came like a thunder storm and quickly passed away. A great army of savages, if once drawn together, would necessarily perish from want of supplies. To subsist on forage they must scatter. Thousands of years of warfare in Europe have taught the importance of supplies of food and munitions of war in order to use an army once organized. The colonists came with knowledge of the advantages of organization, but were largely of such hardy and independent spirits that they often suffered through their inclination to act separately. The notions of social order, government, property rights, and laws, which they brought with them from the mother country, led all the colonies to organize such governmental agencies as appeared to them necessary in their situation. The Mayflower Pilgrims, as we have seen, signed a compact before landing. The first permanent colony of Virginia followed the leadership of Captain John Smith. As the colonies increased in size and settlements multiplied, it was found impracticable for all the settlers to meet and consult, so delegates were chosen from each town or district to represent it in a general meeting. The organization did not proceed exactly along lines subsequently maintained, but as time wore on the advantages of a wider and wider combination to insure concert of action against common foes by all the English colonies was more and more felt. In the early days the home government paid little heed to conditions in America. There was often much friction between governors sent out from England and the colonists. Scions of nobility, reared in England, were often sent over, who had no conception of the needs of the colonies they came to govern. The result was, in most if not all instances, that the colonists refused to be guided by them and sooner or later forced their recall. Popular institutions took their most advanced form in New England, where the town meeting, into which all the freemen of the town gathered,

was the governmental unit. These units acted in concert, through an Assembly of delegates chosen by each, who in turn selected the executive officers. The freemen in town meeting regulated all the concerns of the town, leaving to the assembly only matters of general concern. This was very similar to the ancient Saxon system at the time of the first invasions of England, except that the Saxons had no representative bodies. In the early days of New England there were several separate colonies in each of the small territories of Massachusetts, Connecticut and Rhode Island, and the subsequent consolidations were mainly the work of the colonists, effected through new royal charters, obtained on their petitions.

So early as May 19, 1643, an alliance was formed by the Plymouth, Massachusetts Bay, Connecticut and New Haven colonies for matters of common concern. The Indians, the French on the north and Dutch on the west, whose hostility they feared, led them to join for their defense. They entered into a written compact, embodied in a preamble and eleven articles. At this time these colonies are said to have had an aggregate population of about 24,000, living in thirty-nine towns, and took the name of the United Colonies of New England. The affairs of the confederacy were placed in charge of two commissioners from each colony, but each colony remained independent as to all its local affairs. This confederacy continued in existence for a number of years. As the colonies grew in population and came to have more intercourse with each other, the idea of joining forces for their mutual protection gained force.

The most powerful enemy against whom they had to contend was not the savage natives, but the civilized French, who, having possession of Canada on the north and Louisiana in the southwest, formed a chain of posts along the Great Lakes, and the Ohio and Mississippi Rivers to connect them, and constantly threatened the English settlements from the rear. Each nation sought alliances with the natives. The French were rather the more successful and attached the powerful tribes of the north to their interests. The British however

secured the friendship of the Five Nations of New York. Numerous conferences were held, not only by the Governors of New York, but by representatives of other states with the chiefs of these powerful tribes. So early as 1684 one of these conferences was held at Albany, at which Virginia, Maryland, Massachusetts and New York were represented. It was deemed a matter of great importance to secure and hold the friendship of these Indians, who occupied the border region between the English and French settlements. Similar conferences, though with a varying representation of colonies, were held in 1690-1694, 1722-1748 and 1751. In 1698 William Penn gave out a plan for the union of the American colonies, but nothing came of it.

The attempts to govern the colonies from England proved, in nearly every instance, a failure because of a want of knowledge of the situation of affairs in America, and especially of a lack of understanding of American character, which generation by generation developed under conditions very dissimilar from those existing in England. Most of the country had been given out to great landholders, but the actual settlers were not of the aristocratic class. The population was almost entirely rural, but it was not an English rural society. Though great proprietors sought in most of the states to establish a rent paying tenantry and succeeded in doing so in some parts, the general rule was that the settlers soon became independent freeholders. This was the case especially in New England, where, except in Maine and New Hampshire, there was no great lord proprietor. Clearing forests, building houses in the wilderness, defending against Indians and hunting wild beasts developed not merely a strong, hardy and courageous race but a self-reliant one. The government of Great Britain was far away and unsympathetic. In their local gatherings, and even in meetings from the various colonies, men came together who were confronted with similar difficulties and readily understood each other's wants and abilities. Nearly all the governors sent over from England came imbued with ideas of kingly prerogative. For these the colonists cared little, because they served no purpose among them. Although

from the conclusion of peace with the Dutch in 1664 till the final revolt of the colonies, the English held undisputed possession of the whole coast from Maine to Florida, no comprehensive plan was formulated by the king or parliament for governing the country as a whole, nor was there any general system applied alike to all the colonies. Each claimed its special privileges under its peculiar charter, and above all the settlers claimed the right to meet their difficulties in their own practical ways.

The colonists brought with them their English traditions and ideas of right. The common law of England, with some modifications by legislative enactment, was administered in the courts and by the same system of practice, in the main, that obtained in England. In Massachusetts religious zeal was carried to extremes of intolerance, and Quakers and others were even hanged for heresy. The strangest exhibition of judicial barbarity, aside from this, was in the trial and execution of poor people, mostly women, for witchcraft. It is exceedingly difficult to understand how such practical and shrewd people as the Puritans could have believed in the existence of a crime of this kind. In their overstrained morality they became not a little hard and cruel. It happened with them, as with so many others, that, in their intense hatred of imaginary vices, they committed real crimes against the innocent. Charity and compassion, the expressions of a loving spirit, were not general among them. Their great strength lay in their industry, thrift and the education of their children. Study and work, under rigid and gloomy discipline, were the rule. The colonists early gave much attention to learning. The first free school in America was established in Charles City Virginia in 1621. Many others were established throughout New England, where it was deemed of especial importance that all should diligently study the Bible and be governed by its teachings. Free schools were opened in Maryland in 1704 and primary education of the young was far more general throughout the colonies, from the earliest days, than in the mother country. Attention to higher education was also given at a time when the settlements were very

sparce and the people very poor. Of the great universities, Harvard was established in 1638, William and Mary's 1693, Yale 1716, Princeton 1746, Columbia 1754, University of Pennsylvania 1755, Brown 1764. In their beginnings all were small and poor but they soon exerted powerful influence.

While the colonists received little aid from the king in their struggles with the natives, king-craft in Europe repeatedly exposed them to the horrors of warfare with Europeans and savages. King William's struggle with France for his Dutch possessions involved the colonists from the two countries in warfare with each other, as well as with the savages, from 1689 to 1697. The war of the Spanish succession in the reign of Queen Anne, from 1702 to 1713, caused a similar state of hostilities in America. War with Spain from 1739 to 1742 occasioned severe fighting with Spanish and Indians in the Southern Colonies, and the claims of King George's family in Germany caused war with France again from 1744 to 1748. It is impossible to tell just how many people were killed in the colonies by Indians or how many by the French and Spanish, but it is probable that far more than half the butcheries of English colonists were caused directly by the policy of the so-called civilized governments of Europe, and that, if left to deal with the natives in their own way, without any interference from without, the colonists would have suffered but little from them.

Very much has been said and written about the hardships and dangers endured by the early settlers, and especially concerning the horrors of Indian warfare, yet the real truth appears to be that America was a far more safe and happy place to live in during the seventeenth and first half of the eighteenth centuries than Europe. In 1751 Franklin estimated that there were about 1,000,000 English souls in America, but that not more than 80,000 had been brought over by sea. Natural increase went on, if this be so, at such a rate that in 144 years the population had been multiplied by twelve and one half. But only a small part of the 80,000 came so early. While this remarkable increase of population occurred in America, no European state of importance made an increase

nearly so great. Definite statistics are not to be had on the subject, but the population of England probably did not double in the whole period, and may not have increased more than fifty per cent. Thus it is shown that conditions were more than ten, perhaps more than twenty, times as favorable to the multiplication of the species in America as in England, during the very period so often mentioned as one of such excessive danger and hardship. War, famine, hard laws, bloody courts, selfish and cruel kings and councillors, are largely responsible for the unfavorable results in Europe. Ample lands with liberty to make use of them as best they could, and comparative exemption from the burdens of European militarism and injustice were the leading causes of American increase.

When the war, known in America as the French and Indian war and in Europe as the Seven Years' war, broke out, the American colonies had become important factors in the contest. Before the formal declaration of war collisions had occurred in the Ohio valley, claimed by both Virginia and the French. The British ministry perceived the necessity for concert of action among the colonial forces. Early in the spring of 1754 the ministers sent notice to the colonial governments, that it was the desire of the king that they should oppose the encroachments of the French by force, and recommended that they should send delegates to a general convention, at Albany, to form a league with the Six Nations and provide for their own united action. Maryland, New York, Pennsylvania and the New England colonies responded. Benjamin Franklin was a delegate from Pennsylvania to this conference. He there proposed a federal league, to be authorized by an act of Parliament, with a president appointed by the king, a grand council of members chosen by the provincial assemblies to the number of not less than two nor more than seven from each colony; the executive power to be lodged in the president and the legislative in the council and president. This government was to have power to declare war, make peace, conclude treaties with the Indians, regulate trade with them, purchase their lands, raise troops, arm vessels, provide

for the general safety and impose taxes for these purposes. The laws enacted were to be sent to England for the approval of the king, who might disallow them within three years. Naval and military officers were to be nominated by the president and approved by the council, and civil officers were to be nominated by the council and approved by the president. This plan met with opposition from both sides. The colonists thought it conferred too much power on the king, the British government that it gave the representatives of the people too much power. The general idea was not novel, it was merely an extension of the system then prevailing in most of the colonies to a larger organization, including them all, with powers limited to matters of general concern. The delegates to the convention were unanimous in the opinion that union of the colonies was essential to their safety, but were unable to agree on any plan to effect it. Franklin's plan was about midway between the extremists but satisfactory to neither side. Though the formal declaration of war was not published in England till May 17, 1756, fighting had been going on in America for nearly two years, and Braddock had sustained his disgraceful defeat the preceding year. In the spring of 1756 the governors of the colonies met at New York and agreed on a general plan of military operations. The British army regulations, which gave precedence to officers holding British commissions over those issued by the colonies, were of course distasteful to the Americans, who naturally contrasted the prudence of Washington with the folly of Braddock. In this war the colonies made a very considerable show of military force. In the expedition against Crown Point in 1755 between 5,000 and 6,000 men were furnished by New England and New York. In 1757 more than 6,000 American troops were gathered at New York under the incompetent Lord Landoun. After Landoun's recall his successor Abercrombie gathered an army of 50,000, of whom 28,000 were provincials. Massachusetts alone raised 7,000 and Connecticut 5,000. America became an important field for the struggle between the two nations and, while the provincials furnished many men, large numbers of regulars were

brought over from England, and the command of all the principal armies was in the hands of British officers. The results of this war were important to the colonists in many ways. Canada, all the northern portion of the continent and also the Ohio valley, Florida and all the territory east of the Mississippi, except Louisiana, became British territory. The British government had become more fully aware of the value of the land and of the productive capacity of the colonies. Their cupidity was aroused and directed toward gaining wealth through exclusive trade privileges and taxation of the colonies. The right of the British Parliament to regulate the foreign trade of the colonies was not seriously questioned by the colonists, but its exercise, especially with respect to the trade with the West Indies, was regarded as a grievous injury. The natural advantages of exchanges of the products of New England for those of the southern islands were so great that the trade was very profitable.

On the question of the right of Parliament to levy taxes on the colonies a more decided stand was taken. It was claimed by the Americans, as a settled principle of English constitutional law, that no tax could be imposed on British subjects, except with the assent of representatives chosen by themselves, and that they were guaranteed the rights of Englishmen by their charters. As none of the colonies had representation in the British Parliament, it was denied that it had any right to grant their money to the king. The position taken by Franklin and most of the American leaders was, that the king should himself, through his ministers, call on the colonial assemblies for contributions to his treasury, and that these assemblies, as representatives of the American people, would then grant such revenues as were proper. The expense of the French and Indian War had added about £86,000,000 to the national debt of Great Britain, a sum exceeding the whole prior debt. English statesmen and taxpayers were eager to shift a part of the burden of this debt to the shoulders of the Americans. On the other side, the Americans had endured the horrors of warfare for British dominion, and insisted on their right to determine what they should pay.

From the time of Cromwell there was a marked difference in the development of ideas on the two sides of the Atlantic. In England there had been a strong reaction, not only against the religious sentiments of his time, but also against the liberal political ideas then prevailing. The house of Hanover labored to strengthen the royal prerogative, and popular rights in England meant nothing more than the rights of the wealthy and titled few. The toiling masses were not consulted in affairs of government. In America, the land held by resident owners was mostly in comparatively small tracts, its value depending almost wholly on the labors of the owners with some few slaves in places. There was no such system of tenantry as existed on the great manors of England. The democratic spirit had steadily grown, not as a result of political agitation, but of the modes of life, and the habits of thought naturally resulting from substantial equality of condition and daily necessity for independent action and self-reliance. For a century and a half the people had been accustomed to give heed only to regulations of their own making, and at times to refuse obedience to governors sent over from England, who sought to exercise arbitrary power. Under these different conditions a British Parliament was in no position to legislate intelligently for the colonies. It lacked the first and all important qualification, knowledge of the people, their character and surroundings. Nothing could have been more unwise than the stamp act of 1765, the leading provisions of which are given in the preceding chapter. The taxes it imposed were so noticeable, challenging the attention of the taxpayer to the fact of the imposition as well as the amount, whenever a stamp was required. It did not require actual payments under it to disclose its odious character to the colonists. They simply would not submit to it. Their protests and resistance were so general and so vigorous as to occasion its speedy repeal without the realization of any revenue from it. The inexcusable blunder had been made of challenging the attention of the people of the colonies to the principle involved, taxation without representation. Parliament still insisted on its sovereign power, and by the

declaratory act and the duties levied on tea and a few other commodities asserted its claims. The colonists would probably have submitted under protest to the collection of these duties had it not been for the unfortunate quartering of troops in Boston and the foolish act closing the port of Boston. The British ministry, still ignorant of American character, looked to military force to obtain obedience, and also sought, by increasing the salaries of the judges of Massachusetts and making them independent of the legislative assembly, to have an instrument they could rely on. These things tended to exasperate, rather than to overawe, the people.

Looking back at the issues raised between the British Ministry and the colonists, it must be admitted that from the English standpoint, their measures were mild for that age, that the home people bore far heavier burdens of taxation and were more oppressed by monopolies and trade restrictions than the Americans. The trouble was that there existed a wide difference between the states of public feeling in the two countries. A measure that would have fallen like a spark in wet straw in England was like a fire brand in dry prairie grass in America. It kindled instantly a flame which spread over the whole country. Though the colonies had some just grounds of complaint, they were not grievously oppressed. They enjoyed far greater advantages on the whole, with much lighter burdens, than the common people of England. The system of town meetings in New England was made use of to arouse the people and disseminate the views of the leading spirits on the public question involved. The various colonial assemblies passed resolutions on the subject. The discussion of the abstract question as to the right of Parliament to tax the colonies began in 1764 by a resolution of Parliament asserting the right. This was followed by a denial of it by the General Court of Massachusetts. After the passage of the stamp act, the House of Burgesses of Virginia also took its stand against the right, and other legislatures quickly passed similar resolutions. On Oct. 7, 1765, the first real American Congress met in New York. Nine colonies namely, Massachusetts, Rhode Island, Connecticut, New York, New Jersey,

Pennsylvania, Delaware, Maine and South Carolina were represented by delegates numbering twenty-eight in all. This congress passed resolutions of loyalty, claiming that one of the rights of Englishmen, secured to all the colonies by their charters, was the right to tax themselves, which could only be done by their own legislative bodies. An address to the King, a memorial to the House of Lords and a petition to the House of Commons, were prepared and forwarded. Virginia, North Carolina and Georgia were prevented by their governors from sending delegates to this congress, but they forwarded petitions to England similar in import to the resolutions of the congress. A peculiar mode of resistance to British measures was that adopted by the merchants of Boston, New York and Connecticut, who agreed not to import or purchase any merchandise,—a few enumerated articles excepted,—from Great Britain for a year. Two regiments of soldiers having been quartered in Boston, some of them on March 5, 1770, exasperated by gibes and pelted with stones by a mob, fired on them, killing three and wounding others, one of whom afterward died. This was called the Boston Massacre and tended to increase the irritation caused by the quartering of troops there. Throughout the early years New England had been allowed greater freedom in the management of its domestic affairs than the more southern colonies. It was now made the center for repressive measures and the exercise of arbitrary power. The result could have been foretold by anyone familiar with the character of the New Englanders of that day, but ignorance of it led the British Ministry to commit blunder after blunder. The sentiment of loyalty to the British government and kinship to the English people was still strong throughout all the colonies. The people could easily have been led to tax themselves, and probably to have contributed their full share to the revenues of the crown, but they could not endure arbitrary power. Trade restrictions and duties led to smuggling, and this in turn to severe measures to repress it. In June 1772 the armed schooner Gaspre, employed in the revenue service, having run aground in shoal water near Providence, Rhode Island, was boarded by armed

men in whale boats and burned. The East India Company, encouraged by the allowance of a drawback of the English duty of a shilling a pound on tea to be exported to America, where the duty was only threepence and believing they could realize great profits from it in the colonies, sent several shiploads to New York, Boston, Philadelphia, and Charleston. But the Americans had decided not to drink tea. At New York and Philadelphia the ships were sent back to London. At Charleston the people unloaded it and stored it in damp cellars, where it soon spoiled. At Boston, having vainly tried to send back the three shiploads which had arrived there, a party of men disguised as Indians boarded the ships and emptied the tea into the bay. As soon as this was known in England, Parliament passed a bill ordering the port of Boston closed, and followed it with bills prohibiting town meetings, except with the consent of the governor, and requiring persons charged with offenses against the state to be sent to England or another colony for trial. These were direct blows at the most dearly cherished rights of the people, which had been guaranteed them by their charters and enjoyed ever since the earliest settlements. The town meeting was like the tribal meeting of the ancient Saxons. Through it the public will found expression. It could not be taken away, except by a force superior at every point to the people of the colonies, yet an ignorant, foolhardy ministry sought, through a vote of Parliament, to revolutionize New England's political life. The first thing done at Boston, after the receipt of news of the passage of these acts, was to hold a town meeting. This was what had always been done when any matter of great public concern required attention. Resolutions were passed calling for concert of action among the colonies and a suspension of trade with Great Britain till the wrongs were righted. These extreme measures on the part of Great Britain were generally comprehended throughout the colonies, and the cause of Boston and Massachusetts was looked upon as one common to all the cities and colonies. The Virginia Assembly resolved to observe the first day of the operation of the port bill as a day of fasting, and proposed a general congress to deliberate and provide for the common welfare.

On September 4, 1774, delegates from eleven colonies met at Philadelphia and on the next day chose Peyton Randolph as their president. A declaration of rights was agreed upon and the repeal of the acts of Parliament infringing them was demanded. To enforce their demands an agreement to suspend trade relations with England was entered into. Addresses to the King, to the people of the colonies and of Great Britain were prepared. The effects of the liberties which the colonists had enjoyed, and of the attention paid by them to education, were now made manifest. Boldness of spirit in asserting their rights was the offspring of habits of self-reliance and independence, clearness of statement of their rights and demands, was due to a thorough knowledge of the growth of liberal principles in England and of the free institutions of ancient Greece and Rome. Lord Chatham characterized the addresses as masterpieces of their kind. After an eight weeks' session Congress dissolved, with the recommendation that another be held on the tenth of May following at Philadelphia. The ministry looked to the army to enforce their policy, and General Gage and two regiments of infantry and some artillery were landed at Boston. The colonists began to make preparations for a collision, and the Massachusetts committee of safety gathered some supplies at Concord. Gage sent out a force to seize them, and the collision with the minute men of Lexington, which opened the war of the Revolution, took place April 19, 1775. Then followed on May 10 the capture of Ticonderoga and on June 17 the Battle of Bunker Hill. On May 10, 1775, the time fixed by the first congress, delegates from twelve colonies met at Philadelphia. They forthwith recognized the existence of a state of hostility between England and the colonies, and determined to provide for their defense, but, still seeking peace, they resolved that they wished for peace and that "to the promotion of this most desirable reconciliation an humble and dutiful petition be presented to his majesty." The petition and a second address to the people of Great Britain, as well as others to the people of Canada and Jamaica, were prepared. Congress voted to equip 20,000 men, chose George

Washington commander-in-chief of the army of the United Colonies, authorized an issue of bills of credit to the amount of $3,000,000 and pledged the twelve United Colonies to their redemption. On July 6 the Continental Congress issued a manifesto, justifying their resort to arms, yet disclaiming any intention to establish their independence of the Crown. In July a convention in Georgia resolved to support the common cause and sent delegates to the Congress. In December Congress resolved to fit out thirteen ships of war. March 17, 1776, as a result of the siege by the American army under Washington, the British troops amounting to 7,000 men evacuated Boston, and a fleet took them to Halifax. The military operations in 1775 were generally favorable to the colonists, mainly because the British government had not yet organized and sent over its armies. Aug. 25, 1775, the king issued a proclamation against the rebellion and sedition in America, and in October Parliament voted 25,000 men to maintain his authority. Arrangements were soon after made to hire 17,000 Hessian auxiliaries. Thus war grew into greater proportions, and both sides looked to force rather than reason to maintain their positions. When the news reached America that so large a force was about to be sent against them, and that they had been declared out of the royal protection, the sentiment in favor of independence grew rapidly. It was perceived that open organized resistance of British authority was inconsistent with a pretense of loyalty to the king. Writers and speakers began to talk vigorously in favor of throwing off all allegiance and on June 7 Richard Henry Lee of Virginia moved in Congress "that the United Colonies are and ought to be, free and independent States, and that their political connection with Great Britain is, and ought to be dissolved." The motion was earnestly advocated and vigorously opposed. It passed by one majority. Further consideration of the subject was postponed until July 1, and a committee, consisting of Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman and Robert R. Livingston, was appointed to prepare a declaration. These were remarkably strong men, who thoroughly understood the feel-

ings of the people for whom they were to speak. The declaration they prepared, and which was finally adopted and proclaimed on July 4, 1776, still blazes forth as the beacon light by which Americans are guided in their efforts to secure liberty to all. The fundamental principles on which they based their action were not to be found in any code of Europe, nor have they yet been given full operation in America.

The substance is contained in the second paragraph as follows:

"We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundations on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." The declaration then proceeds with an arraignment of the King of England for a long list of tyrannical acts with which he was charged, and a justification of the course pursued by the colonists in their efforts to obtain redress of their grievances.

The breach between the British government and the colonies had now become irreparable and the old, cruel, and unnecessary method of settling questions of right by the horrors and barbarities of war was resorted to on both sides. British statesmen in all times past had relied on force to compel submission to their authority. American statesmen knew no other course but to resist force with force. Centuries of education to forsake Christ and follow the ancient war gods caused the people to follow their leaders into the bloody strife. That the misunderstanding started from a question which ought to have been settled by reason in a friendly conference is clear; yet so poor, clumsy, obstinate and morally defective were, and usually have been, the statesmen of the time, that untold misery must needs supply the place of the virtue and

intelligence which belong in the councils of a great nation. The frightful responsibility of setting the elder branch of the English family in arms against the younger one was assumed with that alacrity with which evil passions so frequently are allowed to lead to destruction.

Having utterly thrown off all the authority of the British government, the task of constructing one of their own was presented to the colonists. They were not hampered by any claims of hereditary authority on the part of Americans. British titles had remained on the east side of the ocean, and equality of political rights was not a discovery of some advanced philosopher, but a patent fact long recognized in America. Equality did not need to be established, nor was there any occasion for educating the people to it. Whatever sentiment of loyalty to the king or of respect for titled nobility existed—and there was some—was for a king and nobility far away across the ocean, not for dwellers in America.

The organization of new governments necessarily started from the people in their primary capacity, and was effected in each colony through the medium of a convention or assembly of delegates, selected by the people in their town meetings in New England and New York and their counties in the south. The transition from the colonial system to one of independent states was effected easily and naturally. The system which had prevailed needed only slight modification to provide for such parts of the governmental force as had been theretofore appointed by the Crown. All the colonies had elective legislative bodies, and Connecticut and Rhode Island chose their own Governors and judicial officers. The people were accustomed to look to their representatives for legislation on matters of interest to the colony, and systems of election were already in use, by which the people were accustomed to name them. The town meeting system, which prevailed in New England, furnished a most convenient means of expressing public sentiment, and one which the royal governors found it utterly impossible to seriously interfere with. The people in the southern colonies also found no difficulty in choosing

representatives and convening them for business. Constitutions providing for state governments were adopted during 1776 in all but four of the colonies; the conventions in Georgia and New York met in 1776, but did not complete their labors till February and April respectively of the following year. In Massachusetts a constitution was framed by the General Court in 1778 which was rejected by the people and it was not till 1780 that one was adopted. Connecticut, being satisfied with its existing system under its charter, merely affirmed its independence by an act of its General Court, adopted the form of civil government contained in the charter of Charles II and promulgated a brief bill of rights. A new constitution was not framed till 1818. Rhode Island also was so well satisfied with its charter government that it framed no constitution till 1842. In most of the colonies the governors had been named by the king, but the charters of Connecticut and Rhode Island provided that they should be elected by the General Assembly. It was therefore quite natural that, on cutting off the appointing power of the king, it should be transferred to the representative body. Under the first constitutions the chief executive officer, styled Governor in some states and President in others, was elected by direct vote of the people in Massachusetts and New York only. His term in New York was three years. In New Hampshire a temporary arrangement was made for the choice of a council of twelve, by whom a president was named. The constitution then adopted was not intended to be complete or permanent. In 1784 a new one was framed under which the President was chosen by the people. In all the other colonies the Governor was chosen by the Legislative body and held office only for one year. The preponderating force in all the states was the great representative body, which derived its authority and was named directly by the people. The idea prevailed everywhere that delegates to the legislature should come out of the body of the people and return to them at short intervals, so as to always be in a position to truly represent the prevailing sentiment of those for whom they acted. The members of the most numerous branch of the legislature were chosen for

one year only in every state except South Carolina, where the term was two years. Most of the constitutions provided also for a senate or legislative council, to be elected at the same time as the representatives, but in New York and Virginia the senators were elected for four years and in Maryland for five years. In most of the states an executive council was also provided for, which was selected by the assembly. While some of the more carefully drawn constitutions provide in express terms for the separation and independence of the executive, legislative and judicial functions, the provisions of some of them with reference to the choice and powers of the judiciary are not very explicit. In no case was their election by the people required. The tenure of office of the judges of the high courts was during good behavior in all the states which framed new constitutions at that time, except New Jersey and Pennsylvania, where the term was seven years. Nearly all the constitutions guarantee full religious liberty without qualification, but that of Massachusetts allows the Legislature to provide for public worship and qualifies the freedom of religious observances. The distaste in some states for clerical interference in affairs of state was so great, that the constitutions of Delaware, Georgia, New Jersey, North Carolina and Virginia, expressly disqualify all ministers of the gospel from sitting in the Legislature, and some of them disqualify them from holding any office whatever. All the states provided for the choice of delegates to the Congress of the United States to be chosen annually by the Legislature. The constitution of Massachusetts is the most full and explicit of all and goes much more into details than the others. The constitutions of Maryland, Massachusetts, North Carolina and Pennsylvania begin with what are termed Declarations of Rights and that of Virginia with a Bill of Rights. Perhaps the best of these for brevity, clearness and strength is that of North Carolina, though that of Virginia is also an admirable model. All these constitutions crystalize the impulse and spirit which moved the colonists to revolt. The prime purpose of all of them was to protect the people against arbitrary power. Liberty and public order were the

two great blessings they were designed to secure. With the amendments, which subsequent experience has dictated, they have been found to serve these purposes admirably. The one fatal inconsistency of such lofty statements of the inalienable rights of men with the actual holding of slaves was felt by the leading statesmen of the time, but could not then be avoided. Little mention of African slavery is to be found in these constitutions, most of which are altogether silent on the subject. Delaware provided that no slaves should be thereafter brought in from Africa, nor from other colonies for sale. While the work of forming state government went on so expeditiously, that of providing a system for conducting the general affairs of the United States was found much more difficult. No general government had ever existed, except the British monarchy, which was utterly thrown off. No model existed for, nor were the people educated or accustomed to respect, any central authority speaking for all. Though a congress had been formed by the simple process of sending delegates from each colony, the extent of its powers and the manner of exercising them was wholly undefined, and the ratification of the state governments was requisite before the resolutions of Congress could be given effect.

On June 11, 1776, Congress resolved that a committee should be appointed to prepare a form of confederation, and on the next day the committee was made up. It was not till Nov. 15, 1777, that articles of confederation were completed, finally agreed to in Congress and proposed to the states. They were formally ratified and signed on behalf of eight states on July 9, 1778, but did not receive the assent of Maryland till March 1, 1781. These articles provided for the retention of their sovereignty by the states, but united them in a league for mutual defense. They gave to the citizens of each state all the privileges of citizens of the other states, and provided for a Congress, made up of delegates from the states, chosen for one year subject to recall. Each state was given only one vote in Congress, but might be represented by not less than two nor more than seven delegates. The states were prohibited from making treaties, sending embassies or

forming alliances with each other without the consent of Congress. The treasury of the Confederated States was dependent on contributions from the states, to be raised under the direction of the Legislatures, as were the quotas of men for the army and navy. Congress was given exclusive power to make peace or war, send ambassadors, make treaties, decide controversies between the states, regulate the coinage of money and to conduct the general affairs of the states. A committee of the states with a president was vested with executive power during the recess of Congress.

The weakness of this plan of organization lay in its lack of executive force. The Congress could do little more than resolve and give directions for the use of the troops and the disbursement of the funds which the state legislatures might provide. It had no power to act directly on the citizens of the states. It could neither enforce military service nor collect taxes. These defects became painfully apparent as the war progressed and the necessities of unity and promptness became more and more apparent. Not only was there great delay in obtaining supplies through the state legislatures, but there was no means of compelling action on their part after Congress had made its requisition. The devotion of the people to the cause of liberty, and the remarkable patience, steadiness of purpose and ability to inspire confidence, exhibited by Washington, had to make good the weakness of Congressional authority. Though in military organization and equipment the Americans were far inferior to the British, in spirit and enterprise they were quite superior. The British could take the seaport cities with comparative ease, but Burgoyne fell into difficulties and was forced to surrender his army in an attempt to force his way through New York. The spirit and energy with which the Americans surrounded him with a superior force were characteristic of a free people. Similar conditions proved the ruin of Cornwallis and his army. With the aid of France and Spain the independence of the colonies was achieved, and a preliminary treaty of peace was signed at Paris on Nov. 30, 1782. The final definitive treaty was not completed and signed till September 3, 1783.

Though many inconveniences had attended the loose organization under the articles of confederation, while the war lasted the authority of Congress was generally respected, and it gained a character with the people, who generally understood that success without united action would have been impossible. When the strain of war was removed the inadequacy of the powers of Congress to provide for the general welfare became more apparent and, the common danger being past, conflicting interests of the different states were regarded as of more importance, and the effect of commercial treaties, which Congress had no power to make binding on the state, more productive of discord. A great debt had been incurred, for the payment of which Congress had no adequate powers of taxation. The army, which had fought so successfully, was to be disbanded with large arrears of pay due the soldiers. The recommendations by Congress of treaties negotiated with foreign powers, and for the raising of funds to pay public obligations, were no longer followed by the states, unless satisfactory to them. The pressure of evident necessity to force compliance was lacking. The desire for a more efficient national organization had been frequently expressed, and, under the lead of Virginia, a convention was called to meet at Annapolis to consider the subject, but the attendance was so small that nothing of importance was done beyond issuing an address urging the appointment of commissioners from each state to meet in Philadelphia in May following. On Feb. 21, 1787, Congress adopted a resolution favoring the convention. In pursuance of this plan a convention with delegates from seven states, and later from all but Rhode Island, met at Philadelphia and elected George Washington as its president. This convention framed a constitution, a full copy of which with all amendments subsequently adopted will be found in the appendix.

This constitution having been agreed to by the Convention, engrossed and signed by all the members present, except Gerry of Massachusetts and Mason and Randolph of Virginia, was transmitted by the president to Congress with a resolution providing the manner of putting it in execution

and an explanatory letter. On September 28, 1787 Congress directed that the Constitution, resolutions and letter "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention." It was ratified by the states on the dates following: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789, and Rhode Island, May 29, 1790. The new constitution was put in operation on March 4, 1789 with George Washington as President and John Adams as Vice-President, before its ratification by the two states last named. There had been violent opposition to it, mainly on the ground that it conferred so much power on the general government and was deficient in its guarantees of liberty and of the rights of the states. This feeling was so strong and general that the first Congress, on September 25, 1789, proposed twelve amendments to the Legislatures of the states, ten of which were ratified by the requisite number of states by December 15, 1791. The journals of Congress do not show any ratification by either Connecticut, Georgia or Massachusetts, but include Vermont, which had been admitted into the union, February 19, 1791, as a new state. The new articles adopted are given in the appendix.

The next amendment was proposed by Congress September 5, 1794, declared adopted January 8, 1798 and reads:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

The Supreme Court of the United States had decided, that it had jurisdiction of a suit to compel a state to pay a debt, and this amendment was adopted to prohibit any further exercise of such jurisdiction. The next amendment was pro-

posed in 1803, proclaimed as adopted September 25, 1804, and stands as Article 12 of amendments. It changes the mode of electing the president and vice-president. No further amendments were made for more than sixty years. The next were the XIII and XIV, prohibiting slavery, and guaranteeing the rights of the liberated negroes, which followed as a result of the Civil War. The thirteenth was proposed February 1, 1865, and declared adopted December 18, 1865. The fourteenth was proposed June 16, 1866, and declared adopted July 21, 1868.

The Supreme Court of the United States has held that corporations are citizens within the meaning of the first section of this amendment, and the principal effect of the amendment, so construed, is to prohibit the state Legislatures from regulating the business of great corporations, a matter never discussed or generally thought of when the amendment was adopted. The XV was proposed February 27, 1869, and declared adopted March 30, 1870. The XVI amendment was proposed by Congress and ratified by the requisite number of states in February, 1913. From the time of the French and Indian War the political principle most cherished among the people of the American states has been, and still is, individual liberty. Resort to arms for the maintenance of their rights, has been, and still is, generally regarded as justifiable, and the war spirit is perhaps as prevalent as in the European states. In 1801 hostilities commenced with Tripoli and were continued till June 1805 by the naval force. The wars in Europe were the occasion of acts on the part of both England and France which caused great irritation to those engaged in foreign commerce. The search of American vessels for deserters from the British navy, practised by the English, was especially exasperating. Other high-handed proceedings on the part of the British government led to a declaration of war on June 19, 1812. It was expected that the people of Canada would break away from Great Britain and join the United States, but in this they were disappointed. In this contest the Americans again had to face Indian warfare on the frontiers. In the fighting on land the advantages were mainly on

the side of the British, whose troops were better disciplined, but at sea the Americans disputed their claim to rule the wave and won some victories, sustaining also some defeats. The contest with France drew the main force of the British and saved the Americans from the full brunt of the war. A treaty of peace was made in December 1814. With the exception of the Indian wars, which took place on the frontiers from time to time, the country was at peace till 1846. Texas, having gained its independence from Mexico, was on March 1, 1845, annexed to the United States and admitted into the union as a new state on December 29, 1845. War with Mexico followed and as a result of it, by the treaty of Guadalupe Hidalgo, concluded February 2, 1848, the vast territory from Texas to the Pacific was added to the possessions of the United States. The Louisiana purchase in 1803 had added the fertile district of undefined extent west of the Mississippi River, and in 1821 Florida was ceded by Spain. By a subsequent treaty a relatively small district was purchased from Mexico, known as the Gadsden purchase, thus completing the present boundaries of the contiguous territory of the United States. The foreign wars of the United States, except that with England, have not been of such magnitude as to seriously strain the resources of the country or check its growth and prosperity. The unfortunate circumstance of a slave population in a part of a great country, whose leading political dogma was personal liberty, led, first to bitter words and then to a civil war between a part of the slaveholding states and the regular government, which, for the vast numbers of men drawn into the armies, the bloody battles fought, and the determination of each side to succeed at all hazards, has rarely been equalled. In the political campaign of 1860 there was a breaking up of old parties, and a new party, whose main purpose was to prevent the extension of slavery into the territories, elected its candidates for president and vice-president. Leaders in the slave-holding states saw in this a menace to the institution of slavery and induced the states to attempt to withdraw from the Union. The right of a state to secede was asserted in the south and denied in

the north. No peaceful tribunal existed to which the parties were willing to submit the question, and the old, horrible, barbarous tribunal of war was invoked. During the struggle the government of the United States expended far more money in expenses of the war than the market value of all the slaves in the whole Union. As a mere matter of dollars, the general government could have bought, paid for and liberated every slave for far less money than was expended on the army and navy. Far more important of course than the money, were the men who lost their lives, their limbs or health in the contest, and the misery and destitution in the homes of the absent soldiers. These were the direct and apparent effects of the mad struggle. The indirect effects, though not so easily discerned, were of great importance. There was a general lowering of moral standards throughout the country. An impetus was given to the building of great fortunes, and to corrupt influences on public officials from which the country has not recovered. The object lessons of the war, most patent to the rising generation, were lessons of the use of the organized powers of the contending parties for the taking of the lives and the destruction of the property of each other. This war could not have taken place if the people generally had been educated to condemn war as barbarous. The histories, then and still read by the people, are mostly filled with the details of wars, and the men most admired and extolled are the military leaders. The war spirit will be propagated and break forth with its furies and moral pestilence till the people are taught peace, and wholesale murder by nations is classed with retail murder by individuals and condemned by the public conscience. Nations have seldom suffered more severely from the effects of civil war than did the United States from 1861 to 1865, yet perhaps none ever recovered from the effects so rapidly. The question which gave rise to the conflict having been decided and the basis of the contention removed, the work of resuming harmonious relations was quickly accomplished. The people of the seceded states were taken again into the Union, which they had vainly tried to break away from, and accorded all the rights and privileges of those who had maintained it.

From the adoption of the fifteenth amendment till the ratification of the sixteenth a period of forty-three years elapsed.

State Constitutions

From thirteen, the number of the revolting colonies which assumed independence and sovereignty in 1776, the Union has now grown to contain forty-eight states, each with rights equal to those enjoyed by the original thirteen. The early constitutions modelled as we have seen after the colonial systems of government theretofore prevailing, have been amended or superseded by new ones from time to time, and the forty-eight fundamental laws of the states afford a most pleasing exhibit of advancement in the administration of public affairs and the development of the principles of government by a free and intelligent people. The ideas of government generally entertained at the time of the Revolution, having been moulded in English forms, did not extend to the selection of executive and judicial officers by direct choice of the people. Delegates to the legislative body, chosen in comparatively small districts, were the only officials selected by vote of the people in England. So, under the first constitutions of the states, the people elected only representatives to the legislatures, leaving to them the selection of executive and judicial officers. In Connecticut the people had always elected their governors and in Massachusetts had done so till their charter was annulled. As a safeguard against the arbitrary exercise of power, the expedient of three separate coördinate departments was adopted. The idea of this division of powers is thus clearly expressed in the fourth Article of the declaration of rights in the constitution of North Carolina of 1776.

"That the legislative, executive and supreme judicial powers of government ought to be forever separate and distinct from each other." The same idea is embodied in all the constitutions and expressed in terms in many of them. Over and above the division of governmental powers in such manner as to furnish separate departments to operate as a check on each other, the framers of the constitutions were so jealous

of their personal rights and so fearful of the tendency, always and everywhere manifested under established governments, for officials to encroach on the rights of the people, that Bills of Rights, or Declarations of Rights, were incorporated in most of the constitutions, usually appearing as the first part. These Bills or Declarations are in all cases intended as limitations on the powers and functions of government and reservations to the people of full liberty of action in those particulars in which the state has no concern. This idea is not expressed in direct terms in any of the constitutions made prior to the close of the revolutionary war, but Section 46 of the Constitution of Pennsylvania of 1776 reads:

"The declaration of rights is hereby declared to be a part of the constitution of this commonwealth, and ought never to be violated on any pretense whatever."

In the present constitution of that state adopted in 1873 the idea is thus clearly and forcibly expressed in the last section of the Declaration of Rights,

"To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government, and shall forever remain inviolate."

The constitutions of Florida, Alabama, Delaware, Kentucky, Texas and North Dakota contain either identical or similar language. In some states the framers of the constitutions have seemed more fearful that the bill of rights might be construed as a statement of all the reserved rights of the people, and therefore a limitation on them, and have inserted the following clause (copied from the constitution of Maryland of 1867):

"This enumeration of rights shall not be construed to impair or deny others retained by the people."

The same or similar language occurs in the last constitutions of California, Colorado, Iowa, Kansas, Louisiana, Maine, Mississippi, Missouri, Nebraska, Nevada, New Jersey, North Carolina, Oregon, Rhode Island, South Carolina, Virginia, Idaho, Montana, Utah, Wyoming and Washington. In the constitution of Kansas and some other states there is

added "and all powers not herein delegated shall remain with the people." There is some diversity in the statement of these rights in the different constitutions, owing to a diversity of conditions. The tendency of late has been toward brevity. The main purport of all of them is to make a reservation of all political power in the people, except as specifically delegated, to guarantee freedom from arrest, except for lawful cause, freedom of speech, religious liberty, the right to bear arms, exemption of property from seizure or search, except on lawful process, trial by jury, the writ of habeas corpus, freedom of the press, no taxation without representation, the right to peacefully assemble, consult and instruct their representatives, and to prohibit exclusive privileges, hereditary titles, the suspension of laws, arbitrary arrests, the exaction of excessive bail, general search warrants, standing armies in time of peace, perpetuities and monopolies, hereditary honors, privileges or emoluments, and ex post facto laws, and to subordinate the military to the civil power. These fundamental ideas found vigorous expression in the earliest constitutions and have not been greatly extended or improved in later ones, that of North Carolina of 1776 being perhaps as clear and strong as any other. Marked changes have been made in the terms of office and modes of electing the executive and judicial officers. Members of the legislature are still chosen in accordance with substantially the same principals and in much the same manner as at first, but there has been a tendency to lengthen the official term, and in many states to have less frequent sessions. Under the first constitutions members of the legislature were generally elected annually, holding for the year only. Under the latest constitutions, members of the most numerous body, usually called the House of Representatives, are now chosen annually in nine states and for terms of two years in all the other states. Senators are elected for one year only in four states, namely, Connecticut, Massachusetts, Maine, and Rhode Island, for two years in fourteen states for three years in one, New Jersey, and for four years in twenty-nine states. The term of office of the governor is one year only in the four New

England states last named, it is two years in twenty states, three years in one, New Jersey, and four years in twenty-three states. In the early days substantially all the other state executive officers were appointed by the governor or elected by the Legislature. Most of the later constitutions provide for the election of some other state officers by the people, usually including Secretary of State, Treasurer, Auditor, Attorney-General, Superintendent of public instruction and in some states Surveyor-General. The governor is now elected by direct vote of the people in all the states, and in most, if not all of them, a Lieutenant Governor is also so elected. Thus not only the governors but the principal heads of executive departments are chosen directly by the people by ballot. In England and in the colonies, except as stated, there was no balloting by all the people for executive or other state officers, popular elections being confined to comparatively small districts.

In England, where the judges have always been appointed by the king, it was thought that the independence of the judiciary would be secured and the administration of justice improved by giving the judges a life tenure of office with a fixed salary assured, and this was done by Parliament with this end in view. In the colonies before the revolution, there was the same desire for an independent judiciary and the same means was adopted to secure it. The effect of the difference between the appointive system in England and the elective system in America was not at first perceived. The judges were appointed by the governor or chosen by the legislature and held during good behavior. This system is still preserved in the appointment of the judges of the United States and in their tenure of office. It has since been perceived that there is a wide difference between independence of the crown and independence of the people. Under the English system life tenure tended to judicial independence and afforded a check on the exercise of arbitrary power by the king; under the American it tends to independence of the people and the exercise of arbitrary power by the judges, and to judicial favoritism. It fills the bench with men too

old for usefulness and too much attached to all that is bad in the law and the system of administering it to admit of a progressive administration of justice by them. These considerations have not escaped the attention of the framers of the new state constitutions, and in all the new states the judicial offices have been made elective for limited terms. In most of the original states a similar change has been made under later constitutions. There is still what amounts practically to life tenure in Delaware, Florida, Massachusetts, New Hampshire and Rhode Island. The terms in the other states vary from two years in Vermont to twenty-one in Pennsylvania, for the judges of the court of last resort, the term most common being six years in nineteen of the states. The principle of popular election of judges has not yet been universally adopted. In nine states the judges are still appointed by the governor, confirmation by the senate being required in eight of these, in five they are chosen by the Legislature, and in the remaining thirty-four including all the most populous states, they are elected by the people. The institution of a council of state, apart from the heads of departments of the state government, which obtained at the time of the formation of the state governments, has nearly disappeared in that form, but the chief executive officers form a kind of executive council for certain administrative purposes. The evolution of state constitutions to their present type of remarkable uniformity, when differences of conditions are considered, has been effected in some states by amendment only of the early constitutions, submitted to the people for ratification, and in others by conventions called to frame new constitutions. Among the best provisions of all the constitutions are those which provide for their own amendment or abrogation whenever the people see fit to make changes. More than a majority vote of the legislature is generally required, usually two-thirds, to submit an amendment or call a convention, but this restriction has not had the effect to prevent frequent alterations of the fundamental laws of the states. Of the thirteen original states Massachusetts alone still retains its first constitution, but this has been

amended many times. In Connecticut the state government continued under the colonial charter till 1818, when a new constitution was framed and adopted, this, however, had by 1875, been amended in twelve different years. Rhode Island adopted its first constitution in 1842 and has not amended it many times. New Jersey adopted a new constitution in 1844. Delaware, New Hampshire and New York have each had three constitutions, and New York has also adopted numerous amendments. North Carolina, Pennsylvania and Maine have each had four, Virginia and Georgia six and South Carolina seven. The number for the last named states and North Carolina is due in part to the Civil War, which occasioned new constitutions at the commencement and after the conclusion of the war. This occurred in all the seceded states. Other northern states, admitted after the Revolutionary War, have shown almost equal activity in remoulding their fundamental laws. The early types, of which that of Massachusetts is the most full, by the declaration of rights, exclude certain matters from governmental interference, divide the powers into three coördinate branches, and impose certain restrictions on the action of the Legislature. The manner of electing officials and their duties are regulated and the methods to be pursued in the enactment of laws. That of Massachusetts devotes space to educational institutions and to forms of official oaths and religious declarations, requiring all state officers to declare that they believe the Christian religion and are possessed of the amount of property required as a qualification for the office. A property qualification was required by most of the early constitutions to entitle a person to vote. In Massachusetts he must have a freehold estate yielding £3 per year or £60 of other property. It is sometimes asserted that the southern states were more aristocratic in their ideas than the northern ones, but this does not find expression in their constitutions. In Pennsylvania and North Carolina it was only required that the voter should have resided in the state a year and paid a tax, in Georgia he must have £10 value or be a mechanic with six months' residence, in Maryland fifty acres of land or £30 value.

By new constitutions or amendments to the old the right of suffrage has been extended in most of the states to all males twenty-one years old, who have resided in the state the requisite time, six months or a year in most cases, and who are not criminals or public charges or *non compos mentis.* Most states allow foreign born men, who have declared their intention to become citizens of the United States, to vote. There is usually a requirement that the person offering to vote shall have resided in the voting district a prescribed length of time.

The tide continued steadily in the direction of extension of the elective franchise till very near the close of the nineteenth century. The last state to do away with its requirement of a property qualification was Rhode Island, which in 1888 changed its provision so as to take away the requirement, except in voting for city council and on the expenditure of money in the towns, where it is still retained. At that date the only cases of further restrictions were those requiring the voter to have paid taxes in Delaware, Georgia, Pennsylvania, Tennessee and Massachusetts, and that the voter, except under certain stated conditions excusing it, should be able to read. The peculiar situations in some of the southern states, where the fear of negro rule has ever been present since the adoption of the fifteenth amendment to the Constitution of the United States, has led to the adoption of peculiar constitutional provisions, designed to take away the elective franchise from the negroes without violating the fifteenth amendment. In this, South Carolina, where the colored population is most largely in the majority, took the lead, and in 1895 adopted a new constitution, which requires that the voter must have resided in the state two years, in the county one year and in the polling precinct four months before election, and have paid a poll tax. He must be registered, and to obtain registration must be able to read any section of the state constitution submitted to him by the registration officer, or understand and explain it when read to him by the officer. After 1898 he must be able to both read and write any section of the constitution submitted to him, or

must own and have paid taxes on property assessed at $300. There are fifteen sections in the article on Right of Suffrage. The lead of South Carolina was followed in Louisiana, where the negroes also constitute a majority, and in 1898 a constitution was adopted, requiring that a voter be able to read and write or be a bona fide owner of property assessed at $300, but all persons, who were voters under the laws of the state where they resided on January 1, 1867, and all their lineal descendants, are exempted from these requirements and may vote without regard to either of them. Substantially the same provision is made in the constitution of North Carolina, adopted in 1902. As negroes were not entitled to vote in 1867, it practically excludes the illiterate negroes and admits the illiterate whites, without doing so in express terms. The great question with reference to the elective franchise, now being most generally considered, is concerning the right of females to vote. Utah, Idaho and Wyoming, by constitutions framed in 1889, have provided that the right to vote shall not be denied on account of sex. In an earlier constitution, that of 1876, Colorado had provided that the Legislature might permit women to vote. In 1912 California and Kansas adopted amendments giving women the right to vote. The constitution of South Dakota allows women to vote at school elections, and the constitutions of other states permit the legislature to extend to them the right to vote at school elections. The modern state constitutions go more into minute details than the earlier ones, and the subjects of taxation, municipal organization, private corporations, and education have received much attention. Nowhere else has the desire for internal improvements, especially for the construction of railroads, been such a passion among the people. From the earliest days of railroad building to the present time there has been a tendency to burden states, counties and municipalities with indebtedness, often to a ruinous amount, to obtain new railroads, and, when the full burden was felt, to attempt to repudiate it. Bonds issued for these purposes have been and still are heavy burdens on a large part of the country. In the early stages of railroad building state aid

was often granted and in some instances construction was undertaken by the state. There was also, prior to the Civil War and the passage of the national banking act, a strong tendency to establish state banks, authorized to issue bills based to a greater or less degree according to the views of the Legislature on the credit of the state. About 1850, some of the states, which had suffered most from the reckless use of credit, commenced to adopt constitutional restrictions, thus the constitution of Ohio adopted in 1851 provides, "The credit of the state shall not in any manner be given or loaned to, or in aid of, any individual, association, or corporation whatever; nor shall the State ever hereafter become a joint owner or stockholder in any company or association in this state or elsewhere, formed for any purpose whatever." The state was also prohibited from assuming the debts of any of its subdivisions, or of any corporation whatever, unless to repel invasion or suppress insurrection, and counties, cities and towns were prohibited from becoming stockholders in corporations or loaning their credit to aid them. These provisions indicate the prevalence of the instance thereby prohibited. The newer states, however, have exhibited the old passion for public improvements, especially railroads, and some of them still permit a limited amount of aid to be voted by counties, cities and townships for the construction of railroads.

The regulation of the governments of cities is a problem not very definitely solved as yet. It is a subject of constant legislation and change, wherever there are large cities, but is seldom treated in much detail in state constitutions. The general framework of the governmental system has not been greatly changed. All the states are divided into counties, the counties generally into towns or townships and the townships into school and road districts. These are the only general divisions of the territory for administrative purposes. Congressional, judicial, senatorial, representative and other districts are established for the election of officers and to define their territorial jurisdiction. The principle of local self-government is applied, subject to legislative and judicial

supervision. Each county has its board charged with supervision of roads, bridges, county buildings and county interests. In each a court of general original jurisdiction is held at stated times. Each county elects its officers, including generally in addition to the county board, a sheriff, treasurer, recorder of deeds, superintendent of schools, coroner, attorney and county clerk. Other county officers are sometimes added. In the New England States, New York and other states closely modelling their township organizations after them, the town officers are more numerous and their duties more important than in the southern and some of the western states, where the tendency is to trust more to the county boards. The school districts are very important divisions and have charge of their own schools, which are generally looked after by a district board in accordance with specific directions given by the voters at a general meeting. The taxes for school purposes are usually voted at the annual meeting and the teachers are employed by the board.

At the time of the Revolution the prevailing opinions with reference to the distribution of governmental powers were, that usurpation of authority and oppressive exercise of it were most to be apprehended from executive officers, that the legislative body, made up of representatives chosen directly by the people, could best be trusted to guard their interests and should be the repository of the most important delegated powers. The judiciary was not then looked upon as more than a department for the adjustment of controversies between private persons, municipalities and states and for the trial of persons charged with crimes. That it would ever supervise, control or nullify legislative action was not thought of, because no such power had theretofore been exercised in England or America by the courts, nor is there yet any such thing as an unconstitutional act of the British Parliament. But the idea of placing limitations on the powers of government necessarily carried with it limitations on the powers of the Legislatures, then regarded as of such preponderating influence and importance. The bills of rights are all limitations on the powers of all departments of gov-

ernment, as well as mandatory in directing the performance of certain official duties.

Throughout colonial times the legislatures had always stood as the champions of the people, representing their interests and urging their claims. The governors, and those holding office by appointment from them, represented the British government. It was through the governors that enforcement of the acts of Parliament and the administrative policy of the ministry was attempted. When the change was made, which took away the connection between the governors and the British crown, the people did not at once get rid of their antipathy to governors nor determine to invest them with extensive power. There has, however, been a decided tendency to place more power in the hands of the governors. By the original constitutions the governors had no part in the making of laws and no veto on the action of the legislature in Virginia, North Carolina, New Hampshire, New Jersey, Delaware, Georgia or Maryland. In Massachusetts the governor might object, and a two-thirds vote was then required to pass the act. In New York the governor, chancellor and judges of the Supreme Court, or any two of them, were required to revise bills and might object to them, when a two-thirds vote was required for their passage. In Connecticut and Rhode Island, under their charters, the governors were a part of the law-making power. In South Carolina the governor was given an absolute veto under the constitution of 1776. Under the existing constitutions the governor has no absolute negative on legislation in any state, but in all but Delaware, North Carolina, Ohio and Rhode Island, he may return the bill with his objections, when if it receives the requisite majority, it may become a law. The vote required varies from a majority of all the members elected to each house, to two-thirds of all elected, the latter being the usual requirement. In Vermont the objection of the governor suspends the operation of the law till the next session of the Legislature. Of the early constitutions that of Massachusetts is the longest and is divided into six chapters, preceded by the Declaration of Rights, which contains thirty sections or Arti-

cles, as they are termed. Chapter I relates to the Legislature, confers legislative power on the senate and house of representatives, prescribes the manner of their election, time of meeting and number required for a quorum and exempts members from arrest going to, returning from and attending the assembly. Chapter II prescribes the manner of electing the governor, makes him commander-in-chief of the army and navy, and confers the pardoning power and power to appoint all judicial and executive offices, with certain named exceptions. All public moneys are required to be paid out only on his warrants. A lieutenant governor and a council of nine, to advise the governor, are also provided for in this chapter and the mode of their election pointed out. A secretary, treasurer, receiver general, commissary general, notaries public and naval officers are required to be chosen annually by the legislature by joint ballot. Chapter III treats of the judicial power and makes the terms of judicial officers during good behavior, except justices of the peace, whose terms are seven years. Article 5 of this chapter reads: "All causes of marriage, divorce and alimony and all appeals from the judges of probate shall be heard and determined by the governor and council until the legislature shall, by law, make other provision." Chapter IV provides for the election of delegates to congress by joint ballot of the Legislature. Chapter V relates to the University of Cambridge, confirms its charter rights, and makes it the duty of legislatures and magistrates to "cherish the interests" of schools, learning, arts, science, etc. Chapter VI contains long forms of official oaths and declarations, prohibits any person from holding more than one of the principal offices named, adopts the laws theretofore adopted, used and approved in the courts, requires that the writ of habeas corpus be made free and cheap, and prohibits its suspension, except on urgent occasions and for not more than twelve months. This old constitution is the only one the state has ever had, but it has been amended from time to time. With all its amendments it lacks much of the completeness of the later constitutions, of which perhaps a fair type is that adopted in Missouri in 1875, which is

divided into fifteen articles. Art. 1 confirms the existing boundaries of the state and makes all rivers bordering on the state free public highways to all citizens of the United States. Art. 2, is the Bill of Rights with thirty-two Sections of the usual purport. Art. 3 distributes the powers of government among the three departments. Art. 4, vests the legislative power in the general assembly, provides for the apportionment of the state into senatorial and legislative districts, fixes the qualifications, compensation and terms of office of senators and representatives, provides the manner of organization of the houses, requires a majority of all for a quorum, regulates the procedure in the passage of bills with minuteness, requiring the vote on final passage to be taken by yeas and nays and recorded on the journal. Then follow unusually severe restrictions on the power of the legislature to appropriate money, requiring the payment of the public debt to be first provided for, appropriations for school purposes next, and pay of the assembly last. The power to create a public debt is limited to unforeseen emergencies, and the legislature is prohibited from lending the credit of the state to aid any person or corporation or give away public money, except in case of a public calamity, or to authorize any county or municipality to do so or to become a stockholder in any corporation, and the assembly is prohibited from subscribing for stock in any corporation. The assembly is also prohibited from passing local or special laws for a long list of enumerated purposes, including the granting of charters and corporate privileges. This constitution is of the most extreme type in the strictness with which it restrains the action of the Legislature. Article 5, relates to the executive departments and prescribes the terms of office, manner of election, powers and duties of the governor and members of the executive department. Article 6, relates to the Judicial Department, prescribes the powers and duties of the different courts, the number and manner of election of the judges and contains forty-four sections. Article 7. Authorizes the impeachment of all the principal executive and judicial officers by the house and their trial by the senate, but limits the judgment to re-

moval and disqualification from holding office. Article 8. Prescribes the qualifications of electors and requires all elections by the people to be by ballot and all elections by representatives to be *viva voce*. Article 9 relates to counties, cities and towns and provides for their organization and government. Cities of 100,000 population or more are authorized to frame their own charters, submit them to the people and if ratified by their votes the charter becomes operative. Alternative sections may be submitted and voted on separately by the voters without prejudice to the others. Article 10 treats of revenue and taxation and is very rigid in its limitations. The legislature can only impose taxes for general purposes, powers of local taxation can only be exercised by the counties, cities, towns and municipalities for which the moneys raised are to be expended. Taxes are required to be uniform and no property can be discharged from its equal share of a public burden, except public property which is made exempt from all taxes. The creation of municipal indebtedness and the amount of the annual tax levy in counties, cities, towns and school districts is strictly limited. No other state has such full or rigid restrictions in these respects. Article 11 in its first section expresses modern American views on the subject of education. "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state between the ages of six and twenty." Separate schools for children of African descent are required. Provision is made for the maintenance of the State University and the investment of the public school funds. Article 12 deals with corporations and prohibits their creation by special acts or the conferring of special powers, and the issuing of stock except for a valuable consideration received. Railroad corporations are separately treated and are prohibited from discriminating between patrons, from consolidating with parallel or competing lines and from granting passes to members of the assembly, board of equalization, or any State, county or municipal officer.

The acceptance of a pass forfeits the office. The creation of a state bank is prohibited and any law authorizing the creation of banking corporations must be submitted to a vote of the people before going into effect. It is made a crime for any bank officer to assent to the receipt of deposits after knowledge of the insolvency of the bank. The legislature cannot remit the forfeiture of a charter, and the police power of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state. An important provision is that which authorizes the condemnation, under the power of eminent domain, of the property and franchises of corporations, as well as individuals, and provides that the right of trial by jury shall remain inviolate in all cases where corporations are interested in the determination of claims for compensation in the exercise of the right of eminent domain. This provision appears, in almost identical language, in the constitution of Illinois of 1870, of Pennsylvania of 1873 and Arkansas of 1874, and its importance can only be measured by the growing sentiment in favor of public ownership and operation of public utilities, now mainly in the hands of private corporations. The extension of the principle of local self-government logically lies in the direction of its application to great combinations to carry on a business which requires large capital and many employees. It is a little surprising not to find the provision, common to most state constitutions since the decision of the Supreme Court in the Dartmouth College case, that corporations may be created only by general laws which may be amended or repealed. The remaining articles of this constitution are Article 13 which treats of the organization of the militia, Article 14 with miscellaneous provisions, prohibiting civil or criminal proceedings growing out of acts done in the military service during the civil war under the authority of either the Federal or Confederate government, disqualifying duelist from holding office, also any person holding an office under the United States, prohibiting the increase of the compensation of officers during their terms of

office or extending their official terms, prohibiting lotteries, and making some minor regulations. Article 15 points out the mode of amending the constitution, requiring only a majority of the legislature to submit and a majority of the people to adopt an amendment. Many amendments have been adopted, including one allowing three-fourths of the jurors to render a verdict in a civil case.

The new constitution of Illinois adopted in 1870 is not so long but covers much the same ground, having fourteen articles, among which those relating to Revenue, Counties and Corporations are quite full. A separate article is devoted to warehouses, a subject not elsewhere of so much importance, Chicago being the great grain market and storage point. The constitution of Pennsylvania of 1873 is not quite so long as that of Illinois, but is divided into eighteen Articles. Substantially the same ground is covered though with less particularity. Though the state has very large cities the article on cities and city charters has but three short sections, authorizing cities to be chartered when the people vote in favor of it and have 10,000 inhabitants, requiring that debt shall not be created by any municipal commission, except in pursuance of an appropriation previously made, and that an inviolable sinking fund shall be created for the payment of funded debts. Separate articles are devoted to Private Corporations, Railroads and Canals. The granting of passes, except to employees, is prohibited, but no penalty is attached to its violation.

State constitutions, except in their distribution of the powers of government, cannot be said to have reached any settled type. The rapid growth of cities and the increasing importance of corporations, furnish subjects not yet satisfactorily adjusted.

The general idea of the governmental system of the United States is now quite fully and logically carried into practical operation in the states and nation. Matters of general concern to all the states are entrusted to the Federal Government. The extreme conservatism of the provision of the Constitution of the United States on the subject of amendments

seriously retards the correction of its defects. The requirement of a two-thirds vote of each branch of Congress and ratification by three-fourths of the states, seems an unreasonable restriction on the will of majorities. The constitution requires the House of Representatives to be elected by the people of the states, and the members are now usually chosen by districts, the boundaries of which are fixed by the state legislature, though in some cases they are elected by the electors of the whole state. The Constitution of the United States provides for the election of president and vice-president by electors chosen for that purpose, but the people have adopted a system which renders the work of the electors a mere matter of form. The electors are named by party conventions held in the several states and are expected to vote for the candidate named by that party in its national convention. No instance has yet occurred in the history of the republic of a presidential elector betraying his party and voting for a different candidate. No official of a state or the nation is more truly selected by the people than the president. The great powers conferred on him and the exalted rank of the office challenge the attention of all the people to the merits of proposed candidates, and personal worth is an important element, though not equal in its influence on the voters to that of the party name.

It is a source of great satisfaction to Americans that the presidential office has always been filled by a man of high character and good ability. The names of most of the presidents would have appeared among the illustrious men of the country, if they had not been chosen to that high office. The masses of the people take more pride in the president than in any other public official and, as a rule, have been better satisfied with the manner in which he has discharged his duties. More than a century of elective presidents has confirmed the wisdom of trusting the people to choose their chief magistrate.

At the time of the Revolution the judiciary took no leading part in public affairs. From the earliest times of the British monarchy they were appointees of the crown. When the

Constitution of the United States was framed, the existing system was continued without change except of the appointing power. Subsequent experience has however disclosed its defects, and the states have substituted a judiciary elective for fixed terms in place of an appointive one for life.

The constant tendency to restrict the powers of the legislatures, so strongly manifested in the state constitutions, has not been exhibited with reference to executive departments, which have been multiplied and their functions extended, with no added restrictions of note beyond making all the chief officers in the states elective. The legislatures have generally been relied on to provide all necessary checks on executive action.

As the power of the legislatures has been restricted by constitutional inhibitions, the power of the courts has grown, though without any express constitutional authority. The system of written constitutions makes a division of the laws into constitutional, which may not be violated by any one and can only be changed by the people, and legislative, which the legislature may change at will. In the early days the question arose whether a court had the right to declare an act of congress or of a state legislature void, if in conflict with the constitution, and it was very logically held that it had. Though in the early history of the country the courts were exceedingly loth to nullify legislative acts, the constant exercise of the power to do so has established a practice, now very prevalent, and no act of the legislature, materially affecting great private interests, is now regarded as law till its constitutionality has been passed on by the court of last resort. The Federal Courts are especially free in disregarding and nullifying acts of state legislatures on constitutional grounds, and have even gone so far, in construing acts restricting the charges of public service corporations, as to sit in judgment on the reasonableness of the rates established by the legislature, thus substituting their own judgment in a matter as to which minds naturally differ, for that of the law-making body. It apparently has escaped the attention of constitution makers, that they were thus so greatly exalting the power of

the courts. As the courts pass judgment in most of the states only on questions arising in cases coming before them, and never on abstract questions of law, it often happens that an act of the Legislature remains for years printed in the statute books as a valid enactment, and is then declared by the courts of no effect. Neither the common citizen nor the professional lawyer can ever tell with absolute certainty what a court may determine in such a case. It is always presumed that the members of the Legislature are as familiar with the constitution under which they act as the courts, and that they as honestly observe its limitations, yet the courts may now be relied on to nullify a considerable percentage of legislative acts affecting property rights. No such inconvenience attends the system of any other great country. It grows out of the desire to restrict governmental powers, yet it has resulted in exalting the power of that branch of the government least subject to popular control, and in the case of the Federal Judiciary, altogether beyond the peoples' chastening hand. It would seem that some system should be adopted under which all acts of Congress and state Legislatures will pass scrutiny and judgment as to their constitutionality, before they are given effect, and that thereafter they shall not be open to challenge on constitutional grounds. The courts of law cannot be always trusted to be the final arbiters, not merely as to the powers of the legislative and executive departments of governments, but as to their own also. Perhaps it might be well to have all constitutional questions of this kind passed on by a tribunal representing all three departments of the government, or by an independent one named by the people. The constitution of Belgium provides that authoritative interpretation of the law belongs only to the law-making power.

The experience of 126 years under the United States Constitution, during which the territory has been extended not only across the continent, and over Alaska to the Polar Sea, but also into the Asiatic Islands, the number of states increased from thirteen to forty-eight, the population from 3,000,000 to more than 93,000,000 exclusive of the Philippine

Islands with a yearly influx now by immigration running as high as 1,000,000, made up of people of all nations, and the strain of a terrific civil war, have not pointed out any radical defect in the general framework of the republic. Improvements can always be made in any government, but the system itself points out how they may be made peacefully. The most surprising thing connected with American history is that so little modification of the constitution resulted from the Civil War. The seceded states were simply brought back into more harmonious relations with the others. The framework of the state governments as above pointed out has undergone far greater changes, quite uniformly in the direction of an extension of the principle of local self-government. The Federal Government is one of limited powers, confined to matters of general concern. The state governments, while restricted in their functions in certain particulars by the Constitution of the United States, and still more by the state constitutions, yet have a far wider field of action and affect the interests of their citizens at many more points. It is the state Legislature that has power to pass laws defining crimes in general, and fixing the punishments for them, and that regulates the property rights of its citizens. At first the legislatures were given power to regulate local affairs by special acts, and some of this power is still retained and exercised, but the tendency still seems to be in the direction of further constitutional restrictions on the state legislatures and greater local independence. State legislatures everywhere are subjects of severe criticism. They are always surrounded by powerful corrupting influences. The railroad, insurance and other great corporations are always either asking legislation in their special interest or striving to prevent acts curtailing their privileges or casting burdens on them. This leads to the custom of granting free passes and other special favors to the members and to charges of bribery with money, doubtless sometimes based on facts. Many efforts have been made to remedy these evils, and the use of passes has been greatly curtailed. So long as such great interests are in private hands, managed for personal gain, it is doubtful whether any

perfect remedy can be found. State legislatures are not so vile however as they are sometimes painted. They are usually made up of very fair representatives of both the intelligence and the integrity of the people. The State executive officers have generally been men of fair character, who have managed their offices to the satisfaction of the public. Some scandals are always incident to the management of the great charitable and penal institutions, and there are sometimes charges of cruelty in prisons and asylums, but the rule is that prisoners and patients are treated kindly, and their needs well and even generously supplied.

Next in order below the state government comes the county. All the states are divided into counties varying in number from three in Delaware to two hundred and forty-six in Texas. The size of counties is far more nearly uniform than that of the States, being generally about as large as will admit of driving with teams from every part to a central point in a day. Some of the western states, however, where population is very sparce, have very large counties, many times greater than such states as Rhode Island and Delaware. Each county has its court house and its quota of county officers occupying it. Here at stated times the great court of general original jurisdiction is held, commonly termed either the district or circuit court; the probate court and special courts in the more populous counties. The representative body transacting the county business, usually possessing a mixture of legislative, executive and judicial functions, also meets here at stated times. In New England, New York and other northern states these bodies are made up of members elected by the towns, and are called the Boards of Supervisors in New York. In Ohio and many other states the members are elected by districts and the board is made up of a much smaller number, three only in Kansas, and are called Boards of County Commissioners. In the south and some western states they are chosen in the same manner, but the members are called judges and the body is styled the County Court. There is much diversity in the scope of the duties and powers of these tribunals, which are almost if not quite universally fixed by

the legislature, rather than by constitutional provision. In the East the laying out and repairing of roads and the construction and maintenance of bridges are generally under the supervision of the towns, while in the West they are partially or wholly under the direction of the county boards. The maintenance of the courthouse and other county institutions, the levying of county taxes and the expenditure of county money are under the direction of this tribunal, and it stands as the general representative of county interests. Each county elects its own sheriff, whose principal functions are to serve and execute the processes of the courts, of which he is the chief executive officer, and to collect delinquent taxes. The office, though still important, does not rank as high as formerly in the colonies and in England. Each county also elects its recorder of deeds, who records all instruments affecting the title to land and mortgages on personal property and such others as the law may require to be recorded. In Connecticut, and possibly some other of the eastern states, these records are kept by the town clerks instead of a county officer. There are usually also a county treasurer, clerk, coroner, probate judge, superintendent of schools, surveyor, clerk of the court and attorney. Other officers are sometimes added. The county organization is of prime importance in the actual operation of the governmental system. It is here that the law is administered, and that the juries pass on the facts in civil causes triable before them, and on the merits of criminal prosecutions. The roads, bridges, local charities and improvements of various kinds are mainly under county control. Except in counties containing large cities, the conduct of county affairs is usually very closely watched by the people and is in main quite satisfactory. Great abuses seldom exist and when they do are soon remedied.

The importance of the towns or townships as municipal organizations varies greatly. In the New England states in Revolutionary times the towns were the political units. The people gathered in their town meetings, consulted, took such action as seemed advisable and selected their representatives and agents to carry out their will. This system did not pre-

vail in the South, where the county was the unit. At present there is a tendency to approximate a common type, with township organizations attending to the repair of roads and bridges, the temporary relief of the poor and some other special matters. The most important function of the town or township is in connection with the elections. There is always one or more election precincts in each of them, and the township officers are usually charged with the duty of providing the polling places and making other necessary arrangements for collecting the votes and forwarding the returns. Each town has one or more justices of the peace, with power to decide petty causes and issue warrants for the arrest of persons charged with crime. Within the towns are road and school districts. The system of repairing roads under the direction of an overseer appointed for a small district, is not generally satisfactory, owing to the unsystematic and often shiftless manner in which the work is done. Where a road poll tax is required or property tax is allowed to be worked out, it often happens that the smallest fund is available for the districts requiring the largest expenditure, and thus the roads are worked often to their injury where work is not needed and left in bad condition in less rich or populous districts. The tendency now is in the direction of larger districts and a regular levy for road purposes.

The most important of all the functions of the state is that connected with the education of the young. The system of district schools is now substantially universal over the whole United States. The whole country is divided into school districts of such convenient size as will enable all the children in it to attend easily; usually two miles is as far as any child needs to go to reach the school house. The affairs of the district are determined by the people in a general meeting at which, in many states, women as well as men are now allowed to vote. The size and cost of school buildings, the number of teachers, the length of school terms and other particulars are generally determined by the people at the annual district meeting. It is a noticeable fact, that in no other public matter is so much liberality shown, and the school tax

imposed on themselves by the voters is always the heaviest of all borne by the people. Comfortable school buildings and as good teachers as the district can afford are always demanded. This system of direct regulation of schools by the people applies only to rural districts. In the cities, where many teachers are required, the schools are in charge of boards elected for that purpose.

In 1790 the urban population, inhabiting cities of 8,000 or more, is given as only three and three-tenths per cent of the whole. New York City alone now contains more people than there were in all the colonies at the date of the adoption of the constitution. The problem of municipal government was not then one of great concern. It is now one of the most complex that confronts the legislator. On the farm or in the small town the family supplies most of its wants in its own way. For water wells and cisterns are dug or natural springs and water courses afford a supply. Lights are supplied in a more or less primitive fashion, but always by the individual in his own way. To communicate with his neighbors and the outside world he formerly walked or drove along the public highway. Now he uses the telephone and rural mail service. No neighbor cuts off his light or air by a new building, nor is he usually much affected by what is done on his neighbor's ground. In the city conditions are greatly changed. The individual must rely on some one else to supply nearly all his wants. The universal tendency of the city is to divide labor, specialize and become dependent, each one on a multitude of others. Water, light, heat, conveyance from point to point, means of communication and security against fire and floods, must all be provided by some general agency, public or private. In rural communities there are poor people, but none with inordinate wealth. The city breeds the multi-millionaire and the multitude of paupers. In the cities are to be found the dens of the criminals, the filthy houses of prostitution, the conscienceless gamblers and swindlers of all kinds. Selfishness and vice grow up together, children of a common parent, though one may dwell in a palace and the other in a wretched tene-

ment. In contrast with rural conditions the bulk of the property is owned by the few and the great multitude work for wages, live in rented houses, and have little or no provision made for a time of adversity. A marked characteristic of the American city dweller is that he strives to appear as well as his neighbor. He rents a more expensive house and wears dearer clothing than his income warrants. His economies if any are such as his neighbor cannot see. The tendency of this mode of living is to produce a constant strain for appearances, which results in duller moral perceptions and a debasement of ideals. The strength and safety gained by self-denial and frank admission of the truth, are sacrificed to a foolish desire to appear more prosperous than he in fact is. This class of people of necessity are always at someone's mercy, and generally become, if they do not begin as, servants of others. The percentage of Americans, who refuse to gain independence by the slow sure route of industry and rigid economy, is distressingly large. The vain hope of some stroke of fortune, which will make good all that could be gained by thrift, keeps multitudes in poverty. While these propensities play so important a part, the city problem would not be nearly solved if they were eliminated. It must be conceded that the satisfactory government of great cities still remains an unsolved problem in America. State legislatures, under most of the state constitutions, are vested with general powers of legislation for them, and may create such offices as they think best and prescribe the mode of filling them. State legislatures, however, are seldom in a position to judge wisely of the needs of a city, and all schemes to govern through state appointees have resulted in gross misgovernment and corruption. It is fully demonstrated that the people will govern themselves better than any agency from without, but it is not demonstrated that they will do very well under prevailing methods and conditions. The general framework of the city government is similar to that of all the other governmental agencies. There is an executive head, usually called the mayor, and a body vested with legislative powers, usually termed the council. This

consists sometimes of one and sometimes of two chambers, the very large cities usually having an upper and a lower house, while the smaller generally have but one. The mayor and council are vested with power to enact ordinances for the regulation of police affairs in the city, and for the management of its property, the regulation of streets, public grounds, water fronts, and other places to which the people resort. They may impose penalties, usually limited to a small fine or a brief term of confinement, for violation of their ordinances. To the mayor and council the people look for management of the supply of water, light, gas, electricity, for pavement of the streets, construction of bridges, sidewalks, sewers, dykes, public buildings, markets and numberless other conveniences, and the regulation of all public service corporations, so far as their limited powers will enable them to do so. Recently what is termed the commission form of government has been adopted by some cities under which a single board of commissioners elected from the city at large exercises all legislative and administrative functions. In the small places the list of executive officers includes the mayor, marshal or chief of police, street commissioner, fire warden, police judge, clerk and such other police officers as the situation calls for. In the large cities, besides these there is a long list of officials connected with each department of the city government. Large forces are constantly employed in the departments of the police, streets, parks, sewers, health, buildings, waterworks (where owned by the city), and others according to the particular needs of the city. Into each large city railroads are built, requiring terminal facilities and privileges of various kind, and subject to taxation as is other property. The various corporations, owning these or other great properties, find it necessary, from time to time, to apply to the city for special privileges of various kinds, often of great value. The use of streets, alleys and public grounds is often desired and frequently granted without compensation. Street railway companies, desiring to occupy streets with their lines, call on the council for franchises, worth millions to them. Water, gas, telephone, telegraph,

electric light and power companies and other corporations of many kinds, conducting great public conveniences, go to the council for permits to use the streets and other public property and for exclusive franchises and privileges of many kinds. The necessities of the public in a city call for heavy expenditures on streets, parks, sewers, public buildings, bridges, viaducts, police and sanitary supervision. These, added to the other expenses of the city government, necessarily makes city taxes high, where no revenue is collected in return for special privileges. The people of cities find the same difficulty experienced by county, state and national governments in their dealings with great private corporations. The public agencies, designed to supervise and regulate the corporations, are in fact often, if not usually, supervised and controlled by the corporations. The reason for this lies mainly in the superior qualification of the agents of the corporations for dealing with the special subjects under consideration. Strong personal interests, actively at work at all times, accomplish the purposes of the corporations. In dealing with any question relating to the operation of a special branch of business, like furnishing water, gas, or electricity, or operating a railroad or street railway, the company's managers are reasonably certain to be much better informed as to the details of the business than the members of a city council, chosen from men in the various occupations, indiscriminately, with no special knowledge or experience concerning any of these particular matters. City councilmen are frequently charged with having acted corruptly in granting corporate franchises, when they have merely been misled through ignorance. Reason would indicate and experience proves that the operations of great business corporations cannot be efficiently supervised or regulated, except by men specially qualified by education and experience for the work. The idea of extending the principle of popular government to the public ownership and operation of street railways, water-works, gas works, telephones, telegraphs, railways, coal mines and other public utilities, which are either natural monopolies or likely to be artificially made such, seems to be

gaining favor. Whenever upright public agents, who fully understand the business, are placed in charge of works of this character, the results are satisfactory, but city governments, far more than those of any other political division, seem destined to fall into either corrupt or inefficient hands. The reason for this appears to be that less care is exercised by city voters in the choice of public officers than by the people of the rural districts. This may fairly be accounted for by the difference in the circumstances of the people. Probably the people of the cities are as intelligent and well informed as the country people, but they are more inclined to give their exclusive attention to their personal affairs and neglect public interests. The successful merchant, as a rule, eschews politics, because he has no time to spare and believes it will hurt his business to take sides in the election. Busy men having large establishments of other kinds are inclined to take the same view. These classes do not constitute a large percentage of the voters. The wage earners in a great city are always in a vast majority. The concentration of wealth, which steadily increases with the growth of cities, is such that the proportion of independent property owners is small. The tenant wage earner, who pays little or no tax, feels little concern about public expenditures or the management of the city's business. Thus, from different causes, we have two great classes of voters indifferent in the exercise of their duties as citizens. The result is that a small class of men, who devote their time to city politics and seek personal gain from the results of the elections, often control the affairs of a great city for years. Where the motives of the managers of opposing political organizations are the same, namely, to gain possession of the offices merely for the profit that can be made out of them, no very exalted standard of public service can be expected, whichever party wins. Improvement in the conduct of city governments and the elevation of their moral tone can only come through the active efforts of the best classes of citizens, involving some sacrifices of time and money. Perhaps the assumption by the cities of greater business interests would tend to increased attention on the part of the voters to the choice of city officials.

Corporations

Notwithstanding the fact that a very large part of all the men, women and even children of the United States are stockholders in or members of one or more corporations, there is much confusion of thought as to the attributes and usefulness of corporations. This doubtless arises from the great variety of functions performed by different classes of them. In the American system there is the city, a municipal corporation exercising merely public functions, through the agency of officers chosen by all the voters, in many states including the women, yet held to the same accountability for wilful misconduct or negligence connected with the discharge of its functions as a private corporation. It combines substantially all the attributes of a local government and a private corporation. Then there are the counties, townships and school districts, termed quasi-corporations, with less corporate responsibility and less compact and forceful organizations. The state and nation are bodies corporate, but not usually regarded as corporations. Of the corporations termed private there are many classes. Formerly in Europe the most important division was into ecclesiastical and lay, the former conferring special privileges on some church functionary or religious body, and the latter artificial powers or privileges for secular purposes. In the time of Henry VII of England the ecclesiastical corporations were far more numerous and important than the lay. They were all dependent on the great Papal organization of Rome, corporate combinations for business purposes had not yet become numerous. There are now in the United States a very great number of religious corporations with much diversity in their functions. Here as elsewhere the great Church of Rome has its adherents, its churches, schools and other property, and priesthood high and low. The governmental forces, however, are nowhere exerted in its interests, but for its revenue it relies entirely on the voluntary contributions of its members. The only compulsion it can exercise is such as acts through the religious ideas of the people and the force of church influence and

association. The various Protestant church corporations, modeled more or less after the Roman according to the views of the leaders, also stand in the same relation to the general public, without state support. In the management of their affairs, though all profess to be guided by the law as written in the Bible and to believe implicitly in all its teachings, the governing force differs, being either wholly in the clergy, as in the Roman, in representative bodies, as the Presbyterian, or in the congregation. Perhaps the most potent and efficient church organization within its limited field of action is the Mormon, which for nearly half a century maintained at Salt Lake City a remarkable hierarchy, which combined the functions of a religious organization, a political government and a coöperative business corporation. Though not granted any peculiar charter privileges by any state or by the national government, it exercised these powers by the consent and with the full support of the community. The leaders of the church made up their own charter, which became applicable to such and such only as chose to join them.

The American spirit of liberty finds expression in the religious organizations, and the diversity of individual views has led to a constant splitting up of churches. Old religious dogmas are constantly being discarded, and moral teachings and the spiritual essence of Christianity are demanded from the pulpit, rather than threats of damnation for heresy and promises of safe transit to a realm of bliss as a reward for faith in church dogmas. Though efforts are constantly made to unite and combine the strength of the churches to accomplish common ends, it is apparent that church corporations lack cohesive force, and that the general tendency is toward disintegration. The reason for this is apparent. The old doctrines, which exerted such powerful influence on the public, are no longer accepted as truth. Heaven is not so alluring and hell has lost its terrors. In the churches a leading difficulty now experienced is to get voluntary contributions for the support of the ministers, the building, furnishing and maintenance of the churches, and for missionary and other church purposes. There is some charitable work

added, but as an incident rather than the primary object of the organization. The secret of the success of the early Christians lay in the brotherly feeling existing among them and in their mutual help. The remarkable hold of the Church of Jesus Christ of Latter-day Saints, as the Mormon church is termed, on its members, was largely due to the advantages gained by its coöperative business functions, through which it furnished its people with a system of exchange of products among themselves and with the outside world without the use of money. It recognized the fact that all wealth comes as the result of labor well applied and economy. The great temple was built and paid for by a people having no money to contribute. A system of checks or certificates, issued by the authorities for labor done or produce or materials furnished or deposited in the tithing house, filled the place of a medium of exchange—being redeemable in goods at the tithing house. Beyond doubt the moral teachings of the clergy from the pulpits have a great educational value. The early Christians, while they fed, lodged and clothed those who preached the new doctrine, did not maintain a salaried clergy, nor expensive temples of worship. The weakness of all the churches is evidenced by their inability to grapple with practical difficulties and accomplish results. To call on church members for large contributions to church funds on Sunday, to be made good during the week by artifice or wrongdoing, does not tend to advance moral standards. The practical problem, of bringing about just relations between the people in their every day affairs, is one for which many of the clergy have neither taste nor capacity.

We have seen that the first settlements in the United States were effected through corporations, chartered by the kings of England, with grants of full governmental powers, though under the sovereignty of the British crown. The purpose of these charters was to enlist the capital and energy of the members of the corporation in a new, difficult and dangerous enterprise, designed to add strength to the British empire and yield profit to the members. The charters authorized the corporators to organize forces in England, to transport

them to the designated parts of America, take forcible possession of the country and make war on any who might oppose them. The corporations performed the tasks of organization in England, and brought together the necessary combination of money to furnish and equip ships and men to undertake the new settlements. After the settlements were established either the corporation moved to America and there discharged its functions as the governmental organization of the colony, as in Massachusetts, or went out of existence, leaving to the people in the colonies more or less of their charter privileges, according to the terms of that affecting the particular colony and the conduct of the British ministry with reference to it.

The science of government is the science of organizing the whole people of some portion of the earth for common purposes, and the organization of municipal corporations is merely a part of the governmental work. Private corporations, however, for the accomplishment of special purposes, are formed in great variety by the voluntary association of individuals, often citizens of different nations and residing at great distances from each other. In Europe, till recent times, corporate franchises were granted by the kings, and in England sometimes by act of parliament, to particular persons or to them and such as they might associate with them, as a special favor. In the United States corporate franchises were at first granted by special acts, but the favoritism necessarily engendered by this system was soon perceived. The practice was generally discontinued and in most states is now prohibited by constitutional inhibition. Corporations for almost any purpose not immoral may now be formed under general laws in any state of the Union. They are in fact formed to carry on all kinds of business, ranging from those which the constitutions guarantee any citizen full liberty to conduct, such as carrying on small commercial, manufacturing, mining or agricultural concerns, by systems differing in no important respect from and with no greater facilities than, those enjoyed by single individuals or partnerships, to great railroad, telegraph and mining companies, which have

many elements of governmental power and perform great public functions.

Perhaps the classification of corporations now of most practical importance is into those for profit, having a capital stock on which dividends are expected, and those for social, charitable, religious, educational and other purposes, yielding no profit to the members. Corporations for profit are divided into those discharging public functions and those merely conducting an ordinary private business, and also into those distributing their gains on a purely capitalistic basis pro rata on the capital contributed, and those distributing profits on the basis of amount of dealings with the corporation on which the profits have been realized. Insurance corporations are very numerous and are divided into the purely capitalistic, and the fraternal and coöperative, designed merely to distribute the losses of individuals among many without paying profits on capital stock. These various classifications are often difficult of application, because of the great diversity both of purposes for which the corporations are formed and of methods of dealing with their stockholders and members. The great public service corporations exercise most governmental powers, have the largest capital and employ the most people of all. The construction and operation of railroads on the continent of Europe is generally regarded as a purely public function, and most of the railroads there are owned and operated by the governments. In England and the United States they are all owned and operated by private corporations for profit, organized on a purely capitalistic basis. In the early history of railroad building in America the construction of lines of road was sometimes undertaken by the states, but in no instance was the undertaking financially successful. The great outlay required called for the combination of the capital of many individuals. This could not be readily obtained for untried ventures, involving so large an outlay. To induce the thrifty to put their money into these enterprises, public contributions were offered with the greatest liberality. States, counties, cities, towns and villages voted bonds to be either exchanged for

the stock or bonds of the railroad company, or donated to it outright, in consideration of the construction of some designated line of road. The indirect benefits resulting from the transportation facilities furnished by the road were generally regarded as a full equivalent for the bonds voted. This system of public subscriptions to the capital stock of railroad corporations led to the adoption of a policy by the companies of making large issues of mortgage bonds to raise the requisite capital, and to the distribution of the capital stock among the promoters of the scheme and the purchasers of its bonds without the payment of any money for the stock. The municipalities subscribing for the stock thus became the only paying stockholders and their stock had little or no market value. The inordinate profits realized by the promoters of these enterprises, and the keen rivalry of cities and towns in their efforts to bring in new railroads, early led to the greatest activity in the organization of railroad corporations and the construction of new lines of road. No other country has so many miles of railroad and nowhere else has there been such vigor exhibited in pushing forward new enterprises. While the system followed has had the advantages of rapid development and a remarkable exhibition of inventive genius and engineering skill in the improvement of rolling stock and machinery and the construction of roads under all kinds of difficulties; it has been attended with many and serious wrongs and inconveniences, among which are corrupting influences exerted on all departments of the government, unjust treatment of persons and localities, frauds upon stockholders, oppression of employees and patrons of the road, and a recklessness of human life in the movement of trains quite peculiar to American railways. In early days it was so vast an enterprise to build a railroad from the seabord to the great lakes, that several corporations were required to construct it in parts. Now lines aggregating more than 10,000 miles are under a single management. The growth of railways, which, during the period of most rapid construction, brought into existence a great number of new corporations, has now taken a decided

turn in the direction of consolidation, not only of connecting but also of competing lines. The necessity for separate charters, in each state where a new line was to be constructed, in order to exercise the right of eminent domain and condemn the ground required for the uses of the road, led to the taking out of a number of charters for each long line of road. Most states now authorize the consolidation of connecting lines, built under charters from other states, and the manifold advantages of a single management, covering a large system of roads, have led to consolidation upon consolidation. To the corporation there are the great economies of reduced cost of management and increased business. To the public there is the advantage of transportation for long distances under a contract with a single company, without the vexations attending transfers from one line to another. The public like to ride on a through train from starting point to destination, and railroad managers like to supply such trains. All interests, public and private, can be better served by long lines with many branches, than by separate concerns. Against these manifest advantages stand the fear and menace of too much power to aid or crush the individual or locality and to influence public officials. The logic of consolidation has been more fully exhibited with reference to the telegraph than the railroads. Whereas in the early history of the telegraph there were many separate companies, now a single corporation has a practically complete network extending all over the United States and much of Canada with cable lines to Europe and the West Indies. Telegraphing, so nearly allied to the postal system in the service it performs, is now a governmental function in all the great European countries, including the British Isles. It is a natural monopoly, requiring a single management for efficiency. The same principles apply to the telephone, which, at first used only in limited areas for short distances, has now developed into a vast network connecting distant cities, towns and country homes. Waterworks necessarily have a limited field of operation, but like the railroad, telegraph and telephone, require the use of the public streets and the exercise

of the power of eminent domain for their establishment, and are natural monopolies for the district served, admitting no advantage from competition. Gas, electric light and street railway companies discharge functions of substantially the same character. All these are public service corporations, exercising powers strictly governmental in character within long established principles. The lands on which their works are constructed can and are forcibly taken from private owners against their will, because public needs require them. But the use of the right of eminent domain in the construction of their works is neither the only nor the greatest governmental function exercised by these corporations. The railway companies own the great highways of the country over which its vast commerce passes. They construct and maintain the roadway, and generally the vehicles used on it. No one can ride or transport his property over it without their aid, nor except on the terms they impose. In countries of a low order of civilization the public highways, and often the rivers, are held as the property of some ruler or petty lord, and tribute is extorted at his pleasure from all who pass along them. The system followed in the United States by the railroad corporations was to charge passengers and shippers such rates as in the judgment of the railroad officials will produce the largest net revenue. Attempts at direct legislative control, to make charges reasonable and prevent discriminations for the enrichment of a few and the impoverishment of the many, have been made from time to time, but without satisfactory results. Most members of most legislatures are ignorant of the facts and in no position to make rules which will work well in practice. Most bills of this character fail to pass, mainly because members recognize their own unfitness to act on the subject, and in a less degree from the corrupting influences exerted by the railroad lobby. Such bills as do pass are mostly nullified by the courts, especially of the United States, which in determining the reasonableness of such legislation have assumed legislative functions. Regulation of rates and operation through the Interstate Commerce Commission and similar state commissions is producing more satisfactory results.

The law, which fixed the terms on which the citizen might travel over this class of highways or transport his property to or from his market, was made by or under the direction of the board of directors of the railroad used. Now these rates are subjected to revision to some extent by the commissions.

Still another governmental function, reaching in some instances even farther than any named, is that of determining where towns may be built and where not; stimulating the activities of favored localities and destroying towns already built. Small business centers, little towns, are built whereever the railroad company establishes a depot. Considerable towns grow up at its division points and around its shops. A change in the location of one of these generally means financial ruin to many in the deserted town, and greatly increased activity at the new point. Neither state nor nation have ever attempted any check on such changes, or any requirement of compensation to injured parties. There are hundreds of towns scattered throughout the United States, which are mainly dependent on some one railroad company for the employment of a large part of their people. Whenever such a change is made as to force its employees to reside elsewhere, residences must be abandoned and business property rendered valueless.

In its dealings with its vast army of employees it may be said that the railroad corporation merely stands in the same position as any other employer, but this is only partially true. In many places the railroad company has a monopoly of the labor market and is therefore in a position to fix prices. The organization of the different classes of railway employees into unions has given them the added strength which organization and combined effort always bring. This system however is attended with its disadvantages to both parties and also to the public. Whenever there is an open breach between the company and the men and a strike follows, the business of the company is paralyzed, the men earn no wages, the company gets no profits, and the activities of the public dependent on it cease with the attendant loss of all that might have

been gained if no disturbance had occurred. Whatever causes enforced idleness results in a loss to the public equal to all that would have been produced and performed if activities had continued normally. Something of the same principles apply to all the other public service corporations, but the railroads are of overshadowing importance, and the correction of the evils connected with their operations are still far from a satisfactory solution. No other question connected with popular rights, now under consideration by the American people, compares in urgency and importance with that of the proper mode of conducting and regulating the businesses now under control of public service corporations.

Banking corporations occupy a very important place in the business of the country. National banks, authorized to issue bills designed to circulate as money and the payment of which is guaranteed by the United States, discharge a strictly governmental function and enjoy the special privilege of issuing and drawing interest on a limited amount of credit money. Ordinary commercial banks organized under state laws, which receive deposits, loan money and buy and sell exchange and securities, discharge an important function, intermediate in character between the public and private. They are now generally under state supervision through a state commissioner, who inspects their books and securities and compels compliance with the law. The ordinary bank is organized by the people of the town in which it is located, who subscribe for its stock and name the board of directors, which employs a cashier and whatever other agents the business may require. It is a useful agency, by which the money in circulation is made to perform more service and to effect many more exchanges and payments than if left scattered in the pockets of the depositors. It also supplements the currency by the use of accounts, checks and drafts, which pass from one customer to another and effect payments by charge and credit on the books without the actual use of any money. So long as confidence in the solvency of the bank is maintained, checks drawn by depositors against their accounts answer all the purposes of money to those who merely desire to increase the balance of their credits in the bank.

No subject connected with state and national legislation is of more importance than that of guarding against the recurrence of financial panics. Congress has recently provided for a system of reserve banks, designed to combine the strength of many, and provide extra issues of currency to meet emergencies. Some states provide for a state guarantee of deposits based on a reserve fund accumulated from contributions made by the banks. It is too early to speak confidently of the permanent value of these expedients, but they appear to be useful.

The insurance of lives, limbs and property has developed a greater variety of corporations than any other branch of business. The banks and the great public service corporations are mostly purely capitalistic organizations, in which representation is based on the amount of stock held.

The insurance corporations present all forms, from the strictly capitalistic to the purely mutual and coöperative. The business of life insurance has developed the largest aggregations of capital, single concerns now reporting hundreds of millions of dollars in assets. Few if any of these companies profess to be purely capitalistic. Nearly all promise to divide net earnings among policyholders. The great concerns pay high salaries, and often still higher compensations in the way of commissions, to their officers and agents. The management falls into the hands of a board of directors, who usually find it easy to perpetuate their authority, no matter how liberal they may be in fixing salaries for themselves and their friends. They alone keep in touch with the members of the company and know their names and addresses, and it is usually easy for them to gather proxies enough to reëlect themselves at each annual meeting. The receipts from premiums on new policies are more than sufficient to pay losses under old ones, and the business and assets continue to grow without the company being subjected to any call which really tests its solvency. At the other end of the line are what are termed the fraternal companies, which in the simplest form merely call on each member of the company, or of the class of policy holders to which the deceased member belonged, for a stated contribution to be paid to the beneficiary. A small sum is

collected from each member to pay current expenses. There is no capital stock and no accumulation of funds. Most fraternal orders now accumulate funds from which losses can be paid promptly, without waiting to collect from members, and fix a regular rate of yearly payments sufficient to cover losses and accumulate an adequate reserve fund. Life insurance finds great favor with the American public, because it relieves the distress of families suffering from the loss of their bread winners. The early system was to merely pay a lump sum, specified in the policy, in case of death, and this is still the prevailing one, but a considerable sum in cash, paid to persons unaccustomed to the investment of money, usually results in the loss of much of it through unwise investments. Policies of insurance are now issued, which provide for the payment of annuities for life or a specified period of years. So large a part of the people invest in insurance, and the principle of providing against the day of sorrow and calamity grows in favor so steadily in enlightened states, that it would now seem to be a legitimate function of the state. All the states have insurance departments to inspect and regulate the corporations. The principle of insurance being merely the distribution of an individual loss among many, so that no one bears a heavy burden, is so simple that it could easily be carried out through a public insurance office. The business of fire insurance is also divided between capitalistic corporations and mutual or coöperative companies, the leading distinction between the two being that the former is organized with a capital stock and sells its policies at fixed rates, while the latter undertakes to apportion losses among its members, adding only the actual cost of conducting the business. The great life insurance corporations have become among the greatest moneyed institutions in the country, and the organization of new corporations, which have adopted some new feature or made some modification of an old one, goes steadily on. Many insurance companies combine an organization for social purposes with the business of life insurance, and many of these also add other charitable features, for the relief of the sick, the burial of the dead and the care of widows and

orphans. In nothing is the genius of the American people for organization and innovation more clearly exhibited than in its multitude of insurance and fraternal companies. The tendency in these organizations seems to be in the direction of complexity and diversity, rather than simplicity according to some standard.

The business of manufacturing in most of its branches is now mainly in the hands of corporations. These range in size and importance all the way from small concerns owned by a very few persons, with only a few hundreds of dollars of capital, to the great steel corporation with its billion dollar capitalization. They may be merely small competing companies or vast monopolies. Mining also is now done almost wholly by corporations, ranging from the little concern, operating a particular mine, to the Standard Oil Company which controls a large part of the world's supply of mineral oil. Commercial corporations in endless variety also exist, ranging from the coöperative country store to the so-called trusts, formed to monopolize one or more products.

Besides these various classes of corporations, designed to benefit their members in some material way, there are the charitable, social and educational ones, from which the contributors hope for no personal gain but seek to do good to others, through the maintenance of hospitals, asylums, clubs, schools, libraries, reading rooms, and other conveniences. The leading part now played in all the business of the country by corporations, the marked tendency toward great combinations and consolidations, and the inability of the state and national authorities to curb them, have led to much strong denunciation of corporations indiscriminately, and to a feeling of distrust and intense hostility in many quarters. The great corporate aggregations are now engaged, either in transportation, manufacturing, trade, insurance, banking or in the management of public utilities. The agricultural population, the wage earners, the professional men and those in miscellaneous callings, are not organized into strong, compact corporations, designed to further their interests. As governmental organizations seem indispensable to the security of the

individual and the maintenance of peace at home and abroad, so business orgnization is necessary to secure to the individual just returns for his work.

The wage earners in certain lines have achieved remarkable success in the maintenance of labor organizations, but while some of these take the form of corporations, they are not held together by any strong tie. Common interests and sympathy with each other constitute practically the only bond. The strength of the organization always depends on the completeness with which all the laborers in a particular line are bound together, so that all will act in concert. A single laborer, in dealing with a great corporation, can do no more than accept the company's terms of employment. All the employees of such a corporation, acting through their representatives, can secure such terms as general business conditions warrant. There are serious objections however to the general system of a few capitalists controlling great properties dealing with an army of laborers through their representatives. It quite frequently happens that one side or the other or both become unreasonable and an open breach follows, causing a cessation of work and the interruption, not only of the business of the corporation, but of all the public dependent on its operations. Sometimes a strike is followed by attempts to use force, by blows and bloodshed. It always entails heavy loss on the laborers, and usually on the company and the outside public. These conflicts are always destructive in character. Arbitration is one of the remedies proposed, but there is great difficulty in securing an impartial and competent tribunal to decide the issue. The question as to the rate of wages which ought to be paid is not susceptible of a definite answer, capable of mathematical demonstration. The revenues of a corporation fluctuate, and the necessary outlays increase and diminish. What percentage of gross revenues ought to go to labor and what to capital, and what is a fair return on invested capital, are matters on which the minds of men differ widely. If the capitalist as a separate factor could be eliminated and the stock of the corporation all be held by the employees, this particular trouble would be obviated, but the

questions between the several employees as to their respective rates of compensation, and with the general public as to rates of charges to them, would still remain. Even when this idea is carried to its extreme limit, so that the property of a corporation is owned by all the people who are in any manner interested in its business operations, the questions as to rates of compensation for services still remains. The coöperative corporations, the Rochdale stores and similar organizations, seek to solve the problem of establishing more just relations between all parties concerned by limiting profits on capital, establishing schedules of wages, promoting laborers and employees solely on a basis of merit, and returning to customers all excess of profits over the expenses and percentage allowed on the capital. The great fortunes, now such a marked feature in the United States, are mostly made in some manner from corporations. The disorganized mass of agricultural, wage earning and professional people, are at all times at a disadvantage in their dealings with strong combinations. They pay more than a just compensation for the services, and excessive profits on the wares of the corporation, and where they sell their products to it they get less than the market warrants.

The subject of business organization and combination is the leading one before the American public. As we have seen, the political system so far as the general structure and the leading principles of government are concerned, appears to be settled, but the question of efficiency in business organization and just relations and fair dealings between citizens in their every day life is as far from a satisfactory solution as ever. In considering the principles governing the purposes of corporations there are two things mainly to be regarded, efficiency and justice.

For efficiency in carrying forward a great enterprise, involving the accumulation and use of large capital and the employment of a great number of men, it is evident that the capitalistic system is the most vigorous in the existing state of popular education and public opinion. Combinations of accumulated capital for such a purpose can be much more easily formed than combinations of the necessary laborers

to do the work on their own account. Take the case of the construction of a railroad, a few great capitalists, or even a single one, can contribute the necessary money and through agents employ the required number of laborers and purchase the necessary materials to build it. There is little danger of divided counsel. When once it has been determined that the project shall be carried out, it moves steadily forward. Where bonds and stock are sold on the market to raise the money, the projectors still direct the operations, and if the project commends itself to smaller investors, little difficulty is experienced in accumulating funds as fast as needed to pay the laborers and buy the materials. After the road is built its business interests are to be considered. The board of directors of a purely capitalistic corporation is free to employ or discharge whomever it pleases. The selection of efficient employees is at the same time the most necessary and the most difficult thing required to insure successful management. Integrity, capacity, industry, and fidelity are demanded of every man who enters the service. The stockholders have first to choose a competent board of directors, and these have to outline the general policy of the company and employ efficient agents and managers to carry it out. If a corporation with the requisite capital and a sound purpose fails, it usually does so because of the dishonesty or inefficiency of its managers. Strictly first class men to conduct any enterprise are often hard to find, but it does not follow that they always or usually demand inordinate compensation. Great numbers of corporations, large and small, go to pieces year by year as a result of weakness at the head. The purely capitalistic corporation usually receives the watchful care of its principal stockholders, and through their vigilance is protected from the dishonesty and inefficiency of employees, but on the other hand this class of corporations stands more in a position of antagonism to its employees than the coöperative ones, and therefore requires greater vigilance in their supervision.

When the railroad is built it is found that its business may be greatly increased by extending the line from one or both ends and by branches reaching out into country that can be

made tributary. This may be effected by consolidating with lines already built, or by the construction of new ones. Consolidation is far more economical than the construction of competing lines. It is usually advantageous to the corporation on the score of economy, and to the public on that of efficiency of service. The purely capitalistic corporation, which needs to consult only a limited number of stockholders, can effect these combinations far more easily and readily than one organized along other lines, where more people with smaller interests must be consulted.

Great combinations in manufacturing and commercial enterprises, when carried to the point of a monopoly of a particular line of business, often bring great advantage, both from the reduction of operating expenses and from increased margins of profit on the articles produced or dealt in. Below this point the economies are often sufficient to give large gains. The purely capitalistic corporation requires of its employees merely that they understand all matters connected with their particular duties and perform the tasks assigned them. The compact between employer and employee calls for service on one side and wages on the other, and may generally be severed by either at any time. The coöperative organization has some points of efficiency which are superior to the capitalistic. It has the active support of more people and, when merely designed to transact a particular branch of business for its members at the cost of the service, it eliminates much or all of the expense caused by competition. The weakness of the coöperative concern generally lies in scant capital, lack of a well digested plan of operations, understood by the members, and a disposition to distribute profits, rather than use them in extending the enterprise. For efficiency a corporation must have the requisite capital, no matter what may be the principles of its organization.

The next consideration is the justice of the system. It is in this particular that the great capitalistic corporations are most open to criticism. The attacks so commonly made against them because of their vast properties, incomes, and power, and their tendencies to grow, combine and consolidate,

would be groundless, if all these elements of strength were justly used. The fundamental objection to the ordinary capitalistic corporation is, that its sole purpose is financial gain, and that in business it has a code of ethics corresponding to that of the king, who uses his army to extend his dominions. Among the many unjust and immoral operations connected with these organizations may be noted the manipulation of and gambling in their stocks. The vast fortunes thus acquired are not products of earnings, carefully saved and applied to the development of new enterprises. The moral tone of the management of great corporations is low in the particular that its officials and agents are often required to seize every advantage and yield nothing except where the company is legally bound. Officials are not always authorized to deal justly and fairly with the public, but are sometimes bound by rigid rules to yield no advantage gained. Doubtful claims against the company are rejected and meritorious ones of certain classes habitually scaled down under threat of litigation. In the conduct of their business, such of the great corporations as enjoy monopolies, like the railroad corporations and other public service companies, and the great manufacturing and commercial corporations which have achieved a monopoly of some line of business, may and often do, fix prices and charges at such rate as, in their judgment, will yield the largest net return, without regard to the rights of the public.

These immoralities seem to be inherent in monopolies. Political power, monopolized by a king, has always surrounded him with favorites without merit, whom he caused to become enriched at the cost of his subjects. The efficient remedy for the evils of monopoly would seem to be to eliminate the monopolist, let the public, or the portion of it interested, condemn and pay for the physical property, and employ and pay public servants for the services required in conducting the business. The despotic government has a king, to despoil his subjects in the interest of himself and favorites, and to lead his followers into foreign lands and kill, destroy and rob the people there. The advanced idea of government

is that it is a public agency to do for the people those services, required by the general public, which they cannot do for themselves separately. The corporations, now as in the first settlement of the country, are experimenters, preliminary organizers and promoters, who explore and formulate, and by their successes educate the people into new ways.

Perhaps the most grave charge of immorality in the great capitalistic corporations remains yet to be made. It is their corrupting influence on all departments of the government. Congress and the legislatures are never free from their emissaries. Corrupt members are hired to do their work, and weak ones are tempted to vote in their interests. Executive officers, charged with any discretionary duties affecting their interests, are tempted in the same manner. The corrupt lobbyist of the great corporation is always a man of intelligence and culture, and usually one who in private business would have been a fairly honest man. The immoral purpose and spirit of his employer corrupts him and makes him a bribe giver. Most subtle and dangerous of all the corrupting influences, are those with which the courts are surrounded. The representatives of the most powerful corporations always take an active part in the selection of judges, whether elected or appointed, but their influence is far more potent in gaining appointments of favorites than election of them. When elected the judges are extended all manner of courtesies by the officials, free passes, franks, special cars and numerous other accommodations appreciated by the recipients, but not in the form of gross and palpable bribes. The careful cultivation of the acquaintance of the judges and the observance of their weaknesses and leanings perhaps is not open to censure, but is found profitable by them. The judge, like other men, generally likes good living and a good income. They are always ready to propose a banquet with him as an honored guest, or an excursion at the company's expense. But they like to do more. Whenever there is a chance to raise his salary out of the public funds, they are on hand to urge it. Corporations enjoying unmerited privileges and inordinate revenues feel safer in court before an overpaid judge. It

puts him to that extent in their class and in sympathy with them. So we find the salaries of the judges constantly raised as they exhibit more and more strongly their leanings to arbitrarily uphold the unjust privileges of the monopolies. The same system has prevailed in England from an early day. The judges there, who are relied on to enforce the privileges of the aristocracy, are paid inordinate salaries, out of all proportion to the value of their services. Under these circumstances they unhesitatingly enforce unmerited privileges in the name of law.

The injustice wrought by corporations lies in the taking or withholding from one or many of that which is justly their due and conferring it on one or more others to whom it is not due. There are two principal classes of recipients of the revenues of a corporation, the employees, high and low, and the stockholders. Probably the most glaring abuses in the payment of salaries are connected with the great life insurance companies, which have no watchful stockholders to change directors and compel a reduction of salaries. The abuses connected with some of these corporations are very gross, the only practical limit seeming to be the greed of the managers themselves. Some of the great railway corporations pay a few quite high salaries, but the general rule with reference to the salaries of the officers of corporations is that they are not grossly excessive. The other employees usually earn all or more than they get. The bulk of the excessive gains goes to the stockholders. While efforts are constantly made to correct the evils and injustices mentioned by legislation, another method is being evolved which may in time accomplish the result. This is merely the organization of corporations to do the business now transacted by the objectionable ones, but on just principles. The rules governing the operations of a corporation are made by its directors and stockholders and become its laws. If these are just to all concerned the desired end is accomplished. The fraternal orders have come very near solving the problem so far as insurance is concerned. They lack however the economy and strength that would come from a single organization without competition

and under no necessity to solicit business. The chief expense of all insurance companies is connected with getting the business. The ideal organization would be one resorted to by all insurers, which paid all honest losses promptly and collected from policyholders only enough to enable it to do so and to pay reasonable wages to all its necessary officers and clerks.

The Rochdale store system is designed to eliminate merchant's profits by distributing among the stockholders the net profits, above a fixed moderate percentage on the capital stock and the expenses of transacting the business, on the basis of the amount of goods purchased rather than the amount of stock held. Sometimes a part of these profits is given to the employees. The usefulness of these organizations depends on integrity and ability in management and the combination of a sufficient number of patrons of the stores to make economical management practicable and leave a margin of savings. Very small concerns can rarely succeed. The same principle is now being applied in selling agencies. The producers of many articles of commerce find it to their interest to combine and sell their products in the general market through a common agency, instead of selling to dealers, thereby saving the profits and distributing them among the stockholders who sell their products to the corporation, on the same principle as the Rochdale stores distribute them among buyers. Though some of these coöperative concerns have assumed large proportions, as a rule they are engaged in lines of business requiring only a small capital. Little or no success has as yet attended the construction of railroads or other public service plants, requiring large capital, on a cooperative basis. In cities the public municipal corporations successfully take on the added functions of supplying the municipality with water, light, heat, power, street transportation and the like, in which all the citizens are interested and require similar service. The principle on which these public utilities are conducted by the municipalities is that of coöperation. The service is rendered at cost, interest being usually paid on a bonded debt covering the cost of the property.

The problem as affecting railroads, telegraphs and telephones has been solved in Europe, New Zealand and elsewhere by governmental ownership, thus extending the coöperative principle to the conduct of these lines of business by the highest corporation, the state. The International Postal Union has gone yet one great stride farther and is the pioneer world wide coöperative combination, which transmits the mails from any part of the civilized world to any other part of it, with the maximum of efficiency and the minimum of cost. No other business agency in the United States compares in efficiency with the Post Office. This is a purely coöperative enterprise, conducted in the interest of the whole people by the national government and is the most useful and important function it performs. The great telegraph company operated by a purely capitalistic corporation with capitalistic methods over substantially the same territory within the United States and also reaching into other countries, gives very poor service at very high rates and stands in strong contrast with the Post Office both as to efficiency and economy.

The true position of the corporation is that of a pioneer in the work of organizing the world on a firm basis of peace. Unlike the military organizations of feudal times, which performed no beneficial function for the common good, the corporations, almost without exception, conduct some useful business. They combine capital and labor in trade, transportation, manufacturing, mining, fishing or other peaceful productive enterprise. Great latitude is allowed in all the American states in the purposes for which corporations may be formed. The corporators are allowed to fix the amount of their capital stock, the size of the shares, the duration of the corporation, to give it a name and specify the objects it intends to accomplish, which many states allow by statute to be any lawful one. This permits anyone to take the initiative and form an organization to do anything useful, with whatever strength of combination he is able to draw together. Success in the enterprise requires not merely the requisite capital and working force, but the education of all who are

connected with it in its principles and methods, so that each may know his duty to the corporation and its members and to the public. Failure comes from many causes, inadequate capital, incompetent management and dishonesty, but most frequently of all from want of a perfect understanding as to the end to be accomplished, and how it is to be done. Ill-digested schemes, not quite clear in the minds of the promoters, or well digested ones not fully comprehended by those relied on to carry them through, are generally doomed to failure from the start.

No other topic fills so wide a field in the law or is of such growing importance as that of corporations. In no other way is the genius for directing the combined efforts of numbers of people so fully manifested as in their organization and operations. They afford object lessons of deep moral depravity and of the most exalted altruism, of heartless greed and cruelty and of that charity and helpfulness which is the outward expression of love for the unfortunate. They should be approved or condemned according to their deserts, and fostered or destroyed according to their helpful or harmful effects. Viewed as a whole they fairly gauge the moral standards and efficiency of the business world, and point the way to higher and still higher social development.

National and State Laws

The system of laws, which prevails throughout the United States, has for its foundation the common law of England and the ancient statutes of that country. It is a very common error to assume that the original purpose of all laws was to compel all to be just. Many laws in all countries are designed to promote injustice. This is true of the land laws of England. The leading purpose of the law-makers, since the free Saxon common tenure of land was changed into the feudal system, has been to give unmerited advantages to the king and his courtiers, in early times, and to the favored few in modern, through a legal theory of land ownership. All the monstrous injustice of the feudal tenures was based on strict law, which gave to the lord the soil and through his

title to it arbitrary power over all the dwellers on it. There are some survivals of ancient Saxon ideas in the commons and highways of the country, but the leading idea of exclusive ownership of the soil, without reference to use or occupancy, is the feudal idea modernized. Under the feudal system the lord exacted services from his tenants, but was himself bound to protect the tenants in their possessions. Under the modern American system of absolute paper titles, one may acquire the title to an unlimited area of land, without being under any obligation to allow any of the tenants on it to remain, and with no limitation whatever on the terms he may impose on those he may take as his tenants. He cannot be forced to sell or rent any part of it, except for public use for those purposes recognized as warranting the exercise of the right of eminent domain. In the early history of the country there was an extensive development along lines somewhat similar to the ancient tenure in common. The government of the United States acquired vast districts of country, subject only to the claims of the native Indian tribes, which were held as public property. Some of the states, notably Texas, have had great areas of public lands. In the early days of sparce population sales in large tracts were allowed, but the policy of the federal government has been to restrict the amount any individual may acquire to a moderate sized farm, to be occupied and tilled by the owner. The homestead law restricts the quantity to 160 acres and requires five years' residence and cultivation before a patent issues. This system has worked beneficially so long as there remained an abundance of fertile country unoccupied. But the limit has already been reached and desirable homes on the public domain are now hard to find. Mountains and deserts abound, but the great fertile prairies have all become private property. The nation is no longer able to give to each of its citizens land for a home, and the process of differentiating classes of landlords and tenants is proceeding rapidly. The eleventh census shows that in the new western states and territories the percentage of home owners is largest, and that it is smallest in the southern states having the largest percentage of colored people.

This census shows that of the whole 12,690,152 families in the United States, only 47.8 per cent owned the homes they occupied, and 52.2 per cent were tenants. In 1910 the percentage of home owners had fallen to 46.5. The extreme range was exhibited in Oklahoma with only 13.11 per cent of tenants and South Carolina with 71.23 per cent. As might naturally be expected, the showing in the great cities is still more discouraging. In the twenty-eight leading cities having a population of 100,000 or more, there were 1,948,834 families of which 444,879 owned the homes they occupied and 1,503,955 or 77.17 per cent lived in rented houses. In the great city of New York, out of a total of 312,754 families, only 19,798 or 6.33 per cent owned the homes they lived in. These figures are a little more unfavorable throughout than the facts, because many people own homes, but rent them and live elsewhere in rented houses. Widows, bachelors and maiden ladies often rent their property and live with a tenant family. New York but illustrates the tendency everywhere manifest for the land to pass into few hands, wherever the law assures ownership to the holder of a paper title and his heirs without regard to occupancy. The most significant facts connected with this subject are, that there is a steady drift of population into the cities, that in the cities the land falls under the dominion of a diminishing percentage of owners, and that the laws favor and effectuate this tendency.

Some wealthy families in each of the older great cities have for several generations steadily pursued the policy of buying land and never selling. Where the income exceeds the expenses, as the law stands, there is nothing to prevent a great land owner from steadily extending his holdings and thereby diminishing the area accessible to others seeking to own homes. The important point now under consideration is that this results from artificial human law, and not from the law of nature. In all primitive societies use and occupancy are the only titles recognized. Where the land is ample and the people are few, each man is allowed to occupy what he pleases and when he abandons it anyone else may take it. As population increases the tribe parcels out the land, giving to each his

share, but the ownership is in the whole and the ancient Saxons divided it among the working units. We are not now considering the expediency of paper titles, but seek to emphasize the point that the system is wholly artificial, and that the division of the people into landlords and tenants is entirely due to the law. Whatever of injustice there is in it is chargeable to the law. The law gives the landlord absolute dominion over his lands and tenements, except as he voluntarily parts with it, and subject to the taxes and burdens imposed by public authority.

To those who have given no study to the laws it might occasion great surprise to find how little of the law administered by the courts is based on Congressional or Legislative enactment. It is also remarkable that of the great mass of public acts of the law-making bodies, published as the work done at each session, so little is of permanent force and so much is either temporary in character or mere revision or alteration of what preceded it. The compilation of the General Statutes of the United States published in 1875 contains seventy-four titles, of which one regulates the election of senators and representatives, the organization of the houses, compensation of members, officers and employees, the library, congressional investigations and contested elections, another regulates presidential elections and president's salary. Then follow nine titles devoted to the organization and conduct of the executive departments, State, War, Treasury, Justice, Post Office, Navy, Interior and Agriculture. Title 13 establishes the District and Circuit Courts and fixes the jurisdiction, organization and procedure of all the federal courts. After these are titles dealing with the Army, the Navy, the Militia, Arsenals and Arms, Diplomatic and Consular Officers. Title 23 treats of the organization of the Territories and the four following of Civil Rights, Citizenship, the Elective Franchise and Freedmen. Title 28 declares the policy of the government toward the Indians and makes provisions to carry it into execution. After this come titles on Immigration, Naturalization, The Census, Public Lands, Duties on Imports, Collection of Duties, Internal Revenue, Coinage,

Weights and Measures, Currency, Legal Tender, Public Moneys, Appropriations, Public Debt, Postal Service, Foreign Relations, Commerce and Navigation, Fisheries, Steam Vessels, Merchant Seamen, Prizes, Lights and Buoys, Coast Survey, Pensions, Public Health, National Hospitals, Asylums and Cemeteries, Patents, Trade Marks and Copyrights, Bankruptcy, National Banks, Rivers and Harbors, Railways, Telegraphs, Crimes against the United States, and some minor matters. All this is printed in a single volume of 1092 pages, exclusive of index. By far the greater space is devoted to the organization of the departments and working forces of the government, the army and navy, the public revenue and matters growing out of the civil war. There is very little that affects the daily life of the citizen, except the Post Office.

Though the people of the United States are educated away from the forms of unjust government, which military power has so often established, they are not yet fully awake to the barbarity, the criminality and utter unjustifiability of aggressive warfare, or of war to gratify the pride, often wrongly called the dignity, of a nation. In the early days of the Republic private warfare was popular. In the North and East an insult must be resented by a blow with the fist, in the South and West by a challenge to fight a duel. The so-called code of honor required a challenge to be given under certain conditions, to refuse which meant social disgrace. Friends must be called in to witness the fight and the purpose was to kill. This survival of barbarism has now fallen into disfavor and many of the states, in which such combats were most frequent, have adopted constitutional prohibition of it.

In sifting the provisions of all the statutes of the United States, for the purpose of finding such as make provisions beneficial to the people, we find provisions with reference to the public lands, coinage, weights and measures, the currency, commerce and navigation, lights and buoys, hospitals, asylums, and river and harbors are necessary and useful. Most of the rest relate to the construction of the great governmental machine and the manner of compelling the people

to support it. Since the acquisition of the Philippine Islands the military feature has grown rapidly and the policy of constructing war ships, very expensive and utterly without use in times of peace, has been adopted, and many millions are annually expended on them. From $48,950,268 for war and $34,561,546 for the navy in 1897, the appropriations increased and in 1911 were $160,135,976 for war and $119,937,644, for the navy. A great navy of this kind will never be of any use except in war, and its possession will be an ever present temptation to statesmen to plunge the country into foreign wars on slight provocation. The only sure bond of peace between nations, as well as between individuals, is confidence in each other's intentions and mutual good will. Great armies and navies always prevent this confidence. It is fairly certain that the United States, if always disposed to deal justly with others, could safely rely on peaceful influences to secure the rights of its citizens the world over, to substantially the same extent that they are now secured. Wrongs will doubtless continue to be done in the future as in the past, but the greatest of all wrongs with which the world has been cursed throughout all time are the cruel wars in which the innocent expiate the crimes of their guilty rulers and leaders.

The ground covered by the statutes of the States is quite different from that of the National legislation. It reaches the daily life of the people at far more points. The statutes of each state regulate the machinery of the state government and also that of the counties, towns, cities and school districts. They determine and establish the qualifications of voters, the manner of exercising the elective franchise, the educational system from the district school to the university, the organization of the various courts, their jurisdiction and procedure, the charitable and penal institutions, the establishment, improvement and repairing of highways and bridges, the descent and distribution of property, the administration of estates, the organization of corporations, their powers, duties and liabilities, the criminal code defining all public offenses and fixing their punishments, the rules governing

the guardianship of minors and care of their estates, marriage, divorce, the conveyance and mortgaging of land and recording the deeds and other instruments affecting the title to it, taxation, partnerships, assignments for the benefit of creditors, interest, contracts, fences, landlords and tenants, liens on real and personal property, lunatics, imbeciles and drunkards, domestic animals, trusts and powers. Matters of local concern peculiar to the state are also covered. Of all the functions of the state government that of educating the young is far the most important. Of all the good things passed down from generation to generation, the accumulated knowledge is the most valuable. Part of this is passed down outside the schools, in the homes, on the farms, in the workshops, factories, mines, counting-houses and all the places where useful things are done. Instruction in useful employments is mostly given outside the schools, though there is a marked increase of late in the attention given in the schools to domestic science, agriculture and mechanical arts. The practical instruction in domestic arts and in some particular business, which the child receives at home and in connection with such business is of the greatest practical value, but the schools open a wider field to those disposed to inquire and introduce the student to some knowledge of the outside world which he cannot see, to the past and the distant. Narrow prejudices tending to enmity between individuals and nations are mainly due to lack of knowledge of each other. The bonds that bind the people of the United States in concord are the bonds of interest and sympathy, which are steadily strengthened by the diffusion of general information. The public schools where the young are taught to read and write, lay the foundation for the great educational work of the newspapers, periodicals and correspondence distributed through the post office, and for the use of books and libraries, which constitute the more permanent treasure houses of knowledge. While the general government has assigned to the new states a portion of the public domain to be used for the support of the public schools, the great burden of public instruction is borne by the people under state regulations.

The actual direction of school affairs is mainly given by the people themselves, who voluntarily contribute generously for the free instruction of all pupils. In many states all the public schools from primary to university give free instruction to all children of the state. While there is ample room for improvement in the school system, both as to its general theories and methods of instruction, modern civilization finds its highest and best practical expression through the educational institutions. All progress necessarily comes from the preservation and dissemination of the truths gathered from past experience, supplemented by the few newly discovered ones.

There are some statutes to be found in nearly or quite all the states, copied or modelled after old English statutes, which are believed to be dictated by public policy, though not founded on any principle of natural justice. What is known as the statute of Frauds and Perjuries requires certain classes of contracts to be in writing and denies relief in the courts on parol contracts of these classes, notably contracts for the sale of lands, trusts relating to lands, contracts to pay the debt of another, those based on the consideration of marriage, and such as are not to be performed within a given period of time. The statute of limitations denies relief in the courts unless suit be brought within the time limited by the statute for the particular class of actions to which the cause belongs. The theory on which these statutes were passed is, that dishonest persons would claim rights under parol contracts of the classes named and support their claims by perjury, and therefore written evidence should be required, and that stale demands are liable to be presented and falsely urged after the evidence to defeat them has been lost. Both these statutes confessedly work injustice by denying relief on just claims under the arbitrary rules they impose. They assume the prevalence of dishonesty among the people to such an extent that more wrong would result by reason thereof, if suits were allowed to be maintained, than by denial of all remedy in the courts. This view may be altogether erroneous, but the consensus of legislative judgment is such

as to continue these arbitrary rules with considerable variation, however, in the different states, especially in the times allowed for bringing suits.

While the state statutes generally require some public celebration of marriages and many states require marriage licenses to be taken out, compliance with these requirements is not generally held to be absolutely essential to a valid marriage. The only communities where plurality of wives has been allowed are the Mormon settlements. Public sentiment throughout the whole country has, however, been so strong against polygamy, that severe statutes have been passed to extirpate it, and it is not now countenanced by the laws of any state or territory. Everywhere the free consent of the parties to the marriage is regarded as the only real concern of the state. After marriage, in most states, the wife has a status amounting nearly or quite to legal equality with her husband. The old English rule, which merged the legal existence of the wife in that of the husband, has been done away with and the wife may in most states own property in her own name, contract debts, buy, sell and carry on business with nearly or quite the same freedom as a married man.

The greatest diversity of state laws is on the subject of divorce. At one extreme South Carolina by the constitution of 1895 establishes the rule "Divorces from the bonds of matrimony shall not be allowed in this state." Other states like New York allow absolute divorces for adultery only, but the courts are authorized to annul certain unlawful or void marriages. At the other extreme are Kansas and some of the other western states, which authorize the courts to grant absolute divorces, for abandonment for one year, adultery, impotency, pregnancy of wife at marriage by one other than her husband, extreme cruelty, fraudulent contract, habitual drunkenness, gross neglect of duty, conviction of a felony or having another husband or wife living at the time of marriage. Between these extremes there is much diversity in the statutes of the different states.

The statutes relating to the organization and management of corporations also exhibit great diversity. In some states

a corporation may be formed to carry on any lawful business or promote any legitimate object, as in Delaware, and the only formalities required are filing a charter with the Secretary of State setting forth certain matters specified in the law and payment of certain fees. Other states prescribe the purposes for which corporations may be formed with much particularity and require application to be made to some court, board or officer authorized to pass on the right to incorporate for the purpose desired.

Statutes in each of the states regulate the descent and distribution of the property of deceased persons. All are framed on the theory that the owner may dispose of it by will, and that in the absence of a will the whole shall be distributed to those related to the deceased owner by blood or marriage. The leading difference in the division made is in the share allowed to the surviving widow or husband, thus in some of the older states like Massachusetts, New York and New Jersey the wife is given the old common law estate of dower, *i.e.*, a life estate in one-third the deceased husband's lands, and the husband takes a life estate in all the deceased wife's lands as tenant by courtesy, if there has been issue of the marriage born alive. In Colorado, if there are children, the surviving husband or wife takes half the estate, if no children the whole. In other states there are provisions intermediate between these, some of them varying the rule according to the number of children and others, where there are no children, giving the wife the whole only of small estates and distributing a portion of large estates among the relatives of the husband. In Mississippi the widow takes a child's part.

In the distribution of the estate among children and their descendants, after the share of the husband or wife has been set apart, there is entire uniformity throughout all the states. The children take equally and the heirs of deceased children take by representation. There is no preference given in any state on account of age or sex. There is more diversity in the distribution among collaterals, which it would serve no present purpose to follow. In no state is there any survival either of primogeniture or the ancient inheritance by

the whole community. Recently some of the states have imposed a tax on large estates, but the idea of state inheritance has not received any legislative consideration so far as the writer is aware. In many states the homestead is secured against sale for debts and division among the heirs until the youngest child becomes of age. The mode of conveying lands is regulated by statute and is substantially uniform throughout all the states. A deed signed by the grantor is required. In order that the deed may be recorded, it must be acknowledged before some one of the officers named in the statute and his certificate of the fact attached to the deed. In order to impart notice of the transfer of the title, the deed must be recorded in a public office, usually termed that of the Register or Recorder of Deeds. There is a difference in some states between a conveyance of the homestead and of other real estate, the joint consent of husband and wife being required. Their separate deeds have been held in some cases absolutely void. There is also much diversity in the different states as to the effect of a conveyance by the husband alone on the wife's inheritable interest in his lands. In some states the husband may convey a full title to all but the homestead by his separate deed, while in others the wife's dower or other inheritable interest in his estate remains, unless she joins in the conveyance. In Louisiana, Texas, New Mexico, Arizona, California, Nevada, Idaho and Washington a distinction, borrowed from the Spanish law, is made between property owned prior to the marriage and that accumulated afterward, the latter being termed community property and regarded as jointly owned by both. This joint ownership does not in Louisiana prevent the husband alone from conveying it. At the death of one the survivor takes only the half, subject to the payment of debts, and the balance goes to the heirs. There is much diversity in the laws of the different states with reference to what property may be seized for the payment of debts. All exempt some personal property, but there is much difference in the amount. The general idea is to leave to the debtor and his family those things which are indispensible to their comfortable existence.

In many states this exemption includes books, pictures and musical instruments without limit as to value, and even the identical articles for which the debt was contracted. With reference to the exemption of land there is even greater diversity, none being allowed in Rhode Island or Delaware. In Pennsylvania $300 in value of real or personal property, selected by the debtor, and all wearing apparel, bibles and school books are exempt. In most of the eastern states, by compliance with certain statutory provisions, a homestead of limited value may be secured; in Maine the limit is $500, in New York and New Jersey, $1,000, in Virginia $2,000, while in Kansas an acre of ground in a city or one hundred and sixty acres of farming land, occupied as a residence by the family of the debtor, with all the improvements thereon without regard to value, is absolutely exempt, and in Texas a town homestead worth $5,000 or a farm of two hundred acres is allowed. The wages of the debtor, where necessary for the support of his family, are also usually exempt for a limited period. This stands in marked contrast with the brutal system which prevailed at the time of the revolution, under which the family could be stripped to utter destitution and the debtor thrown into prison, to be confined at the pleasure of the creditor till some friend paid the debt. The extremely liberal exemptions allowed in states like Kansas are often taken advantage of by dishonest men. So long as the state continues to exercise the function of a collecting agent and enforces the payment of debts, it is manifestly inequitable to seize the little stock of a poor groceryman for his debts, and at the same time allow the occupant of a palatial mansion or a farm of great value to hold a fortune, exempt from the payment of a debt to this same groceryman for necessaries bought from his store. There should be some reasonable approach toward equality in such laws, as is the case in many states.

In the construction of the judicial systems of the various states and in the procedure in the courts, while there are many common features there is also much diversity of detail, due in part to divergent views of expediency. At the head

in all the states there is a court of appeals with authority to reverse the judgments of inferior courts for error of law. These courts are usually styled the Supreme Court. There is held in each county one or more courts of general original jurisdiction, called either the district or circuit court in most states. Between these there are sometimes intermediate courts with jurisdiction to review certain classes of decisions. Sometimes an appeal is allowed successively from the intermediate to the supreme court. At the base of the judicial system are the justices of the peace, usually township, but sometimes county officers. Probate jurisdiction and supervision of the estates of deceased persons, minors, and others under legal disability are generally vested in a Probate Court called Orphan's Court in some states and Surrogate's in others, but in some of the states the circuit courts exercise this jurisdiction. The codes of practice are statutory modifications of the old English system and while, in what are termed the code states, distinctions between actions at law and in equity and all forms of action are in terms abolished, many of the old distinctions are still retained. The idea of the framers of the codes was to simplify the system and avoid the failures of justice, which occurred so frequently because of the strict rules of procedure and pleading. It must be confessed, however, that there is very much yet to be desired in the way of reforms in the methods of courts. In the great care which has been taken to secure strict observance of positive laws, a system has been built up which affords the average citizen little chance to get speedy justice. Though in most states the principles formerly applied by courts both of law and of equity are now applied by the same tribunal in one case, they are applied in a different way. Suits, which under the English system were required to be brought in the law courts, entitle the party to a trial by a jury. In actual practice the verdict of a jury, except where it acquits a defendant of a criminal charge, does not finally decide anything. On a motion for a new trial the court may set it aside. From this decision an appeal may be taken to a reviewing court and sometimes again to a higher court, where the de-

cision of the trial court may be reversed. If a question of Federal law is involved, an appeal lies still to the Supreme Court of the United States from the decision of the highest court of the state having cognizance of the cause. If the decisions of the courts of last resort were final it would not be so bad, but the case may be merely reversed for error in the instructions given to the jury by the trial court or for other erroneous ruling of the court, such as the improper admission or rejection of evidence, and sent back for a new trial. There is never any assurance that the trial court will not commit an error on some other point at the next trial, and the case again go the rounds of appeal, reversal and new trial. This is of frequent occurrence and suitors are often worn out in an effort to reach a final determination of the cause, which can only be when the highest reviewing court agrees with the trial judge on all vital questions of law passed on by him. Such a system lacks little of utter absurdity. The difficulty is hinged on the sacred right of trial by jury, which is thus rendered in fact valueless. The reviewing court will not itself decide what the facts are, but will often say that the findings of the jury are not in accordance with the evidence. These delays and successive trials give an unconscionable advantage to the rich suitor or the strong corporation, able to pay the expenses of the litigation and go from court to court, while the poor man with a good case may be compelled either to accept the first adverse decision or give a lawyer a large part of his claim to prosecute the case farther on a contingent fee. Under such a system substantial justice is lost sight of, and the business of the lawyer becomes a mere exercise of technical skill in taking unwarranted advantages allowed by the rules of procedure. It may well be doubted whether, on the whole, justice is promoted by reviewing courts. At times it has happened in most of the states that the court dockets have become overburdened to such an extent that a case could not be reached for many years. Speedy decision is of almost as much importance as right decision. Long delay is a substantial denial of justice.

Although the codes in terms require brevity and simplicity

in pleadings there is in the system actually followed and required by the courts much useless prolixity and technicality. The new English system is very greatly in advance of anything followed in any of the United States, except perhaps that under the Kansas Code of 1909. The new Equity Rules promulgated by the Supreme Court of the United States greatly simplify and improve the practice in United States courts in equity cases.

The bulk of the compiled general statutes of the various states varies from one to three large volumes. Taking those of Kansas, a state of medium size, we find the compilation divided into 119 chapters of which thirty-four are devoted to the state institutions, officers, agencies, revenues, and expenditures, eleven to courts and their procedure, four to schools, two to criminal law and practice, two to suffrage and elections, two to cities, two to corporations and the remaining sixty-two to miscellaneous matters, some of very slight importance.

For most of the general principles of the law administered by the courts we must look to the great libraries containing the works of text writers and the reported decisions of the courts of the United States, the several states, England and its dependencies. Numerous digests and Encyclopedias have been made and become deficient and out of date as soon as the last volume was published. Reports of decided cases are being published in each state at such a rate as to make a considerable library from the issues of a single year. The work of classification of the various topics of the law is done according to the view of the writer or compiler, and new topics are being added from time to time.

While much of the law administered by the courts and commented on in the written opinions published in the reports is more or less connected with some statute, the full exposition of the law on any subject is never to be found in any statute, but must be searched out through numerous volumes. Even the classification of the various topics of the law is a matter on which the various authors have widely divergent views, and much of the conflict in the decisions

arises from the different views of judges as to the class in which a given action falls and the particular principle which should control, rather than any disagreement as to what the principles of the law are. In comparing different views respecting legal classification we find that the American and English Encyclopedia of Law, in which the titles are arranged alphabetically and only what is termed substantive law is included, there are sixty-one titles beginning with the letter A. In the companion work published by the same company, the Encyclopedia of Pleading and Practice, there are forty-two titles beginning with A, while the American Digest, Century Edition, which is considerably more full and bulky and includes both substantive law and pleading and practice, has but forty-five titles beginning with A. Besides these various titles, which cover some topic of law, there are numerous cross references and brief paragraphs giving definitions of words. The system followed is to give a general statement of the law in the text and in very elaborate footnotes to give references to the authorities in support of it. The list of abbreviations used and titles of the works to which they refer covers sixty-four large pages of fine type. The twenty-two volumes of the Encyclopedia of Pleading and Practice contain five hundred and sixteen titles. The wide divergence between the classifications of the Encyclopedias and the Digest is due to the fact that in the Digest the titles are far more comprehensive and further classifications are made by sub-headings, for instance in the Encyclopedia of Law the title Agency fills three hundred pages and is by odds the most important in Vol. I, while in the Digest there is nothing under the heading Agency but a cross reference to the title Principal and Agent. On the other hand the Digest, which divides its large closely printed pages into two columns, fills 4951 columns under the title Appeal and Error, while the Encyclopedia of Law has no such title, and the Encyclopedia of Pleading and Practice gives 587 pages to Appeals, 335 to Certiorari and ninety-five to Writ of Error. The system followed in England and America of developing the principles of the law by the written opinions of the

judges, given in actual controversies decided by them and confined to the very questions in issue, has been much extolled, mainly on the ground that great care is necessarily exercised in the performance of the duty of determining the rights of the parties before the court. It stands in sharp contrast with that by which the Roman civil law was developed, which was largely by what were termed rescripts, answering abstract questions as to the rule in a given case. It may as well be confessed now as later that our system is already overgrown, and the multiplication of decisions and books, instead of settling and making clear the doubtful matters in the law, year by year introduces confusion and uncertainty. There is a widely prevalent disposition among the judges to refine and introduce exceptions, till what were once fairly clear rules of easy application have ceased to be rules and in their stead the individual view of the judge, whatever it may be, can be backed with an authority from some court or other, which at least seems to support it. There is now an ever widening field of uncertainty as to what the rule is in certain classes of cases. This works to the advantage of the strong suitor, who can appeal from court to court, and the most unfortunate part of the matter is that this field of uncertainty is in that district which affects the interests of the great combinations of capital and privilege.

Corporations and their rights, powers, duties and obligations, are now by far the most prolific subjects of litigation, and under various headings fill more than than 3200 pages of the American and English Encyclopedia of Law. The main reason for this is that it is through corporations that most modern business combinations are formed and new enterprises are undertaken. The field covered by them is constantly widening and includes both new purposes and new methods of accomplishing them. The laws of inheritance and the distribution of the estates of deceased persons through the courts occupy the next largest space. Frauds and fraudulent conveyances of property, bills of exchange and promissory notes, elections, landlord and tenant, homesteads and exemptions and marriage and divorce are the next most

prominent topics. It is gratifying to find that criminal law has become of minor importance, and that murder and homicide, the most prominent title of the criminal law, fills far less space in the books than either of those above named.

Military law is a subject of such slight importance as to require but little notice, and religious societies are no longer prominent litigants. There is no more certain gauge of the moral height of any society than that of the purity and strength of family ties. Yet we find that while there is a full consensus of opinion among thoughtful people on this proposition, there is a wide divergence on the question of divorce. All agree that husband and wife should be faithful and dutiful, but if not what then? There are two opposing theories of expediency, one that they should be held legally bound to each other and forced to make the best of a distasteful relation, the other that when the matrimonial bond has become intolerable to one, it should be dissolved by a court's decree and the parties again made free to contract new alliances. Perhaps the most radical defect in the laws of those states which grant divorces with the greatest liberality is in failing to give full weight to the claims of the offspring of the union. Children have natural claims on both parents and are most deeply interested in the question of divorce and the breaking up of the family. Except in rare instances they are not chargeable with the wrong doings of their parents, but rather sufferers therefrom. A suit for divorce ought not to be viewed in the light merely of a controversy between husband and wife, but rather of a proceeding to disrupt the family, in which the children, being innocent parties, are entitled to have their interests protected before a divorce is granted. It is rarely the case that the applicant for divorce is wholly free from fault. Estrangements usually result from some wrong on both sides and the safer standpoint for judicial action is that of the general interest of the children, to whom the public owe a clear duty of protection. This view is now taken by the laws of some states.

The rules governing the relation of parent and child are few and simple yet are still tinctured with some remnants of

brutality. The parent, if too passionate or stupid to govern his child by reason, may beat him, and only in case of extreme cruelty will the law interfere. The father may take the earnings of his minor child and is liable for his support. It is easily apparent that domestic happiness is not dependent to any marked degree on the legal rules applicable to the relations of members of the family. The interference of courts in domestic concerns seldom promotes concord or happiness. The promptings of love, the mutual interests, the wholesome teachings of the elders, and all the pure and refining influences that nature breeds in the home of a well mated couple, are vastly more potent and thorough in regulating the domestic relations, than statutes or court judgments can possibly be. It is only the exceptional household that is in any manner affected by the rules of law administered in the courts.

The old common law idea of the domination of the husband has been discarded, and the tendency in the United States has been steady and constant in the direction of absolute equality of rights for wives. Children also have come to be looked upon as more nearly independent and entitled to such measure of freedom as they are mentally and physically capable of, and parents are expected to instruct and reason with rather than beat them.

The rules governing land tenure and the inheritance of property, though so familiar in their main features as to be generally accepted as natural laws, are purely artificial and arbitrary. Absolute ownership of the soil is entirely a creation of the law maker, impossible of practical operation to the extent the law warrants, namely, an absolute title in a living being to the land for all future time. There is a manifest absurdity in conferring on a mortal man, limited to a brief term of life, dominion over that which will remain substantially unchanged for countless centuries to come. Nature clearly and definitely limits the dominion of man, even over his own body, to the term of his natural life, and all control exercised by him over material things after his death must necessarily be through an artificial extension of his will through the operation of a positive law. All ownership of

land without actual occupancy is purely artificial. In the early settlement of new districts nature indicates simple rules by which the rights of each comer are determined. He may take possession of so much as he can use, and the next settler must choose out of the remaining lands. Actual possession and use establish the right. As numbers increase and there is no longer enough land to satisfy all comers, some limitations are of necessity imposed on the claims of occupants and it becomes necessary to make land laws. Of these the world presents a great variety. In the United States there is at present no limit whatever to the quantity one person may acquire. Land is treated as a merchantable commodity, to be bought and sold without restrictions other than as to form. The laws governing the conveyance of land, the making and recording of deeds, leases, mortgages and other written instruments affecting the title, are all human inventions, based on conceptions of expediency.

The laws of inheritance are also mere legislative creations. Nature indicates that when the occupant of a house dies his family should still continue in possession of it, and also that the household goods and furniture and the domestic animals in his possession should continue in the possession of the family, but nature fixes no law for their division among heirs. Houses and lands in the possession of others as tenants of the deceased owner, if there were no legal rules of inheritance, would remain in the possession of the actual holders, freed from the claim of the landlord after he ceased to breathe. The rules which pass the landlord's title to others are arbitrary and artificial. To avoid conflict and confusion it is necessary that some rules should be established. In the various countries of the earth a great variety of rules exists, ranging from public inheritance to primogeniture, from making the estate merely an addition to the common property of the community to giving all the land to the oldest son. The principle of passing dominion over a large estate from father to son is identical with that of the inheritance of political power. In the case of great properties the public has an interest in their use and management. The son of a wise,

able and just king may be like his father, but is almost as often stupid, incompetent and dishonest. Blood furnishes no sure guarantee of capacity, especially as but half comes from the father, and the heir may exhibit the qualities of some remote ancestor on either side, rather than those of his father. In the inheritance of property the rule is that the son of a hard, grasping, avaricious father is inclined to be idle and dissolute. A very large percentage of the smaller fortunes accumulated by one generation are dissipated by the next. This is detrimental to the public interests, for the heir as a rule is less industrious, more wasteful and often more dissolute than he would have been if started in life knowing that he must provide for himself. As the laws of inheritance are purely of legislative creation, others framed on radically different principles may be made at any time the people become convinced either of their justice or expediency. Law-makers seem to have considered the question of right as a limited one, affecting only those nearly related to the deceased owner by blood or affinity. Manifestly the question is far wider. In the case of the multi-millionaire, on whose properties thousands of laborers are employed and yet more thousands are dependent for their prosperity, the question as to proper management of the property is of public concern. It is of great importance whether the rich man's son shall become the hereditary ruler of all the tenants and laborers on his estate and their offspring, and whether the accident of birth shall confer through a legal theory of title dominion over many people. It is a question of prime public importance whether laws of inheritance be established, which shall deal justly with all citizens and give each a substantially equal share of the earth and the accumulations of past generations. Shall rich ruling families be differentiated in America, as they have been in Europe, to ultimately take political power as well as title to the land, or shall the principles of our system of inheritance be changed with a view to the preservation of substantial equality among the citizens at the start, leaving great wealth to be gained only by meritorious effort. Is not wealth by inheritance a survival of chaotic times when

might made right? Has it any support in morals or expediency? The state is partial in its treatment of its citizens when its laws assign to one child a vast fortune and to another nothing, for it is the law alone that gives effect to the will of a dead man, or assigns his estate to a particular person or heir when he leaves no will.

In the books the title of master and servant is still retained as expressive of the relation of employer and employee. At the time of the revolution the law in most of the colonies recognized the title of a master to African slaves. The civil war terminated slavery. Since then the theory everywhere has been that personal service is purely a matter of voluntary contract, except where imposed as a punishment by the public for a violation of some penal statute. The master has full liberty to hire such servants as he desires, and the servant may choose his employer and refuse to work except at such wages as he is willing to accept. In times when all industries are active there is little difficulty in finding employment and the freedom is real, except as affected by local conditions and the organizations of capital and labor. In periods of depression, however, large numbers of laborers are discharged and can find no new employer. The least efficient of the employees are first turned away and, as industrial activities diminish, the ranks of the unemployed swell until the idlers roam over the country as beggars in great numbers. Employers in nearly all lines of manufacturing, as well as transportation, are year by year forming larger and stronger combinations. The effort on their part is to accomplish results with the least expenditure of money for labor. The general public is the gainer by all legitimate economies in the conduct of any line of business, provided it be effectually subjected to the law of competition, but a favorite means of gaining unearned wealth has long been to combine all competitors or destroy part of them, and, having gained a monopoly, extort excessive profits from the general public. Though monopolies are neither so numerous nor so complete in the United States today as they were under patents from the crown in England in the days of Elizabeth,

organizations which have achieved more or less complete monopolies are numerous and vastly more powerful and profitable now than then. On the other hand the laborers in particular lines of employment have formed many organizations for the purpose of protecting their interests, and in some cases of effecting a monopoly of the supply of labor in a particular line by excluding all except members of their organization. There is a marked difference in the principles on which these opposing combinations are formed. The capitalistic organization is compact and firm. When a corporation is formed and its capital contributed, it does not fall in pieces so long as its business proves profitable. It has unity of purpose and of management. It is capital that is hazarded, not the persons or the services of the stockholders. The labor organization, however, from the nature of the combination lacks cohesive force. The laborers do not combine their efforts to carry on a business and distribute the returns, they do not contribute capital, except some small dues, they do not transfer to the organization any legal power to command their services. It is doubtful if the law as administered by the courts would tolerate an organization that did so. Yet to place organized labor in a position to contend with organized capital on equal terms, it would be necessary, not only that the legal power to control the services of all the men in the combination should be conferred on a single head or board, but that sufficient capital should be also acquired to enable the laborers to live through any period of idleness. Though the members of labor organizations have in many instances exhibited remarkable steadfastness of purpose and have endured great hardships to accomplish the purposes of the organization, there is an inherent weakness, both in the principles on which such combinations are effected and in the poverty and consequent inability of the members to follow the directions of leaders when they cannot live without wages. Though the struggles between labor organizations and the railroad companies, mine owners, manufacturers and other great employers of labor is a matter of the highest public concern and often engrosses public attention, comparatively

little of the time of the courts is taken up with such controversies. The title Master and Servant fills but one hundred and ninety pages of the Encyclopedia of Law. This is not an accurate gauge of the number of suits in the courts growing out of that relation, most of which are for small balances of wages in the inferior courts of which no report goes into the books. The questions arising on contracts for personal services are comparatively few and simple. The courts merely enforce the contract of the parties and, except in a very few special cases, never attempt to compel the laborer to specifically perform his contract.

The rules with reference to the organization of corporations have been greatly changed during the past century. At first a corporate charter was granted as a special favor, and the king or parliament in England and the legislatures in America fixed the powers and privileges of the corporation by the terms of the charter. Now new special charters are almost unknown and there has been a steady tendency toward allowing corporations to be formed to carry on any business that a private citizen may conduct. In this respect the tendency has been uniformly in the direction of abolishing all arbitrary rules of law, and also of allowing the corporations to formulate rules in the form of by-laws which determine the relations of members, stockholders, officers and employees. Thus the supervising public agency, the political power, has been gradually withdrawn, and the power of private lawmaking by the corporation, steadily extended. This increased freedom of organization is highly beneficial. It allows the people to combine their capital, labor and energy for useful purposes, and thereby achieve results which they could not accomplish singly. Freedom of combination for laudable ends is quite as essential to the welfare of the people as freedom of individual action. Partnerships and corporations are methods of combinations in business enterprises requiring either more capital or more personal effort than one alone can supply. The corporate form is best adapted to great enterprises, and the railroads, telegraphs, telephones and most of the great manufacturing and commercial establishments have

been constructed through the instrumentality of corporations.

There is no monopoly that could not be destroyed by merely taking away that on which it feeds, thus a water or gas monopoly can be destroyed by a combination of those who use the water or gas to supply themselves through their own corporate organization. If the people along the line of a railroad were to combine, build and use another to the utter exclusion of the old one, the old railroad would cease to have any revenue. The effort thus far has been mainly to regulate monopolies by law through the political power. Where cities construct and operate those utilities which are natural monopolies, though abuses in management occur, the ownership is always in the hands of those served, and they at all times have the power to correct them. Where a trade monopoly is formed, those suffering from its extortions may relieve themselves by combining and transacting the business through their own agency. The leading difficulties in the way of forming such combinations are mutual distrust and lack of understanding of the principles applicable to such combinations. The field is one so vast that no one can indicate the limit of possible accomplishment. Although the activity in the organization of corporations is so very great, none of them have reached anything like completeness, and the largest are mostly objectionable because the principles by which their actions are governed are lacking in equity. Governmental systems, being merely of human construction, are operated mainly by arbitrary rules, founded on conceptions of expediency. In the effort to regulate public affairs the powers, duties and compensation of public officers and servants are established by fixed rules, it having been fully demonstrated in other countries that undefined power will usually be abused.

There are two leading purposes to be subserved by courts, the first is a public one, namely to afford a peaceful solution of all controversies, and thereby prevent fights and bloodshed, the second is to do justice between the parties. Most of the rules by which the actions of courts are governed commend themselves to the moral sense and have been adopted to promote justice. The desire to correct errors and secure absolute

fairness, has, however, been carried to such lengths in the system which now prevails, that the endless pleadings, motions, orders, demurrers, new trials, appeals, writs of error and certiorari, primarily invented with the purpose of having the cause presented clearly and of correcting every error of the trial court and jury, have in fact resulted in such delays, expense and real injustice, that radical remodelling is imperatively demanded. The idea has prevailed that supreme courts could be made of men so deeply versed in the law and of such soundness of judgment, that they would not only be able to avoid making mistakes of their own, but could correct the errors of inferior courts and juries. The fact is however, that there are so many technical rules of procedure to be followed in presenting the case to the reviewing court, so many arbitrary rules of substantive law to be applied, and such a disposition among the judges of the courts of last resort to refine and exhibit their learning, that there is little in their decisions to commend them to the sense of justice of the plain citizen. It may well be doubted whether the verdicts of the juries are not on the whole far nearer just determinations of the cases before them, than the carefully worked out judgments of the highest courts. When the delays, costs and vexations incident to our long process of determining a cause are considered, they certainly more than counterbalance the possible nearer approximation it may afford to a correct application of the law.

The decisions of the private tribunals established by boards of trade, exchanges and other commercial bodies are usually promptly given and accepted as final, and are far more satisfactory than the dilatory processes of the courts. The great desideratum is a system which will insure impartiality, and under which the end of litigation may be quickly reached. One defect in the jury system is that it is required that the jury be taken from the vicinage. Originally it was supposed that their knowledge of facts would aid them in coming to a right verdict. In the United States it is required that they be taken from the county or district, but it is also required that they shall have no knowledge of the facts. These two

requirements are incompatible. Jurors of the vicinage will always have some knowledge of some things affecting an important case. Impartiality being so indispensable to right judgment, the jury should come from a place sufficiently remote to be wholly unacquainted with the parties and the facts of the case.

A very illogical system is followed in the determination of questions of fact and of law. The jury decides the facts of the particular case before them. Their verdict binds only the parties to that particular cause, yet the twelve men composing the jury must all agree on all essential particulars, or no decision can be had. Successive juries must be called till one can be found which does agree. The supreme or other court of last resort, made up of men specially trained and schooled in the law, decide, not merely what the law is in the particular case, but make a precedent, binding on all inferior courts, and generally so on themselves and their successors in all other like causes, yet a bare majority of the judges may decide the cause and establish the legal rule, no matter how strenuously the minority oppose it. This lacks little of absurdity. A majority might well be allowed to determine the facts, but the rule of law would seem to be a most uncertain guide, if some of the judges of the highest court dispute its existence. Some of the states have adopted constitutional amendments allowing nine jurors to find a verdict in civil causes and in practice this is found to be a great improvement. Unanimity may well be required in criminal causes where punishment is to be inflicted. The great defect in the whole system seems to lie in the division of causes into those to be tried by a judge alone and those to be tried by a judge and jury and in the attempt to complete a code of laws by the decisions of courts in causes between private parties. A combination of judge and jury with power to decide without appeal might work as well in practice as the special private tribunals above referred to. The Athenian system of juries made up of a vast multitude, though far too tumultuous as well as expensive to be practicable here, suggests the idea of the selection of a list of men of probity and intelligence to act as

final judges in all causes. Perhaps if the parties were allowed to select such of them as they could agree on or, if they could not agree, were required to strike the objectionable ones from the list, so as to leave some convenient number to try the case, more satisfactory results would be obtained than now. This is merely a suggestion, for it is far easier to point out defects in an existing system, than to devise one which would remedy them and work satisfactorily.

In the nature of things the rules giving jurisdiction to and regulating the procedure of courts are purely artificial. Freedom of choice of arbitrators and judges tends to secure impartiality and acceptance by the defeated party of the award. The inherent difficulties attending the administration of justice are such that the ideal can never be attained in practice. Facts necessary to right judgment are unknown, the memory of witnesses is imperfect, the ability to state clearly and accurately what the witness knows is rare, jurors and judges fail to understand the witness as he means to be understood. These difficulties inhere in the investigation of causes when parties and witnesses are all perfectly fair and honest, when they are not so fraud and perjury may be accepted for truth and sophistry for logic. Errors will be committed and wrong judgments rendered by the best conceivable court. The real gauge of advancing morality is not the infallibility of judges or juries but the habit of just dealings among the people. The percentage of transactions which are made the subjects of litigation is steadily decreasing, and in the ideal state the compulsory processes of courts would be unnecessary. It is a fact of profound significance that crime has diminished as punishments have been made less severe. When petty larceny and a long list of other minor offenses were punished in England with death, crime was rampant and society was brutalized. When the state ceases to take life for any cause, the sanctity of human life is better respected by the people. As imprisonment for debt and seizure for the creditor of the clothing and household goods of the debtor is done away with, a higher standard of integrity, founded on a conception of right, is established. Though the compulsory processes of

the law may not be safely dispensed with, a public sentiment, which insists on just dealings and right conduct and which educates each rising generation to advanced morality, is the best guarantee of social order.

Authorities

The Histories of Bancroft, Garner, Lodge, Watson, Wilson and Winsor have been consulted on matters of history. For the provisions of the early colonial charters the published charters have been examined, and for the provisions of constitutions and statutes the official publications have been used.

CHAPTER XXVI

Modern Mexico, Central and South American States

South America was discovered by Columbus in 1498 though he did not learn the extent of the continent. Following his discoveries the Spaniards devoted their attention mainly to the West Indies, Mexico and South America, and within fifty years thereafter had made conquests of those parts that displayed most gold and silver and were inhabited by the most advanced people. The purpose of the invaders everywhere was conquest and robbery. Natives were ruthlessly slaughtered and their property destroyed or carried away as suited the caprice of the victors. The native population of the West Indies was soon nearly exterminated. On the main land there was great slaughter of people and destruction of property at first, but later more friendly relations were established and there was much intermixture of blood with the natives. Owing to the number of the Indians and the extent of the country over which they were scattered most of them survived and their descendants, including full bloods and mestizos, constitute a large part of the population in all the principal states. The governments of the Mexicans, Peruvians and other most highly civilized nations were destroyed and Spanish military rule imposed in place of them. Along with the Spanish armies came priests at a time when religious bigotry was most virulent. Pope Sextius IV had established the Holy Office in Spain in 1478, fourteen years before Columbus made his discovery. The gloomy cruelty of the religion of the Aztecs in Mexico was well calculated to stimulate the zeal of the Catholic priesthood, and the Inquisition did bloody work in America as well as in Europe. Some conversions of natives were made and in time some of the spirit of genuine Christianity was manifested, but viewed at large the conquest was dual and the people were subjected to

the domination of both a military and a priestly despotism. Spanish law was introduced and Spanish methods of government prevailed in all the subjugated countries. The ancient industrial organizations of Mexico and Peru were disrupted and no equally efficient systems put in their places. Wealth was sought in the mines of precious metals and the natives were enslaved and forced to work them. The King of Spain assumed ownership of the face of the earth, without regard to the occupancy of the natives, and parcelled it out to favorites in great tracts. In the islands where the natives had been exterminated African slaves were employed to till the soil, but on the main land there were sufficient Indians who were compelled to do it. Cattle, horses, grain and fruits were introduced from Europe, and some improvement in agriculture resulted from Spanish methods, but industrial development along any line was nowhere the leading purpose of the invaders. The search for gold induced them to encounter dangers and endure hardships and throughout the continent they were very active as explorers and pioneers.

Brazil was discovered by both the Spanish and Portuguese in 1500, but the Portuguese gained ascendency and effected permanent settlements along the coast. The plan first adopted by the Portuguese government was to grant captaincies, each extending fifty leagues along the coast to those who should undertake to make settlements. The first captaincy was located at S. Vincente in 1531, and others followed, so that by 1549 they were of such importance as to induce the crown to establish a governor-general at Bahia. Rio de Janerio was settled in 1567. The early settlements of Brazil differed from those of the Spanish colonies in the purposes of the settlers, which were to cultivate the soil and raise live stock rather than search for gold. This may have been due to the fact that the natives of the coast of Brazil did not display gold and silver as the Peruvians did, rather than to a difference in the characters of the Spanish and Portuguese. Be this as it may the subsequent development of the different colonies shows the difference between the prosperity resulting from the mere acquisition of gold by robbery and that which

follows useful industry, cultivation of the soil and the breeding of cattle, horses and sheep. The gold so long as it was retained produced nothing and neither fed nor clothed the possessor. It could be used in making purchases once, and once only. The sugar and coffee plantations and the flocks and herds on the grass lands grew, multiplied and year by year yielded larger returns. Nature multiplied the rewards of industry and thrift and passed them on to succeeding generations, but the gold of the conquerors was sterile. But the Portuguese were not content with the proceeds of merely their own labors. They enslaved the natives and imported great numbers of slaves from Africa. Their prosperity however was seriously handicapped by trade restrictions imposed by the Portuguese government, which prohibited all direct dealings with other nations. In 1578 Portugal and its American possessions passed under the dominion of the Spanish crown and so continued till the restoration of the royal house of Portugal in 1640, after which Brazil was again a Portuguese dependency. There was some fighting with British, Dutch and French rivals as well as with the natives, but the Portuguese seem to have been more successful in establishing friendly relations with the native tribes than the others and were able to hold their ground.

As a consequence of the invasion of the Iberian Peninsula by the French under Napoleon the royal family of Portugal sailed for Brazil in 1807, accompanied by many of the nobility, and established the court there. Brazilian ports were then opened to trade with other nations and a great impetus was given to all kinds of industry. The court was maintained in Brazil until 1821, and the unprecedented situation of a European kingdom ruled from America was presented in the government of Portugal by the King in Brazil. The King then returned to Portugal, leaving his son Dom Pedro as regent of Brazil. The political independence of Brazil was agitated soon after the departure of the king and on Dec. 1, 1822 Dom Pedro was crowned Emperor of Brazil. A constitution was adopted and sworn to by the King March 25, 1824. Portugal recognized its independence in 1825. Dom Pedro and his

son who succeeded him were very popular as rulers, and Brazil escaped serious political disturbances till near the close of the century. But republican sentiment grew to such strength that in 1889 a bloodless revolution took place, the royal family was sent to Portugal, and on Feb. 24, 1891 a republican constitution was adopted which established a federal government and erected the former provinces into states. This constitution is in some respects the most advanced of any yet adopted.

Spanish domination over the rest of Latin America continued until 1810 when revolutionary movements began in Argentina, Chile and Mexico. By the end of twenty years thereafter Spain had lost substantially all her foothold on the continent, but retained Cuba and Porto Rico until 1898. From the first conquest till the end of Spanish rule the relation of Spain to her American possessions was that of a distant military ruler. From sheer necessity the colonists, especially along the Rio de la Plata, were at times forced to effect military organizations of their own for protection against the Indians and hostile Europeans, but nothing like efficient local self-government was established till after allegiance to Spain had been renounced. The superior civilization of the natives of Mexico and Peru over those of most other parts of America seems to have complicated the problem of establishing settled free institutions rather than to have simplified it. In Mexico and South America the Indians and mixed races still constitute a large majority of the population, but in varying combinations in the different states; thus in Mexico about fifty per cent of the whole are Indians, thirty per cent Mestizos, and the remainder of Spanish and other European stock with a few Africans and Asiatics; in Peru fifty-seven per cent are given as Indians, twenty-three per cent Mestizos and the balance Spanish descendants with a few foreigners, negroes and Chinamen; while in Brazil about forty-five per cent are white, thirty per cent mixed white, negro and Indian in varying combinations, fifteen per cent Africans and ten per cent Indians. In recent years there has been an influx of Europeans, especially into Argentina and

Chile, and Americans from the United States are constructing lines of railroad and establishing business enterprises and combinations in increasing numbers, so that there is a well marked tendency toward similar conditions with reference to the intermixture of the people from all parts of the world under free institutions to those in the United States. But in the United States the Indians are now negligible as a political element, while throughout Latin America they are still dominant in many parts and in fact furnish the leaders in many of their struggles. The superior industry and thrift of the southern races has enabled them to survive in contact with the whites, notwithstanding the oppression to which they have been subjected, while the indolent and improvident northern tribes have faded away.

A Spanish settlement was made in Jamaica in 1509, in Cuba in 1511, and in Venezuela in 1520; Mexico was conquered in 1519, Peru in 1532, and Buenos Ayres was founded in 1535. It was not till 1607 that the English effected their first permanent settlement in the United States. Spanish dominion was asserted over a territory of more than double the extent of the present continental possessions of the United States at a period almost a century before the settlement of the United States commenced, yet the total population of Latin America, including the descendants of the native races, is less than two-thirds that of the United States. The difference in the progress of the northern and southern countries is a theme worthy of extended study, but it can be given only brief consideration in this work. The Spanish colonies all started as dependencies of the Spanish crown ruled by viceroys and military force, while the British colonies were planted under charters encouraging organization for self-protection and local self-government. Spanish favorites were granted vast tracts of land, and so long as Spanish rule continued the inhabitants were divided into a few rich, a multitude of poor and a small middle class. In the British colonies there were some large grants of land, but small farms tilled by the owners were the rule, especially in New England. Illiteracy was the rule in Latin America and learning was confined to the

few and mainly of the priestly, religious sort, while in the north it was more general and rigidly Puritan in New England. At the time of the revolt of the British colonies there were more Europeans in Latin America than in those colonies but they were distributed over a much greater territory, extending from Santa Fe, New Mexico to the settlements in Chile and Argentina. The West Indies then produced sugar, tobacco and other products to which they were especially adapted in such quantities as to make trade with them a matter of importance; the plains of the southern half of South America offered pasturage without limit and Brazil was already noted for its coffee. Though gold and silver from the mines continued to allure the Europeans, the value of the products of agriculture and the herds far exceeded that of the mines.

The ships which transported the precious metals from the Spanish colonies were tempting prizes, and pirates infested the southern seas and found secure hiding places on the islands and along the coasts. The code of morals of the Spanish conquerors which was applied in dealing with the natives answered the requirements of the pirates in their operations. The West Indies were coveted by other European powers: dominion over them was determined by the law of might, and Spain was unable to hold all of them. In Mexico the authority of Spain was maintained without serious difficulty till the revolution, but in South America there were many serious conflicts with the natives and occasional wars over the conflicting claims of Europeans.

In 1810 the spirit of revolt broke out in Mexico, Argentina, Chile and other parts of America, and continued to spread and grow in force till an end was put to the authority of Spain in all of her continental possessions. Republics were established with constitutions modelled after, though differing in some particulars from, that of the United States, but the people were not able to rid themselves at once of the evils of military rule. The necessity for the long struggle to gain orderly liberty arose from accepted legal theories of property, the structure of society and the characteristics of the

people. Royal grants had given dominion to favorites over vast tracts of land, and the multitude of the poor were virtually slaves. There was no common school system and only the children of the rich were educated. What is commonly termed the middle class was wholly wanting on the great estates and few in numbers anywhere. Trade developed as products of the land increased, but there was little tendency to improve on primitive methods of manufacturing coarse fabrics and crude implements. There were no great business combinations establishing common interests or educating to concert of action in peaceful pursuits. Such conditions have always invited the combinations of the robber and military adventurer. Where the avenues of success in legitimate industry seem closed or surrounded with intolerable difficulties, the warlike instincts of the savage assert themselves and bold spirits lead reckless followers in attempts to substitute their forcible mastery for that asserted under the law. While nature offered the most bounteous provisions for human welfare throughout the continent, the relations of men to each other were such as to entail misery and suffering on a large part of the people during much of the time.

Notwithstanding these untoward conditions able, educated men disseminated high ideals of political organization throughout Latin America and governments were established based on principles of liberty, equality and law. The struggle to overcome the unsocial conditions has been long and often discouraging, but of late the progress in all the leading states of South America has been most marked and gratifying. Following the establishment of republics immigration from all the nations of Europe was encouraged and the process of making new states out of a combination of vigorous people of different nationalities, all admitted on an equal footing, has gone on with constantly accelerating speed. Colombia led in the line of education and established a compulsory school system in 1870, and the other states have made much progress in establishing educational institutions. The element of educated people above immediate want, yet under the necessity of being useful, is growing steadily in

numbers and influence. While many of the rich have grown vastly richer from the general prosperity, the ratio of the abjectly poor has been materially diminished. The process with which we are so familiar in the United States of organizing large industries, importing great numbers of cheap laborers for the rough work connected with them, educating them and their children and soon seeing them self-reliant and often leading citizens is now fairly under way in the leading South American states. This process has been viewed with much apprehension in the United States and has its disadvantages, but the prejudices which have been manifested successively against Irish, German, Scandinavian, Italian, Pole, and Russian laborers have given way one by one, and their children are taken into full fellowship as American citizens with little or no discrimination against them on account of the nationality of their parents. The problem of assimilating Africans and Asiatics is one of more difficulty, but education and even handed justice are found to be all that is necessary to render it possible for all races to become mutually helpful and prosperous.

After a century of effort to establish orderly popular government the South American states are enjoying general tranquillity and prosperity, and in some particulars lead rather than follow the march of civilization. Mexico was afflicted with almost constant civil war from the revolt of 1810 till the accession of Diaz in 1884. He maintained order and observed the forms of constitutional government without much regard to the substance. Through requirements of unobtainable proofs of title to lands his government confiscated the holdings of multitudes of poor peasants for the enrichment of favorites. He encouraged the investment of foreign capital, and during his long rule many miles of railroad were built and many new industries established, but all on the insecure basis of a vast multitude of illiterate homeless poor, at the mercy of either great landholders or corporations, with reliance on military force to preserve order. Following his reelection in 1910 a revolution caused him to leave the country, and on May 25, 1911, Francisco I. Madero became provisional

president. Since the overthrow of Diaz the weakness of the social structure of Mexico has again become apparent. There are not enough people schooled in the principles of government and devoted to social order to curb the ambitions of immoral leaders. The brief career and tragic death of Madero and the subsequent struggles of rival leaders give again a most unhappy illustration of the evils attending ignorance and oppression. The progress in industrial development which had been made is not merely at a stand still but retrogression has set in. The task of establishing order and justice through the popular elements as they now exist is one of great difficulty, but real progress can only come through a public sentiment that condemns the bloodshed and robbery that has become prevalent, and the organization of a public force sufficient to maintain order and used for the protection of rights instead of the perpetration of wrongs.

The Latin American states all have constitutions framed on the general lines of that of the United States, but most of them are much more elaborate in details. All distribute the governmental powers among three separate departments, executive, legislative and judicial, with a president as executive head, two houses in the legislative branch and judges independent of both. Councils of State variously composed, under different names and with differences in powers and functions are provided for in the constitutions of Chile, Mexico, Colombia, Ecuador and Peru. There are differences in the terms of office, thus in Venezuela the term of the president is two years, in Mexico, Brazil, Ecuador and Honduras it is four years, in Chile five, and in the Argentine Republic and Colombia six years. The terms of deputies or representatives are two years in Ecuador and Mexico, three years in Brazil and Chile and four years in the Argentine Republic, Colombia, Venezuela and Honduras, and of senators four years in Mexico, Equador and Venezuela, six years in Colombia and Chile and nine years in Brazil and the Argentine Republic. Judges of the highest courts have terms of four years in Venezuela, and Honduras, six years in Mexico and Ecuador and during good behavior in the Argentine Republic, Brazil, Colombia and Chile.

The constitutions of Chile of 1833 and of the Argentine Republic of 1860 abolished slavery and prohibited the slave trade at times when slavery was the most noticeable institution maintained by law in nearly half of the United States. The more recent constitutions also show the march of ideas and contain good provisions not to be found in that of the United States. The constitution of Brazil abolishes the death penalty except under military law in time of war, and that of Venezuela abolishes it without any reservation. On the subject of waging war Brazil has the honor of taking the most advanced ground in its fundamental law of any nation. Article 88 reads: "The United States of Brazil shall in no case undertake a war of conquest directly or indirectly of themselves or in alliance with another nation." Congress is empowered "to authorize the government to declare war, if there is no opportunity for arbitration or if arbitration has failed, and to make peace." The five Central American States in 1908 established the Central American Court of Justice under a treaty which binds them to submit to its judgment "all controversies or questions which may arise among them of whatsoever nature, and no matter what their origin may be, in case the respective departments of foreign affairs should not have been able to reach an understanding." Kings and hereditary rulers of all kinds may regard it as inexpedient for them to abstain from the use of military force to further their ambitions, but the interests of the people and the moral law are always opposed to war. It is the interests of rulers and privileged classes only that are likely to be adversely affected by the judicial settlement of all international disputes. The welfare of the whole people of all of the nations would be promoted by a universal treaty of arbitration similar to that of the Central American States.

Argentina, Chile and Ecuador support the "Apostolic Roman Catholic church" and Colombia recognizes its right to administer its own affairs but without formal recognition as the religion of state. The constitution of Mexico provides, "The state and church are independent of one another. The congress may not pass laws establishing or prohibiting any

religion," and "The simple promise to speak the truth and to comply with the obligations which have been incurred, shall be substituted for the religious oath, with its effects and penalties." That of Brazil contains the following: "No cult or church shall receive an official subsidy nor have relation or dependence or alliance with the government of the Union or of the states."

Viewed as a whole the recent progress of the Latin states has been quite rapid. Steadily advancing moral standards are being adopted and the curse of war is less frequent in its visitations. The Argentine Republic, Brazil and Chile especially exhibit growing industries and commercial activities and an inclination to seek all that is best in improved systems of organization, not for the destruction of mankind by war but to benefit them through combinations for good purposes.

Authorities

Glynn: Foreign Constitutions.
Dodd: Modern Constitutions.
Baldwin: The New Era of International Courts.

GENERALIZATIONS

1. Poverty of History

The earliest records that have come down to us are those of the Egyptians, Babylonians, Aryan invaders of India, and Chinese. Each of these people had their own written language, that of the Chinese being so radically different from the others as to indicate no probability of suggestion from the others. The others bear no close resemblance to each other, yet may all have been outgrowths from the same primitive suggestion. All dwelt between the twentieth and thirtieth degrees of north latitude and all were Asiatics, except the Egyptians who inhabited a small district in the northeast corner of the African continent. The extent of the countries inhabited by them and the Israelites and other tribes with whom the Egyptians and Babylonians came in contact and of whom we have any very early account could not have exceeded one-tenth the area of Asia. We have no records of any other people extending back to even one thousand years B.C. We have no knowledge of the governments or laws of the people who dwelt in the balance of Asia and Africa, or in any part of Europe or America prior to that time. Greek and Roman records take us back less than three thousand years, less than one hundred generations of men. When we consider how slowly the art of writing and reading was disseminated and the state of comparative isolation in which the various people dwelt, it is not surprising that the lessons to be drawn from very early times are so meager. The Chinese constructed a written language and a theory of government and system of laws under which one-fourth of the people on the earth now live. At the other end of the line of early civilization the Egyptians in a far smaller country produced their peculiar civilization. Each of these people were substantially isolated from the rest of the world for

long periods of time and were able to live in peace in a very fertile country substantially secure from outside foes under conditions favorable to the study of agriculture and the arts. Babylon was also located in a very fertile valley and flourished for a long time, but was always exposed to attacks from without, and finally went down before the Persians. The conquerors of India maintained their ascendency by their arms and religious teachings and still preserve their caste superiority. The idea of government generally entertained by all these people throughout all the ages was unlimited paternal power in a single monarch, who however was expected to rule in accordance with established laws. All authority centered in and emanated from the king. No great representative body was chosen by the people to express their views or check the abuses of power. In their religious and classical books the Chinese and Brahmans expressed just sentiments concerning the legitimate functions of government, but they failed to devise effectual checks to prevent the abuses of power.

The record of European civilization starts with the Greeks and Romans and at a period very much later than that of the Egyptians, Babylonians and Chinese. The accessible accounts of their public doings are much more full, and their influence on western civilization has been much more potent. While the Greeks tried many experiments and exhibited wonderful brilliancy and vigor, their governmental structures were relatively small and shortlived. The Romans were more successful and steadily extended their system of government and laws till it covered southern and western Europe, northern Africa and Asia Minor. Their empire went to pieces before the onslaughts of the northern and eastern tribes and the territory covered by it is now divided among the nations of Europe and with the Mohammedan Turks. Of the peculiar civilizations that developed in Mexico, Central America and Peru we have no native historical accounts, and the European observers saw them for only a short time. They had no written language but the Mexicans had made some progress in picture writing and the Peruvians used the quipu for records and messages. Their civilization developed in isolation and

so far as we know without being influenced by suggestions from without.

Since the discovery of America and of the ocean routes to India and the far east, new conditions have existed and the people of the various countries have from time to time felt the force of external impulses. Instead of delving into domestic history for precedents in the structure of governments, contemporaneous examples, adapted to modern needs and conditions are now more regarded by the people of every nation.

2. Methods of Acquiring and Conferring Political Power

The influence which operates most powerfully and swiftly in promoting concert of action for public purposes is war, present, threatened or contemplated. The exigencies of war demand combination of all those having common interests and concentration of authority to direct the movements of all in a single head. The most primitive political power is that of the leader of a tribal war party. Such leaders have been found everywhere and in all ages among savage tribes. The duration of the leadership has depended on his capacity, the needs of the tribe and their wishes and purposes. The leader's authority over people in the hunter state rarely extends beyond his immediate tribe. Pastoral and agricultural people who can make provision for the support of larger bodies of men for longer periods effect larger and more permanent combinations. The general rule has been that the larger the combination the more arbitrary and despotic the power of the leader. Ignorance, illiteracy, poverty and inadequate means of communication limit and condition the extension of power. So far as we are informed the only large combinations evolved in America by the aborigines were those in Mexico and Peru where the people had made much progress in agriculture and manufactures and in building roads, the transmission of messages by runners and picture and sign language. The earliest known Egyptian and Asiatic conquerors were backed by industrious multitudes

who provided for their armies, and knew the use of written words. Numberless military despotisms over more or less extensive territories have been superimposed on existing systems of government by military leaders, of whom Alexander, Caesar, Charlemagne, Genghis Kahn and Napoleon are conspicuous examples. The common characteristic of all such leaders has been ruthless destruction of human life to further the ambition and often to gratify the malice of the leader.

The patriarchal idea of government typified by that of the imperial government in China and which prevailed quite generally throughout Asia, though despotic in character, was in some measure an outgrowth of the multiplication of families and tribes by natural increase and the extension of the authority of the patriarch over the enlarged family. The power of the patriarch has usually been supplemented by military force as occasion has been presented until the great kingdom or empire has been established. Military force has been the main instrument employed in the formation and perpetuation of most of the great governments throughout all historic times.

Next in potency and universality of employment have been religious teachings. The religious beliefs and the superstitions of a people are the products of suggestions from their environments, and of fear, desire, hope, imagination, and inspiration. They are gross and absurd or pure and exalted according to the capacity and character of those who propose them. In Peru and other countries where cloudless skies prevail the sun has been adored as the great life-giving power. The early mariners of the Mediterranean Sea feared the wrath of Neptune, god of the sea. In the mountains and plains of northern India Indra, the god of storms was seen in the tempests. Among warlike people, the god of battle under a great diversity of names, Siva, Jehovah, Mars, Thor, Allah, has been called on for aid in bloody strife. Other gods in endless variety have been named to meet the requirements of the situations with which tribes and nations have been confronted. That religious impulses are most potent in influencing the conduct of the people is patent to all intelligent

observers. This has led crafty men in all ages and countries and in all stages of social development to use the beliefs and superstitions of the people as a means of mastery over the multitude. Occasionally a man has appeared who could draw a multitude to his support by advancing a new creed or a modification of an old one like Mohammed, but ordinarily accepted beliefs have been taken advantage of. The methods of utilizing these beliefs and the special purposes for which they have been employed are as varied as the human mind can readily conceive. The superstitions of savages have been utilized to influence the actions of one or a number and to gain merely a temporary or a continuing mastery. The religions which combine the purest ethical principles with their beliefs have been found the most serviceable. Dread of reptiles, beasts and birds has led savages to attribute supernatural powers to them and people so highly civilized as the ancient Egyptians and Hindoos have deified them. The Chinese dragon, the griffin and other imaginary monsters are fanciful extensions of the pantheon. Whatever the particular form of the superstition, the medicine man or the priest claims special relations and influence with the supposed supernatural power, teaches the multitude that such relation exists, magnifies its potency, claims ability to use it for their good or ill here or hereafter, and induces obedience to him through hope and fear of the supernatural and incomprehensible.

In the more advanced states of society religious domination has been at times distinct from the secular, but far more frequently in combination with it. The combinations have taken a variety of forms. The early Brahman priests combined with the military order of their race to secure their ascendency. The priests taught the mysteries of their religion, the superiority of their caste, the secular power of the military men and the duty of all others to respect Brahmans and Cshatriyas. Moses led the children of Israel with the aid of Aaron as his mouthpiece in religious instruction. The Greeks consulted their oracles, some of the most noted of which professed complete independence. The Church of Rome has ruled mainly by the use of ecclesiastical expedients,

but always with some aid from the temporal powers and at times by the use of military force. Most of the great and enduring despotisms have closely combined a priestly system with military power. In the Chinese, Mohammedan, Russian and ancient Peruvian empires there was strict identity of head in ecclesiastical and temporal government. The emperor, the caliph, the czar and the inca were each at the same time supreme representatives of the overruling spiritual being and fountains of all temporal power in their dominions. Though the taboo among Polynesians and the gross superstitions of African and American savages have been used with great effect, they have never afforded a foundation for the erection of any great or enduring empire. The greatest priestly combinations have been built on more lofty religious conceptions. Chinese philosophy and the religious teachings of Gautama have been utilized in combination with some gross superstitions in maintaining rulership over the Chinese multitudes. Mohammed, the image-breaker and apostle of one living God, propagated the word by the sword with irresistible power and sought to forcibly reform many prevailing abuses. The Czar as the head of the Greek church has led his armies and wielded his bloody despotic powers in the name of the meek and lowly Prince of Peace. The Inca as the high priest of the Sun stood at the head of the religious establishment and was at the same time possessed of all temporal power. The Greeks and Romans in accordance with their democratic ideas took the gods of all the peoples into their Pantheon, and the Greeks especially allowed their gods to take opposing sides in their conflicts and war with each other. Though the Romans consulted their priests and augurs and paid great regard to religion, the secular power dominated till the fall of the empire. The Papal power, extending over Europe, into Asia and Africa and then America is unique in character. Its basis is the same as that of the Greek church, but it has stood through so many centuries as a power apart from and much of the time superior to the soverigns of the Catholic nations. Kings and emperors, while claiming unlimited temporal power, have acknowledged the spiritual mastery of the Pope. Through-

out all the dark ages the priesthood monopolized nearly all the learning, and temporal rulers were dependent on them to teach the ignorant multitude the doctrine of the divine right of kings to rule and the religious duty of the people to submit and obey. In return for this service the kings gave them title to lands and allowed them to collect tithes and other revenues for the church. Thus there was a close confederacy between the spiritual and temporal rulers, giving mutual support to each other's authority. The breaches between the clergy and the crown paved the way for emancipation from the religious yoke and afterward for political freedom. In recent times there is a marked tendency to completely divorce church and state.

The third method of acquiring political power is by the voluntary choice of the people for the accomplishment of their purposes. This method has been far more generally employed by people in all parts of the earth than is commonly realized. The American Indians and most other savages chose their chiefs and determined most of the important affairs of the tribe in a general council of all the men. Democratic assemblies are not strangers in the greatest despotisms. In the villages of China and Russia the people have long been accustomed to choose their head men and manage their local affairs. A similar village system has long prevailed in India. The ancient Persian monarchs ruled most of their subjects through a tribute system, and the villages were free to regulate their local affairs through the elders and patriarchs chosen or recognized by them. In Europe democratic institutions were not limited to the Greek and Roman cities of early times, but were common in the cities of Italy, Germany and Russia in medieval times. Strictly democratic institutions were universally confined to the people dwelling within a city or small district of country. This resulted from the necessity for consultation and public gatherings of all, which was only practicable where the people were in close contact with each other and had common interests and purposes. Though the Roman republic was extended into distant provinces, no system of general representative government was

built. The general affairs of the republic were regulated from Rome, and the local affairs in the provinces were managed by the people through their domestic governments. It is still impracticable for the multitude to gather from all parts of any large district of country and transact public business in a general assembly of all. Direct action of all the people on matters of general policy has become possible through the aid of printing presses and improved facilities for the transmission of information and consultation between people distributed over a large territory. We now can act directly through the ballot, not only on constitutions but on general laws of all kinds that are referred to the people for approval or rejection. Brief terms of authority have been the rule in all democracies. Great activity and rapid changes in the official system and the purposes of the community as well as in the persons chosen as leaders have occurred everywhere. Diversity of conditions seems to render the management of purely local affairs a matter which should be confided to the people concerned. Outsiders are in no position to act intelligently and have no sufficient motive for forming correct judgments concerning the interests of other communities. The number of public questions as to which the multitude can inform themselves at any given time is necessarily limited and the highest measure of success in popular government is dependent on the submission of each question to the body of voters or to such representatives of them as can give it the best consideration and will act for the interest of the people concerned.

It is only in modern times that popular government has been extended by the selection of representatives chosen to act in place of the multitude in matters affecting more people and larger district than can meet in general assemblies. The principles of representative government are simple and readily understood. The whole country is divided into such provinces and districts as seem necessary or convenient for the regulation of their affairs and the transaction of public business in them. The United States of America may perhaps justly claim to have been the pioneer in forming a representa-

tive system, adapted to unlimited extension among homogeneous people. The ascending series of general political divisions is towns, counties, states and United States. The people of each of these divisions choose the officers who conduct the public affairs of all the districts within which they are included. Aside from these divisions there are the cities with varied plans of representative city government, judicial districts and districts from which members of the legislative bodies are chosen. While the United States has ruled and still rules territories and dependencies through the general government without allowing either full local self-government or representation in the general government, such rulership is outside of and opposed to the general principles on which the government is constructed. The theory adopted in this regard has been that such government has been merely temporary and preparatory to the establishment of the general system followed in the states. The general government of the United States is of limited powers conferred for general purposes by the constitution or implied from it. All other political power is reserved to the states and the people thereof. The value and efficiency of all these governmental agencies is dependent on choice of representatives. The ever present difficulty is for the people to know which men will act for the best interests of the public, and which will sacrifice public to private, corporate or party interests. Without the aid of modern means of communication and dissemination of information these difficulties, with the present heterogeneous elements in our population, might be insurmountable. As matters stand there is ample room for great improvements in our methods of selecting officials and representatives of the people.

The British Empire is constructed in accordance with far more flexible theories, and can adapt its governmental machinery to the varied stages of social development from African savages to the socialistic colony of New Zealand. It rules in India as a military despotism and in Canada and Australia allows full liberty of self-government. Only the inhabitants of the British Islands are represented in the gen-

eral government of the empire, but the people of the colonies make their own laws and conduct their home affairs with practically no interference. Instead of extending the system of representative government so as to include representatives from remote parts of the empire, the tendency now is to allow what is called home rule to Ireland and thereby to further divide legislative authority. But this is really in accord with the American plan of allowing the people of each state to make laws adapted to their needs and views.

The spread of representative government since the American Revolution has been very rapid. In the western hemisphere practically all the governments are republics in form, except the European dependencies. In Mexico and Central America military force is still resorted to for the establishment of political power at times, but it is to be hoped and expected that stable governments based on free and fair elections and submission to the will of majorities will soon be maintained as they now are in the Latin states of South America. In Europe Switzerland and France are well established republics, and Portugal has recently become one. In Asia, Japan, Persia and Turkey are constitutional monarchies. chu dynasty and become a republic. With this accession to the ranks of the republics of the earth the aggregate population of them jumps from about 200,000,000 to 600,000,000. All the other European governments including Russia and Turkey have representative legislative bodies and the monarch's power is limited by constitution in all but Russia. In Asia Japan, Persia and Turkey are constitutional monarchies. It thus appears that the only great country, inhabited by civilized people, in which popular representation in the government is wholly denied is India, which is ruled as a dependency by Great Britain. There is great diversity in the meaning of the term limited monarchy as applied to the different governments. In Great Britain the power of the king has been reduced to a shadow and the hereditary house of lords to little more than an advisory body, while in Germany the Emperor is still the war lord with the weapons of a despot at his command. When it is considered that the doctrine that kings

ruled by right divine was firmly established and maintained all over the world till the close of the eighteenth century the progress of representative government appears very marked and rapid.

Representative government does not imply that all governmental functions are performed by men chosen directly by the voters. In the United States the President is chosen theoretically by an electoral college, but in fact by choice of candidates made by party conventions and choice between these candidates by vote of the people. The President as the representative of all the people appoints all the heads of the executive departments, all the diplomatic and consular representatives of the nation, all the federal judges, and tens of thousands of inferior executive officers. The more important of these appointments require confirmation by the senate, and in practice most of the local officers in the states are selected by the senators and representatives on whose recommendation the president appoints them. Some of the chief executive officers in turn appoint a great number of subordinates in their departments. Under the constitution as it was originally adopted the people did not choose the members of the senate but the state legislatures elected them. An amendment has recently been ratified by the states providing for their election by direct vote of the people. The governors of the states and the mayors of the great cities also appoint great numbers of executive officers, some of whom require confirmation by the state senate or city council. All members of the state legislatures, most of the state judges and nearly all the county and township officers are elected by popular vote. In the United States changes in the cabinet are dependent on the pleasure of the President, while in France and Great Britain they are dependent on the will of Parliament. While there is some diversity of methods in the various republics, political power is conferred in each of them in all the ways above mentioned.

In the constitutional monarchies not only is the king or emperor indebted to a law of inheritance for his office rather than to the people, but there is an upper house of the parlia-

ment made up of hereditary nobles or royal appointees or both who are not accountable to the people for their action nor subject to removal by them. In some countries the hereditary nobility exercise great influence in the election of members of the lower house. The requirement of property qualifications as a condition to the right to vote in some countries renders the lower house a representative only of the privileged classes. In all these countries however there is an unmistakable tendency to restrict the exercise of arbitrary power and make the military subordinate to and dependent upon the civil power.

3. Methods of and Principles Applicable to the Selection of Public Officers

All governments however established or whatever their forms or functions are mere expedients, without moral attributes, and doomed to successive changes in methods of conferring power, in functions, and in purposes. It does not follow that any of these are matters of indifference, or that the government is any the less a necessity. The men who direct the operations of government have moral attributes and it is of the utmost consequence that those best qualified for the discharge of the required duties and most devoted to the general welfare be chosen. Some general principles may be declared with reference to the methods which tend to good and bad selections of officers. First, the selections should be made by those whose sole purpose is to promote the general welfare. The purpose of the military despot in making his choice of officers is to secure fidelity and efficiency in the execution of his will. His own interests are the prime consideration and may be the sole one. It is morally possible that a despot may be wholly devoted to the welfare of his subjects, but it is hardly possible that the influences surrounding him will be of such character. The courtier is usually actuated by selfish motives and his suggestions and recommendations are ordinarily made to promote his own rather than the public interests. The same principles apply with more or less force to all monarchical and oligarchical govern-

ments. The influences controlling all appointments are special and personal rather than general and public. Where the selections are made by the whole body of persons whom the officer is to serve the general motive must be public and to promote the welfare of all. Theoretically the desirable motive dominates in popular elections. It often happens that a small but influential number of persons succeed in dictating the nomination and procuring the election of officers who are devoted to their personal interests or favorable to schemes for the advancement of special interests. Ambitious candidates, though lacking in moral purposes and qualifications for the offices to which they aspire, may yet be experts in the art of getting votes and succeed in defeating opposing candidates who are far more worthy. Under all popular governments there is a constant tendency for the people to divide into political parties, the members of which act in concert to secure the election of the candidates of their choice. Like most other expedients employed by a free people in their public affairs party organizations have their good and bad influences. They ordinarily secure ample criticism of the official conduct of officers of the opposing party, and sometimes are quite efficient in bringing to public attention candidates well qualified for the positions to be filled. They also are capable of exerting good influences on the officials while in office. On the other hand there is a marked tendency for political parties to fall under the domination of leaders whose main purpose is personal and party advantage, and who resort to immoral means to accomplish results. It is well to have the opposing sides of all public questions discussed and to have the merits and demerits of candidates made known, but it sometimes happens that the purpose is to deceive and mislead rather than to correctly inform the public. The evils incident to popular choice are however temporary and such as are incident to human weakness and imperfection. The underlying and continuing motive must still be good.

Second, selections of representatives and officers should be made by those having sufficient acquaintance with or information concerning the candidates to enable them to judge

fairly of their qualifications. It is apparent that the members of a tribe or a small community may know all the prominent men in it and express an intelligent choice for leaders. This accounts for the wide prevalence of democracy in the primary political organizations of so many countries. When the choice is made for larger districts personal acquaintance with the candidates become less general, and the voters must rely on information derived from others. When the selection is for a large province a great state or a whole nation most of the people must rely wholly on such information. Ample means of intercommunication between the people of all parts of the territory affected then becomes indispensable. The growth of representative government has been contemporaneous with and dependent on modern inventions and improvements in means of spreading information and interchanging views. The printing press, postal service, railroad, telegraph and telephone, have done much to eliminate the difficulties interposed by distance. Instant communication with all the centers of civilization throughout the world is now not only possible but common. The practical difficulties in the way of affording full and correct information as to the character and qualifications of men and the merits of public measures among the multitudes in great states are still very serious obstacles to be overcome. A considerable part of such information as is in fact scattered among the people mainly emanates from those having special interests to subserve as candidates or otherwise. This may be colored with falsehood. A far more serious practical difficulty of similar nature lies in the want of time, opportunity and capacity of the average citizen to fairly consider and decide upon the merits of a great number of opposing candidates for many different offices. When it is considered that each American citizen is in some measure responsible for the selection of hundreds of thousands of officers high and low the physical necessity for selection and appointment through representatives is apparent. All the people could not possibly take part in the direct choice of all the officers. Representative government implies not only popular selection of the legislative bodies, but also

of the appointing power that fills the executive offices. Schemes have often been adopted under which a body of men chosen by the people chooses another body which makes the ultimate choice of the persons who are to perform the official duties. This was the method of electing United States senators, who wielded so much power and influence in the selection of judicial and executive officers. The people elected the members of the legislatures, who then elected the senators who named the appointive officers. This system has been found open to two most serious objections; it interferes seriously with the legislative work, and gives an opportunity for those who seek special privileges and advantages to exert undue and often corrupt influences in the selection of the senators. Since this provision of the constitution has been changed all legislative officers in the United States are chosen by direct vote of the electors. There is a rapidly growing feeling that federal judicial officers should be chosen directly by the people, in place of being appointed for life as now. There has also been a tendency to add to the list of executive officers on the ballots at the popular elections, but the impossibility of making an intelligent choice between so many candidates who are strangers to most of the voters is apparent and becoming recognized. Selection of those who fill minor executive offices by their superiors who are directly chosen by and accountable to the people seems to produce the best results.

Third, those who make the choice of persons to fill public offices should have a general understanding of the nature of the duties to be performed and be in a position to judge of the qualifications of the candidates. It is still necessary, however, that the leading motive actuating those who make the choice should be to promote the public welfare. Those specially skilled in a science, profession or business are generally better qualified to select officers whose duties relate thereto than the general public, but they are liable to have personal or class interests to promote. Lawyers are better qualified to select judges than laymen, and physicians and surgeons health officers, but the interests of the profession might not always coincide entirely with those of the public.

The principle of expert selection of experts is, however, quite too generally neglected.

4. Direct Legislation. Initiative and Referendum

Though the initiative and referendum are generally looked on as new they are mere extensions of the familiar method of establishing popular governments. The constitutions of the American states have been mostly formulated by conventions and submitted to the people for adoption. Amendments to these fundamental laws in great numbers have been submitted to the vote of the people and adopted or rejected. The subjects dealt with have included not merely the framework of the government but many rules of substantive law. The principal new feature is in the initiative through which a law formulated by any citizen may be submitted to the voters for adoption on the petition of the required number of voters. Formulation of laws by persons who are not members of any legislative body is not at all uncommon, and many of the most carefully prepared acts are so prepared and afterward enacted into laws. The referendum is merely the submission of a law to the approval of the people as constitutions and amendments thereto are submitted.

5. Changes in the Forms and Functions of Governments

As we have seen there is a world-wide drift toward popular representation in government and away from the doctrine of the divine right of kings to rule. As popular influences gain ascendency it would seem natural that military tendencies which have been such prolific breeders of despotisms should diminish. Nevertheless at no period in the history of the world was there anything to compare with the modern military and naval establishments of Europe or the expenditure of money in maintaining them. Modern inventions in the manufacture of explosives, guns, steel and other metals, shipbuilding and the many costly structures and instruments of destruction and defense, seem to have caused the nations to run mad in a race of military organizations.

The claim had been that all this preparation was merely

for purposes of defense but a situation of complete preparation for a conflict has borne its natural, perhaps inevitable, fruit, the most gigantic war the world has ever known. The leading nations of Europe have for many years borne a most excessive burden of taxation for military and naval expenditures and the people who have borne these burdens are now being slaughtered in great numbers as a result of them. The perfection of Germany's army neither preserves the lives of its soldiers nor protects their families from the suffering that war entails. Great Britain's vast navy preserves its dominion over the sea to a limited degree but at the expense of the lives of many of its sailors and marines. Air ships and submarines introduce new elements in warfare and have served to add to its savagery. Rules for the protection of noncombatants which had been observed in recent wars are now disregarded because deemed impracticable where war is waged from the air and beneath the sea.

Notwithstanding this dreadful relapse into ancient savagery aided by so many modern inventions, the demand for some general organization of the nations of the world which will not merely prevent the recurrence of such conflict but which will relieve the people of all the nations from the burdens of great military and naval establishments is more widespread, general and persistent than at any time before in the history of the world. The danger of placing the power to set all Europe ablaze with war in the hands of a single ruler is apparent to all observers. Thousands of men are now earnestly seeking for some practicable plan which will secure the multitude against the mad ambitions, crimes and follies of crowned heads and military leaders.

In times past differences in race, language, religion and customs have interposed serious obstacles in the way of good understandings between nations. These obstacles are being measurably removed by intercommunication and education, but on the other hand modern facilities for travel and communication bring the people of each country in contact with the people of all the others in greater or less degree. The most military nations are those that come most in contact

with the others. In the dark ages China, Japan and India were completely isolated from the Europeans. Now the fleets of all nations sail into their ports, and railways connect them by land. England, France, Germany, Italy and Russia are reaching out for distant possessions, while Spain and Turkey have been forced to give up much of theirs. The savage tribes of Africa are being subdued by Europeans who covet their lands and products. All the earliest seats of civilization in Egypt, India, China and Babylonia are either already dominated or threatened by these aggressive nations. Military force is still employed for the extension of power, as it was in the days of Ramses, Darius, Alexander and Caesar. Savages are subdued by it, a relatively easy matter, and vast preparations of armies and navies are made to ward off and overawe other covetous military nations. Even the United States unfortunately took from Spain a claim of sovereignty over the Philippine Islands and pays the heavy penalty for it of increased militarism and $200,000,000 a year in added war and naval expenditures. A few centuries ago the wars of European nations were mostly due to claims of their rulers to sovereignty over neighboring territory, and with immediate neighbors. Now the conflicts are largely over distant possessions. Very modern examples of this are in the wars of Russia with Japan over claims of dominion and privilege in northeastern Asia, and between Italy and Turkey over a part of northern Africa. The material as well as the moral advantages of a general agreement among all the aggressive nations to police the countries inhabited by savages and protect the people of all nations who see fit to go there for lawful purposes, have not yet overcome inherited military tendencies, national selfishness and the jealousies of the great powers. In theory the submission of this whole matter to a parliament of all the nations is simple, yet practical obstacles still prevent it. By war and the maintenance of armies and navies the interests and ambitions of a few are served, but the multitude always suffer from them. Militarism and despotism go hand in hand and are of course antagonistic to the welfare of the public. The guilt of provoking war us-

ually lies in some ruler or leaders. The great multitudes pay the penalties of their crimes and often enrich and glorify them for the misery they have inflicted. With the advancing enlightenment of the masses throughout the world these truths are gaining recognition and aggressive warfare is condemned, yet it is not common to fix criminal responsibility on the men who dictate national policies. The central idea of the union of the American states is applicable to a world wide union of the nations. Such a union calls merely for the superimposition over all nations of an agency made up of representatives of each for the promotion of the welfare of all, leaving the regulation of the internal affairs of each country to the home government of it. It implies, however, the acceptance by all nations of the representative principle and of the equality before the law of the people of all races and countries. It must be attended by such general education of the masses and intercommunication among them as are essential to a world-wide understanding of the principles of the union. The guarantee to the citizens of each state of all the privileges and immunities of all the other states is of prime importance in America, and would be so in a world union. North and South America are republican throughout and though Mexico and Central America still have military disorders they have accepted the principle of self-government. With the aid of a general union all their difficulties would doubtless be relieved. For a long time similar conditions existed in the South American states but they have substantially disappeared. The United States had its frightful civil war, but the principle of local self-government and of equality of rights among all the people was not impaired. The people of France and Switzerland are educated for such a union, and all the British, German, Scandinavian, lowland and related people, though retaining monarchical forms of government, are quite well prepared to enter into and maintain a general union. Not only these but the pacific races of China and India and the Japanese are amply qualified to join the great federation. The European states where religious domination still combines with military in government and the

Mohammedans might be found more intractable than others, though they cannot be said to be more warlike.

A parliament of the world would of necessity be based on the broadest toleration of local institutions, laws, beliefs and personal views in all non-essentials. It could only stand on an accepted theory of justice to and equality of legal right in all. All national robbery by military force would necessarily be condemned. It is not essential to the successful maintenance of such a union that the people of all countries should regulate their domestic affairs in the same manner. It is only necessary that they should be substantially agreed as to the principles governing international relations and in the sterilization of the military functions of government. Increased intercommunication, interchange of literature, trade, common enterprises, common language and common purposes tend to sympathy and good understanding. That all these influences are actively at work and are breaking down the barriers which have so long caused fear and suspicion where confidence and good will ought to prevail is manifest. Whenever the sublime ideal of universal brotherhood and mutual help among all people prevails there will be little difficulty in effecting a general union.

Among the Greeks and Romans law-making, military training, religion and the administration of justice were the public matters receiving most attention. At Sparta the young were educated by the state. Education of the boys meant military training and of the girls physical development; all primarily for the purpose of giving strength, courage, endurance and efficiency in war. In all the Greek and Roman cities religious observances were matters of state concern, and Rome has its *pontifex maximus* and its college of *pontifices*. Popular institutions necessarily imply public instruction in matters of public concern and the Greeks and Romans disseminated knowledge of military affairs, religious observances and the principles of their governments and laws, through the discussions in their assemblies, writings open to public inspection and in many other ways. Instruction in language, mathematics, philosophy, science and art was given mainly in pri-

vate schools. In Asiatic and European despotisms legislation was merely an assertion of the will of the monarch, while custom afforded most of the rules governing the conduct of people in their private affairs. Military organization was the basis of the feudal system and continued to be the basis of the monarchical system which ensued, but both were closely allied with the great religious organization of which the Pope was the head, except as conflicting interests and ambitions caused dissensions. The functions of the kingly governments included military organization, collection and disbursement of the revenue, administration of the law, and the display, intrigue, amusements and debaucheries of the courts. Modern governments have added many new functions. 1. The first and by far the most important of these is the dissemination of knowledge. Free schools maintained at public expense, affording instruction to all in all branches of learning from the primary to the university, and technical schools are now maintained by all the leading nations. At first the Greek and Roman languages and literature and theology filled a large part of the curriculum, but now there is a marked tendency to treat these as of minor concern and to give prominence to the sciences, to all knowledge that gives man mastery over the material world. Among the newly developed or greatly enlarged functions of government are:

1. Education which is no longer mere polish, but equipment with power and efficiency in all undertakings. The old theory that gentility is measured by elegant worthlessness and indolence, and that distinction must be based on war's savagery is being discarded and men are measured by the more just standard of the services they render to others. The great man now is he who does, invents, plans or directs something that contributes to the welfare—not the destruction—of the multitude. Young men are still trained and educated for war in great schools maintained by the nations as well as in military camps, but much of the instruction given in the military and naval academies is just as valuable preparation for civil as for military duties. These schools are relatively few in number when compared with the general systems of common schools

where all the children are taught the fundamentals. In the United States the expenditures of moneys raised by taxation for the maintenance of public schools are far in excess of those for any other public purpose and now exceed those for the current expenses of both the army and navy by $150,000,000 a year. The European countries do not yet make so good a showing.

2. The post office conducted by the governments is essentially a newly developed function. Each established and well organized government in the world receives transmits and delivers letters, printed matter of all kinds and small packages not only for all its own people but also to and from all the people of all other civilized countries. All the nations join in the international postal union, and though the vast significance of it is seldom discussed, the world already has one general governmental agency performing a strictly useful and peaceful function. Next to the educational function this is far the most useful and valuable one performed by the governments, yet it is carried on with the maximum of efficiency at minimum cost for the service and with little or no expense to the taxpayers.

3. The telegraph and telephone, services which in the United States are conducted by corporations are operated in Europe largely by the governments in connection with the postal service. While they are of great and growing importance the expenditures connected with them are relatively small.

4. Construction and maintenance of roads by the government is not new. The Romans and ancient Peruvians were great road builders and all civilized governments devote more or less attention to their highways. Some of these old roads were as well constructed as any modern ones constructed for similar use, but railroads have introduced an entirely new system of transporting persons and property. In some countries these are constructed and operated by the government, while in others they are owned and operated by private corporations under more or less governmental supervision. The construction of highways open to the use of the general pub-

lic has always been regarded as a proper function of the government, but the traffic carried on over them was in private hands. As a railroad from its nature calls for unity of management, the transportation of persons and property over it must either be assumed by the government or left to some private or corporate organization. Highways of all kinds are required for the postal service and a railroad operated by the government merely rounds out the service given through the highways and post office by adding the operation of trains over the road for the transportation of packages of all sizes and kinds and also of passengers. To what point the functions of governments will be extended along this line the future will answer. The railroad is necessarily more or less a monopoly, but is dependent on the intercourse and commercial transactions of people dwelling at a distance from each other for its support. Neither state nor national boundaries indicate natural termini for it or limitations of its usefulness. It becomes in time a firm bond of union between the people who use it. In spite of governmental hostility it steadily teaches unity of interest, mutual confidence and brotherly assistance, regardless of race or nationality.

5. Improvement and care of the waterways, rivers, harbors, lakes and seas, construction of canals, dikes, aqueducts, breakwaters, lighthouses, docks and other aids to traffic by water, while not new are greatly enlarged functions of the government. The ancient Babylonian, Egyptian and Chinese governments constructed canals in aid of agriculture and commerce and gave much attention to the promotion of these industries. The superiority of their civilization was due to their peaceful activities. The changes in modern activities along these lines is due mainly to the use of steam as a motive power. The construction of railroads tends to diminish the need for canals as waterways, and steam pumps raise water for purposes of irrigation. Steamboats have brought all countries bordering on the seas into safe and easy communication with each other, where all the proper safeguards and conveniences are supplied along the coast. Such vast undertakings as the Suez and Panama canals are carried to

completion quickly and without placing an appreciable burden on the people of a nation of ninety million people. While great sums are still expended on fortifications to guard against hostile squadrons, vastly greater sums are expended on improvements designed to open and make safe the entry of friendly ships and people from every quarter of the globe. While other nations have not passed from a policy of rigid exclusion of all foreigners to one of most active intercourse like Japan, the trend in all nations is to extend a welcome to all as friends, and to use the powers of government to promote friendly intercourse with, rather than for the destruction or robbery of them.

6. Care for the unfortunate is now recognized as a duty of the organized public. Asylums and hospitals of all kinds are maintained for the care of the insane, diseased, imbecile and indigent. It is recognized as a duty of the state to take care of all who cannot care for themselves and have no kindred on whom they rightfully depend. These humane functions, which now call for large expenditures, are distinctly modern and are a public acceptance of one of the obligations of universal brotherhood. To these may be added the care for those who sail the seas, lakes and rivers, through life-saving crews and appliances, lights, buoys and forecasts of the weather. In harmony with the recognition of these duties toward the unfortunate has come a change in the attitude of the public toward the criminals. There is a well defined drift away, not merely from arbitrary and unjust executions and punishments, but from all vindictive punishments. It is seen by criminologists that the criminal is still a human being, entitled to the aid of the state in becoming a useful member of society, instead of an enemy to it. It is also perceived that society is measurably responsible for conditions that stimulate crime. It is now regarded as a proper function of the state to undertake the reformation of not only juvenile but adult criminals.

The divorce of church and state now so complete in the United States and some other countries is a most important and clear cut change in the functions and theory of government. The growing tendency in all the leading nations to

deny all divine commission to govern, to withhold from the church all support by taxation and all aid in procuring the observance of religious forms is very marked. When governments are established and maintained by the people for their own purposes both military methods and religious sanctions are unnecessary. The secular power no longer requires the prop of the church to maintain arbitrary assumptions of authority, and no longer vouches for the truth of its doctrines, or compels the people to furnish it revenue. This divorcement is of profound importance in its moral influence. False claims of divine right to rule are no longer bolstered up by the teachings of the clergy, but the secular officers must look to the people for their authority and justify their conduct to them. They may and often do deceive the people as to their motives and the merits of their policies, but the very truth of the matter is open to inquiry and all the churches are free to act as public censors. On the other side the truth of the claims of the clergy that they are commissioned to speak for the divinity is no longer vouched for by the secular power but is for them to establish. Out of the darkness appears truth as the divine light and the only safe guide to be followed. The truth is, falsehood is not. The truth bears every test, falsehood may bear some but not all. No matter what the line of human inquiry, he who can follow the lines of truth knows that he gains strength step by step and that he gathers imperishable fruit as he goes. The words of kings and priests and the books they have written may be true, but they may also be mixed with and colored by falsehood. To proceed safely in scientific investigation there must be either mathematical demonstration or such multiplicity of tests as excludes the chances of error. All the people searching freely and eagerly for the true rules affecting their common welfare and true relations to each other can discover more of them than any select few.

It is clear that whatever changes in governmental forms and functions tend to eliminate the destructive and wasteful agencies and substitute productive and economical ones are desirable. It is clear that the elimination of hatred and mal-

ice from the impulses which actuate the governing force is devoutly to be wished, and the propagation of universal kindness and good will stimulated in all ways. The field of possible improvement appears limitless, but we have entered on and are traveling over it at steadily accelerating speed. Many people are alarmed at the tendency to rapid changes in all popular governments. This is due to the experimental character of all governments, the infinite possibilities of improvements in them, rapid changes in internal and external conditions, and the application to public affairs of so many more minds actuated by diverse impulses and suggestions. It needs but a few of the many pages of history to show how great harm nations can do each other in bloody warfare. It is now equally apparent that no matter how near to or remote from each other they may be, all may profit from mutual aid. The possibilities of achievements through combined efforts to promote the general welfare appear limitless. Compared with them the building of a Panama canal is but as a holiday diversion for the amusement of the world.

LAWS

Methods of Originating Laws

The leading methods of originating laws may be placed in eight classes: First, and most universal is custom through which laws arise from the activities and environments of the people and come to be observed as rules of conduct without formal agreement or promulgation by any body. Second, Parental authority, exercised first over the immediate family and then extended to posterity and over enlarged families. Third, Military power, through which a despotic ruler converts his will into law. Fourth, Oligarchic decrees promulgated by a dominant few. Fifth, Religious leaders acting singly like Mohammed, or in combination like Moses and Aaron, or in representative bodies, and claiming divine sanction for their rules of conduct. Sixth, Representative bodies authorized to speak for the state and enact laws. Seventh,

Direct action of the people in a general assembly of the mass, or by vote on a proposition submitted to them. Eighth, Decisions of courts and doctors of the law who are authorized to interpret the written law and called on to find a rule of decision where there is no written one.

The spirit of the law accords with the spirit of the maker of it, and the purpose to be accomplished by it is his, not that of those on whom it operates.

Laws come into existence through a combination of two or more of these methods and in all the leading nations of the world there are survivals of laws which owe their origin to each of them.

Purposes of Laws and Motives Prompting Their Enactment

1. *Punishment.*

The laws prescribing punishments have many aspects. The importance of them is very greatly overestimated by most people, though by no means inconsiderable. The sum total of wrongs inflicted through violations of the criminal law is very small in comparison with the sum total of wrongs inflicted in the name of law and with its sanction. This affords the anarchist his basis of reasoning, but does not justify his conclusions. Experience everywhere demonstrates the necessity for a public force to restrain those who will not voluntarily refrain from injuring others. To leave the injured party to right his own wrongs in his own way leads to a succession of reprisals and enduring feuds. The theory of our criminal law is that crime consists of acts detrimental to the public welfare and that all such are public offenses. There is, however, in the nature of things a well marked difference between those offenses that are merely against the state or its rulers and those that harm private citizens only.

Purely public offenses grade all the way from treason manifested in open warfare agains those rightfully entrusted with the powers of government to mere failure to contribute revenue or comply with a rule of public order. Treason is almost invariably an outgrowth of a condition of social dis-

order, and the purpose of the perpetrators of it is usually to overcome the power of the men in authority, rather than to harm the general public. It is common in despotisms which fall into weak hands, and is usually punished arbitrarily in accordance with the will of the despot. Those condemned as traitors are usually merely the prominent men whose power and influence the despot fears. Executions may be military as in the recent lamentable instances in Mexico or under judgments of courts organized to kill like those employed by Henry VIII of England. They are mere manifestations of savagery in different forms. In well ordered states where the government is one of which the people approve treason is rare. It may, however, assume the form of civil war as that of 1861 to 1865 in the United States in which millions participated in the crime. While the law might have been invoked to slaughter more victims after the struggle ended, the manifold advantages ensuing from the restoration of all to friendly relations are perfectly obvious. The despot seldom feels safe in acting on this principle. Most of the other offenses which are strictly public in their nature are connected with the army, navy, revenue, currency or public records. Many of the offenses relating to the public revenue have no moral turpitude except in the refusal to be bound by the law. In and of itself there is nothing morally wrong in bringing food or merchandise of any kind into one country from another. The evasion of an excise or other tax in order to supply one's family with the necessaries of life evidences no moral turpitude. There is, however, connected with all these offenses a disregard of established laws deemed necessary for the general welfare.

Of offenses against private persons which affect the general public only by the shock to the feelings of others and their sense of security, there is the full list of wrongs which one may do to the person or property of another of such crude and obvious viciousness that all recognize the immorality of the acts. For such acts the laws of modern states no longer take eye for eye and tooth for tooth, but many of them still do take life for life. For most wrongs a fixed quantity of

suffering is measured out for a given offense. More humane views concerning punishments are now spreading, and it is perceived that the criminal is still a human being entitled to help and sympathy. The offenses violative of property rights, though still given much consideration, are quite inconsequential in their general effects in every orderly state. The sum total of value of all property which changes hands as a result of theft, robbery, embezzlement, forgery and all other crimes of similar character is relatively insignificant, and it is rare that great suffering results from it. Arson committed out of malice toward another or to defraud an insurer is by far the most prevalent and disastrous of all.

Let us measure against these and the other wrongs committed against the law and to the harm of others the wrongs which are committed with the aid of the law. By means of the law the government forces its citizens to leave their private callings, their homes and families and enter its service in the army or navy. It declares war against its neighboring nation and sends these men out to kill and be killed, wound and be wounded, destroy property and spread desolation over the land and throughout the homes. It takes the property of its own citizens and uses it to destroy the lives and property of the citizens of other countries. It murders the murderer and confines felons in dungeons where human hatred comes but human sympathy is wanting. It gives absolute dominion over the land to a part of the people and casts sick and starving tenants into the streets at the landlord's demand and recognizes his right to be harsh and cruel in the assertion of his dominion over the face of the earth. It takes food from the mouths of the poor and clothing from their backs through the taxation on the articles consumed. It lends its aid in multiform ways to aid the crafty and the lucky in gathering incomes from those for whom they have rendered no service, to be squandered in vain show and debauchery. The hard and merciless creditor is the favorite of the law. Every advantage that the crafty man can gain in accordance with the the law, is carried to fruition by the law. It is the law that

makes and fortifies all privilege and continuing injustice. How vastly more is secured to the favored few the world over through the unjust use of the law than all that is taken by all the crimes against the law. Manifestly the best field of labor for all who seek the elimination of crime is in taking away the temptation and incentive to crime by doing away with the injustice which the law now sanctions. Poor men are no longer hanged for killing wild game and thereby interfering with the savage sport of the idle gentry because enlightened sentiment has caused the repeal of the laws that required it to be done. Boys are no longer hanged for stealing a shilling, but monstrous injustice still uses the law.

In primitive societies where the people are poor and substantially equal, offenses are few in number and punishments mainly limited to death, bodily maiming, chastisement or fines. Despots add a list of offenses relating to their personal security and power. In theocracies and governments combining a religious establishment with the civil power offenses against religion and the church are sometimes greatly multiplied. Fictitious crimes like heresy and witchcraft have been visited with frightful torture and death. The more complex the organization of society the greater the number of statutory offenses. In the United States Congress and the state legislatures go on defining new offenses year by year as evils incident to changing conditions and relations of the members of society are brought to their attention. This multiplication of statutory crimes has a marked tendency to induce disregard of the law and laxity in the efforts of the officers to enforce it.

The lists of crimes against which penalties have been denounced and the severity of the punishments inflicted have been so varied at different periods of the world's history and in the different countries that it is difficult to trace anything approximating a steady evolution along either line. Punishments among the ancient Egyptians are said to have been generally mild, while at Babylon the barbarity of the *lex talionis* prevailed. China and India have exhibited mildness

and barbarity according to the character of those in power at the time. In Europe as well as in America there now seems to be a well marked tendency to mitigate punishments. The most advanced illustrations of this tendency are in the treatment of juvenile offenders, who are now placed in schools for instruction and reformation rather than punishment, in indeterminate sentences holding out an inducement to earn liberty by good conduct, in the parole of prisoners to give them a chance to demonstrate their ability to abide by the laws, in improved sanitary and moral conditions in prisons, and yet more important than all these in a growing tendency to search out the causes of crime and charge society itself with the conditions which induce the commission of it. In many states the death penalty is no longer inflicted. The state no longer compels an officer to take a life that cannot be restored. With ample wealth to provide places for confinement and restraint of those who lose either their reason or moral self-mastery the apparent necessity for swift vengeance disappears. It is dawning on us that the offenses committed by those we have so long looked on as without the pale of human sympathy are but the natural offspring of the wrongs inflicted by the dominant forces in society on its weaker members. The lord who excludes the would be tiller of the soil from his game preserve to starve is the criminal rather than the poacher whom in former times he caused to be hanged. The same principle applies to a long list of modern conditions exhibiting all grades of inhumanity on the part of the dominant members of society.

2. *Taxation*

The justification both in morals and in public expediency for taxation is that funds are needed to promote the general welfare. In fact however the taxing power is and always has been invoked largely for the purpose of favoring the few at the expense of the many. In the crude simple despotisms it takes the form of robbery, the despot merely taking what he wants by force. A step in advance is a levy of tribute on conquered people for the use of the conqueror and his fol-

lowers. In more advanced states the purposes multiply, but always with a large element of personal or class favoritism both in the distribution of the proceeds and apportionment of the burden. The typical despot squanders his revenues on dissolute courtiers and pomp and display about his court. Taxation with him is sheer robbery of the industrious people to support the vices of the favorites. Tithes, offerings and other church exactions are similar in character and similarly used where the priesthood rule. The Romans became expert tax-gatherers, and the republic was doomed when the tribute from the provinces produced a dominant dissolute class and paid legions to back the claim of military aspirants for power. Modern nations are able to and do collect far larger amounts of annual revenue than the ancients could because of the greatly increased returns from productive industries and the far greater volume of money and substitutes for it in circulation. The progress made in the art of tax-gathering is mainly along the lines of inventing methods of indirect taxation through which burdens are concealed from the tax-payers. Such methods are successfully employed in the forms of excise taxes on beer, wine, liquors, tobacco and other articles of domestic production, which are paid in the first instance by the producers and by them added to the price charged the dealers and consumers. Custom duties on imported merchandise are similarly collected from the importers who pass the taxes on to the consumers through added prices. In time the people become accustomed to the high prices of such commodities and pay them without general complaint. Capitation, income, inheritance and direct property taxes are open and understood. The amount of the payment being known the tax-payer promptly complains of the burden unless convinced of the necessity for it, but where it is concealed in the price of articles of consumption he ordinarily submits without protest, and does not know and therefore cannot show to what extent he has been wronged by his government. The collection of such taxes is facilitated by the necessities of the consumers on whom they ultimately fall, because they are made an incident to the buyer's wants. He goes to the market

to feed and clothe his family and furnish his home. The taxes are added to the prices of his supplies. The fundamental principle of such taxes is vicious because it adds burdens to want. It also has the further vicious effect of obstructing the natural course of trade and thereby giving artificial advantage to some to the detriment of the public. Manifestly the more just method is to distribute the public burdens according to strength and ability to bear them, to tax income instead of outgo, wealth not want. Manifestly the method best calculated to insure rigid scrutiny of public expenditures and curb waste and extravagance is to present each taxpayer with a bill of the amount required of him.

In the United States the general rule is that the revenue required for schools, roads, bridges and other state and local purposes is raised by direct taxes levied on the property within the district. While there is sometimes waste and extravagance in these expenditures, the purposes are so universally approved that the people cheerfully bear them. The revenue of the general government however is mostly raised by the indirect methods above mentioned. The expenditures are such as might readily be foretold. Militarism takes the lion's share. The army and navy, which the nation got along without during its early period of weakness now call for more and more as the need of them diminishes. As official positions become ornamental rather than useful salaries are increased and useless offices multiplied. Multiplication of offices and extension of the functions of government follow a well marked law of governmental growth. This is well or ill according to the nature of the growth.

There is another method of raising revenue for public purposes of fundamentally different character from either of those above mentioned, namely by performing a business function from which an income is derived. The post office, public railroads, telegraphs, telephones, canals, irrigation plants, water-works, gas, electricity and like public service works are illustrations of this sort. The officers and employees who discharge these functions are, generally, what all public officers and employees should be, public servants returning a full

equivalent in service to the public for their salaries. Their compensation, even though charged against the general treasury, is in fact collected from those served and in proportion to the benefit received by each. It may not be desirable, practicable or even possible to so distribute the functions of government that the officers discharging each function shall be able to show by returns from it that they have earned their salaries, but it certainly is well to apply the test of utility to each branch of the public service and weigh cost against benefits.

In many countries the wealth of the privileged classes is due mainly to the use of the taxing power to extort revenue from the industrious multitude. In all countries it is permitted and protected by a government maintained by taxes raised from the producers of wealth. The possibilities of controlling the accumulation of unwholesome aggregations of wealth and financial power by the apportionment of taxes and the uses made of the revenue are not generally perceived except by those who use the taxing power for their own aggrandisement, yet by this method alone almost any desirable result is possible. "The power to tax is the power to destroy." It may be used to destroy wholesale injustice as it has been to build it up. In many countries there has been at times wholesale confiscation of coveted accumulations of property, but no system of distributing public burdens so as to steadily and continually keep them bearing most heavily on those whose rapacity ought to be restrained has ever been maintained.

3. *Personal Status*

Laws fixing the personal status of individuals and classes of people have played a most important part in the history of the world. The primary simple division is into masters and slaves of which all others are modifications. Prior to the rise of feudalism in Europe slavery had been recognized by the laws of every nation except where caste worked out the same results. Human beings were property subject to purchase, sale and the laws of inheritance. Moses and Moham-

med both sanctioned slavery. In India the laws of caste made masters of the twice-born classes and servants of the Sudras, who however were not chattels subject to sale. The Greeks and Romans enslaved prisoners of war and passed the status on by sale and inheritance. Prior to the time of Justinian the people of the Roman Empire were divided into four principal classes: citizens, persons having Latin rights corresponding in a general way locally to the rights of Roman citizens, freedmen with more or less restricted liberty and slaves. The basis of this division was quite different from that into the four leading castes of India. In India it was based on religion, education and occupation, while in the Roman Empire it was based on a theory of property and political rights. The Indian system has proved the more enduring and difficult to disrupt. Feudalism displaced the Roman system by introducing a new theory of mastery through title to land. The owner of the soil by dictating the terms on which his tenants might live on the land could obtain all the fruits of mastery. More modern serfdom in Russia operated similarly. The capture by Europeans of ignorant African savages and importation of them into America caused the establishment of slavery in America long after its disappearance from Europe. It proved as terrible a scourge to the white masters in the United States as the enslavement of the Israelites did to the Egyptians. There is now a well defined concensus of opinion the world over that slavery is immoral and detrimental to the public welfare. Chattel slavery is therefore rapidly disappearing. There is also a general tendency to raise the political status of the poor classes.

4. *Family Relations*

The law governing the rights and duties of husband and wife toward each other has been throughout all time and the world over the law of the stronger. The weaker one who most needed the protection of the law is the one from whom its protection has been withdrawn. In Asia the wife is and always has been little less than a slave to her husband, and polygamy is allowed to further extend the mastery and gratify

the propensities of the male law-givers. In ancient Rome wife and children were under the absolute power of the husband and father, but polygamy was not allowed and religion imposed many wholesome restrictions on the exercise of his power. In some rare instances savages have respected the rights of women, but the rule has been that the wife was practically a slave, and often a captive forced to become the wife of her captor. In spite of the law it has not infrequently happened that the wife, being the more capable of the two or the more resolute, has ruled the household, but on the other hand the instances of most gross oppression have been distressingly common. Where the union is one of genuine affection the law is a matter of minor concern, for each voluntarily does all he can for the welfare of the other. Kansas and some other American states have reached in their laws the true conception of absolute equality of rights in the husband and wife in their children, their property and political rights. The mothers of the coming generation are deemed entitled to as much respect and consideration as the fathers. The laws of most of the American and European states however still maintain the mastery of the husband with more or less emphasis. In different countries and at different times marriage has meant anything from the capture or purchase of a wife from a master or father to a free and voluntary choice on the part of both. By some people in some countries property considerations are deemed controlling, while by others they are ignored and even deemed despicable as affecting the true basis of marriage. Polygamy though nowhere general, owing to the equality in numbers of males and females, is allowed in all Mohammedan countries and will continue so long as the Koran is the supreme law. In all Christian countries it is condemned. Polyandry though allowed in a few places is so rare that it is seldom mentioned. A world wide evil of great importance lies in celibacy and prostitution. As the virtuous marriage is the source of all virtue, prostitution is a never failing parent of vice. In no modern country is marriage made obligatory either by law or religious teachings. Ancient Peru affords the only instance of compulsory mar-

riages at a stated age. If it be true that under the Peruvian system there was neither a pauper nor a prostitute it is well worthy of study in this connection. Modern governments leave the question of marriage or celibacy entirely to the parties concerned. There are many and diverse laws relating to the forms of contracting marriages and some restrictions on the marriage of classes of persons who are deemed unfit, and of different classes with each other, but none designed to promote them.

The laws relating to divorce are quite as diverse as those relating to marriage and range all the way from the right of the parties to separate at will to prohibition of an absolute divorce. In America and Europe a decree of a court for such cause as the law of the particular country deems sufficient is generally required. No other field of legislation is more perplexing or works out less satisfactory results. The effects of divorces on the children of the pair demand consideration and some states now require that they be represented at the trial of a divorce case. The ill success of all divorce legislation seems to indicate that happiness in the homes must be secured in some other way, and that divorce is but a clumsy make-shift resorted to because the true remedy has not been discovered. The grand difficulty is that the whole subject of matrimonial relations is too delicate for the state to deal with. The God of Love alone can legislate wisely for it.

In most countries the father has been and still is the master of the children. In ancient Rome this mastery lasted through life and included the descendants in all degrees through the male lines and the wives of sons and son's sons. Patriarchal systems have prevailed in many Asiatic countries. In Europe and America the children are emancipated at an age variously fixed by the laws of the different countries and in many states the law releases parents and children thereafter from all legal obligation toward each other. In America the spirit of migration is so active that the grown children soon leave the homes and families are scattered far and wide. This effectually prevents the growth of extended patriarchal house-

holds like those so common in Asia and eastern Europe. While the right of parents to punish their minor children is recognized in all countries the laws of the leading ones now prohibit cruelty to them. The father cannot lawfully put his child to death, maim or permanently injure it. Modern tendencies are toward a weakening of paternal authority and family ties. In this there is a mixture of good and ill. It tends to widen the bonds of sympathy among remote families and distant people, and to weaken them between members of the family. This sometimes results in neglect of duties toward one another and especially toward aged parents. Perhaps this foreshadows a state of society in which kindness will be diffused and the sense of kinship with and duty to others will extend beyond the family to all humanity.

5. *Land Laws*

What is title to land and whence does it come? My birthplace was the ancient hunting ground of the now extinct Eries. My father who held title to our home, my mother, brothers and sisters with whom I dwelt in childhood have all passed away, but the hills and the valleys, the woods, meadows, pastures and streams are still substantially as they then were. The clay tablet on which a deed to a lot in Babylon was inscribed is dug up and deciphered by the antiquary, but grantor and grantee and the Babylonian kingdom have been no more than a reminiscence for thousands of years. One man held such tablets for many pieces while others occupied them as his tenants. Landlord and tenants soon gave back to the soil the substance of their lifeless bodies which is now mixed with the other dirt of the wild waste where the great city stood. The tablets still endure but neither confer nor take away rights. Nations rise, make laws by which they assume to grant perpetual titles to the face of the earth, fall and sink into oblivion, but the mountain and plain, hill and valley still drink in the sunlight and the rain and bring forth their annual verdure for whomsoever may come to them. What is ephemeral man that he claims perpetual dominion over the land on which he rests for a brief period and then withers

and decays like the grass or drifts away like the passing cloud? What is the lesson of it all? The earth is for the living. The dead merely return their bodies to it.

Men have made land laws on many diverse theories. A tribe of American Indians occupied a district as a common hunting ground. Some of them cultivated little patches of it and took their produce. In time a superior force came and drove them away. None of them had thought of permanent ownership of any of it. Pastoral tribes in the Eastern Hemisphere grazed their herds where grass grew and had property in them but not in the land. Families and tribes settled down and tilled the soil, recognizing a common title in all the people of the village. Where land was abundant each used so much as he pleased. When increase of numbers imposed limitations on the claims of each the community made assignments from time to time as changing conditions dictated. Possession protected by the public force suggested the idea of continuing right of possession and use. Temporary absence in war or on business suggested right to possession on return and to the products during absence. Temporary occupancy by another established the relation of landlord and tenant, and the sum paid by the tenant for the privilege of occupancy suggests the power and advantage to be derived by using the public force to maintain the dominion of the absent landlord. It is then soon perceived that with the conversion of the right of possession into the right to dictate terms of possession to others for an indefinite period in the future a scheme of mastery capable of extension over many tenants may be evolved. The landlord then may have harvests from fields he has not sown and receive service for which he makes no return of service. The right to dominate a part of the face of the earth without occupancy being fully established and extended by the law of wills and inheritance the complex system of land tenure which prevails in Europe and America developed. Regulation of the occupancy of land in a densely peopled country is imperative and naturally and necessarily devolves on the law-making power. The Romans treated land as a vendible commodity and placed it in the same class

with slaves and work animals required for its tillage. Unrestricted right of purchase and sale always results in the concentration of title to land in the hands of the few, and this tendency was well illustrated at Rome and throughout the empire. The laws compiled by Justinian dealt mainly with title to slaves, land and other property, and the transfer and perpetuation of property rights by sale, will and inheritance. The feudal system differentiated land titles from other forms of property rights and based its theory of political power on a modified scheme of title to land. It was then perceived that the ownership of slaves was unnecessary, that title to land in effect gave ownership of those who must live on it, and that full dominion over the land could be made to mean full personal and political dominion over all the people who dwelt on it. The king then became lord paramount, holding the ultimate title to the soil of his kingdom, which he parcelled out among his vassals and their dependents according to circumstances. The feudal system gave way in turn to the commercial view of land titles which had preceded it, and land again became subject to bargain and sale. There are still survivals of the ancient village systems of common tenure without individual right of sale and of various modifications of it, and of some of the incidents of feudal tenure, but subject to such restrictions as local laws impose, perpetual dominion over land may now be bought and sold in most of Europe.

In the United States the government has claimed the ultimate title to all the land which had not become private property before the establishment of the government, subject only to the possessory rights of the Indian tribes. The Indian titles have been acquired by treaties from time to time. Through the acquisition of political sovereignty over the territories and the Indian rights the United States became possessed of a vast area of fertile land. In the early days some of this was sold in large tracts, but later the quantity allowed to one purchaser was restricted to 160 acres of ordinary land. Later the right to acquire title at all was limited to actual settlers to whom the land was given outright after five years

occupancy and improvement. The area of good available agricultural land now owned by the government is very small and no longer affords accommodations for the multitude. While the quantity of land which a settler could acquire from the United States has been thus restricted, the title conveyed has been full and absolute and no restrictions have been placed on transfers to purchasers after completion of the settler's title. It has followed naturally that a large part of the settlers have sold their homesteads soon after perfecting their titles and fallen back into the ranks of tenants. The process of consolidating the holdings in the hands of speculators and investor goes on quite rapidly, and is counteracted only by the laws of inheritance and willingness to take profits out of sales. The tendency for titles to pass into the hands of the few is very marked. The theory of the title conveyed by a patent from the government is that it is full and absolute in the patentee, his heirs and assigns to the end of time, and that it carries with it all beneath to the center of the earth and all above to the stars; subject only to the taxing power and the exercise of eminent domain for public uses. This gives a legal basis for the worst form of land monopoly. The owner may use the land or not at will, absolutely exclude all occupants or dictate the terms of tenancy. The courts, backed by the whole power of the state will enforce his rights, no matter how oppressively exercised. No person may become a tenant except on the landlord's terms. So long as government land was open to every settler farmers had a more or less available alternative, but now the outlet is substantially closed and the landlord's extortion is only limited by the steadily diminishing difficulty in obtaining tenants. Whoever has surplus income may extend his holdings of land according to his means, and the landless are confronted with advancing prices and diminishing net incomes. The theory of absolute title regardless of use encourages speculation in unoccupied farm lands and vacant town property, through which many great fortunes are made by those who merely obstruct settlement until their cupidity is satisfied. The profits realized from such investments are merely sums ex-

torted from those who ultimately use the land. The speculator renders no service as an equivalent for his profits, and does nothing in connection with his dealings for which he merits a reward. No theory of land tenure more vicious in principle has ever obtained in any country. The dual system of state and national sovereignty renders it exceptionally difficult to deal with land monopoly in a thorough and comprehensive manner. Though the laws are as favorable to the concentration of land in the hands of the few as were those of ancient Rome before the republic gave way to the military despotism, there is still a great middle class which may protect itself from conversion into a vast illiterate, debased proletariat, such as Rome then had. Title to the face of the earth vested in the few enables them to condition the existence of the many, but title is wholly dependent on artificial human law and its oppressive use on the aid of the public force. Political power is here vested in the multitude and they have it in their power at all times to change the law and abolish land monopoly. Every family requires a home. Home is the citadel of all virtues and good influences. Probably the most efficient step that could be taken toward the prevention of crime and the social evil would be to provide every family with a home of its own. Homestead entry of government land is now available only to the very few and will soon cease entirely unless title is reclaimed from private owners. Exemption of homesteads from forced sale for the payment of debts does not give homes to those who have none. All the theories of the law are theories of mastery for the landowner and dependence on the part of the landless. Many young men do not marry because they are not able to provide homes, and young women cannot marry till husbands are available. The ancient Peruvian government solved these problems. This proves that it is not only possible but practicable to assign to each family a share of the face of the earth. The broad question which every state must answer by its laws is, shall one part of the people be dependent on another for an abiding place on the earth? The answer now given is yes. Is this the answer that accords with justice and sound public policy?

6. *Inheritance*

One of the leading causes of the destruction of democracies has been rules of inheritance. It was long an unsolved puzzle to the writer, why so many cities of Europe had started as democracies, been converted into oligarchies and then subjugated by despotisms. Illustrations of this round can be found in great number among the free cities of Greece, Italy, Germany and Russia. Notwithstanding the patent fact, that as free democracies they were far more vigorous and prosperous than after their institutions were changed, there seemed to be a fatality that doomed every democracy to destruction and that fore-ordained the succession of a tyrant. Having always held firm faith in the final triumph of that which is morally best, it was hard to understand why what seemed both a less just and less efficient form of social organization persistently supplanted a better one. The secret lies in the unjust rule of the transmission of property by inheritance, coupled with the theory of absolute title to land. On these most legal tyranny is based. The practical operation of laws of inheritance is easily traced. In the first generation the most crafty and energetic gain the largest shares of wealth. The indolent and improvident remain poor. In the next generation some inheritances are dissipated by improvident heirs, others are preserved and increased. Intermarriages occur mainly between those of the same class, and fortunes are thus consolidated. In the course of time a few great estates absorb the whole landed property, and much of the movable as well, and the society is divided into the few rich and the many poor. So long as officials are chosen by vote of the whole, the more wealthy and prominent men are usually elected. Elections then become either a mere matter of form or are dispensed with. The few families, which have the property, have also the political power. Sometimes, as at Venice, a close corporation is formed, which rigidly excludes all new aspirants for political influence. When this stage is reached decay sets in. The ruling class seek enjoyment of their riches rather than the public good.

The great multitude struggle along in ignorance and poverty. The law of natural selection of leaders in business and state affairs is stifled. In and in breeding causes physical and mental decay in the ruling class. Experience everywhere shows that the strongest and brightest men come quite as frequently from the poorer classes as from the wealthy, but where both the management of properties and the direction of public affairs are denied them, the state loses their natural force. Thus it happens that the public get neither the benefit of the natural strength of the few rich or the many poor. The energies of the rich are deadened by affluence and easy living, and those of the poor by want and ignorance.

The maximum of energy can only be maintained by starting the members of each generation on a substantially equal footing, and requiring each individual to demonstrate his ability to make good use of wealth and power before entrusting him with it. The law of inheritance passes the wealth and power of the father to the son, no matter how weak, immoral or unfit he may be to use it. A rule of primogeniture accentuates the evil. The law which executes the will of the testator, as a general proposition, merely substitutes a private rule of inheritance for the public law. In practical operation it works out substantially the same results and passes the property to one or more favored members of the donors family, and in case of a failure of issue supplies the want by selecting some favorite from without the family.

Nowhere are the effects of the laws of inheritance more clearly shown than in the city of New York, where all the landed property has already been concentrated into the hands of about six per cent of the families, leaving the other ninety-four per cent as their tenants. Most of the great estates have passed down from generation to generation from the early Dutch settlers. The great wealth of most of the proudest families is due to no merit of the present owners, and they live in unearned luxury, while performing no useful function for the public. It is fundamentally wrong and wholly unjust to start six per cent of the children born in New York as the owners of all of it, and the other ninety-four per cent as

subject to whatever terms the six per cent may impose for living on the island. Justice demands of the state that it give to each member of each generation fair treatment. This implies education and a portion of the face of the earth. Nothing is more firmly rooted in the prejudices of the people than the rules of inheritance and the power to make testamentary disposition of property, yet no other legal rules work out either so much injustice or so many public disadvantages.

The greatest force to laws of inheritance is found in India, where not only the property of the ancestor passes to the heir, but also his social status and occupation. The extreme rigidity of this system has been often remarked, but the fact that it has its basis in a theory of inheritance and is but another harmful application of it seems to be generally overlooked. Hindoo law makes most minute provisions for the transmission of property by descent. The law of caste separates the people of one generation into classes and then passes that division down from generation to generation. That it is contrary to nature is abundantly demonstrated by the numerous violations of it, which have resulted in the production of so many sub-castes. In its operations it is far more arbitrary and restrictive of personal liberty than any despotism of a single ruler can possibly be, for it places the individual in a vice where he cannot move to better his condition. It tends to idleness when conditions are unfavorable to the inherited calling, to inordinate pride among the highest castes and extreme servility among the lowest. It stifles spontaneity of individual effort, because of the limitations imposed on the right of an individual to select his own calling and to follow a variety of occupations. Trade guilds and labor unions are extremely mild in their dictations to their members when compared with the Indian castes. The enforcement of these restrictions is not dependent on a ruler or on the whole body of government officials. Not only the Brahmans and the military caste, but all the castes and the whole weight of religious influence, education and public sentiment unite in enforcing this most harmful system. So completely are all the people imbued with devotion to the plan of their social or-

ganization, that to attempt a reform is to oppose the whole mass, yet the whole scheme is dependent on a purely artificial law of inheritance, which is neither founded on sound morals or expediency.

As with the laws recognizing slavery, men cling to rules of inheritance with great tenacity, because they give advantages to those of most influence. The poor and ignorant fail to grasp their effects. In the southern states the poor whites, who suffered almost as much from slavery as the slaves themselves, took great pride in their superiority as freemen, and, when the war came, went out and fought for slavery under the guise of states rights. The poor and landless now generally believe in the land and inheritance laws.

Novels, which are read far more than any other class of books, often picture the hero or the heroine as finally rewarded for suffering and tribulation with an estate from some relative. The popular fancy still calls for unearned wealth. Fair compensation for services rendered, added to a fair share of the natural wealth of the earth and the accumulations of past generations, fails to satisfy. The average man or woman wants a great gift from fortune, rather than justice.

The ancient Peruvians appear to have been the only people who had a just conception of the relation of the state to its people in regard to inheritances, but there was much to condemn in their system. The state assigned to each newly married pair a home, and also distributed among its people a share of the products of the flocks, herds, mines and fisheries. All took their patrimonies, not from their ancestors, but from the state as the common father of all. The Inca however took an inordinate share for his household, and, worst of all, there was no room for the exercise of the inventive genius of the people. All were tied down by a rigid system, which they could neither change nor break away from. The idea however of the state as the heir of all deceased persons, bound to assign to each child its share of all the estates, is one that the people of the most advanced nations may well consider. In no other manner can full justice be done to each genera-

tion. In no other way can the full strength and energy of each individual in the race of life be as surely called out as by giving to each an equal start in a fair field. Natural selection then takes place; the strongest and ablest lead, and the weak and sluggish follow. This is the natural law. The artificial rules of land titles enduring after death, and of inheritance of property, deaden the energies of the so-called fortunate heirs of wealth by removing the necessity for effort, and lessen the efficiency of the children of the poor by depriving them of the means to do with.

In all ages and in every country the maximum of all virtues is found among the middle class, who are above immediate want and yet under the necessity of exercising industry and economy. Public policy requires that each member of society should perform a useful part and render service in return for all services received. Inherited wealth enables the heir to receive service and return none. The state thus loses the benefit of the work the heir should have done and, what is often of far more consequence, the labor expended in wasteful extravagance. The services of the great retinue of servants, maintained by some people of great wealth merely to minister to their personal vanity, are wholly wasted and usually give no real enjoyment to the master. The healthy, enjoyable life must always be the life of useful activities, in the benefits of which others share. The evil influences, which great inheritances have on the heirs, begin usually as soon as the child is taught to expect the estate, and that labor to earn a subsistence will be unnecessary. They end only with death. Where a great estate falls to an infant of tender years, the title is vested in an owner incapable of managing it, where it vests in a profligate, it is wasted in riotous living. In practice any system that would meet general approval would doubtless leave the home in the possession of the family of the deceased owner. It is probable that it would also leave to them the farm of limited size, the work shop, the store, or other place of business of limited value and necessary for earning a livelihood, where there is a member of the family able to use it.

The radical change, which would seem desirable, is one

cutting off the transmission of great estates to unworthy hands, and placing them in the hands of the public for distribution in such manner as will best promote the general welfare. Like all other radical changes of system, it can only be effected when the public demand it. The imposition of inheritance taxes is a timid start toward the curtailment of great inheritances.

7. Contracts

The law of contracts necessarily extends over the whole field of commercial transactions, industrial relations and investments. Its subject matter includes the land and all that grows upon or lies beneath it, all movable things and all the artificial and intangible forms of property and assurances of benefits that men devise. In the most advanced states living persons are no longer subjects of bargain and sale but contracts for their services grow in number and variety. Slavery having been abolished, every person of full age and sound mind except married women is theoretically free to buy and sell whatever he can and make all sorts of contracts for service from or to others. For their protection minors are shielded from improvident contracts made prior to an age arbitrarily fixed in most countries at twenty-one years. In many of the American states married women now have substantially the same right to make contracts and acquire property that men have.

Freedom of contract is of the very essence of liberty. There can be no doubt that the modern increase in industrial and commercial activities is largely due to increased freedom of contract and of occupation. The abolition of slavery in the southern states instead of ruining their industries ultimately stimulated them. Service under contract gives better results than slave service. The abolition of serfdom in Russia has resulted similarly. The modern tendency everywhere is to take away restrictions on the right of the poor to change locations and masters. There is also a general tendency to throw off restrictions on the purchase and sale of land and on the importation and exportation of products from one

nation to another. It is perceived that full advantage of natural conditions can only be taken by allowing the shifting of population according to needs and conditions and the production in each place of the commodities for which the climatic conditions and natural facilities best adapt it.

There is no difficulty in making the law in terms confer full liberty to make contracts, but to secure by legislation fairness and equality in dictating their provisions involves endless complications. There is full liberty in many states to negotiate contracts concerning land, but no approximation to equality of control over their terms. Ownership of land is monopolistic in its nature. Even where the law imposes no restrictions on dealings in land the competition of sellers in the market is limited to the particular tracts that the owners are willing to sell. All the rest is withdrawn from the market. If the competition between buyers were limited to landless ones the situation would not be so unfavorable to them, but the fact is that great landowners are often the most persistent land-buyers. Those who derive large incomes from rents affording them a surplus for investment often use it to increase their holdings. The tenant of farming land is not a formidable competitor of his landlord in the land market. The landlord is usually in a position to prevent him from having any surplus income to invest. In many countries the law interposes artificial obstacles in the way of the landless purchaser.

The advantage of the land-owner in making contracts relating to the use of his own land is even more marked. People multiply, but the land area neither multiplies nor stretches. All must have abiding places. Every newcomer requires a part of that which is already the private property of another. He can use it only on the terms imposed by the owner. If a tenant increases the fertility of the land he tills or otherwise improves it the landlord may increase his rent accordingly. In a city the more costly the buildings erected by a tenant the higher the ground rent. These advantages held by the land-owner are wholly unearned and unmerited and due solely to the system of land monopoly sanctioned by the law.

The same principle of monopoly applies also in the labor market. Agricultural laborers can find employment only from the farmers. The supply of land is strictly limited and the owners may determine absolutely what work shall be done on it. The number of laborers may fluctuate but whether few or many all must accept the terms offered or starve, so far as this line of employment is concerned. The monopoly of labor applies more acutely where great numbers of operatives are dependent on a single mill, mine, factory or other industry and must accept the terms offered by the employer or migrate to another place. Not merely the rate of wages but the conditions of service are dictated by the employer, except as the employees are able to approximate equality of position through combination and dealing as a unit. Some semblance of a monopoly of the supply of labor for certain lines of work is sometimes effected through labor unions, but the need of wages on the part of the laborer is ordinarily far more urgent than the need for help on the part of the employer, and the closest combination falls short of giving equality of position in most cases. There are cases of the ruin of employers by strikes of the laborers. Industrial warfare is of the nature of war, wasteful and destructive to all engaged in it. The relation of the law to the parties to such contests is more remote than in those relating to land. The law does not directly confer the advantage, but it is often due to superior capacity exhibited in building up the employers business. Most great enterprises however are now carried on under corporate charters granted by the state. The strength of the company arises from the law which authorizes the combination of capital and energy under a single head. This in its inception is a combination of interests and naturally suggests and leads to further combinations and consolidations resulting in great manufacturing, trading, mining and transportation monopolies, many of which are able to dictate, not merely terms of employment to their laborers, but also the terms of their contracts with all others with whom they deal as buyers, sellers, carriers or bailees. These artificial entities being dependent on the law for their existence

are subject to visitation by the law-making power for the correction of whatever abuses of their privileges they may be guilty.

In many instances laws are passed for the avowed purpose of aiding one party to a class of contracts. As we have seen, in the reign of Elizabeth of England favorites were enriched by grants of trade monopolies enforced by the government. Many modern nations give the domestic producers of certain classes of commodities advantages in the home markets by means of protective tariffs imposing burdens on international competition. The tax levied on the imported foreign product is imposed rather to shut out competition by the foreign producer than to raise revenue for the government. To stimulate inventive genius inventors are given monopolies of their inventions for limited periods. Buyers must accept their terms of sale till the patent expires, but at the end the public gets the full benefit of the invention. Similar encouragement is given to authors and artists.

Added to these are less easily classified enforceable contracts made under conditions of mastery and dictation of one over another. The courts refuse to enforce contracts made under compulsion, but legal duress falls far short of including all cases in which the strong and crafty overawe or overreach the weak and confiding. Having shielded minors, insane and imbecile persons from improvident contracts, it was long deemed sound public policy to require each person to protect his own interests in his dealings and to enforce whatever agreements the parties make in lawful transactions. Modern legislatures have come to take cognizance of some of these positions of advantage, especially on the part of employers and to avoid such terms as are designed to shield them from reasonable care for the health, safety and morality of their operatives.

The law of most countries requires some formal requisites for certain classes of contracts. What is termed the Statute of Frauds and Perjuries requires contracts for the sale of lands and various other classes of contracts to be in writing and signed by the party to be charged thereunder, and is very

generally in force in English-speaking countries. The Common Law recognizes differences in the legal force of different forms of written contracts, ranging all the way from the absolute conclusiveness of judgments of courts and public records of certain kinds to the mere prima facie disputable evidence of a receipt for money. Requirements of written evidence of contracts and promises are based on distrust of oral testimony and human memory. Written instruments have the advantage of unfailing memory, and in the process of reducing an agreement to writing it becomes necessary to make its terms clear and definite so that they can be accurately stated. The statute is designed mainly to protect against certain classes of promises unless they are in writing. Like all rigid rules relating to human dealings it works injustice in many cases, yet seems to be regarded with general favor. The Roman law and the Civil Codes of France and Germany make different classifications and prescribe different formalities, but make requirements based on the same reasoning.

Contracts for the payment of money, made in the form of negotiable paper play an important part in the business world. The rule cutting off all defenses to such contracts in the hands of bona fide holders for value without notice of such defenses seems reasonable and necessary for the protection of those who take such paper in lieu of money in commercial dealings, but when applied to promissory notes bought as an investment often aids swindlers working in combination to enforce the payment of notes fraudulently obtained for no good consideration.

While it is a long established rule of jurisprudence throughout Europe and America that the law will not enforce immoral contracts, the standard of morality recognized by the courts has not always been an exalted one. In commercial dealings there is ordinarily an element of chance for gain or loss that cannot be measured accurately, and some merchants grow rich while others lose their little capital. Dealings in the stock markets and on boards of trade appear in form to be similar to the business of the merchants, but the purchase and sale of stocks, grain and provision for future delivery, al-

though in form legitimate commercial contracts, are largely mere bets on the rise and fall of prices in the markets. Dishonest combinations of speculators to cause abnormal fluctuations of prices are natural attendants of such operations, and many of the modern abnormal accumulations of wealth come from such dealings. Under the new German Code such contracts are void. The discovery and production of mineral wealth is in its nature speculative and uncertain, and dealings in mines and mining shares are necessarily uncertain ventures. Only through combinations sufficiently large to give a general average of results can there be a fair distribution of profits and losses and the ruin of some and the enrichment of others avoided. This principle of distributing burdens and sharing benefits is well illustrated by contracts of insurance of life and property which in form appear very much like wagers at great odds that a person will not die or a house will not burn within a given period, yet are in fact quite scientific methods of distributing and equalizing the burdens of disaster and the waste caused by the elements. The wrongs perpetrated through unfair and immoral contracts which the law-makers deal with now are similar to those encountered in the past, but as human relations grow in complexity the difficulties attending the enforcement of fundamental moral principles increase. It is easy to declare in terms that the public force shall not be used to aid the extortioner, the gambler or the immoral operator in his schemes, but it is not easy to determine just where and to what extent elements of extortion, gambling and immorality have entered into human dealings, to afford full relief from their evil consequences and still allow the measure of liberty necessary for healthy business activity.

The suppression of lotteries and gambling houses, the requirement of publicity of the financial condition of banking, railroad and other corporations, the regulation of the charges of public service corporations, provisions for the safety and health of employees and efforts to prevent monopolistic combinations, evidence a growing appreciation of the application of higher moral standards to the law of contracts. Some

European governments still profit from the vices of lotteries and gambling houses which they license, but in the United States the effort is to suppress them.

For the enforcement of contracts of every kind and character the parties are dependent on the law, the courts and the public force. Shall the state give effect to those having any taint of unfairness or immorality? The answer to the question cannot be a clear and unqualified negative because of the difficulty in applying nice moral tests. Legislatures and courts can at the best undertake to make only a fair approximation by general rules to the enforcement of moral standards. Those who profit largely from unfair conditions and unjust laws are in all countries in positions of more or less advantage to influence governmental action and the powerful are seldom wedded to the most exalted conceptions of right. If they were so they would regard their unearned wealth as a trust held for the use of others. So long as the great multitude remain ignorant and illiterate oppression and wrong flourish, but with the general diffusion of knowledge and the extension of representative government law-makers and courts are brought to see more of every side of public questions and to feel impulses from the weak and destitute as well as from the rich and powerful and the law of contracts becomes imbued with more of the spirit of justice.

8. *Combinations*

This is the age of private combinations. A very good test of the stage of civilization which a people have reached is the number, extent and purposes of the voluntary combinations they form. No great undertaking can be carried forward without combination and concert of action of many people working toward a common end. The most potent incentive to great combinations has usually been war, and the form military. All great military leaders have excelled in capacity for organization and direction of the operations of great numbers working with a common purpose. The saying "in time of peace prepare for war" expresses the necessity for the employment of peaceful activities as prerequisite to war-

like ones. Among savages bows, arrows and other crude weapons must be made and an understanding reached as to the men who are to use them and the time and manner of attack or defense. As civilization advanced it was soon perceived that continuance of the struggle depended not merely on numbers of men and supplies of arms but also of food and clothing. Granaries had to be filled, clothing made and transportation of supplies provided for. To facilitate military operations the Romans and Peruvians became great road and bridge builders. The Greeks and Phoenicians gave more attention to their boats, and the Persians and Hindoos to horses, chariots and elephants. The invention of gunpowder made necessary not merely its manufacture but a long chain of industrial activities for the production from iron ore of guns and the construction of carriages and attendant equipments. With the use of costly weapons and soldiers trained to use them comes the necessity for a burden of taxation to defray the expenses, involving a peaceful organization to extort money for war and its incidents. As new forms of high explosives have been invented it has been rendered necessary to strengthen the forms and fibre of the guns and add costly machinery to handle them. Warships must be large enough to bear ponderous armament and be shielded with armor plate to resist the shots of like guns. A long chain of industries extending from the iron and coal mines through the furnaces, foundries and mills to the forts, arsenals and ships is now maintained to fill the demands of modern armaments. Food, clothing, hospital equipments and supplies and all the paraphernalia of camp and battleship must be produced and stored to await the contingency of unrestrained national greed or hatred. The one great useful lesson that war teaches is the value of combined effort to a common end. Courage, devotion to duty, patriotism and all the other virtues of the private soldier meet disaster if efficient combination and concert of action is wanting. But the purpose of all this long chain of preparation is death and destruction. The possession of a great armament excites distrust and arouses enmity. Lasting peace and security is and always must be dependent on mutual

confidence and good will. For two men to arm for conflict with each other manifestly has no tendency to promote neighborly conduct or good will. The tendency of national armaments is the same. Why not substitute activities designed to promote good understandings and mutual confidence for these hateful ones? Both consciously and unconsciously the substitution is being made. The inventions that vivify have far outstripped those that destroy. By the use of high explosives a cannon ball may work havoc twenty miles away, but peaceful communication leading to good understanding and mutual help may be had almost instantly between people on opposite sides of the globe. While forts are built to protect seaports against hostile attacks, lights and buoys to safely guide friendly commerce, breakwaters to shield against storms, piers and docks to afford safe and easy landings are constructed to welcome all who come on peaceful missions. Torpedoes are sometimes placed in channels and harbors for the destruction of the warships of enemies, but vastly greater effort is expended in removing rocks and reefs and deepening and widening channels to make safe the entry and exit of merchant ships. The ancient Chinese Empire was shielded from hostile attacks by the great unexplored oceon on the east, the Himalayas, Kuen-Lun and Thian-Shan mountains on the south and west and they built the great wall to complete the circuit of their defenses. Thus isolated they developed their unique civilization uncontaminated from without, except when the Tartar hordes broke through the barriers and established their rulership over them. Japan produced its busy millions in isolation from the distant west. Foreign warships and soldiers have come to these peaceful people in this age of intercourse and taught them their superiority in the art of destruction. But foreigners have also brought ship loads of unheard of inventions and useful things, knowledge of natural laws, of the material world, of the processes of nature, of medicine, sciences and arts of which they knew little or nothing, and have opened distant markets for their peculiar products. Though the destructive agencies excite fear and distrust, the peaceful influences induce friendships. Combi-

nations are formed for the exchange of products and to gain mutual benefits through which the bonds of confidence steadily gain strength. The dark cold visage of the foreign destroyer changes to light and warmth, and the "foreign devil" is transformed into a delightful friend. No people can now live in complete isolation. The advantages flowing from the interchange of products are sufficient to induce the merchants to transport commodities between the most distant lands. Each nation has dealings with many or all others, and it has become necessary to have agreements as to the rights and privileges which the people of one country will be accorded in another. These agreements are put in the form of treaties which rest on the good faith of the parties for enforcement. A breach of one of them may occasion war between the parties, but war leads only to another treaty. While there are treaties to which several nations are parties, the general situation is one of separate treaties by each nation with each other one, all dependent on good faith and voluntary compliance except as one party may be able to enforce its demands, right or wrong, by superior force. A general agreement to submit all questions arising under treaties or otherwise between nations to impartial arbitration is seen to be the next great forward stride in the march of civilization, and the logical culmination of governmental combination. The long list of separate treaties is a modern product, nothing similar having been possible in ancient times.

The walls, canals and temples of Babylon and China evidence great combination of effort for common ends; the walls for protection; the canals for communication and water supplies, and the temples for religious rites, all tending to security and comfort for the people. The great pyramids of Egypt prove a like combination of effort, but apparently designed only for the gratification of kingly pride. These combinations were under despotic domination. Modern military and naval combinations partake of the despotic character of all things military and of necessity are made by the national governments. The folly, the wickedness of it all has been freely discussed by representatives of the nations in the Hague

conferences, and the inherent savagery of war has been condemned in whole and in each of its particulars, but the bonds of interest and of good will between people whose ancestors have fought and killed each other throughout all times past are not yet sufficiently strong to inspire general confidence. The task of making them so is being performed by private and quasi-public agencies and by indirection more certainly than by open advocacy. America's settlement shows the difference in potency of moral and immoral combinations and enterprises. The conquests of the rich and civilized countries of Mexico and Peru by the Spaniards were military. The purpose was to rob the natives of their gold and silver, with which the conquerors were dazzled. Gunpowder and steel were more potent than the primitive arms of the natives, but they merely wrought destruction. No bond of sympathy was established between conquerors and conquered, and there was no thought of building up continuing industries for mutual benefit. The robbers carried away booty after destroying many useful structures built by the natives. Conquest meant desolation. The settlers of North America also sought gains, and the charters granted the colonists reserved for the British crown a share of the gold and silver to be mined, but the savages knew nothing of gold or silver and the mines were far from the regions settled. To gain profits it was necessary to combine for the production of useful things. Robbery and destruction offered no rewards but the uncultivated land. The inception of the settlements was by parties organized to come across the ocean in ship loads and take possession of the country. Scattered settlements near the coast struggled to produce from the earth means of subsistence. In time their products attracted traders and slowly at first, but with increasing strength, agriculture, trade and then manufactures were developed. The first settlers worked mainly in separate families and small groups, but with a constant and growing appreciation of the advantages of mutual help and concert of action. Self-reliance, inventive genius and capacity for adapting means to ends have been the well marked characteristics of the European settlers of North America, and these have

produced a greater variety of private combinations to do useful things than have been formed in any other part of the world. Contemporaneously with the settlement of America the nations of Western Europe, at first more especially the Dutch and British, organized shipping and trading companies in great number. The French, Portuguese, Spaniards and Scandinavians followed in similar lines. The discovery of America was soon followed by the discovery of the other unknown regions. The sea was a great highway, open to all adventurers, and by it every distant shore could be reached by those having a suitable ship. The romantic and incredible tales told by Marco Polo of the wealth of the east were verified, and Europeans sought out the coveted products of the orient.

Inventive genius has had much to do in shaping modern private combinations. The invention of printing aided greatly in spreading information concerning distant lands and people, but did not at once occasion any great organization for gathering and distributing information. Now press and news associations are world wide, and the educational influences of the published reports of the doings and sayings of people in all parts of the earth are the most potent and far-reaching of all in breaking down the barriers of prejudice and distrust. The work of the types and presses is dependent for its efficiency on a multitude of ancillary inventions. The paper used requires great mills and paper companies and multitudes of laborers to convert forests into paper. The manufacture of printing presses is itself a great industry, and the perfection of those on which the great dailies are printed has involved a multitude of inventions of mechanical devices which take the place of human hands and bring forth with marvelous speed and perfection the story of a day's doings. The efficiency of the news-gathering and distributing agencies is dependent on still other great inventions and combinations furnishing the facilities. The discovery of the methods of inducing, conducting and breaking currents of electricity gives us the telegraph, telephone and other facilities for the rapid transmission of messages. To use these a network of wires

spreads over the land and cables across the seas. The wireless waves are projected through the air from towers, caught up far away and interpreted. A perfect understanding by each operator of the work of the others is essential to the use of these inventions. Combinations are formed which act as carriers of information and on these the press and public depend for the transmission of the news to be printed. These combinations are public in some countries and private in others, but all work in concert in the conveyance of news. Newspapers and periodicals having been printed the publishers and the public are dependent on another great organization, the post office, for transmission and delivery to the readers. Some falsehood and some malice find expression in these publications, and it necessarily results that their influence is sometimes evil, but this is exceptional. The general purpose of the press the world over is to ascertain and publish the truth, expose error and falsehood and promote human welfare. So doing it leads the march of civilization. To the types and presses we are also indebted for the crystalization of accumulated knowledge in the form of books. Educational institutions whose mission it is to disseminate knowledge and strengthen mental processes are mainly dependent on books for the principles they teach. Here again we meet a great chain of combinations working together for the elevation of humanity and the promotion of peace on earth and good will to men. Science is truth. Mathematical science is demonstrable truth from which errors may be certainly eliminated. Other sciences admit of more or less approximation to absolute certainty. Back of the preparation of books are investigators working singly or in combinations according to the nature of the investigation. Great compilations like the encyclopedias require the work of specialists in many lines and a large fund to defray the expense. The barriers which formerly prevented the utilization of the learning of alien people have been measurably removed by interpreters, and the literary and philosophical treasures so long concealed in the hieroglyphics of the Egyptians, the cuneiform characters of the Babylonians, the Sanskrit and the Chinese writings, are

now available to students. The great universities perform the double service of bringing together natives of all countries to be taught the same truths and instructing in all languages. The translation and publication of the sacred books of the various religions afford a chance for comparison of them and lead to the rejection of the palpable falsehoods and better appreciation of their moral beauties. Manifestly truth will bear every test and alone has divine sanction. No matter what the field of study one may be sure of divine sanction of his conclusions if he has found the truth, and may also safely reject palpable falsehood, no matter where or how it is written or asserted. Modern methods of investigation lead toward the overthrow of all false theories of the right of man to rule his fellows, and of all false claims of knowledge of the Infinite and special commission to represent and speak for the Deity. All truth-tellers speak for him in the truths they utter. All else is imposture. Educational influences tending to mutual understanding and concert of action among men are not confined to the schools and products of the printing presses. Every combination to produce useful things or perform beneficial services teaches a practical lesson of common brotherhood.

The railroad company may perhaps be singled out as the most advanced type of modern business combination, exhibiting some evils and injustices, but withal a most potent educator and promoter of good will. To bring the physical property into being some combine their capital to pay for land, materials, labor and equipment, and become the stock and bond holders of the corporation, while others in greater numbers combine their labors in the construction of the roadway, buildings and rolling stock. As the physical property comes into being it is turned over to an operating organization requiring great specialization of training and duties. Office men, track men, shop men, yard men and train men must each and all work in concert for the accomplishment of the general purposes of transportation and with due regard for the safety of each other, of the traveling public, of those on and about the line of road and of the property entrusted

for transportation. Here the duty of man to his fellow man and full responsibility for the welfare of others finds most ample recognition. The traveler enters the car, sits in comfort, goes to bed, sleeps, wakes in the morning, dresses, eats, visits with his fellow passengers or reads as his inclination moves him, in confident reliance on the vigilance of all whose duty it is to provide for his safety and comfort and carry him to his destination. The self-sacrificing devotion of train men to duty is proverbial and exhibitions of it hardly excite notice. Engineers, firemen, brakemen and conductors sacrifice their own lives to save those for whose safety they are responsible. Lines of railroad are arteries along which the pulsations of human life flow, and the attendant telegraphs and telephones are the nerves of sensation and motion. The intermingling of distant people on the trains, going to and leaving them, steadily tends to knowledge of each other, sympathy and good understanding. Railroad, steamboat and telegraph lines now connect all countries more or less directly with each other. In some countries the railroads and telegraphs are owned by the governments, while in others they are the property of combinations of private persons, often including citizens of several countries. War interferes with their normal business operations, and usually results in the destruction of more or less of the property. While a navy may be employed to protect a merchant marine and an army to protect a railroad, the commerce of the world has outgrown such a system of protection. It demands the protection of good will. Mutual interest and business arrangements between those connected with and using any line of transportation are usually the only protection needed, except as resort to the courts becomes necessary at times.

Besides the transportation companies there are numberless trading, manufacturing, mining, insurance, benevolent and religious organizations formed in one country and operating in another, or composed of citizens of both that bind by mutual interest or bring alien people into sympathy by personal contact. It is not so much through the propagation of particular doctrines as by the establishment of common interests

and personal friendships that progress is made toward the recognition of universal brotherhood. Tornadoes, floods and famines in distant lands become the concern of good people everywhere and aid in disaster is extended merely because the sufferers are human. Voluntary private insurance companies undertaken with a view to gaining profits by the collection of premiums in excess of the risks incurred now have to compete with mutual companies that merely distribute the burdens of losses among the policyholders on an equitable basis.

Manufacturing, mining, banking and trading companies in endless variety, ranging in size all the way from a few coworkers with little capital to such a gigantic combination as the United States Steel Corporation with its capitalization of nearly a billion and a half and its great army of employees have been organized and extend their operations according to their means, purposes and abilities to a few or many people, to near neighbors only or to the most remote foreign countries. The influence of the large combinations tends generally to the promotion of good understanding and friendly relations between distant people. The evil influences incident to them arise mainly from monopoly or attempted monopoly, strife with competitors and oppression of dependents. It is through combinations of such kinds that most modern exotic fortunes have been acquired, often by more or less immoral methods. It is also through them that the most oppressive use is made of the power of wealth. The lavish expenditures of some multimillionaire bond and stockholders contrast unpleasantly with the penury and privation of some of the operatives. But the fact of most profound significance is that these are combinations to produce things or perform services beneficial to mankind. The owners and managers may receive far too great rewards for the services they render and operatives be underpaid, but whatever either of them gets comes as a result of useful, not harmful, activities. The gains of robbers and pirates are losses to others, but the gains of those engaged in useful activities are not necessarily the losses of anybody, and ordinarily are attended with cor-

responding gains to those with whom they deal. Viewed as a whole in their relations to society such combinations are moral and highly beneficial. They lead mankind along many peaceful paths to rich fields where great harvests are gathered for the general good. The policy of modern enlightened nations is to encourage such combinations. Despotism and theocracy usually fear them, but free people need only to curb and eliminate their injustices. These arise, 1. from the corrupting influence exerted on the governments; 2. from the frauds of promoters who secure stocks, bonds and privileges without just compensation through relations of trust and confidence; 3. inordinate profits gained through monopoly; 4. inordinate compensation to the few managers; 5. inadequate compensation to the many dependent workers; 6. disregard of the health and safety of employees; 7. disregard of the rights of the general public.

The representative of a great corporation, like the ancient courtier, diligently cultivates the acquaintance of all entrusted with power to aid or injure it, fawns, flatters and corrupts. Neither executive, legislative or judicial officers are exempt from his attentions. Unmerited advantages are sought and often obtained by immoral methods. Corporate franchises and privileges come only from governmental sources. It is necessary that lawful purposes and needs of corporations be made known to all the governmental agencies that deal with them, and for this purpose they must have representation. There is little danger from influences exercised openly. The private conferences and close associations for undisclosed purposes are most dangerous. Corporate abuses are all subject to correction by the sovereign power.

The first great change in governmental policy with reference to corporations in the United States was in prohibiting special charters and providing for their organization under general laws. Corporate entity may now be obtained as a matter of right instead of special favor. The whole field is open for corporate competition and secure monopolies can no longer be obtained through special charters. Legislatures are relieved from the corrupting influences attending appli-

cations for them. The problem of establishing justice between men is now complicated in many ways and simplified in others by corporate organizations. In its dealings with the outside public it is treated as a unit and may be restrained and regulated as may be found necessary for the general welfare. Many laws have been passed requiring statements at intervals of the operations and financial condition of various classes of corporations to be used as a basis for protection against fraud, the abuse of corporate powers and unreasonable exactions by public service corporations. Important governmental agencies have been established with supervisory powers over certain classes of corporations. In the United States national banks are supervised by the Comptroller of the Currency and state banks by state officers. The charges and operations of carriers engaged in interestate commerce are subject to substantial control by the Interstate Commerce Commission, and intrastate traffic by like commissions in many of the states. Insurance companies are inspected, their solvency determined and charges and dealings regulated by commissioners or other officers with like powers in the states. Recent legislation recognizes and enforces the duty of employers to provide for the health and safety of their employees, and bear some of the pecuniary loss resulting to them and their families from accidents in the service. Some corporations make provision for pensioning their superannuated servants.

Great combinations force on us more full and careful consideration of the relations of man to his fellows. The duty to care for the welfare of others is being more and more perceived and comprehended, and the Deity is being exonerated from the charge of visiting poverty and suffering on the multitude and wealth and satiety on the few. It is becoming apparent that the poverty and suffering with which the world is filled are avoidable and mainly due to human pride, hatred, malice, indolence, waste, ignorance and injustice, not to divine wrath or caprice, which are mythical false attributes of the Deity. Many potent modern influences are tending to the elimination of these evils. Governments have assumed the

function of educating the young, and now expend vast sums to remove the ignorance and credulity which formerly afforded favorable conditions for the assertions of false claims to power and privilege. It is found that the strength and efficiency of a just government is greatly promoted by the general diffusion of knowledge. Though wars still devastate parts of the earth, people are learning the inherent vice and immorality of them. National duels are seen to have no better basis in morals than private duels, which the laws of civilized countries now condemn. Murders, robberies and crimes of all kinds are still committed, but it is now becoming apparent that prevention of the causes of crime is better than punishment of criminals. Many organizations have recently been formed to promote the judicial settlement of international disputes and thereby relieve statesmen from any apparent necessity for plunging nations into wholesale crime. Other organizations are seeking the causes of crime and how it may be avoided and eliminated. All these deal with the complicated relations of men to each other and the human combinations which impel to war and crime. The criminal is no longer looked on as a monster from without the pale of human fellowship, but as an unfortunate who requires help and discipline to bring him to observe just relations with his fellows. A fundamental error in the teachings of the Code of Manu lies in the doctrine that moral perfection may be gained by solitary abstraction, overlooking the impossibility of severing the bonds which bind man to man, and the fact that the great field of the moral law is the field of human relations one with others.

The good and evil inhering in business combinations are similar to that in the social relations of private persons. Mutual help, kindness and good will are the vivifying, upbuilding and uplifting forces, while strife, hatred and malice are destructive in their tendencies. Competition and rivalry are not necessarily harmful, but if merely manifestations of effort to excel are highly beneficial. But immorality akin to that of war often attends the use of the power of strong corporations as well as that of strong nations. Men holding

a majority of the stock sometimes use their power to ruin the holders of the minority of it. The whole force of the governing body of the corporation may be used to oppress employees, to ruin competitors, to unjustly favor one customer or ruin another, or to wrong all with whom it has dealings. To correct these evils it is not necessary to destroy the useful combination, but only to compel the men who direct its activities to desist from vicious practices. Moral qualities are primarily personal though a corporation may acquire a reputation for moral character by steady adherence through all its agencies to just dealings, but if it follows vicious methods it is the men who direct its affairs who are guilty and should be brought to account rather than the soulless corporate entity. A fine assessed against the corporation punishes the innocent equally with the guilty stockholder.

Combination tends to unity of purpose, and unity of the overruling power throughout the universe is the most sublime conception of which the human mind is capable. It is axiomatic that this unity is moral and that all natural laws are moral, for the test of morality is accordance with the law of the Supreme Intelligence. All combinations, all governments and all human laws should be framed and used to induce the people to know and obey the unchanging principles of the moral law. The infant must accept the instruction and obey the commands of its parents because they have superior knowledge and power. The parent must learn and obey the public law, because it expresses the sovereign will and is sanctioned by the public force. Officers, agents and employees of a great corporation must study and obey its by-laws, for they express the corporate will and are enforced by it. The corporation itself is the mere creature of the public law, and its by-laws, rules and regulations are valid only so far as they accord with the public law. But the public law reaches no farther than the national boundary. No nation can legislate for another, or for the great broad oceans. The rules that have been evolved and enforced are local and temporary, affecting a limited number of people and only so long as they are sanctioned by the dominant force. International law is

customary law based on the more or less generally accepted customs of nations, but it lacks the sanction of a superior force to compel observance of it. In the autocratic government the ruler is accountable to no earthly power, and the limited monarch is shorn of power rather than subject to discipline. In popular governments all who use the public force are accountable for their conduct to the people for whom they are authorized to act. Progress in the science of government means progress in enforcing the observance of law by those entrusted with authority more than by those under them. Progress in the formulation of public law calls for the formulation and acceptance of just rules applicable to nations and people the world over, superior to and binding on rulers and leaders by whatever titles they may be called as well as on the subjects of all nations. Restraint of the conduct of the private citizen, though sometimes necessary, is exceptional, but restraint of those entrusted with great power must be constantly operative. The most prevalent error in reasoning on the needs and purposes of government is based on the assumption that the great multitude of the poor need constant surveillance and repression. The greater need and greater difficulty everywhere and under all forms of government is to curb the dominant elements, restrain their rapacity and amend the rules they have caused to be promulgated as law through which they repeal the moral law of mutuality of service and give to the crafty drones the honey gathered by the workers.

The mixture of good and evil in private combinations is similar to that in public ones. Charters, by-laws and rules governing the apportionment of duties and the distribution of rewards are mainly the work of the few who hold positions of advantage and profit most largely by them. The necessity for such rewards for intelligent direction, skill, energy and devotion to the common purpose as are essential to efficiency is not to be overlooked: nor does it accord with either sound morality or expediency to wholly relieve sloth, inefficiency and wastefulness from the privations and hardships nature imposes for them. All governments are combinations of men,

the best to promote the general welfare, the worst to gratify the rulers. All laws are rules of conduct, of right or of privilege, sanctioned by the state and applicable to some or all its people. Of these also the best promote the general welfare and the worst gratify some and harm the rest. The unnumbered ages of isolated development of diverse systems are past and the time for comparison, selection of the good, elimination of the bad and combined effort to promote the general welfare of the whole human race has arrived.

The primary combination made necessary by the Creator as a condition to the perpetuation of the human race is the family. Union of the male and female may be brief and imperfect or life long and complete. Children may have the imperfect care of a mother only or the best that both parents can give. The love between the pair may be sensual and selfish or pure and self-denying. Every grade and shade of the good and ill in human life finds expression in the family, and the happiness of its members is measured by the love for and devotion to each other manifested by all the members of the household. The principles applicable to the household apply to every combination of human beings from the family to the great family of nations, the whole human family. Love for all humanity, including strangers and aliens of all races, though necessarily ideal and abstract, is yet the very heart and life of all that is good in religion and philosophy. The perfect conception of it cannot be given detailed expression in human laws, because it is too ethereal either for formulation in words or enforcement by officials, yet it is a touchstone by which all forms of combination and all rules of conduct may be tested. Every approach to it conduces to human happiness, every departure from it to suffering. Absolute perfection of conduct and relations is not to be found in any household, but very delightful approximations to it give perennial comfort and much unalloyed happiness to the best families everywhere. Constant approximation in the relations of strangers to each other to such as prevail within the families is foreshadowed by the march of civilization. The multiplication and extension of combinations of all kinds,

public and private, furnish a physical basis for and stimulate the growth of nerves of sympathy that could not exist between people isolated from each other. In every great combination, public or private, the task of greatest importance and difficulty is to rule the ruler, judge the judge and lead the leader. Acts classed and punished as crimes are each the separate work of one person or a few confederates. The importance of the sum total of them is magnified by the detailed narratives of so many similar atrocities. Wholesale crimes perpetrated in the conflicts of nations and by great combinations of men and wholesale injustice corresponding to great numbers of continuing crimes are chargeable to the men who administer the governments or direct the combinations or to the laws.

APPENDIX

Code of Hammurabi of Babylon

[The following extracts are taken by permission from the excellent translation of Professor Harper published by the University of Chicago Press.]

The code of Hammurabi, engraved on a block of black diorite in the ancient cuneiform characters of the Babylonians, discovered at Susa by a French expedition under the direction of M. De Morgan in 1901-2 is the oldest body of written laws known to us. It is assigned to about 2250 B.C. Hammurabi was a military despot claiming to rule by authority of the gods Anu, Bel and Morduk. In the preface to his code, while he bases his authority on the will of the gods, he claims full credit and assumes full responsibility for all his works. He does not claim merely to be the instrument for the transmission of laws framed by a god, but promulgates the code as his own work, written in 282 sections. The despotic spirit in which it was framed is well indicated by the first section, which provides that, if a man charge another with a capital crime and cannot prove it, the accuser shall be put to death.

The second section exhibits the superstitions prevailing. One charged with sorcery must jump into the river and, if drowned his accuser might take his house; but if he came out unharmed his accuser should be put to death and the accused take his house. To bear false witness in a capital case was a capital crime, and in other cases subjected the guilty party to a penalty equal to that imposed for the offense charged.

Sec. 5. "If a judge pronounce a judgment, render a decision, deliver a verdict duly signed and sealed and afterward alter his judgment, they shall call that judge to account for the alteration of the judgment which he had pronounced, and he shall pay twelve-fold the penalty which was in said judgment; and, in the assembly, they shall expel him from his seat of judgment, and he shall not return, and with the judges in a case he shall not take his seat."

The death penalty was imposed for stealing the property of a temple or palace or receiving it from the thief; for purchasing slaves or other personal property from the son or servant of the owner without witnesses or contracts. A theft of an ox, sheep, ass, pig or boat, from a temple or palace might be commuted by payment of thirty fold; if from a freeman of tenfold, but if the thief was unable to pay he was liable to be put to death.

Sections 9 to 13 relate to claims for lost property and require a trial before the judges by the testimony of witnesses. The lost property was restored to the owner, the seller of it to the one found in possession was put to death as a thief, and the purchaser was repaid his purchase money from his estate. If the possessor failed to prove a purchase from another, he was put to death as a thief. If the claimant failed to prove title and identity of his property, he was put to death as a calumniator.

Death was also inflicted for stealing a minor son of another, aiding a slave to escape from the city gate, harboring an escaped slave and refusing to produce him, making a breach in a house, practicing brigandage, taking furniture from a burning house; on an officer sent on an errand of the king for hiring a substitute to go in his stead; on a governor for taking the property of an officer, letting an office for hire, presenting an officer in judgment to a man of influence or taking the kings gift from an officer, and on any man for deceiving a brander and causing him to brand a slave with the sign that he could not be sold, or for building a house so that it collapsed and caused the death of the owner.

To one seizing a fugitive slave and returning him to the owner the latter was required to pay two shekels of silver.

For robbery or murder by a brigand who escaped, the city and governor of the province where it was committed were required to pay the amount of the loss, itemized and sworn to by the loser, and a *mana* of silver to the heirs of the person killed.

If an officer in a garrison of the king was captured his field and garden were given to his son, if able to conduct the business, if too young one-third was given to the mother who was required to rear him, if given to a stranger and the officer returned, they were to be restored to him. If the officer from the beginning neglected his field, garden and house, and another took and conducted the business for three years, his right to continue to do so was established, but by one years neglect the right was not forfeited. If a merchant ransomed a captured officer, the officer was required to pay the ransom, if he had sufficient in his house, if not it should be paid from the temple of his city, and if there was not enough in the temple the palace should pay it. His field, garden or house could not be taken for his ransom.

Sec. 37. "If a man purchase the field, garden or house of an officer, constable or tax-gatherer, his deed tablet shall be broken (canceled) and he shall forfeit his money and he shall return the field, garden or house to its owner." The officer was also forbidden to deed these to his wife or assign them for debt, that is such as he held by virtue of his office, but lands bought from others he might assign for debt.

Sec. 40. "A woman, merchant or other property-holder may sell

field, garden or house. The purchaser shall conduct the business of the field, garden or house which he has purchased."

If a man rented a field and failed to raise a crop he must pay on the basis of adjacent fields and must break up the soil with hoes, harrow and return it to the owner. If he rented an unreclaimed field for three years and neglected it, the fourth year he must break it up and pay a prescribed rent in grain. Where crop rent was paid and afterward a flood carried away the remainder, it was the tenants loss, but if the loss occurred before payment, the remainder was divided in the agreed proportion. A tenant might assign his lease without consent of the landlord. Loss of his crop by flood or drouth entitled a debtor to an extension of time for a year and an abatement of a years interest. The use of land might be given as security for a loan and the land tilled by the lender, or a growing crop might be pledged. In either case the creditor took only his loan and interest.

Sec. 53. "If a man neglect to strengthen his dyke and do not strengthen it, and a break be made in his dyke and the water carry away the farm-land, the man in whose dyke the break has been made shall restore the grain which he has damaged."

Sec. 54. "If he be not able to restore the grain, they shall sell him and his goods, and the farmers whose grain the water has carried away shall share (the results of the sale.)"

Sec. 55. "If a man open his canal for irrigation and neglect it and the water carry away an adjacent field, he shall measure out grain on the basis of the adjacent fields."

If a shepherd pastured his sheep in the field of another without agreement, he must pay two *Gur* of grain per *Gan* of land, and if he turned them in against the will of the owner, he must pay six *Gur* per *Gan*. For cutting down a tree in another's orchard one must pay half a *mana* of silver. If a field was let to a gardener for an orchard, the fifth year the gardener and owner shared equally of the fruit.

Sec. 61. "If the gardener do not plant the whole field, but leave a space waste, they shall assign the waste space to his portion."

If the tenant failed to plant the orchard but raised grain, he must pay rent. Where an orchard was given to a gardener to manage, the owner took two-thirds and the gardener one-third of the fruit. Where a tenant or a gardener neglected his work, he must pay rent on the basis of adjacent fields or orchards. Sections 66 to 99 inclusive are missing, having been cut off the stone at some unknown time prior to its recent discovery. Sections relating to dealings between merchants and their agents follow the missing portion.

Sec. 103. "If, when he goes on a journey, an enemy rob him of whatever he was carrying, the agent shall take an oath in the name of god and go free."

Sec. 104. "If a merchant give to an agent grain, wool, oil or goods of any kind with which to trade, the agent shall write down the value

and return (the money) to the merchant. The agent shall take a sealed receipt for the money which he gives to the merchant."

Sec. 105. "If the agent be careless and do not take a receipt for the money which he has given to the merchant, the money not receipted for shall not be placed to his account."

Sec. 108. "If a wine-seller do not receive grain as the price of drink, but if she receive money by the great stone, or make the measure for drink smaller than the measure for corn, they shall call that wine-seller to account, and they shall throw her into the water."

Sec. 109. "If outlaws collect in the house of a wine-seller, and she do not arrest these outlaws and bring them to the palace, that wine-seller shall be put to death."

Sec. 110. "If a priestess who is not living in a MAL. GE. A., open a wine-shop or enter a wine-shop for a drink, they shall burn that woman."

If a carrier of goods failed to deliver them, he was liable to pay five-fold for them. A creditor, who seized the grain of his debtor without his consent, must return it and lose his debt. If one seized another for a debt he did not owe, he was required to pay one-third *mana* of silver. If the creditor seized his debtor and he died in his house, there was no penalty.

Sec. 116. "If the one seized die of abuse or neglect in the house of him who seized him, the owner of the one seized shall call the merchant to account; and if it be a man's son (that he seized) they shall put his son to death; if it be a man's servant (that he seized) he shall pay one-third *mana* of silver and he shall forfeit whatever amount he had lent."

Sec. 117. "If a man be in debt and sell his wife, son or daughter, or bind them over to service, for three years they shall work in the house of their purchaser or master; in the fourth year they shall be given their freedom."

Sec. 118. "If he bind over to service a male or female slave, and if the merchant transfer or sell such slave, there is no cause for complaint."

Sec. 119. "If a man be in debt and he sell his maid servant who has borne him children, the owner of the maid servant (i. e. the man in debt) shall repay the money which the merchant paid (him), and he shall ransom his maid servant."

The storage of grain and property for others was regulated and return to the owner enforced with penalties for withholding it. If the deposit was stolen the bailee must make good the loss.

Sec. 127. "If a man point the finger at a priestess or the wife of another and cannot justify it, they shall drag that man before the judges and they shall brand his forehead."

Sec. 128. "If a man take a wife and do not arrange with her the (proper) contracts, that woman is not a (legal) wife."

Sec. 129. "If the wife of a man be taken in lying with another man, they shall bind them and throw them into the water. If the husband of the woman would save his wife, or if the king would save his male servant (he may)."

Sec. 130. "If a man force the (bethrothed) wife of another, who has not known a male and is living in her father's house, and he lie in her bosom and they take him, that man shall be put to death and that woman shall go free."

Sec. 131. "If a man accuse his wife and she has not been taken in lying with another man, she shall take an oath in the name of God and she shall return to her house."

Sec. 132. "If the finger has been pointed at the wife of a man, and she has not been taken in lying with another man, for her husband's sake she shall throw herself into the river."

If a man was captured his wife must remain in his house if there were provisions, and if she went to another's house she must be thrown into the water, but if there were no provisions she might go to another's house, and if she bore children there and her husband returned she should go to him and the children remain with their father. If a man deserted his city his wife might go to another house and was not required to return to him in case he came back. If a man put away a wife or concubine who had borne him children, he must return her dowry and give her the income of field, garden and goods to bring up her children, and, when they were grown, she might take a son's part and marry the man of her choice. If a wife had not borne children, the husband might put her away, but must give her her marriage settlement and the portion she brought from her father's house and, if there were none, pay her one *mana* of silver for a divorce.

Sec. 141. "If the wife of a man, who is living in his house, set her face to go out and play the part of a fool, neglect her house, belittle her husband, they shall call her to account; if her husband say "I have put her away," he shall let her go. On her departure nothing shall be given to her for divorce. If her husband say, "I have not put her away," her husband may take another woman. The first woman shall dwell in the house of her husband as a maid servant."

Sec. 142. "If a woman hate her husband and say:" Thou shalt not have me, "they shall inquire into her antecedents for her defects; and if she has been a careful mistress and be without reproach and her husband have been going about and greatly belittling her, that woman has no blame. She shall receive her dowry and go to her father's house."

Sec. 143. "If she have not been a careful mistress, have gadded about, have neglected her house and have belittled her husband, they shall throw her into the water."

If a man's wife gave him a maid servant who bore him children, he could not then take a concubine. If he had a wife who presented

him no children he might take a concubine, but she did not rank as a wife. A maid servant, who had borne children to her master, could not take rank with her mistress, but the mistress could not sell her. She might be sold if she had not borne children. If the wife became diseased, the husband might take another but could not put the first away. He must maintain her, but if she chose to go she might and take her dowry.

Sec. 150. "If a man give to his wife field, garden, house or goods, and he deliver to her a sealed deed, after (the death of) her husband, her children cannot make claim against her. The mother after her (death) may will to her child whom she loves, but to a brother she may not."

If a husband contracted with a wife that she should not be holden for his debts, creditors could not hold her for his debts, nor her creditors hold her husband for hers.

Sec. 153. "If a woman bring about the death of her husband for the sake of another man, they shall impale her."

Incest was punished with drowning, burning or a fine, according to the relation of the parties. If a man refused to consummate a marriage he had contracted, he forfeited the presents he had made, and, if after making a marriage settlement the bride's father refused to permit the marriage, he forfeited double the amount of the presents.

On the death of the wife her dowry belonged to her children, but if she had no children it went to her father's house, if he returned to the husband the marriage settlement.

Sec. 165. "If a man present field, garden or house to his favorite son and write for him a sealed deed; after the father dies when the brothers divide, he shall take the present which the father gave him, and over and above they shall divide the goods of the father's house equally."

Sec. 166. "If a man take wives for his sons and do not take a wife for his youngest son, after the father dies, when the brothers divide, they shall give from the goods of the father's house to their youngest brother, who has not taken a wife, money for a marriage settlement in addition to his portion and they shall enable him to take a wife."

If a man's first wife died and he married a second and had children by both, the children took the dowries of their respective mothers and divided the goods of the father equally.

A father could not disinherit his son without cause nor for the first offense, but for a second grave crime he might do so. If a man having children by both his wife and maid servant called the children of the latter "My children," on his death they inherited equally with the children of the wife, otherwise they did not inherit, but the maid servant and her children were free. The widow took the dowry, the gifts made her by her husband and the use of his house for life. If the husband

made her no gift she took her dowry and a portion of his goods equal to that of a son. If she chose to remarry, she took her dowry only, leaving the rest to the children. If she then had more children and died, her dowry was divided among all her children, if she bore no more her children by the first husband took the dowry.

If a slave married a free woman the children were free, and whatever they acquired after marriage was divided on the slave's death, one-half to the master and the other to the woman for her children. A widow with minor children could not remarry without consent of the judges, and, in case she was allowed to marry again, the judges required husband and wife to administer and preserve the estate and rear the minors. Where a father gave to a daughter, who was a priestess or devotee, a deed of gift, it was for life only, unless the power to give it away after death was conferred by the deed. She took the income for life and on her death it went to her brothers.

If the father did not give a dowry to his daughter, who was a bride or devotee, she took a share of his goods equal to that of a son, which on her death passed to her brothers, except a Nu Par or priestess of Marduk, who took only one-third a son's portion of his goods, but a priestess of Marduk at her death might give to whomsoever she pleased.

If a father gave his daughter a dowry she did not share in his goods, but if he failed to do so she was entitled to a dowry after his death proportionate to his estate.

Sec. 185. "If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son."

If the adopted son was rebellious he might be returned to his father.

Sec. 188. "If an artisan take a son for adoption and teach him his handicraft, one may not bring claim for him."

Sec. 189. "If he do not teach him his handicraft, that adopted son may return to his father's house'"

Sec. 191. "If a man who has taken a young child as a son and reared him, establish his own house and acquire children, and set his face to cut off the adopted son, that son shall not go his way. The father who reared him shall give to him of his goods one-third the portion of a son and he shall go. He shall not give to him of field, garden or house."

Sec. 192. "If the son of a NER.SE.GA, or the son of a devotee, say to his father who has reared him, or his mother who has reared him: "My father thou art not," "My mother thou are not," they shall cut out his tongue."

Sec. 193. "If the son of a NER.SE.GA. or the son of a devotee identify his own father's house and hate the father who has reared him and the mother who has reared him, and go back to his father's house, they shall pluck out his eye."

Sec. 194. "If a man give his son to a nurse and that son die in

the hands of the nurse, and the nurse substitute another son without the consent of his father or mother, they shall call her to account, and because she has substituted another son without the consent of his father or mother, they shall cut off her breast."

Sec. 195. "If a son strike his father they shall cut off his fingers."

Sec. 196. "If a man destroy the eye of another man, they shall destroy his eye."

Sec. 197. "If one break a man's bone, they shall break his bone."

Sec. 200. "If a man knock out a tooth of a man of his own rank, they shall knock out his tooth."

For other kinds of assaults precuniary mulcts were imposed: for striking a superior sixty strokes with an ox-tail whip, for striking a man's son a slave was liable to have his ear cut off, for a blow in a quarrel the aggressor was required to pay the doctor and if death ensued half a *mana* of silver.

Sec. 209. "If a man strike a man's daughter and bring about a miscarriage, he shall pay ten *shekels* of silver for her miscarriage."

Sec. 210. "If that woman die they shall put his daughter to death."

The people were divided into three ranks, styled in this translation as men, freeman and slaves, and pecuniary mulcts for assaults and offenses to the person were graded accordingly. For operating for a wound and saving a man's life or opening an abcess and saving his eye a physician was entitled to ten *shekels* of silver, for a freeman five, and for a slave two. If by operation he caused a man's death or the loss of his eye, his fingers were to be cut off, if the death of a slave he must restore a slave of equal value. For setting a broken bone or curing diseased bowels the physician was entitled to five *shekels* of silver for a man, three for a freeman, and two for a slave. A veterinary surgeon for saving the life of an ox or an ass was allowed one-sixth of a *shekel* and if he caused its death was required to pay one-fourth its value.

Sec. 226. "If a brander without the consent of the owner of the slave, brand a slave with the sign that he cannot be sold, they shall cut off the fingers of that brander."

The compensation of house builders was regulated according to the size of the house.

Sec. 230. "If it cause the death of the son of the owner of the house, they shall put to death a son of that builder."

Sec. 231. "If it cause the death of a slave of the owner of the house, he shall give to the owner of the house a slave of equal value. He must also restore the property destroyed.

The wages of boat builders were similarly regulated and they were bound to make the boat seaworthy. A boatman entrusted with a cargo was liable for a loss caused by his negligence, and also for sinking another boat. The hire of oxen and asses was regulated and the hirer

was liable to the owner for death or injury to the animal resulting from his neglect or abuse.

Sec. 250. "If a bull when passing through the street, gore a man and bring about his death, this case has no penalty."

Sec. 251. "If a man's bull have been wont to gore and they have made known to him his habit of goring, and he have not protected his horns or have not tied him up, and that bull gore the son of a man and bring about his death, he shall pay one-half *mana* of silver."

If a hired overseer of a farm stole seed or crops, his fingers were to be cut off and he was liable to pay damages for his neglect. The wages of boatmen, field laborers, herdsmen, artisans, brickmakers, tailors, carpenters, masons and other hired men were regulated by the code, and they were liable to pay for losses due to their negligence.

Sec. 282. "If a male slave say to his master: "Thou are not my master," his master shall prove him to be his slave and shall cut off his ear."

The character of this code accords with the despotic powers of its author. Its penalties are cruel and in some cases unjust to the last degree. The execution of a son or daughter for a crime of the father against the son or daughter of another is shockingly barbarous. Maiming as a punishment is both cruel and impolitic, as it reduces the usefulness of the culprit and tends to make him a confirmed criminal. It will be noticed that this code deals with the rights and duties of the subjects and is designed to punish crime, enforce the performance of contracts and obligations, regulate marriages, divorces, the inheritance of property and the wages of laborers. Although it mentions the temple and palace it does not purport to regulate either the religious establishment or the system of taxation.

LAWS OF THE XII TABLES OF ROME

The following summary of the Laws of the XII Tables is made from the fragments put together by Mm. Carton and Rouille and published in the Appendix to Cooper's Justinian. These fragments show that Table I deals with procedure and from it we quote:

"I. Go immediately with the person who cites you before the judge.

II. If the person you cite refuses to go with you before the judge take some that are present to be witnesses of it and you shall have a right to compel him to appear.

III. If the person cited endeavors to escape from you or puts himself into a posture of resistance you may seize his body.

IV. If the person prosecuted be old or infirm let him be carried in a *jumentum* or open carriage. But if he refuse that, the prosecutor shall not be obliged to provide him an *Arcera* or covered carriage.

V. But if the person cited find a surety let him go.

VI. Only a rich man shall be a surety for a rich man. But any security shall be sufficient for a poor man.

VII. The judge shall give judgment according to the agreement made between the parties by the way.

VIII. If the person cited has made no agreement with his adversary, let the *praetor* hear the cause from sunrise till noon; and let both parties be present when it is heard, whether it be in the *Forum* or *Comitium*.

IX. Let the same *praetor* give judgment in the afternoon, though but one of the parties be present.

X. Let no judgment be given after the going down of the sun.

XI. (Provides for arbitration by consent).

XII. Whoever shall not be able to bring any witnesses to prove his pretensions before the judge may go and make a clamour for three days together before his adversary's house.

The second table deals with robberies and offenses against property, and allows the killing of a robber who attacks in the night or with arms in the day time. A robber taken in the fact is to be beaten with rods and be the slave of the person robbed. If a slave commits a robbery he is to be beaten and thrown headlong from the capitol. For less aggravated offenses the judge might require payment to the injured party of double damages, and in all cases the parties concerned were permitted to settle the matter.

VII. "If one comes privately, by night and treads down another man's field of corn or reaps his harvest, let him be hanged up and put to death as a victim devoted to Ceres" (but if a child the Praetor ordered him corrected).

Table III deals with debtor and creditor.

I. Let him who takes more than one per cent interest for money be condemned to pay four times the sum lent.

II. When any person acknowledges a debt or is condemned to pay it, the creditor shall give his debtor thirty days for the payment of it, after which he shall cause him to be seized and brought before a judge.

III. If the debtor refuse to pay his debt and can find no security his creditor may carry him home, and either tie him by the neck or put irons upon his feet, provided the chain does not weigh above fifteen pounds, but it may be lighter if he pleases.

IV. If the captive debtor will live at his own expense let him, if not let him who keeps him in chains allow him a pound of meal a day or more if he pleases.

V. The creditor may keep his debtor prisoner for sixty days. If in this time the debtor does not find means to pay him, he that detains him shall bring him out before the people three market days and proclaim the sum of which he has been defrauded.

VI. If the debtor be insolvent to several creditors, let his body be cut

in pieces on the third market day. It may be cut into more or fewer pieces with impunity. Or if his creditors consent to it, let him be sold to foreigners beyond the Tiber.

Table IV. relates to paternal rights.

I. Let the father have the power of life and death over his legitimate children and let him sell them when he pleases.

II. But if the father has sold his son three times, let the son then be out of the father's power.

III. If the father has a child born which is monstrously deformed let him kill him immediately.

IV. Let not a son whose father has so far neglected his education as not to teach him a trade be obliged to maintain his father in want, otherwise let all sons be obliged to relieve their fathers.

V. Let not a bastard be obliged to work to maintain his father.

Table V. permits the making of wills and provides for the division of estates among the heirs of intestates.

Table VI. as given is:

I. When a man conveys an estate to another let the terms of the conveyance create the right.

II. If a slave, who was made free on condition of paying a certain sum, be afterward sold, let him be set at liberty if he pay the person who has bought him the sum agreed upon.

III. Let not any piece of merchandise, though sold and delivered, belong to the buyer till he has paid for it.

IV. Let two years possession amount to a prescription for lands and one for moveables.

V. In litigated cases the presumption shall always be on the side of the possessor, and in disputes about liberty or slavery the presumption shall always be on the side of liberty.

Table VII relates to a number of wrongs and crimes and prescribes punishment or compensation. For maliciously burning the house or corn of another or for false swearing the penalty of death is imposed, by burning for the former and hurling from the capitol for the latter. Parricides were to be sewed in a leather bag and thrown in the river. One who kills a freedman or uses magical words to hurt him or prepares or gives him poison is to be punished as a homicide.

Table VIII relates to diverse matters and requires a space of two and one-half feet between houses, roads to be eight feet wide and allows a traveller to drive out on either side of a bad road. It permits societies to make by-laws, provided they do not conflict with public law.

Table IX. declares among other things.

I. Let not privilege be granted to any person.

III. It shall be a capital crime for a judge or arbitrator to take money for passing judgment.

IV. Let all causes relating to the life liberty or rights of a Roman citizen be tried only in *comitia* by centuries.

Table X. relates to funerals and ceremonies for the dead and prohibits excessive outlay or display and excessive manifestations of sorrow.

Table XI. relates to public and private worship.

Table XII provides,

I. When a woman shall have cohabited with a man for a whole year without having been three nights absent from him, let her be deemed his wife.

II. If a man catches his wife in adultery or finds her drunk he may with the consent of her relations punish her even with death.

III. When a man will put away his wife, the form of doing it shall be by taking from her the keys of the house and giving her what she brought. This shall be the manner of a divorce.

IV. A child born of a widow in the tenth month after the decease of her husband shall be deemed legitimate.

V. It shall not be lawful for the patricians to intermarry with the plebians."

MANAVA-DHARMA-SASTRA

Code of Manu

There is no more remarkable code of laws than that of Manu, regarded by the Hindoos as the son of Brahma and first of created beings. The date of its compilation, in the form in which it is now preserved in the Sanscrit characters, is uncertain. Sir William Jones estimated it about 880 B.C. It is intensely religious in tone and requirements, and is not merely a set of rules to be enforced by those who govern the multitude, but imposes many severe restrictions on kings and their officers and the priestly order.

Its leading peculiarity is that it divides the people into castes, assigns to each certain duties and employments, prohibits other methods of gaining subsistence and requires the education of the young as a civil and religious duty. It prescribes forms of worship, sacrifices, religious and domestic duties, the organization of governments and military forces, rates of taxation, rules of property, of evidence and procedure in courts, punishments for crime, penance and expiation for sins and transgressions, and teaches the transmigration of the soul from form to form until final beatitude is attained. In the original it is written in verse and is divided into twelve chapters. In most parts the rules are so clearly and concisely stated that nothing can be gained by attempting to summarize or condense. Chapter I gives an account of the Creation.

1. "Manu sat reclined, with his attention fixed on one object, the Supreme God; when the divine Sages approached him, and, after mutual salutations in due form, delivered the following address:

2. "Deign, sovereign ruler, to appraise us of the sacred laws in their order, as they must be followed by all the four classes, and by each of them, in their several degrees, together with the duties of every mixed class;

3. For thou, Lord, and thou only among mortals, knowest the true sense, the first principle, and the prescribed ceremonies, of this universal, supernatural Véda, unlimited in extent and unqualified in authority.

4. "He whose powers were measureless, being thus requested by the great Sages, whose thoughts were profound, saluted them with all reverence, and gave them a comprehensive answer, saying: 'Be it heard!'

5. "This universe existed only in the first divine idea yet unexpanded, as if involved in darkness, imperceptible, undefinable, undiscoverable by reason, and undiscoverable by revelation, as if it were wholly immersed in sleep:

6. "Then the sole self-existing power, himself undiscerned but making this world discernible, with five elements and other principles of nature, appeared with undiminished glory, expanding his idea, or dispelling the gloom.

7. "He whom the mind alone can perceive, whose essence eludes the external organs, who has no visible parts, who exist from eternity, even He, the soul of all beings, whom no being can comprehend, shone forth in person.

8. "He, having willed to produce various beings from his own divine substance, first with a thought created the waters, and placed in them a productive seed:

9. "The seed became an egg bright as gold, blazing like the luminary with a thousand beams; and in that egg, he was born himself, in the form of Brahma, the great forefather of all spirits.

10. "The waters are called *nárá,* because they were the production of Nárá, or the spirit of God; and since they were his first *ayana,* or place of motion, he thence is named Náráyana, or moving on the waters.

11. "From that which is, the first cause, not the object of sense, existing everywhere in substance, not existing to our perception, without being or end, was produced the divine male, famed in all worlds under the appellation of Brahma.

12. "In that egg the great power sat inactive a whole year of the Creator, at the close of which, by his thought alone, he caused the egg to divide itself;

13. "And from its own two divisions he framed the heaven above and the earth beneath: in the midst he placed the subtle ether, the eight regions, and the permanent receptacle of waters.

14. "From the supreme soul he drew forth Mind, existing substantially

though unperceived by sense, immaterial; and before mind, or the reasoning power, he produced consciousness, the internal monitor, the ruler;

15. "And, before them both, he produced the great principle of the soul, or first expansion of the divine idea; and all vital forms endued with the three qualities of goodness, passion and darkness; and the five perceptions of sense, and the five organs of sensation.

16. "Thus having at once pervaded, with emanations from the Supreme Spirit, the minutest portions of six principles immensely operative, consciousness and the five perceptions, He framed all creatures;

31. "That the human race might be multiplied, He caused the Brahman, the Cshatriya, the Vaisya, and the Súdra (so named from the scripture, protection, wealth, and labour) to proceed from his mouth, his arm, his thigh, and his foot.

32. "Having divided his own substance, the mighty power became half male, half female, or nature active and passive; and from that female he produced Viráj:

Then follows an account of the creations of various beings from lords of created beings, genii, giants and men, to the smallest insects and vegetables.

51. "He, whose powers are incomprehensible, having thus created both me and this universe, was again absorbed in the supreme Spirit, changing the time of energy for the time of repose.

52. "When that power awakes (for though slumber be not predicable of the sole enternal Mind, infinitely wise and infinitely benevolent, yet it is predicted of Brahma, figuratively, as a general property of life) then has this world its full expansion; but, when he slumbers with a tranquil spirit, then the whole system fades away;

53. "For while he reposes, as it were, in calm sleep, embodied spirits, endued with principles of action, depart from their several acts, and the mind itself becomes inert;

54. "And when they once are absorbed in that supreme essence, then the divine soul of beings withdraws his energy, and placidly slumbers;

55. "Then too this vital soul of created bodies, with all the organs of sense and of action, remains long immersed in the first idea or in darkness, and performs not its natural functions, but migrates from its corporal frame:

56. "When, being again composed of minute elementary principles, it enters at once into vegetable or animal seed, it then assumes a new form.

57. "Thus that immutable power, by waking and reposing alternately, revivifies and destroys in eternal succession, this whole assemblage of locomotive and immovable creatures."

After this is a statement how Bhrigu was appointed by Manu to promulgate his laws, how time is divided for mortals and for the Gods, how Brahma reposes during his long night and awakening reanimates the world and resumes the work of creation, how time is divided into the *Crĭta,* the *Trétà,* the *Dwápara* and the *Cali* ages.

86. "In the *Cṛ̥ta* the prevailing virtue is declared to be in devotion; in the *Trétà,* divine knowledge; in the *Dwápara,* holy sages call sacrifice the duty chiefly performed; in the *Cali,* liberality alone.

87. "For the sake of preserving this universe, the Being, supremely glorious, alloted separate duties to those who sprang respectively from this mouth, his arm, his thigh and his foot.

88. "To Brahmans he assigned the duties of reading the Véda, of teaching it, of sacrificing, of assisting others to sacrifice, of giving alms, if they be rich, and, if indigent, of receiving gifts:

89. "To defend the people, to give alms, to sacrifice, to read the Véda, to shun the allurements of sensual gratification, are, in a few words, the duties of a Cshatriya:

90. "To keep herds of cattle, to bestow largesses, to sacrifice, to read the scripture, to carry on trade, to lend at interest, and to cultivate land are prescribed or permitted to a Vaisya:

91. "One principal duty the supreme Ruler assigns to a Súdra; namely, to serve the before mentioned classes, without depreciating their worth.

92. "Man is declared purer above the navel; but the self-creating Power declared the purest part of him to be his mouth.

93. "Since the Brahman sprang from the most excellent part, since he was the first born, and since he possesses the Véda, he is by right the chief of this whole creation.

The Brahman is declared to be a constant incarnation of Dharma, God of Justice and the highest among men for whose instruction the code was promulgated.

107. "In this book appears the system of law in its full extent, with the good and bad properties of human actions, and the immemorial customs of the four classes.

108. "Immemorial custom is transcendent law, approved in the sacred scripture, and in the codes of divine legislators: let every man, therefore, of the three principal classes, who has a due reverence for the supreme spirit which dwells in him, diligently and constantly observe immemorial custom:

The balance of this chapter is a partial summary of the contents of the following ones.

The next five chapters deal mainly with the education, duties, conduct and privileges of the Brahmans. Chapter 2 is "On Education; or on the Sacerdotal Class, and the First Order."

1. "Know that system of duties, which is revered by such as are learned in the Védas, and impressed, as the means of attaining beatitude, on the hearts of the just, who are ever exempt from hatred and inordinate affection.

2. "Self-love is no laudable motive, yet an exemption from self-love is not to be found in this world: on self-love is grounded the study of scripture, and the practice of actions recommend in it.

3. "Eager desire to act has its root in expectation of some advantage; and with such expectation are sacrifices performed; the rules of religious austerity and abstinence from sins are all known to rise from hope of remuneration.

4. "Not a single act here below appears ever to be done by a man free from self-love; whatever he performs, it is wrought with his desire of a reward.

5. "He, indeed who should persist in discharging these duties without any view to their fruit, would attain hereafter the state of the immortals, and even in this life, would enjoy all the virtuous gratifications, that his fancy could suggest.

6. "The roots of law are the whole Véda, the ordinances and moral practices of such as perfectly understand it, the immemorial customs of good men, and, in cases quite indifferent, self-satisfaction.

13. "A knowledge of right is a sufficient incentive for men unattached to wealth or to sensuality; and to those who seek a knowledge of right, the supreme authority is divine revelation.

14. "But, when there are two sacred texts, apparently inconsistent, both are held to be law; for both are pronounced by the wise to be valid and reconcilable.

15. "Thus in the Véda are these texts: "let the sacrifice be when the sun has arisen," and "before it has arisen," and "when neither sun nor stars can be seen: " the sacrifice, therefore may be performed at any or all of those times.

16. "He whose life is regulated by holy texts, from his conception even to his funeral pile, has a decided right to study this code; but no other man whatsoever.

17. "Between the two divine rivers Saraswatí and Hrĭshadwatí, lies the tract of land, which the sages have named Brahmáverta, because it was frequented by Gods:

18. "The custom preserved by immemorable tradition in that country, among the four pure classes, and among those which are mixed, is called approved usage.

28. "By studying the Véda, by religious observances, by oblations to fire, by the ceremony of *Traividya,* by offering to the Gods and Manes, by the procreation of children, by the five great sacraments, and by solemn sacrifices, this human body is rendered fit for a divine state.

29. "Before the section of the navel string a ceremony is ordained on the birth of a male: he must be made, while sacred texts are pronounced, to taste a little honey and clarified butter from a golden spoon.

30. "Let the father perform or, if absent, cause to be performed, on the tenth or twelfth day after the birth, the ceremony of giving a name; or on some fortunate day of the moon, at a lucky hour, and under the influence of a star with good qualities.

31. "The first part of a Brahman's compound name should indicate

holiness; of a Cshatriya's, power; of a Vaisya's, wealth; and a Súdra's contempt.

32. "Let the second part of the priest's name imply prosperity; of the soldier's preservation; of the merchant's nourishment; of the servant's humble attendance.

33. "The names of women should be agreeable, soft, clear, captivating the fancy, auspicious, ending in long vowels, resembling words of benediction.

34. "In the fourth month the child should be carried out of the house to see the sun; in the sixth month he should be fed with rice; or that may be done, which, by the custom of the family is thought most propitious.

35. "By the command of the Véda, the ceremony of tonsure should be legally performed by the three first classes in the first of third year after birth.

36. "In the eighth year from the conception of a Brahman, in the eleventh from that of a Cshatriya, and in the twelfth from that of a Vaisya let the father invest the child with the mark of his class:

37. "Should a Brahman, or his father for him, be desirous of his advancement in sacred knowledge; a Cshatriya, of extending his power; or a Vaisya of engaging in mercantile business; the investiture may be made in the fifth, sixth, or eighth years respectively.

38. "The ceremony of investiture hallowed by the *gáyatri* must not be delayed, in the case of a priest, beyond the sixteenth year; nor in that of a soldier, beyond the twenty-second; nor in that of a merchant, beyond the twenty-fourth.

39. "After that, all youths of all three classes, who have not been invested at the proper time, became *vrátyas*, or outcastes, degraded from the *gáyatrì*, and contemmed by the virtuous:

53. "Let the student, having performed his ablution, always eat his food without distraction of mind; and, having eaten, let him thrice wash his mouth completely, sprinkling with water the six hollow parts of his head, or his eyes, ears, and nostrils.

54. "Let him honor all his food, and eat it without contempt; when he sees it let him rejoice and be calm, and pray that he may always obtain it.

55. "Food, eaten constantly with respect, gives muscular force and generative power; but, eaten irreverently, destroys them both.

56. "He must beware of giving any man what he leaves; and of eating anything between morning and evening: he must also beware of eating too much, and of going any whither with a remnant of his food unswallowed.

63. "A youth of the three highest classes is named *upavíti*, when his right hand is extended for the cord to pass over his head and be fixed on his left shoulder; when his left hand is extended, that the thread may be placed on his right shoulder, he is called *práchínávíti;* and *navíti*, when it is fastened on his neck.

64. "His girdle, his leathern mantle, his staff, his sacrificial cord, and his ewer, he must throw into the water, when they are worn out or broken, and receive others hallowed by mystical texts.

65. "The ceremony of *césanta,* or cutting off the hair, is ordained for a priest in the sixteenth year from conception; for a soldier in the twenty-second; for a merchant two years later than that.

66. "The same ceremonies, except that of the sacrificial thread, must be duly performed for women at the same age and in the same order, that the body may be made perfect; but without any text from the Véda.

67. "The nuptial ceremony is considered as the complete institution of women, ordained for them in the Véda, together with reverence of their husbands, dwelling first in their fathers family, the business of the house, and attention to sacred fire.

69. "The venerable preceptor having girt his pupil with the thread, must first instruct him in purification, in good customs, in the management of the consecrated fire, and in the holy rites of morning, noon, and evening.

70. "When the student is going to read the Véda, he must perform an ablution, as the law ordains, with his face to the north, and, having paid scriptural homage, he must receive instruction, wearing a clean vest, his members being duly composed.

71. "At the beginning and end of the lecture, he must always clasp both the feet of his preceptor; and he must read with both his hands closed: (this is called scriptural homage.)

76. "Brahma milked out, as it were, from the three Védas, the letter *A,* the letter *U,* and the letter *M,* which form from their coalition the triliteral monosyllables, together with three mysterious words, *bhur, bhuvah, swer,* or earth, sky, heaven:

79. "And a twice born man, who shall a thousand times repeat those three (or *óm,* the *vyáhṛitis,* and the *gáyatrì,*) apart from the multitude, shall be released in a month even from a great offense, as a snake from his slough.

80. "The priest, the soldier and the merchant, who shall neglect this mysterious text, and fail to perform in due season his peculiar acts of piety, shall meet with contempt among the virtuous."

The organs of sense are enumerated and the necessity for keeping mastery of them and abstaining from sensual gratification is declared. Self-control, repetition of the holy texts, purification by bathing and reading the Véda are enjoined over and over again.

108. "Let the twice-born youth, who has been girt with the sacrificial cord, collect wood for the holy fire, beg food of his relations, sleep on a low bed, and perform such offices as may please his preceptor, until his return to the house of his natural father.

109. "Ten persons may legally be instructed in the Véda; the son of a spiritual teacher; a boy who is assiduous; one who can impart

other knowledge; one who is just; one who is pure; one who is friendly; one who is powerful; one who can bestow wealth, one who is honest; and one who is related by blood.

110. "Let not the sensible teacher tell any other what he is not asked, nor what he is asked improperly; but let him, however intelligent, act in the multitude as if he were dumb:

111. "Of the two persons him, who illegally asks, and him, who illegally answers, one will die, or incur odium."

Definite rules are given for saluting persons of the various classes and those related to the speaker in the degrees named.

138. "Way must be made for a man in a wheeled carriage, or above ninety years old, or afflicted with disease, or carrying a burthen; for a woman; for a priest just returned from the mansion of his preceptor; for a prince and for a bridegroom:

146. "Of him, who gives natural birth, and him, who gives knowledge of the whole Véda, the giver of sacred knowledge is the more venerable father; since the second or divine birth ensures life to the twice-born both in this world and hereafter eternally.

154. "Greatness is not conferred by years, not by gray hairs nor by wealth, not by powerful kindred: the divine sages have established this rule; "whoever has read the Védas and their Angas, he among us is great."

155. "The seniority of priests is from sacred learning; of warriors from valour; of merchant from abundance of grain; of the servile class only from priority of birth.

159. "Good instruction must be given without pain to the instructed; and sweet gentle speech must be used by a preceptor, who cherishes virtue.

160. "He, whose discourse and heart are pure, and ever perfectly guarded, attains all the fruit arising from his complete course of studying the Véda.

161. "Let not a man be querulous even though in pain; let him not injure another in deed or in thought; let him not even utter a word, by which his fellow creature may suffer uneasiness; since that will obstruct his own progress to future beatitude.

162. "A Brahman should constantly shun worldly honour, as he would shun poison; and rather constantly seek disrespect, as he would seek nectar;

163. "For though scorned, he may sleep with pleasure; with pleasure may be awake; with pleasure may he pass through this life; but the scorner utterly perishes.

171. "Sages call the *Áchárya* father, from his giving instruction in the Véda: nor can any holy rite be performed by a young man, before his investiture.

172. "Till he be invested with the signs of his class, he must not

pronounce any sacred text, except what ought to be used in obsequies to an ancestor; since he is on a level with a Súdra before his new birth from the revealed scripture:

175. "These following rules must a Brahmachárí, or student in theology observe, while he dwells with his preceptor; keeping all his members under control, for the sake of increasing his habitual devotion.

176. "Day by day, having bathed and been purified, let him offer fresh water to the gods, the Sages, and the Manes; let him show respect to the images of the deities, and bring wood for the oblation to fire.

177. "Let him abstain from honey, from fresh meat, from perfumes, from chaplets of flowers, from sweet vegetable juices, from women, from all sweet substances turned acid, and from injury to animated beings;

178. "From unguents for his limbs, and from black powder for his eyes, from wearing sandals, and carrying an umbrella, from sensual desires, from wrath, from covetousness, from dancing, and from vocal and instrumental music;

179. "From gaming, from disputes, from detraction, and from falsehood, from embracing or wantonly looking at women, and from disservice to other men.

182. "Let him carry water-pots, flowers, cow-dung, fresh earth and cusa-grass, as much as may be useful to his preceptor; and let him perform every day the duty of a religious mendicant.

183. "Each day must a Brahman student receive his food by begging with due care, from the houses of persons renowned for discharging their duties, and not deficient in performing the sacrifices which the Véda ordains.

184. "Let him not beg from the cousins of his preceptor; nor from his own cousins; nor from other kinsmen by the fathers side, or by the mothers; but, if other houses be not accessible, let him begin with the last of those in order, avoiding the first;

185. "Or, if none of those houses just mentioned can be found, let him go begging through the whole district round the village, keeping his organs in subjection, and remaining silent; but let him turn away from such as have committed any deadly sin.

186. "Having brought logs of wood from a distance, let him place them in the open air; and with them let him make an oblation to fire without remissness, both evening and morning.

187. "He, who for seven successive days omits the ceremony of begging food, and offers not wood to the sacred fire, must perform the penance of an avacírní, unless he be afflicted with illness.

188. "Let the student persist constantly in such begging, but let him not eat the food of one person only; the subsistence of a student by begging is held equal to fasting in religious merit.

189. "Yet, when he is asked in a solemn act in honour of the Gods

or the Manes, he may eat at his pleasure the food of a single person; observing, however, the laws of abstinence and the austerity of an anchoret: thus the rule of his order is kept inviolate.

190. "This duty of a mendicant is ordained by the wise for a Brahman only; but no such act is appointed for a warrior, or for a merchant."

Very precise rules are given for the conduct of the scholar in the presence of his preceptor and while receiving instruction. The utmost respect and deference must be constantly shown.

224. "The chief temporal good is by some declared to consist in virtue and wealth; by some, in wealth and lawful pleasure; by some, in virtue alone; by others, in wealth alone; but the chief good here below is an assemblage of all three: this is a sure decision:

225. "A teacher of the Véda is the image of God; a natural father, the image of Brahma; a mother, the image of the earth; an elder whole brother, the image of the soul.

226. "Therefore a spiritual and a natural father, a mother and an elder brother, are not to be treated with disrespect, especially by a Brahman, though the student be grievously provoked.

227. "That pain and care which a mother and father undergo in producing and rearing children, cannot be compensated in a hundred years.

228. "Let every man constantly do what may please his parents: and, on all occasions , what may please his preceptor; when those three are satisfied, his whole course of devotion is accomplished.

241. "In case of necessity, a student is required to learn the Véda, from one who is not a Brahman, and, as long as that instruction continues, to honour his instructor with obsequious assiduity;

242. "But a pupil who seeks the incomparable path to heaven, should not live to the end of his days in the dwelling of a preceptor who is no Brahman, or who has not read all the Védas with their Angas.

245. "Let not a student, who knows his duty, present any gift to his preceptor before his return home; but when, by his tutors permission, he is going to perform the ceremony on his return, let him give the venerable man some valuable thing to the best of his power;

246. "A field, or gold, a jewel, a cow, or a horse, an umbrella, a pair of sandals, a stool, corn, clothes, or even any very excellent vegetable: thus will he gain the affectionate remembrance of his instructor.

247. "The student for life must, if his teacher die, attend on his virtuous son or his widow, or on one of his paternal kinsmen, with the same respect which he showed to the living:

248. "Should none of those be alive, he must occupy the station of his preceptor, the seat, and the place of religious exercises; must continually pay due attention to the fires, which he had consecrated; and must prepare his own soul for heaven.

Chapter 3 is "On Marriage or the Second Order."

1. "The discipline of the student in the three Védas may be continued

for thirty-six years, in the house of his preceptor; or for half that time, or for a quarter of it, or until he perfectly comprehend them:

2. "A student, whose rules have not been violated, may assume the order of a married man, after he has read in succession a *sác'há*, or branch from each of the three, or from two, or from any one of them.

3. "Being justly applauded for the strict performance of his duty and having received from his natural or spiritual father the sacred gift of the Véda, let him sit on an elegant bed, decked with a garland of flowers, and let his father honour him, before his nuptials, with a present of a cow.

4. "Let the twice-born man, having obtained the consent of his venerable guide, and having performed his ablutions with stated ceremonies, on his return home, as the law directs, espouse a wife of the same class with himself and endued with the marks of excellence.

5. "She, who is not descended from his paternal or maternal ancestors, within the sixth degree, and who is not known by her family name to be of the same primitive stock with his father or mother, is eligible by a twice-born man for nuptials and holy union:

6. "In connecting himself with a wife, let him studiously avoid the ten following families, be they ever so great, or ever so rich in kine, goats, sheep, gold and grain:

7. "The family which has omitted prescribed acts of religion; that which has produced no male children; that, in which the Véda has not been read; that, which has thick hair on the body; and those, which have been subject to hemorrhoids, to phthisis, to dyspepsia, to epilepsy, to leprosy, and to elephantiasis.

8. "Let him not marry a girl with reddish hair, nor with any deformed limb; nor one troubled with habitual sickness; nor one either with no hair or with too much; nor one immoderatively talkative; nor one with inflamed eyes;

9. "Nor one with the name of a constellation, or of a tree, or of a river, of a barbarous nation, or of a mountain, of a winged creature, a snake or a slave; nor with any name raising an image of terror.

10. "Let him chuse for his wife a girl, whose form has no defect, who has an agreeable name; who walks gracefully like a plenicopteros, or like a young elephant; whose hair and teeth are moderate respectively in quantity and size; whose body has exquisite softness.

11. "Her, who has no brother, or whose father is not well known, let no sensible man espouse, through fear lest, in the former case, her father should take her first son as his own to perform his obsequies; or, in the second case, lest an illicit marriage should be contracted.

12. "For the first marriage of the twice-born classes, a woman of the same class is recommended; but for such as are impelled from inclination to marry again, women in the direct order of the classes are to be preferrerd;

13. "A Súdra woman only must be the wife of a Súdra; she and a Vaisya, of a Vaisya; they two and a Cshatryia, of a Cshatriya; those two and a Brahmani of a Brahman."

Eight forms of marriage ceremony are named and defined as follows:

27. "The gift of a daughter, clothed only with a single robe, to a man learned in the Véda, whom her father voluntarily invites, and respectfully receives, is the nuptial right called *Brahma.*

28. "The rite which sages call *Daiva,* is the gift of a daughter, whom her father has decked in gay attire, when the sacrifice is already begun, to the officiating priest, who performs that act of religion.

29. "When the father gives his daughter away, after having received from the bridegroom one pair of kine, or two pairs, for uses prescribed by law, that marriage is termed *Ársha.*

30. "The nuptial rite called *Prájápatya,* is when the father gives away his daughter with due honour, saying distinctly, "May both of you perform together your civil and religious duties."

31. "When the bridegroom, having given as much wealth as he can afford to the father and paternial kinsmen, and to the damsel herself, takes her voluntarily as his bride, that marriage is named *Ásura.*

32. "The reciprocal connection of a youth and a damsel, with mutual desire, is the marriage denominated *Gándharva,* contracted for the purpose of amorous embraces, and proceeding from sensual inclination.

33. "The seizure of a maiden by force from her house, while she weeps and calls for assistance, after her kinsmen and friends have been slain in battle, or wounded and their houses broken open, is the marriage styled Rácshasa.

34. "When the lover secretly embraces the damsel, either sleeping or flushed with strong liquor, or disordered in her intellect, that sinful marriage, called *Paisácha,* is the eighth and the basest.

35. "The gift of daughters in marriage by the sacerdotal class, is most approved when they previously have poured water into the hands of the bridegroom; but the ceremonies of the other classes may be performed according to their several fancies."

The good effects flowing from the first four marriages are declared and the evil effects of the four base ones.

67. "Let the housekeeper perform domestic religious rites, with the nuptial fire, according to law, and the ceremonies of the five great sacraments, and the several acts which must day by day be performed.

68. "A housekeeper has five places of slaughter, or where small living creatures may be slain; his kitchen-hearth, his grindstone, his broom, his pestle and mortar, his water-pot; by using which, he becomes in bondage to sin.

69. "For the sake of expiating offences committed ignorantly in those places mentioned in order, the five great sacraments were appointed by eminent sages to be performed each day by such as keep house.

70. "Teaching and studying the scripture is the sacrament of the Véda; offering cakes and water, the sacrament of the Manes; an oblation to fire the sacrament of the Deities; rice or other food to living creatures, the sacrament of spirits; receiving guests with honour, the sacrament of men:

71. "Whoever omits not those five great ceremonies, if he have ability to perform them, is untainted by the sins of the five slaughtering-places, even though he constantly reside at home.

72. "But whoever cherishes not five orders of beings, namely, the deities; those who demand hospitality; those, whom he ought by law to maintain; his departed forefathers; and himself; that man lives not even though he breathe."

Very full and definite rules are declared for the various sacraments and oblations to be performed by householders and hospitality is strictly enjoined.

105. "No guest must be dismissed in the evening by a house-keeper, he is sent by the retiring sun; and, whether he came in fit season or unseasonably, he must not sojourn in the house without entertainment.

106. "Let not himself eat any delicate food, without asking his guest to partake of it: the satisfaction of a guest will assuredly bring the house-keeper wealth, reputation, long life, and a place in heaven."

The performance of oblations to deceased ancestors is treated as a matter of great importance, and rules are given as to the guests to be invited and excluded and places and manner in which the *sráddha* is to be performed. The kinds of food to be provided, the manner of serving and the precedence to be accorded to the different guests are stated in detail, and the salutations to be made to the guests at the conclusion are given.

278. "As the latter or dark half of the month surpasses, for the celebration of obsequies, the former or bright half, so the latter half of the day surpasses for the same purpose, the former half of it.

279. "The oblation to ancestors must be duly made, even to the conclusion of it with the distribution to the servants, (or even to the close of life), in the form prescribed, by a Brahman wearing his thread on his right shoulder, proceeding from left to right, without remissness, and with *cusa*-grass in his hand.

280. "Obsequies must not be performed by night; since the night is called *ráchasì*, or infested by demons; nor while the sun is rising or setting, nor when it has just arisen.

281. "A house-keeper unable to give a monthly repast, may perform obsequies here below, according to the sacred ordinance, only thrice a year, in the seasons of *hémanta, grishma,* and *vershà*; but the five sacramenta he must perform daily.

282. "The sacrificial oblation at obsequies to ancestors, is ordained to be made in no vulgar fire; nor should the monthly *sráddha* of that

Brahman, who keeps a perpetual fire, be made on any day, except on that of the conjunction.

283. When a twice-born man, having performed his ablution, offers a satisfaction to the Manes with water only, being unable to give a repast, he gains by that offering all the fruit of a *sráddha.*

Chapter four is entitled, "On Economics; and Private Morals."

1. "Let a Brahman, having dwelt with a preceptor during the first quarter of a man's life, pass the second quarter of human life in his own house, when he has contracted a legal marriage.

2. "He must live with no injury, or with the least possible injury to animated beings, by pursuing those means of gaining subsistence, which are strictly prescribed by law, except in times of distress.

3. "For the sole purpose of supporting life, let him acquire property by those irreproachable occupations, which are peculiar to his class, and unattended with bodily pain.

4. "He may live by *ŕita* and *amŕita,* or, if necessary, by *mrita,* or *pramŕita,* or even by *satyánŕita;* but never let him subsist by *swavritti:*

5. "By *ŕita* must be understood lawful gleaning and gathering by *amŕita,* what is given unasked; by *mŕita,* what is asked as alms; tillage is called *pramŕita;*

6. "Traffic and money-lending are *satyánrita;* even by them when he is deeply distressed, may he support life; but service for hire is named *swavŕitti,* or dog-living, and of course he must by all means avoid it.

11. "Let him never for the sake of a subsistence, have recourse to popular conversation; let him live by the conduct of a priest, neither crooked, nor artful, nor blended with the manners of the mercantile class.

12. "Let him, if he seek hapiness, be firm in perfect content, and check all desire of acquiring more than he possesses; for hapiness has its root in content, and discontent is the root of misery."

He is enjoined to perform his daily duties without sloth, avoiding sensual gratification, and reading the holy books.

29. "Let him take care, to the utmost of his power, that no guest sojourn in his house unhonoured with a seat, with food, with a bed, with water, with esculent roots, and with fruit:

30. "But, let him not honour with his conversation such as do forbidden acts; such as subsist like cats, by interested craft; such as believe not the scripture; such as oppugn it by sophisms or such as live like rapacious water-birds.

33. A priest who is master of a family, and pines with hunger, may seek wealth from a king of the military class, from a sacrificer, or his own pupil, but from no person else, unless all other helps fail: thus will he show his respect for the law.

34. "Let no priest, who keeps house, and is able to procure food,

ever waste himself with hunger; nor, when he has any substance, let him wear old or sordid clothes.

35. "His hair, nails, and beard being clipped; his passions subdued; his mantle, white, his body pure; let him diligently occupy himself in reading the Véda, and be constantly intent on such acts, as may be salutary to him.

37. "He must not gaze on the sun, whether rising or setting, or eclipsed, or reflected in water, or advanced to the middle of the sky.

38. "Over a string, to which a calf is tied, let him not step; nor let him run while it rains; nor let him look on his own image in water: this is a settled rule.

39. "By a mound of earth, by a cow, by an idol, by a Brahman, by a pot of clarified butter, or of honey, by a place where four ways meet, and by large trees well known in the district, let him pass with his right hand toward them.

43. Let him neither eat with his wife nor look at her eating, or sneezing, or yawning, or sitting carelessly at her ease."

Many other rules of personal conduct are given which appear quite whimsical.

66. "Let him not use either slippers or clothes, or a sacerdotal string, or an ornament, or a garland, or a waterpot, which before have been used by another.

76. "Let him take his food, having sprinkled his feet with water, but never let him sleep with his feet wet: he, who takes his food with his feet so sprinkled, will attain long life.

77. Let him never advance into a place undistinguishable by his eye, or not easily passable: never let him look at urine or ordure; nor let him pass a river swimming with his arms.

78. "Let not a man, who desires to enjoy long life, stand upon hair, nor upon ashes, bones, nor potsherds, nor upon seeds of cotton, nor upon husks of grain.

79. "Nor let him tarry even under the shade of the same tree with outcasts for great crimes, nor with Chandálas, nor with Puccasas, nor with idiots, nor with men proud of wealth, nor with washermen and other vile persons, nor with Antyavasáyins.

80. "Let him not give even temporal advice to a Súdra; nor, except to his own servant, what remains from his table; nor clarified butter, of which part has been offered to the gods; nor let him in person give spiritual counsel to such a man, nor personally inform him of the legal expiation for his sin:

84. "From a king, not born in the military class, let him accept no gift, nor from such as keep a slaughterhouse, or an oil press, or put out a vintner's flag, or subsist by the gain of prostitutes:

85. "One oil-press is as bad as ten slaughter-houses; one vintners flag,

as ten oil-presses; one prostitute as ten vintners flags; one such king as ten prostitutes;

86. "With a slaughterer, therefore, who employs ten thousand slaughter-houses, a king, not a soldier by birth, is declared to be on a level; and a gift from him is tremendous.

87. "He, who receives a present from an avaricious king and a transgressor of the sacred ordinances, goes in succession to the following twenty-one hells:

102. "By night, when the wind meets his ear, and by day when the dust is collected, he must not read in the season of rain; since both those times are declared unfit for reading, by such as know when the Véda ought to be read.

103. "In lightning, thunder and rain, or during the fall of large fireballs on all sides, at such times Manu has ordained the reading of scripture to be deferred till the same time next day.

104. "When the priest perceives those accidents occurring at once, while his fires are kindled for morning and evening sacrifices, then let him know, that the Véda must not be read; and when clouds are seen gathered out of season.

111. "As long as the scent and unctuosity of perfumes remain on the body of a learned priest, who has partaken of an entertainment, so long he must abstain from pronouncing the texts of the Véda.

112. "Let him not read lolling on a couch, nor with his feet raised on a bench, nor with his thighs crossed, nor having lately swallowed meat, or the rice and other food on the birth or death of a relation;

113. "Nor in a cloud of dust, nor while arrows whiz, or a lute sounds, nor in either of the twilights, nor at the conjunction, nor on the fourteenth day, nor at the opposition, nor on the eighth day, of the moon:

117. "Be it an animal, or a thing inanimate, or whatever be the gift at a *sráddha,* let him not, having lately accepted it, read the Véda; for such a Brahman is said to have his mouth in his hand.

118. "When the town is beset by robbers, or an alarm has been raised by fire, and in all terrors from strange phenomena, let him know that his lecture must be suspended till the due time after the cause of terror be ceased."

Other times and circumstances are mentioned which render it incumbent on the Brahman to abstain from or suspend reading the Véda.

135. "Never let him who desires an increase of wealth, despise a warrior, a serpent, or a priest versed in scripture, how mean soever they may appear;

136. "Since those three when contemmed, may destroy a man; let a wise man therefore always beware of treating those three with contempt,

137. "Nor should he despise even himself on account of previous mis-

carriages: let him pursue fortune till death, nor ever think her hard to be attained.

138. "Let him say what is true, but let him say what is pleasing; let him speak no disagreeable truth, nor let him speak agreeable falsehood: this is a primeval rule.

139. "Let him say, "well and good," or let him say, "well," only; but let him not maintain fruitless enmity and altercation with any man.

140. "Let him not journey too early in the morning or too late in the evening, nor too near the mid-day, nor with an unknown companion, nor alone, nor with men of the servile class.

141. "Let him not insult those, who want a limb, or have a limb redundant, who are unlearned, who are advanced in age, who have no beauty, who have no wealth, or who are of an ignoble race.

142. "Let no priest, unwashed after food, touch with his hand a cow, a Brahman, or fire; nor being in good health and unpurified, let him even look at the luminaries in the firmament:

143. "But, having accidentally touched them before his purification, let him ever sprinkle with water, in the palm of his hand, his organs of sensation, all his limbs, and his navel.

159. "Whatever act depends on another man, that act let him carefully shun; but whatever depends on himself, to that let him studiously attend:

160. "All, that depends on another, gives pain; and all, that depends on himself, gives pleasure; let him know this to be in few words the definition of pleasure and pain.

161. "When an act, neither prescribed nor prohibited, gratifies the mind of him who performs it, let him perform it with diligence; but let him avoid its opposite.

162. "Him, by whom he was invested with the sacrificial thread, him, who explained the Véda or even a part of it, his mother, and his father, natural or spiritual, let him never oppose; nor priests nor cows, nor persons truly devout."

The following rules of conduct may well be learned and observed by all men.

171. "Though oppressed by penury, in consequence of his righteous dealings, let him never give his mind to unrighteousness; for he may observe the speedy overthrow of iniquitous and sinful men.

172. "Iniquity, committed in this world, produces not fruit immediately, but, like the earth, in due season; and, advancing by little and little, it eradicates the man who committed it.

173. "Yes, iniquity, once committed, fails not of producing fruit to him, who wrought it; if not in his own person, yet in his sons; or, if not in his sons, yet in his grandsons.

174. "He grows rich for a while through unrighteousness; then he

beholds good things; then it is, that he vanquishes his foes; but he perishes at length from his whole root upwards.

175. "Let a man continually take pleasure in truth, in justice, in laudable practices, and in purity; let him chastise those, whom he may chastise, in a legal mode; let him keep in subjection his speech, his arm, and his appetite:

176. "Wealth and pleasure, repugnant to law, let him shun; and even lawful acts, which may cause future pain, or be offensive to mankind.

177. "Let him not have nimble hands, restless feet, or voluble eyes; let him not be crooked in his ways; let him not be flippant in his speech, nor intelligent in doing mischief.

178. "Let him walk in the path of good man; the path, in which his forefather walked; while he moves in that path he can give no offense.

179. "With an attendant on consecrated fire, a performer of holy rites, and a teacher of the Véda, with his maternal uncle, with his guest or a dependent, with a child, with a man either aged or sick, with a physician, with his paternal kindred, with his relations by marriage, and with cousins on the side of his mother,

180. "With his mother herself, or with his father, with his kinswomen, with his brother, with his son, his wife, or his daughter, and with his whole set of servants let him have no strife.

186. "Though permitted to receive presents, let him avoid a habit of taking them; since, by taking many gifts, his divine light soon fades.

187. "Let no man of sense, who has not fully informed himself of the law concerning gifts of particular things, accept a present, even though he pine with hunger.

188. "The man who knows not that law, yet accepts gold or gems, land, a horse, a cow, food, raiment, oils or clarified butter, becomes mere ashes, like wood consumed by fire:

189. "Gold and gems burn up his nourishment and life; land and a cow, his body; a horse, his eyes; raiment, his skin; clarified butter, his manly strength; oils, his progeny.

190. "A twice-born man, void of true devotion, and not having read the Véda, yet eager to take a gift, sinks down together with it, as with a boat of stone in deep water.

204. "A wise man should constantly discharge all the moral duties, though he performs not constantly the ceremonies of religion; since he falls low, if, while he performs ceremonial acts only, he discharge not his moral duties."

A long list is given of food which he is prohibited from eating, some for sanitary reasons and others because of contamination; thus he must not eat food on which lice have fallen or that has been designedly touched by the foot or smelled by a cow; nor the food of knaves, harlots, public

singers, a eunoch, insane, wrathful, or sick persons, of a physician, hunter, backbiter, false witness or a blacksmith.

222. "Having unknowingly swallowed the food of any such person, he must fast during three days; but, having eaten it knowingly, he must perform the same harsh penance, as if he had tasted any seminal impurity, ordure, or urine.

236. "Let not a man be proud of his rigorous devotion; let him not, having sacrificed, utter a falsehood; let him not though injured, insult a priest; having made a donation, let him never proclaim it.

237. "By falsehood, the sacrifice becomes vain; by pride, the merit of devotion is lost; by insulting priests, life is diminished; and by proclaiming a largess, its fruit is destroyed.

238. "Giving no pain to any creature, let him collect virtue by degrees, for the sake of acquiring a companion to the next world, as the white ant by degrees builds its nest;

239. "For, in his passage to the next world, neither his father nor his mother, nor his wife, nor his son, nor his kinsmen will remain in his company: his virtue alone will adhere to him."

Chapter 5 is entitled, "On Diet, Purification, and Women."

A long list of prohibited foods is given.

19. "The twice-born man who has intentionally eaten a mushroom, the flesh of a tame hog, or a town-cock, a leek, or an onion, or garlick is degraded immediately.

20. "But having undesignedly tasted either of those six things, he must perform the penance *sántapana,* or the *chándráyana,* which anchorets practice; for other things he must fast a whole day.

21. "One of those harsh penances, called *prájápatya,* the twice-born man must perform annually, to purify him from the unknown taint of illicit food; but he must do particular penance for such food intentionally eaten."

This is followed by a list of foods which may be eaten.

39. "By the self-existing in person were beasts created for sacrifice; and the sacrifice was ordained for the increase of this universe: the slaughterer, therefore, of beasts for sacrifice is in truth no slaughterer.

40. "Gramineous plants, cattle, timber trees, amphibious animals, and birds, which have been destroyed for the sacrifice, attain in the next world exalted births.

41. "On a solemn offering to a guest, at a sacrifice, and in holy rites to the manes or to the gods, but on those occasions only, may cattle be slain: this law Manu enacted.

45. "He, who injures animals, that are not injurious, from a wish to give himself pleasure, adds nothing to his own happiness, living or dead;

46. "While he, who gives no creature willingly the pain of confine-

ment or death, but seeks the good of all sentient beings, enjoys bliss without end.

58. "When a child has teethed, and when, after teething, his head has been shorn, and when he has been grit with his thread, and when, being full grown, he dies, all his kindred are impure: on the birth of a child the law is the same.

59. "By a dead body, the *sapindas* are rendered impure in the law for ten days, or until the fourth day, when the bones have been gathered up, or for three days, or for one day only, according to the qualities of the deceased.

60. "Now that the relation of the *sapindas,* or men connected by the funeral cake, ceases with the seventh person, or in the sixth degree of ascent or descent, and that of *samánódacas,* or those connected by an equal oblation of water, ends only, when their births and family names are no longer known."

Rules as to who becomes impure from the death of relatives, the performance of funeral rites and other circumstances are given and the manner of purification prescribed.

96. "The corporal frame of a king is composed of particles from Sóma, Agni, Súra, Pavana, Indra, Cuvéra, Varuna, and Yama, the eight guardian deities of the world.

97. "By those guardians of men in substance is the king pervaded, and he cannot by law be impure; since by those tutelar gods are the purity and impurity of mortals both caused and removed.

98. "By a soldier, discharging the duties of his class, and slain in the field with brandished weapons, the highest sacrifice is, in that instant complete; and so is his purification; this law is fixed.

99. "A priest, having performed funeral rites, is purified by touching water; a soldier, by touching his horse or elephant, or his arms; a husbandman, by touching his goad, or the halter of his cattle; a servant, by touching his staff.

105. "Sacred learning, austere devotion, fire, holy aliment, earth, the mind, water, smearing with cow-dung, air, prescribed acts of religion, the sun and time, are purifiers of embodied spirits;

106. "But of all pure things, purity in acquiring wealth, is pronounced the most excellent; since he, who gains wealth with clean hands, is truly pure; not he who is purified merely with earth and water,

107. "By forgiveness of injuries, the learned are purified; by liberality, those who have neglected their duty; by pious meditation, those who have secret faults; by devout austerity, those who best know the Véda."

After this follow rules for the purification of inanimate things with water, ashes, earth, fire and in various ways.

129. "The hand of an artist employed in his art is always pure; so

is every vendible commodity, when exposed to sale; and that food is always clean, which a student in theology has begged and received; such is the sacred rule.

147. "By a girl, or by a young woman, or by a woman advanced in years, nothing must be done even in her own dwelling place, according to her mere pleasure.

148. "In childhood must a female be dependent on her father; in youth, on her husband; her lord being dead, on her sons; if she have no sons, on the near kinsmen of her husband; if he left no kinsmen, on those of her father; if she have no paternal kinsmen, on the sovereign; a woman must never seek independence.

149. "Never let her wish to separate herself from her father, her husband, or her sons; for, by a separation from them, she exposes both families to contempt.

150. "She must always live with a cheerful temper, with good management in the affairs of the house, with great care of the household furniture, and with a frugal hand in all her expenses.

151. "Him, to whom her father has given her, or her brother with the paternal assent, let her obsequiously honour, while he lives; and, when he dies, let her never neglect him,

152. "The recitation of holy texts, and the sacrifice ordained by the lord of creatures, are used in marriages for the sake of procuring good fortune to brides; but the first gift, or troth plighted, by the husband, is the primary cause and origin of marital dominion.

153. "When the husband has performed the nuptial rites with texts from the Véda, he gives bliss continually to his wife here below, both in season and out of season; and he will give her happiness in the next world.

154. "Though inobservant of approved usages, or enamored of another woman, or devoid of good qualities, yet a husband must constantly be revered as a god by a virtuous wife.

155. "No sacrifice is allowed to women apart from their husbands, no religious rite, no fasting; as far only as a wife honours her lord, so far she is exalted in heaven.

156. "A faithful wife, who wishes to attain in heaven the mansion of her husband, must do nothing unkind to him, be he living or dead.

157. "Let her emaciate her body, by living voluntarily on pure flowers, roots, and fruit; but let her not, when her lord is deceased, even pronounce the name of another man.

158. "Let her continue till death forgiving all injuries, performing harsh duties, avoiding every sensual pleasure, and cheerfully practising the incomparable rules of virtue, which have been followed by such women, as were devoted to one only husband.

159. "Many thousands of Brahmans, having avoided sensuality from

their early youth, and having left no issue in their families, have ascended, nevertheless, to heaven;

160. "And, like those abstemious men, a virtuous wife, ascends to heaven, though she have no child, if, after the decease of her lord, she devote herself to pious austerity:

161. "But, a widow, who, from a wish to bear children, slights her deceased husband by marrying again, brings disgrace on herself here below, and shall be excluded from the seat of her lord.

162. "Issue, begotten on a woman by any one other than her husband, is here declared to be no progeny of hers; no more than a child begotten on the wife of another man, belongs to the begetter: nor is a second husband allowed, in any part of this code, to a virtuous woman.

167. "A twice-born man versed in sacred ordinances, must burn, with hallowed fire and fir implements of sacrifice, his wife dying before him, if she was of his own class, and lived by these rules:

168. "Having thus kindled sacred fires, and performed funeral rites to his wife, who died before him, he may marry again, and again light the nuptial fire."

Chapter 6 is entitled, "On Devotion; or on the Third and Fourth Orders."

2. "When the father of a family perceives his muscles become flaccid and his hair gray, and sees the child of his child, let him then seek refuge in a forest:

3. "Abandoning all food eaten in towns, and all his household utensils, let him repair to the lonely woods, committing the care of his wife to her sons; or accompanied by her, if she choose to attend him.

5. "Let him take up consecrated fire, and all his domestic implements, of making oblations to it, and, departing from the town to the forest, let him dwell in it with complete power over his organs of sense and of action.

5. "With many sorts of pure food, such as holy sages used to eat, with green herbs, roots, and fruit, let him perform the five great sacraments before mentioned, introducing them with due ceremonies.

6. "Let him wear a black antelope hide, or a vesture of bark; let him bathe evening and morning; let him suffer the hairs of his head, his beard, and his nails to grow continually,

7. "From such food, as himself may eat, let him, to the utmost of his power, make offerings and give alms; and with presents of water, roots, and fruit, let him honour those who visit his hermitage.

8. "Let him be constantly engaged in reading the Véda; patient of all extremities, universally benevolent, with a mind intent on the Supreme Being; a perpetual giver, but no receiver of gifts; with tender affection for all animated bodies.

9. "Let him, as the law directs, make oblations on the hearth with

three sacred fires; not omitting in due time the ceremonies to be performed at the conjunction and opposition of the moon.

10. "Let him also perform the sacrifices ordained in honor of the lunar constellations, make the prescribed offering of new grain, and solemnize holy rites every four months, and at the winter and summer solstices.

13. "Let him eat green herbs, flowers, roots, and fruit, that grow on earth or in water, and the productions of pure trees, and oils formed in fruits.

14. "Honey and fresh meat he must avoid, and all sorts of mushrooms, the plant *bhústrīna,* that named *sigruca,* and the fruit of the *sleshmataca.*

16. "Let him not eat the produce of ploughed land, though abandoned by any man, who owns it, nor fruit and roots produced in a town, even though hunger oppress him.

22. "Let him slide backwards and forwards on the ground; or let him stand a whole day on tip toe; or let him continue in motion rising and sitting alternatively; but at sunrise, at noon, and at sunset, let him go to the waters and bathe.

23. "In the hot season, let him sit exposed to five fires, four blazing around him with the sun above; in the rains, let him stand uncovered, without even a mantle, where the clouds pour the heaviest showers; in the cold season let him wear humid vesture; and let him increase by degrees the austerity of his devotion:

24. "Performing his ablution at the three Savanas, let him give satisfaction to the manes and to the gods; and, enduring harsher and harsher mortifications, let him dry up his bodily frame.

25. "Then, having deposited his holy fires, as the law directs, in his mind, let him live without external fire, without a mansion, wholly silent, feeding on roots and fruit;

26. "Not solicitous for the means of gratifications, chaste as a student, sleeping on the bare earth, in the haunts of pious hermits, without one selfish affection, dwelling on roots of trees.

27. "From devout Brahmans let him receive alms to support life, or from other housekeepers of twice-born classes, who dwell in the forests:

28. "Or the hermit may bring food from a town, having received it in a basket of leaves, in his naked hand, or in a postsherd; and then let him swallow eight mouthfuls.

32. "A Brahman, having shuffled off his body by any of those modes, which great sages practised, and becoming void of sorrow and fear, rises in exaltation in the divine essence.

33. "Having thus performed religious acts in a forest during the third portion of his life, let him become a *Sannyási* for the fourth portion of it, abandoning all sensual affections, and wholly reposing in the Supreme Spirit:

34. "The man, who has passed from order to order, has made oblations to fire on his respective changes of state, and has kept his members in subjection, but, tired with so long a course of giving alms and making offerings, thus reposes himself entirely on God, shall be raised after death to Glory.

44. "An earthen water pot, the roots of large trees, coarse vesture, total solitude, equanimity toward all creatures, these are the characteristics of a Brahman set free.

45. "Let him not wish for death; let him not wish for life; let him expect his appointed time, as a hired servant expects his wages.

46. "Let him advance his foot purified by looking down, lest he touch anything impure; let him drink water purified by straining with a cloth, lest he hurt some insect; let him, if he chuse to speak, utter words purified by truth; let him by all means keep his heart purified.

47. "Let him bear a reproachful speech with patience; let him speak reproachfully to no man; let him not, on account of his frail and feverish body, engage in hostility with any one living.

48. "With an angry man let him not in his turn be angry; abused, let him speak mildly; nor let him utter a word relating to vain illusory things and confined within seven gates, the five organs of sense, the chart and the intellect; or this world with three above and three below it.

49. "Delighted with meditating on the Supreme Spirit, sitting fixed in such meditation, without needing anything earthly, without one sensual desire, without any companion but his own soul, let him live in this world seeking the bliss of the next.

72. "Let him thus, by such suppressions of breath, burn away his offenses; by reflecting intensely on the steps of ascent to beatitude, let him destroy sin; by coercing his members, let him restrain all sensual attachments; by meditating on the intimate union of his own soul and the divine essence, let him extinguish all qualities repugnant to the nature of God.

75. "By injuring nothing animated, by subduing all sensual habits, by devout rites ordained in the Véda, and by rigorous mortifications, men obtain, even in this life, the state of beatitude.

76. "A mansion with bones for its rafters and beams; with nerves and tendons, for cords; with muscles and blood, for mortar; with skin for its outward covering; filled with no sweet perfume, but loaded with feces and urine;

77. "A mansion infested by age and by sorrow, the seat of malady, harassed with pains, haunted with the quality of darkness, and incapable of standing alone; such a mansion of the vital soul let its occupier always cheerfully quit:

78. "As a tree leaves the bank of a river, when it falls in, or as a bird leaves the branch of a tree at his pleasure, thus he, who leaves

his body by necessity or by legal choice, is delivered from the ravening shark, or crocodile, of the world.

79. "Letting his good acts descend (by the law of the Véda) to those, who love him, and his evil deeds, to those, who hate him, he may attain, through devout meditation, the eternal spirit.

87. "The student, the married man, the hermit, and the anchorite are the offspring, though in four orders, of married men keeping house.

88. "And all, or even any, of those orders, assumed in their turn, according to the sacred ordinances, lead the Brahman, who acts by the preceding rules, to the highest mansion:

89. "But of all those, the housekeeper, observing the regulations of the *Sruti* and *Smriti*, may be called the chief; since he supports the three other orders.

90. "As all rivers, female and male, run to their determined places in the sea, thus men of all other orders, repair to their fixed place in the mansion of the house-keeper.

91. "By Brahmans, placed in these four orders, a tenfold system of duties must ever be sedulously practiced.

92. "Content, returning good for evil, resistance to sensual appetites, abstinence from illicit gain, purification, coercion of the organs, knowledge of scripture, knowledge of the Supreme Spirit, veracity, and freedom from wrath, form their tenfold system of duties.

93. "Such Brahmans, as attentively read the ten precepts of duty and after reading, carefully practice them, attain the most exalted condition.

94. "A Brahman, having practiced, with organs under command, this tenfold system of duty, having heard the Upanishads explained, as the law directs, and who has discharged his three debts, may become an anchorite, in the house of his son, according to the Véda;

95. "And, having abandoned all ceremonial acts, having expiated all his offenses, having obtained a command over his organs, and having perfectly understood the scripture, he may live at his ease, while the household affairs are conducted by his son."

Chapter 7 is entitled, "On Government, and Public Law; or on the Military Class. The spirit of this chapter will be found to differ materially from that of prior ones. It deals with the practical problems of government by a king.

2. "By a man of the military class, who has received in due form the investiture which the Véda prescribes, great care must be used to maintain the whole assemblage of laws.

3. "Since, if the world has no king, it would quake on all sides through fear, the ruler of this universe, therefore, created a king, for the maintenance of this system, both religious and civil,

4. "Forming him of eternal particles drawn from the substance of

Indra, Pavana, Yama, Súrya, of Agni, and Varuna, of Chandra and Cuvéra:

5. "And since a king was composed of particles drawn from those chief guardian deities, he consequently surpasses all mortals in glory.

6. "Like the sun, he burns eyes and hearts; nor can any human creature on earth even gaze on him.

7. "He is fire and air; he, both sun and moon; he, the god of criminal justice; he, the genius of wealth; he, the regent of waters; he, the lord of the firmament.

8. "A king, even though a child, must not be treated lightly, from an idea that he is a mere mortal: no, he is a powerful divinity, who appears in a human shape.

9. "Fire burns only one person, who carelessly goes too near it; but the fire of a king in wrath burns a whole family, with all their cattle and goods.

10. "Fully considering the business before him, his own force, and the place, and the time, he assumes in succession all sorts of forms, for the sake of advancing justice.

11. "He, sure, must be the perfect essence of majesty, by whose favor Abundance rises on her lotos, in whose valour dwells conquest; in whose anger, death.

12. "He, who shews hatred of the king, through delusion of mind, will certainly perish, for speedily will the king apply his heart to the man's perdition.

13. "Let the king prepare a just compensation for the good and a a just punishment for the bad: the rule of strict justice let him never transgress.

14. "For his use Brahma formed in the beginning of time the genius of punishment, with a body of pure light, his own son, even abstract criminal justice, the protector of all created things.

15. "Through fear of that genius, all sentient beings, whether fixed or locomotive, are fitted for natural enjoyments and swerve not for duty.

16. "When the king, therefore, has fully considered place and time, and his own strength, and the divine ordinance, let him justly inflict punishment on all those, who act unjustly.

17. "Punishment is an active ruler, he is the true manager of public affairs; he is the dispenser of laws; and wise men call him the sponsor of all the four orders for the discharge of their several duties.

18. "Punishment governs all mankind; punishment alone preserves them; punishment wakes, while their guards are asleep; the wise consider punishment as the perfection of justice.

19. "When rightly and considerately inflicted, it makes all the people happy; but, inflicted without full consideration, it wholly destroys them all.

26. "Holy sages consider as a fit dispenser of criminal justice, that

king, who invariably speaks truth, who duly considers all cases, who understands the sacred books, who knows the distinction of virtue, pleasure, and riches;

27. "Such a king, if he justly inflict legal punishments, greatly increases those three means of happiness; but punishment itself shall destroy a king, who is crafty, voluptuous, and wrathful;

28. "Criminal justice, the bright essence of majesty, and hard to be supported by men with unimproved minds, eradicates a king, who swerves from his duty, together with all his race:

29. "Punishment shall overtake his castles, his territories, his peopled land, with all fixed and movable things, that exist on it: even the gods and the sages, who lose their oblations, will be afflicted and ascend to the sky.

30. "Just punishment cannot be inflicted by an ignorant and covetous king, who has no wise and virtuous assistant, whose understanding has not been improved, and whose heart is addicted to sensuality:

31. "By a king, wholly pure, faithful to his promise, observant of the scriptures, with good assistants and sound understanding, may punishment be justly inflicted.

32. "Let him in his own domains act with justice, chastise foreign foes with rigour, behave without duplicity to his affectionate friends, and with lenity to Brahmans.

37. "Let the king, having risen at early dawn, respectfully attend to Brahmans, learned in the three Védas, and in the science of ethics; and by their decision let him abide.

38. "Constantly must he show respect to Brahmans, who have grown old, both in years and in piety, who know the scriptures, who in body and mind are pure; for he, who honours the aged, will perpetually be honoured even by cruel demons:

39. "From them, though he may have acquired modest behavior by his own good sense and by study, let him continually learn habits of modesty and composure; since a king, whose demeanor is humble and composed, never perishes.

40. "While through want of such humble virtue, many kings have perished with all their possessions, and, through virtue united with modesty, even hermits have obtained kingdoms.

43. "From those, who know the three Védas, let him learn the triple doctrine comprised in them, together with the primeval science of criminal justice and sound policy, the system of logic and metaphysics, and sublime theological truths; from the people he must learn the theory of agriculture, commerce, and other practical arts.

44. "Day and night must he strenuously exert himself to gain complete victory over his own organs; since that king alone whose organs are completely subdued, can keep his people firm to their duty.

45. "With extreme care let him shun eighteen vices, ten proceeding from love of pleasure, eight springing from wrath, and all ending in misery.

46. "Since a king, addicted to vices arising from love of pleasure must lose both his wealth and his virtue, and, addicted to vices arising from anger, he may lose even his life from the public resentment.

47. "Hunting, gaming, sleeping by day, censuring rivals, excesses with woman, intoxication, singing, instrumental music, dancing, and useless travel, are the tenfold set of vices produced by love of pleasure:

48. "Talebearing, violence, insiduous wounding, envy, detraction, unjust seizure of property, reviling, and open assault are in like manner the eightfold set of vices, to which anger gives birth.

54. "The king must appoint seven or eight ministers, who must be sworn by touching a sacred image and the like; men, whose ancestors were servants of kings; who are versed in the holy books; who are personally brave; who are skilled in the use of weapons; and whose lineage is noble.

56. "Let him perpetually consult with those ministers on peace and war, on his forces, on his revenues, on the protection of his people, and on the means of bestowing aptly the wealth which he has acquired:

57. "Having ascertained the several opinions of his counsellors first apart and then collectively, let him do what is most beneficial for him in publick affairs.

58. "To one learned Brahman, distinguished among them all, let the king impart his momentous counsel, relating to six principal articles.

59. "To him, with full confidence, let him intrust all transactions; and with him, having taken his final resolution, let him begin all his measures.

61. "As many officers as the due performance of his business requires, not slothful men, but active, able, and well instructed, so many and no more, let him appoint.

63. "Let him likewise appoint an ambassador versed in all the *Sástras,* who understands hints, external signs, and actions, whose hand and heart are pure, whose abilities are great and whose birth was illustrious.

64. "That royal ambassador is applauded most, who is generally beloved, pure within and without, dexterous in business, and endued with an excellent memory; who knows countries and times, is handsome, intrepid, and eloquent.

65. "The forces of the realm must be immediately regulated by the commander in chief; the actual infliction of punishment, by the officers of criminal justice; the treasury and the country, by the king himself; peace and war, by the ambassador.

88. "Never to recede from combat, to protect the people, and to honour the priest, is the highest duty of kings and insures their felicity.

89. "Those rulers of the earth, who, desirous of defeating each other, exert their utmost strength in battle, without ever averting their faces, ascend after death directly to heaven.

90. "Let no man, engaged in combat, smite his foe with sharp weapons concealed in wood, nor with arrows mischievously barbed, nor with poisoned arrows, nor with darts blazing with fire;

91. "Nor let him in a car or on horseback strike his enemy alighted on the ground; nor an effeminate man; nor one, who sues for life with closed palms; nor one, whose hair is loose and obstructs his sight; nor one who sits down fatigued; nor one who says, "I am thy captive;"

92. "Nor one, who sleeps; nor one, who has lost his coat of mail; nor one, who is naked; nor one, who is disarmed; nor one, who is a spectator; but not a combatant; nor one, who is fighting with another man.

93. "Calling to mind the duty of honourable men, let him never slay one, who has broken his weapon; nor one, who is afflicted with private sorrow; nor one, who has been grievously wounded; nor one, who is terrified; nor one, who turns his back.

94. "The soldier indeed, who fearing and turning his back, happens to be slain by his foes in an engagement, shall take upon himself all the sin of his commander, whatever it be.

95. "And the commander shall take to himself the fruit of all the good conduct, which the soldier, who turns his back and is killed, had previously stored up for a future life.

96. "Cars, horses, elephants, umbrellas, habiliments, except the jewels which may adorn them, grain, cattle, women, all sorts of liquids and metals, except gold and silver, are the lawful prizes of the man who takes them in war;

97. "But of those prizes, the captors must lay the most valuable before the king; such is the rule in the Véda concerning them; and the king should distribute among the whole army what has not been separately taken."

Rules to be learned in preparing for war are then given:

107. "When he thus has prepared himself for conquest, let him reduce all opposers to submission by negotiation and three other expedients, namely, presents, division, and force of arms:

108. "If they cannot be restrained by the three first methods, then let him, firmly but gradually, bring them to subjection by military force.

109. "Among those four modes of obtaining success, the wise prefer negotiation and war for the exaltation of kingdoms.

110. "As a husbandman plucks up weeds and preserves his corn, thus let a king destroy his opponents and secure his people.

111. "That king, who, through weakness of intellect, rashly oppresses

his people, will, together with his family, be deprived both of kingdom and life.

114. "Let him place, as the protectors of his realm, a company of guards, commanded by an approved officer, over two, three, five, or a hundred districts, according to their extent.

115. "Let him appoint a lord of one town with its district, a lord of ten towns, a lord of twenty, a lord of a hundred, and a lord of a thousand.

116. "Let the lord of one town certify of his own accord to the lord of ten towns any robberies, tumults, or other evils, which arise in his district, and which he cannot suppress; and the lord of ten, to the lord of twenty:

117. "Then let the lord of twenty towns notify them to the lord of a hundred; and let the lord of a hundred transmit the information himself to the lord of a thousand townships.

118. "Such food, drink, wood, and other articles, as by law should be given each day to the king by the inhabitants of the township, let the lord of one town receive as his perquisite:

119. "Let the lord of ten towns enjoy the produce of two ploughlands, or as much ground as can be tilled with two ploughs, each drawn by six bulls; the lord of twenty that of ten ploughlands; the lord of a hundred, that of a village or small town; the lord of a thousand that of a large town.

120. "The affairs of those townships, either jointly or separately transacted, let another minister of the king inspect; who should be well affected and by no means remiss,

121. "In every large town or city, let him appoint one superintendent of all affairs, elevated in rank, formidable in power, distinguished as a planet among stars:

122. "Let that governor from time to time survey all the rest in person, and, by means of his emissaries, let him perfectly know their conduct in their several districts.

123. "Since the servants of the king, whom he has appointed guardians of districts, are generally knaves, who seize what belong to other men, from such knaves let him defend his people:

124. "Of such evil-minded servants, as wring wealth from subjects attending them on business, let the king confiscate all the possessions, and banish them from his realm.

125. "For women, employed in the service of the king, and for his whole set of menial servants, let him daily provide a maintenance, in proportion to their station and to their work:

126. "One *pana* of copper must be given each day as wages to the lowest servant, with two cloths for apparel every half-year, and a *dróna* of grain every month; to the highest must be given wages in the ratio of six to one.

127. "Having ascertained the rates of purchase and sale, the length of the way, the expenses of food and condiments, the charges of securing the goods carried, and the neat profits of trade, let the king oblige traders to pay taxes on their saleable commodities.

128. "After a full consideration, let the king so levy those taxes continually in his dominions, that both he and the merchant may receive a just compensation for their several acts.

129. "As the leech, the suckling calf, and the bee, take their natural food by little and little, thus must the king draw from his kingdom an annual revenue.

130. "Of cattle, of gems, of gold and silver, added each year to the capital stock, a fiftieth part may be taken by the king; of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil, and the labour necessary to cultivate it.

131. "He may also take a sixth part of the clear annual increase of trees, flesh-meat, honey, clarified butter, perfumes, medical substances, liquids, flowers, roots, and fruit;

132. "Of gathered leaves, potherbs, grass, utensils, made with leather or cane, earthen pots, and all things made of stone.

133. "A king even though dying with want, must not receive any tax from a Brahman learned in the Védas, nor suffer such a Brahman, residing in his territories, to be afflicted with hunger.

149. "At the time of consultation, let him remove the stupid, the dumb, the blind, and the deaf, talking birds, decrepit old men, women, and infidels, the diseased and the maimed;

150. "Since those, who are disgraced in this life by reason of sins formerly committed, are apt to betray secret council; so are talking birds; and so above all are women; them he must, for that reason, diligently remove."

Many rules for the prudent management of military affairs are given, so that wars may be prosecuted at favorable times, and an attack from an enemy of superior force be avoided, and that alliances may be formed with those whose aid is desirable and not dangerous. Rules also are given for the management of forces in battle which do not appear of great practical utility.

197. "Let him secretly bring over to his party all such leaders as he can safely bring over; let him be informed of all that his enemies are doing; and when a fortunate moment is offered by heaven, let him give battle, pushing on to conquest and abandoning fear:

198. "Yet he should be more sedulous to reduce his enemy by negotiation, by well applied gifts, and by creating divisions, using either all or some of those methods, than by hazarding at any time decisive action.

199. "Since victory or defeat are not surely foreseen on either side,

when two armies engage in the field; let the king then, if other expedients prevail, avoid a pitched battle.

200. "But, should there be no means of applying the three beforementioned expedients, let him, after due preparation, fight so valiantly that his enemy may be totally routed.

201. "Having conquered a country, let him respect the deities adored in it, and their virtuous priests; let him also distribute largesses to the people, and cause a full exemption from terror to be loudly proclaimed.

202. "When he has perfectly ascertained the conduct and intentions of all the vanquished, let him fix in that country a prince of the royal race, and give him precise instructions.

203. "Let him establish the laws of the conquered nation as declared in their books; and let him gratify the new prince with gems and other precious gifts.

204. "The seizure of desirable property, though it cause hatred, and the donation of it, though it cause love, may be laudable or blameable on different occasions:

205. "All this conduct of human affairs is considered as dependent on acts ascribed to the deity, and on acts ascribed to men; now the operations of the deity cannot be known by any intenseness of thought, but those of men may be clearly discovered."

The king is admonished to take precautions for his own personal safety against assassination and poison and to be constantly on his guard to frustrate the schemes of his enemies.

Chapter 8 is "On Judicature; and on Law, private and Criminal."

1. "A king, desirous of inspecting judicial proceedings, must enter his court of justice, composed and sedate in his demeanor, together with Brahmans and counsellors, who know how to give him advice.

2. "There, either sitting or standing, holding forth his right arm, without ostentation in his dress and ornaments, let him examine the affairs of litigant parties.

3. "Each day let him decide causes, one after another, under the eighteen principal titles of law, by arguments and rules drawn from local usages, and from written codes:

4. "Of those titles, the first is debt, on loans for consumption, the second, deposits, and loans for use; the third, sale without ownership; the fourth, concerns among partners; the fifth, subtraction of what has been given;

5. "The sixth, non-payment of wages or hire; the seventh, non-performance of agreements; the eighth, rescission of sale and purchase; the ninth, disputes between master and servant;

6. "The tenth, contests on boundaries; the eleventh and twelfth,

assault and slander; the thirteenth, larceny; the fourteenth, robbery and other violence; the fifteenth, adultery;

7. "The sixteenth, altercation between man and wife, and their several duties; the seventeenth, the law of inheritance; the eighteenth, gaming with dice and with living creatures; these eighteen titles of law are settled as the ground work of all judicial procedure in this world.

8. "Among men, who contend for the most part on the titles just mentioned, and on a few miscellaneous heads not comprised under them, let the king decide causes justly, observing primeval law;

9. "But when he cannot inspect such affairs in person, let him appoint, for the inspection of them, a Brahman of eminent learning;

10. "Let that chief judge, accompanied by three assessors, fully consider all causes brought before the king; and, having entered the court room, let him sit or stand, but not move backwards and forwards.

11. "In whatever country these Brahmans, particularly skilled in the three several Védas, sit together with the very learned Brahman appointed by the king, the wise call that assembly the court of Brahma with four faces.

12. "When justice, having been wounded by iniquity, approaches the court, and the judges extract not the dart, they also shall be wounded by it.

13. "Either the court must not be entered by judges, parties, and witnesses, or law and truth must be openly declared: that man is criminal who either says nothing, or says what is false and unjust.

14. "When justice is destroyed by iniquity, and truth by false evidence, the judges, who basely look on without giving redress, shall also be destroyed.

18. "Of injustice in decisions, one-quarter falls on the party in the cause; one-quarter on his witnesses; one-quarter on all the judges; and one-quarter on the king;

20. "A Brahman supported only by his class, and one barely reputed a Brahman, but without performing any sacerdotal acts, may, at the king's pleasure, interpret the law to him, so may the two middle classes; but a Súdra, in no case whatever.

23. "Let the king or his judge, having seated himself on the bench, his body properly clothed and his mind attentively fixed, begin with long reverence to the deities, who guard the world; and then let him enter on the trial of causes:

24. "Understanding what is expedient or inexpedient, but considering only what is law or not law, let him examine all disputes between parties, in the order of their several classes.

25. "By external signs let him see through the thoughts of men; by their voice, colour, countenance, limbs, eyes, and action:

26. "From the limbs, the look, the motion of the body, the gesticulation, the speech, the changes of the eye and the face, are discovered the internal workings of the mind.

27. "The property of a student and an infant, whether by descent or otherwise, let the king hold in his custody, until the owner shall have ended his studentship, or until his infancy shall have ceased in his sixteenth year.

28. "Equal care must be taken of barren women, of women without sons, whose husbands have married other wives, of women without kindred, or whose husbands are in distant places, of widows true to their lords, and of women afflicted with illness.

29. "Such kinsmen, as, by any pretence, appropriate the fortunes of women during their lives, a just king must punish with a severity due to thieves.

34. "Property lost by one man, and found by another, let the king secure, by committing it to the care of trustworthy men; and those, whom he shall convict of stealing it, let him cause to be trampled on by an elephant.

41. "A king, who knows the revealed law, must enquire into the particular laws of classes, the laws of usages of districts, the customs of traders, and the rules of certain families,, and establish their peculiar laws, if they be not repugnant to the law of God;

42. "Since all men, who mind their own customary ways of proceeding and are fixed in the discharge of their several duties, become united by affection with the people at large, even though they dwell far asunder.

43. "Neither the king himself nor his officers must ever promote litigation: nor ever neglect a law-suit instituted by others.

47. "When a creditor sues before him for the recovery of his right from a debtor, let him cause the debtor to pay what the creditor shall prove due.

48. "By whatever lawful means a creditor may have gotten possession of his own property, let the king ratify such payment by the debtor, though obtained even by compulsory means.

49. "By the mediation of friends, by suit in court, by artful management, or by distress, a creditor may recover the property lent; and, fifthly, by legal force.

50. "That creditor, who recovers his right from his debtor, must not be rebuked by the king for retaking his own property.

51. "In a suit for a debt, which the defendant denies, let him award payment to the creditor of what, by good evidence, he shall prove due, and exact a small fine, according to the circumstances of the debtor.

52. "On the denial of a debt, which the defendant has in court been required to pay, the plaintiff must call a witness, who was present at the place of the loan, or produce other evidence, as a note and the like.

53. "The plaintiff, who calls a witness not present at the place, where the contract was made, or, having knowingly called him, disclaims him as his witness; or who perceives not, that he asserts confused and contradictory facts;

54. "Or who, having stated what he designs to prove, varies afterwards

from his case, or who, being questioned on a fact, which he had before admitted, refuses to acknowledge that very fact;

55. "Or who has conversed with the witness in a place unfit for such conversation; or who declines answering a question properly put; or who departs from the court;

56. "Or who being ordered to speak, stands mute; or who proves not what he has alleged; or who knows not what is capable or incapable of proof; such a plaintiff shall fail in that suit;

57. "Him who has said "I have witnesses," and, being told to produce them, produces them not, the judge must on this account declare nonsuited.

58. "If the plaintiff delay to put in his plaint; he may, according to the nature of the case, be corporally punished or justly amerced; and, if the defendant plead not within three fortnights, he is by law condemned.

59. "In the double of that sum, which the defendant falsely denies, or on which the complainant falsely declares, shall these two men, wilfully offending against justice, be fined by the king.

60. "When a man has been brought into court by a suitor for property, and, being called on to answer, denies the debt, the cause should be decided by the Brahman who represents the king, having heard three witnesses at least.

61. "What sort of witnesses must be produced by creditors and others on the trial of causes, I will comprehensively declare; and in what manner those witnesses must give true evidence.

62. "Married house-keepers, men with male issue, inhabitants of the same district, either of the military, the commercial, or the servile class, are competent, when called by the party, to give their evidence; not any persons indiscriminately, except in such cases of urgency as will soon be mentioned.

63. "Just and sensible men of all the four classes may be witnesses on trials; men, who know their whole duty, and are free from covetousness: but men of an opposite character the judge must reject.

64. "Those must not be admitted who have a pecuniary interest; nor familiar friends, nor menial servants; nor enemies; nor men formerly perjured; nor persons grievously diseased, nor those, who have committed heinous offenses.

65. "The king cannot be made a witness; nor cooks, and the like mean artificers; nor public dancers and singers; nor a priest of deep learning in scripture; nor a student in theology; nor an anchoret secluded from all worldly connexions;

66. "Nor one wholly dependent; nor one of bad fame; nor one, who follows a cruel occupation; nor one, who acts openly against the law; nor a decrepit old man; nor a child; nor one man only; unless he be distinguished for virtue; nor a wretch of the lowest mixed class; nor one, who has lost the organs of sense;

67. "Nor one extremely aggrieved; nor one intoxicated; nor a madman; nor one tormented with hunger or thirst; nor one oppressed by fatigue; nor one excited by lust; nor one inflamed with wrath; nor one who has been convicted of theft.

68. "Women should regularly be witnesses for women; twice-born for men alike twice-born; good servants and mechanics, for servants and mechanics; and those of the lowest race, for those of the lowest;

69. "But any person whatever, who has positive knowledge of transactions in the private apartments of a house, or in a forest, or at a time of death, may give evidence between the parties:

70. "On failure of witnesses duly qualified, evidence may in such cases be given by a woman, by a child, or by an aged man, by a pupil, by a kinsman, by a slave, or by a hired servant;

71. "Yet of children, of old men, and of the diseased, who are all apt to speak untruly, the judge must consider the testimony as weak; and much more, that of men with disordered minds:

72. "In all cases of violence, of theft and adultery, of defamation and assault, he must not examine too strictly the competence of witnesses.

73. "If there be contradictory evidence, let the king decide by the plurality of credible witnesses; if equality in number, by superiority in virtue; if parity in virtue, by the testimony of such twice-born men, as have best performed public duties.

74. "Evidence of what has been seen, or of what has been heard, as slander and the like, given by those who saw or heard it, is admissible; and a witness who speaks truth in those cases, neither deviates from virtue nor loses his wealth;

75. "But a witness, who knowingly says anything, before an assembly of good men, different from what he had seen or heard, shall fall headlong, after death, into a region or horror, and he debarred from heaven.

76. "When a man sees or hears anything, without being then called upon to attest it, yet, if he be afterwards examined as a witness, he must declare it, exactly as it was seen, and as it was heard.

77. "One man, untainted with covetousness and other vices, may in some cases be the sole witness, and will have more weight than many women; because female understandings are apt to waver; or than many other men, who have been tarnished with crimes.

78. "What witnesses declare naturally, or without bias, must be received on trials; but what they improperly say, from some unnatural bent, is inapplicable to the purposes of justice.

79. "The witnesses being assembled in the middle of the court-room, in the presence of the plaintiff and the defendant, let the judge examine them, after having addressed them together in the following manner:

80. "What ye know to have been transacted in the matter before us, between the parties reciprocally, declare at large and with truth; for your evidence in this cause is required;"

The most severe penalties in the present and future incarnations are denounced against false witnesses and fame and beatitude promised to the truthful.

103. "In some cases, a giver of false evidence from a pious motive, even though he know the truth, shall not lose a seat in heaven: such evidence wise men call the speech of the gods.

104. "Whenever the death of a man, who had not been a grievous offender, either of the servile, the commercial, the military or the sacerdotal class, would be occasioned by true evidence, from the known rigor of the king, even though the fault arose from inadvertence or error, falsehood may be spoken: it is even preferable to truth.

105. "Such witnesses must offer, as oblations to Saraswatí, cakes of rice and milk addressed to the goddess of speech; and thus will they fully expiate that venial sin of benevolent falsehood.

106. "Or such a witness may pour clarified butter into the holy fire, according to the sacred rule, hallowing it with the texts called *cúshmándá*, or with those which relate to Varuna, beginning with *ud;* or with the three texts appropriated to the water gods.

107. "A man who labours not under illness, yet comes not to give evidence in cases of loans and the like, within three fortnights after due summons, shall take upon himself the whole debt, and pay a tenth part of it as a fine to the king.

108. "The witness, who has given evidence, and to whom, within seven days after, a misfortune happens from disease, fire, or the death of a kinsman, shall be condemned to pay the debt and a fine.

109. "In cases where no witness can be had, between two parties opposing each other, the judge may acquire a knowledge of the truth by the oath of the parties; or if he cannot otherwise perfectly ascertain it.

113. "Let a judge cause a priest to swear by his veracity; a soldier, by his horse, or elephant, and his weapons; a merchant, by his kine, grain, and gold; a mechanic or servile man, by imprecating on his own head, if he speak falsely, all possible crimes;

114. "Or, on great occasions, let him cause the party to hold fire, or to dive under water, or severally to touch the heads of his children and wife;

139. "A debt being admitted by the defendant, he must pay five in the hundred, as a fine to the king; but, if it be denied and proved, twice as much, this law was enacted by Manu.

140. "A lender of money may take, in addition to his capital, the interest allowed by Vasisht'ha, that is, an eighth part of a hundred, or one and a quarter, by the month, if he have a pledge;

141. "Or, if he have no pledge, he may take two in the hundred by the month, remembering the duty of good men; for, by thus taking two in the hundred, he becomes not a sinner for gain.

142. "He may thus take in proportion to the risk, and in the direct

order of the classes, two in the hundred from a priest, three from a soldier, four from a merchant, and five from a mechanic or servile man, but never more, as interest, by the month.

143. "If he takes a beneficial pledge, or a pledge to be used for his profit, he must have no other interest on the loan; nor, after a great length of time, or when the profits have amounted to the debt, can he give or sell such a pledge, though he may assign it in pledge to another.

144. "A pledge to be kept only must not be used by force, that is, against consent: the pawnee so using it must give up his whole interest, or must satisfy the owner, if it be spoiled or worn out, by paying him the original price of it; otherwise, he commits a theft of the pawn.

145. "Neither a pledge without limit, nor a deposit, are lost to the owner by lapse of time: they are both recoverable, though they have long remained with the bailee.

146. "A milch cow, a camel, a riding-horse, a bull or other beast, which has been sent to be tamed for labour, and other things used with friendly assent, are not lost by length of time to the owner.

147. "In general, whatever chattel the owner sees enjoyed by others for ten years, while, though present, he says nothing, that chattel he shall not recover:

148. "If he be neither an idiot, nor an infant under the full age of fifteen years, and if the chattel be adversely possessed in a place where he may see it, his property in it is extinct by law, and the adverse possessor shall keep it.

149. "A pledge, a boundary of land, the property of an infant, a deposit either open or in a chest sealed, female slaves, the wealth of a king, and of a learned Brahman, are not lost in consequence of adverse enjoyment.

158. "The man, who becomes surety for the appearance of a debtor in this world, and produces him not, shall pay the debt out of his own property;

159. "But money, due by a surety, or idly promised to musicians and actresses, or lost at play, or due for spirituous liquors, or what remains unpaid of a fine or toll, the son of the surety or debtor shall not in general be obliged to pay;

160. "Such is the rule in cases of a surety for appearance or good behavior; but, if a surety for payment should die, the judge may compel even his heirs to discharge the debt.

162. "If the surety had received money from the debtor, and had enough to pay the debt, the son of him, who so received it, shall discharge the debt out of his inherited property: this is a sacred ordinance.

163. "A contract made by a person intoxicated or insane, or grievously disordered, or wholly dependent, by an infant or a decrepit old man, or in the name of another by a person without authority, is utterly null.

164. "That plaint can have no effect, though it may be supported

by evidence, which contains a cause of action inconsistent with positive law or with settled usage.

165. "When the judge discovers a fraudulent pledge or sale, a fraudulent gift and acceptance, or in whatever other case he detects fraud let him annul the whole transaction.

166. "If the debtor be dead, and if the money borrowed was expended for the use of his family, it must be paid by that family, divided or undivided, out of their own estate.

167. "Should even a slave make a contract in the name of his absent master for the behoof of the family, that master, whether in his own country or abroad, shall not rescind it.

168. "What is given by force to a man who cannot accept it legally, what is by force enjoyed, by force caused to be written, and all other things done by force or against free consent, Manu his pronounced void.

179. "A sensible man should make a deposit with some person of high birth, and of good morals, well acquainted with law, habitually veracious, having a large family wealthy and venerable.

180. "Whatever thing, and in whatever manner, a person shall deposit in the hands of another, the same thing, and in the same manner ought to be received back by the owner: as the delivery was, so must be the receipt.

181. "He, who restores not to the depositor, on his request, what has been deposited, may first be tried by the judge in the following manner, the depositor himself being absent.

182. "On failure of witnesses, let the judge actually deposit gold, or precious things, with the defendant, by the artful contrivance of spies, who have passed the age of childhood, and whose persons are engaging:

183. "Should the defendant restore that deposit in the manner and shape, in which it was bailed by the spies, there is nothing in his hands for which others can justly accuse him.

184. "But if he restore not the gold, or precious things, as he ought, to those emissaries, let him be apprehended and compelled to pay the value of both deposits: this is a settled rule.

189. "If a deposit be seized by thieves, or destroyed by vermin or washed away by water, or consumed by fire, the bailee shall not be obliged to make it good, unless he took of it for himself.

194. "Regularly a deposit should be produced, the same in kind and quantity as it was bailed, by the same and to the same person, by whom and from whom it was received, and before the same company, who were witnesses to the deposit: he who produces it in another manner, ought to be fined;

195. "But a thing, privately deposited, should be privately restored by and to the person, by and from whom it was received: as the

bailment was, so should be the delivery, according to a rule in the Véda.

201. "He, who had received a chattel, by purchase in open market, before a number of men, justly acquires the absolute property, by having paid the price for it, if he can produce the vendor;

202. "But, if the vendor be not producible, and the vendee prove the public sale, the latter must be dismissed by the king without punishment; and the former owner, who lost the chattel, may take it back by paying the vendee half its value."

Provision is made for the division of the fees of priests.

209. "At some holy rites, let the reader of the Yajurvéda take the car, and the Brahma, or superintending priest, the horse; or, on another occasion, let the reader of the Ṛigveda take the horse, and the chanter of the Sámavéda receive the carriage, in which the purchased materials of the sacrifice had been brought.

210. "A hundred cows being distributable among sixteen priests, the four chief, or first set are entitled to near half, or forty-eight; the next four, to half of that number; the third set, to a third part of it; and the fourth set to a quarter:

215. "That hired servant or workman, who, not from any disorder but from indolence, fails to perform his work according to his agreement, shall be fined eight *racticàs,* and his wages or hire shall not be paid.

219. "The man, among the traders and other inhabitants of a town or district, who breaks a promise through avarice, though he had taken an oath to perform it, let the king banish from his realm:

220. "Or, according to circumstances, let the judge, having arrested the promise-breaker, condemn him to pay six *nishcas,* or four *suvernas,* or one *satamána* of silver, or all three if he deserve such a fine.

222. "A man, who has bought or sold anything in this world, that has a fixed price, and is not perishable, as land or metals, and wishes to rescind the contract, may give or take back such a thing within ten days;

223. "But, after ten days, he shall neither give nor take it back: the giver or the taker, except by consent, shall be fined by the king six hundred *panas.*

227. "The nuptial texts are a certain rule in regard to wedlock, and the bridal contract is known by the learned to be complete and irrevocable on the seventh step of the married pair, hand in hand, after those texts have been pronounced.

229. "I now will decide exactly, according to principles of law, the contests usually arising from the fault of such as own herds of cattle, and of such as are hired to keep them.

230. "By day the blame falls on the herdsman; by night on the owner, if the cattle be fed and kept in his own house; but, if the place of their food and custody be different, the keeper incurs the blame.

231. "That hired servant, whose wages are paid with milk, may, with the assent of the owner, milk the best cow out of ten: such are the wages of herdsmen, unless they be paid in a different mode.

232. "The herdsman himself shall make good the loss of a beast, which through his want of due care has strayed, has been destroyed by reptiles or killed by dogs, or has died by falling into a pit;

233. "But he shall not be compelled to make it good, when robbers have carried it away, if, after fresh proclamation and pursuit, he give notice to his master in a proper place and season."

Other rules relating to the loss of cattle and trespasses committed by them are given. In order to preserve established boundary lines the planting of trees or placing of stones and other durable monuments is enjoyed and rules for the settlement of disputes regarding boundaries are given.

267. "A soldier, defaming a priest, shall be fined a hundred *panas;* a merchant, thus offending, a hundred and fifty, or two hundred, but for such an offense, a mechanic or servile man shall be whipped.

268. "A priest shall be fined fifty, if he slander a soldier; twenty-five if a merchant; and twelve if he slander a man of the servile class.

269. "For abusing one of the same class, a twice-born man shall be fined only twelve; but for ribaldry not to be uttered, even that and every fine shall be doubled.

270. "A once-born man, who insults the twice-born with gross invectives, ought to have his tongue slit; for he sprang from the lowest part of Brahma.

171. "If he mention their names and classes with contumely, as if he say "Oh Dévadatta, thou refuse of Brahmans," an iron style, ten fingers long, shall be thrust red hot into his mouth.

279. "With whatever member of a low-born man shall assault or hurt a superior, even that member of his must be slit, or cut more or less in proportion to the injury; this is an ordinance of Manu.

280. "He, who raises his hand or staff against another, shall have his hand cut; and he, who kicks another in wrath, shall have an incision made in his foot.

281. "A man of the lowest class, who shall insolently place himself on the same seat with one of the highest, shall either be banished with a mark on his hinder parts, or the king shall cause a gash to be made on his buttock:"

Special cases of assaults, negligent and accidental injuries are mentioned and punishments prescribed where injury results from the fault of any one.

299. "A wife, a son, a servant, a pupil, and a younger whole brother, may be corrected when they commit faults, with a rope or the small shoot of a cane;

300. "But on the back part only of their bodies, and not on a noble part by any means: he who strikes them otherwise than by this rule, incurs the guilt, or shall pay the fine, of a thief.

322. "For stealing more than fifty *palas,* it is enacted that a hand shall be amputated: for less, the king shall set a fine eleven times as much as the value.

323. "For stealing men of high birth, and women above all, and the most precious gems, as diamonds or rubies, the thief deserves capital punishment.

325. "For taking kine belonging to priests, and boring their nostrils, or for stealing their other cattle, the offender shall instantly lose half of one foot."

A considerable list of articles of property is given, for the stealing of which a fine of double the value of the property taken is imposed.

332. "If the taking be violent, and in the sight of the owner, it is robbery; if privately in his absence, it is only theft; and it is considered as theft, when a man having received anything, refuses to give it back.

333. "On him, who steals the before-mentioned things, when they are prepared for use, let the king set the lowest amercement of the three; and the same on him, who steals only fire from the temple.

334. "With whatever limb a thief commits the offense by any means in this world, as if he break a wall with his hand or his foot, even that limb shall the king amputate, for the prevention of a similar crime.

336. "Where another man of lower birth would be fined one *pana,* the king shall be fined a thousand, and he shall give the fine to the priests or cast it into the river: this is a sacred rule.

337. "But the fine of a Súdra for theft shall be eightfold; that of a Vaisya, sixteen fold; that of a Cshatriya, two and thirty fold.

338. "That of a Brahman, four and sixty fold; or a hundred fold complete or even twice four and sixty fold; each of them knowing the nature of his offense.

340. "A priest who willingly receives anything, either for sacrificing or instructing, from the hand of a man who had taken what the owner had not given, shall be punished even as the thief.

348. "The twice-born may take arms, when their duty is obstructed by force; and when, in some evil time, a disaster has befallen the twice-born classes;

349. "And in their own defense; and in a war for just cause; and in defense of a woman; or a priest; he who kills justly commits no crime.

350. "Let a man, without hesitation, slay another, if he cannot otherwise escape, who assails him with intent to murder, whether young or old, or his preceptor, or a Brahman, deeply versed in the scripture.

356. "He, who talks with the wife of another man at a place of pilgrimage, in a forest or a grove, or at the confluence of rivers, incurs the guilt of an adulterous inclination:

357. "To send her flowers or perfumes, to sport and jest with her, to touch her apparel or ornaments, to sit with her on the same couch, are held adulterous acts on his part;

358. "To touch a married woman on her breasts or any other place, which ought not to be touched, or being touched unbecomingly by her, to bear it complacently, are adulterous acts with mutual assent.

359. "A man of the servile class, who commits actual adultery with the wife of a priest, ought to suffer death; the wives, indeed, of all the four classes must ever be most especially guarded.

371. "Should a wife, proud of her family and the great qualities of her kinsmen, actually violate the duty, which she owes to her lord, let the king condemn her to be devoured by dogs in a place much frequented.

372. "And let him place an adulterer on an iron bed well heated, under which the executioners shall throw logs continually, till the sinful wretch be there burned to death.

374. "A mechanic or servile man, having an adulterous connexion with a woman of a twice-born class, whether guarded at home or unguarded shall thus be punished: if she was unguarded, he shall lose the part offending, and his whole substance; if guarded, and a priestess, every thing, even his life.

380. "Never shall the king slay a Brahman, though convicted of all possible crimes: let him banish the offender from his realm, but with all his property secure, and his body unhurt:

386. "That king, in whose realm lives no thief, no adulterer, no defamer, no man guilty of atrocious violence, and no committer of assaults, attains the mansion of Sacra.

389. "A mother, a father, a wife, and a son shall not be forsaken: he, who forsakes either of them, unless guilty of a deadly sin, shall pay six hundred *panas* as a fine to the king.

392. "The priest, who gives an entertainment to twenty men of the three first classes, without inviting his next neighbor, and his neighbor next but one, if both be worthy of an invitation, shall be fined one *másha* of silver.

394. "Neither a blind man nor an idiot, nor a cripple, nor a man full seventy years old, nor one who confers great benefit on priests of eminent learning, shall be compelled by any king to pay taxes.

395. "Let the king always do honour to a learned theologian, to a man either sick or grieved, to a little child, to an aged or indigent man, to a man of exalted birth, and to a man of distinguished virtue.

396. "Let a washerman wash the clothes of his employers by little and little, or piece by piece, and not hastily, on a smooth board of *Sálmalí*-wood: let him never mix the clothes of one person with the clothes of another, nor suffer any but the owner to wear them."

Tolls, markets and ferries are regulated.

414. "A Súdra, though emancipated by his master, is not released

from a state of servitude; for of a state, which is natural to him, by whom can he be divested?

415. "There are servants of seven sorts; one made captive under a standard or in battle, one maintained in consideration of service, one born of a female slave in the house, one sold, or given, or inherited from ancestors, and one enslaved by way of punishment on his inability to pay a large fine.

416. "Three persons, a wife, a son, and a slave, are declared by law to have in general no wealth exclusively their own: the wealth, which they may earn, is regularly acquired for the man, to whom they belong."

This chapter covers a vast field but in a crude and disjointed manner. Its moral tone is not so high as that of the chapter dealing with the duties of the Brahmans. The king is not expected to exhibit the loftiest virtues but to deal with the vices and crimes of men by force and in ways calculated to restrain them. The spirit of caste and class privilege is constantly inculcated. The Brahmans are granted special favors and exempted from extreme punishment while the poor Súdras are loaded with the heaviest burdens without hope of present reward.

Chapter 9 is entitled, "On the Same; and on the Commercial and Servile Classes."

2. "Day and night must women be held by their protectors in a state of dependence; but in lawful and innocent recreations, though rather addicted to them, they may be left at their own disposal.

3. "Their fathers protect them in childhood; their husbands protect them in youth; their sons protect them in age: a woman is never fit for independence.

8. "The husband, after conception by his wife, becomes himself an embryo, and is born a second time here below; for which reason the wife is called *jáyá*, since by her (*jáyáte*) he is born again.

9. "Now the wife brings forth a son endued with similar qualities to those of the father; so that with the view to an excellent offspring, he must vigilantly guard his wife.

10. "No man, indeed, can wholly restrain women by violent measures; but, by these expedients, they may be restrained:

11. "Let the husband keep his wife employed in the collection and expenditure of wealth, in purification and female duty, in the preparation of daily food, and the superintendence of household utensils,

12. "By confinement at home, even under affectionate and observant guardians, they are not secure; but those women are truly secure, who are guarded by their own good inclinations.

13. "Drinking spirituous liquor, associating with evil persons, absence from her husband, rambling abroad, unseasonable sleep, and dwelling in the house of another, are six faults which bring infamy on a married woman:"

Then follow sections relating to the duties and conduct of women and inculcating chastity and fidelity.

45. "Then only is a man perfect, when he consists of three persons united, his wife, himself, and his son; and thus have learned Brahmans announced this maxim: 'The husband is even one person with his wife,' for all domestic and religious, not for all civil, purposes.

59. "On failure of issue by the husband, if he be of the servile class, the desired offspring may be procreated, either by his brother or some other *sapinda,* on the wife, who has been duly authorized.

60. "Sprinkled with clarified butter, silent, in the night, let the kinsman thus appointed beget one son, but a second by no means, on the widow or childless wife:

77. "For a whole year let a husband bear with his wife, who treats him with aversion; but after a year, let him deprive her of her separate property, and cease to cohabit with her.

78. "She, who neglects her lord, though addicted to gaming, fond of spirituous liquors, or diseased, must be deserted for three months, and deprived of her ornaments and household furniture:

79. "But she, who is averse from a mad husband, or a deadly sinner, or an eunuch, or one without manly strength, or one afflicted with such maladies as punish crimes, must neither be deserted nor stripped of her property.

80. "A wife who drinks any spirituous liquors, who acts immorally, who shows hatred to her lord, who is incurably diseased, who is mischievous, who wastes his property, may at all times be superseded by another wife.

81 "A barren wife may be superseded by another in the eighth year: she, whose children are all dead, in the tenth; she, who brings forth only daughters, in the eleventh; she, who speaks unkindly, without delay;

82. "But she, who, though afflicted with illness, is beloved and virtuous, must never be disgraced, though she may be superseded by another wife with her own consent.

85. "When twice-born men take wives, both of their own class and others, the precedence, honour and habitation of those wives, must be settled according to the order of their classes:

86. "To all such married men, the wives of the same class only (not wives of a different class by any means) must perform the duty of personal attendance, and the daily business relating to acts of religion;

88. "To an excellent and handsome youth of the same class, let every man give his daughter in marriage, according to law; even though she have not attained her age of eight years:

89. "But it is better that the damsel, though marriageable, should stay at home till her death, than that he should ever give her in marriage to a bridegroom void of excellent qualities.

90. "Three years let a damsel wait, though she be marriageable; but, after that term, let her choose for herself a bridegroom of equal rank.

91. "If, not being given in marriage, she choose her bridegroom, neither she, nor the youth chosen, commits any offense;

92. "But a damsel, thus electing her husband, shall not carry with her the ornaments, which she received from her father, nor those given by her mother or brethren; if she carry them away, she commits theft.

93. "He, who takes to wife a damsel of full age, shall not give a nuptial present to her father; since the father lost the dominion over her, by detaining her at a time, when she might have been a parent.

94. "A man, aged thirty years, may marry a girl of twelve, if he find one dear to his heart; or a man of twenty-four years, a damsel of eight: but, if he finish his studentship earlier, and the duties of his next order would otherwise be impeded, let him marry immediately.

101. "Let mutual fidelity continue to death:" this in few words, may be considered as the supreme law between husband and wife.

104. "After the death of the father and the mother, the brothers being assembled, may divide among themselves the paternal and maternal estate; but they have no power over it, while their parents live, unless the father choose to distribute it.

105. "The eldest brother may take entire possession of the patrimony; and the others may live under him, as they lived under their father, unless they choose to be separated.

108. "Let the father alone support his sons; and the first-born, his younger brothers; and let them behave to the eldest, according to law, as children should behave to their father.

111. "Either let them thus live together, or, if they desire separately to perform religious rites, let them live apart; since religious duties are multiplied in separate houses, their separation is, therefore, legal and even laudable.

112. "The portion deducted for the eldest is a twentieth part of the heritage, with the best of all the chattels; for the middlemost, half of that, or a fortieth; for the youngest a quarter of it, or an eightieth.

113. "The eldest and youngest respectively take their just mentioned portions; and, if there be more than one between them, each of the intermediate sons has the mean portion of the fortieth.

117. "Let the eldest have a double share, and the next born, a share and a half, if they clearly surpass the rest in virtue and learning; the younger sons must have each a share; if all be equal in good qualities, they must all take share and share alike.

118. "To the unmarried daughters by the same mother, let their brothers give portions out of their own allotments respectively, according to the classes of their several mothers: let each give a fourth part of his own distinct share; and they, who refuse to give it, shall be degraded.

119. "Let them never divide the value of a single goat or sheep, or a single beast with uncloven hoofs; a single goat or sheep remaining after an equal distribution, belongs to the first born.

120. "Should a younger brother, in the manner before mentioned, have begotten a son on the wife of his deceased elder brother, the division must then be made equally between that son, who represents the deceased, and his natural father: thus is the law settled.

127. "He, who has no son, may appoint his daughter in this manner to raise up a son for him, saying: "the male child, who shall be born from her in wedlock, shall be mine for the purpose of performing my obsequies."

131. "Property given to the mother on her marriage, is inherited by her unmarried daughter; and the son of a daughter, appointed in the manner just mentioned, shall inherit the whole estate of her father, who leaves no son by himself begotten:

134. "But, a daughter having been appointed to produce a son for her father, and a son begotten by himself, being afterwards born, the division of the heritage must in that case be equal; since there is no right of primogeniture for a woman.

137. "By a son, a man obtains victory over all people; by a son's son, he enjoys immortality; and afterwards, by the son of that grandson, he reaches the solar abode.

149. "If there be four wives of a Brahman in the direct order of the classes, and sons are produced by them all, this is the rule of partition among them:

150. "The chief servant in husbandry, the bull kept for impregnating cows, the riding-horse or carriage, the ring and other ornaments, and the principal messuage, shall be deducted from the inheritance and given to the Brahman-son, together with a larger share by way of pre-eminence.

151. "Let the Brahman take three shares of the residue; the son of the Cshatriyà-wife, two shares; the son of the Vaisyà-wife, a share and a half; and the son of the Súdrà-wife, may take one share.

152. "Or, if no deduction be made, let some person learned in the law divide the whole collected estate into ten parts, and make a legal distribution by this following rule:

153. "Let the son of the Bráhmanì take four parts; the son of the Cshatriyà three; let the son of the Vaisyà have two parts; let the son of the Súdrà take a single part, if he be virtuous.

154. "But whether the Brahman have sons, or have no sons, by wives of the three first classes, no more than a tenth part must be given to the son of a Súdrà.

155. "The son of a Brahman, a Cshatriya, or a Vaisyà or a woman of the servile class, shall inherit no part of the estate, unless he be virtuous; nor jointly with other sons, unless his mother was lawfully married: whatever his father may give him, let that be his own.

156. "All the sons of twice-born men, produced by wives of the same class, must divide the heritage equally, after the younger brothers have given the first-born his deducted allotment.

157. "For a Súdra is ordained a wife of his own class, and no other: all, produced by her, shall have equal shares, though she have a hundred sons.

158. Of the twelve sons of men, whom Manu, sprung from the Self-existent, has named, six are kinsmen and heirs; six, not heirs, except to their own fathers, but kinsmen.

159. "The son begotten by a man himself in lawful wedlock, the son of his wife begotten in the manner before described, a son given to him, a son made or adopted, a son of concealed birth, or whose real father cannot be known, and a son rejected by his natural parents, are the six kinsmen and heirs:

160. "The son of a young woman unmarried, the son of a pregnant bride, a son bought, a son by a twice-married woman, a son self-given, and a son by a Súdrà, are the six kinsmen, but not heirs to collaterals.

161. "Such advantage, as a man would gain, who should attempt to pass deep water in a boat made of woven reeds, that father obtains, who passes the gloom of death, leaving only contemptible sons, who are the eleven, or at least the six last mentioned.

182. "If, among several brothers of the whole blood, one have a son born, Manu pronounces them all fathers of a male child by means of that son; so that, if such nephew would be the heir, the uncles have no power to adopt sons:

183. "Thus if, among all the wives of the same husband, one bring forth a male child, Manu has declared them all, by means of that son to be mothers of male issue.

184. "On failure of the best, and of the next best, among those twelve sons, let the inferior in order take the heritage; but, if there be many of equal rank let all be sharers of the estate.

185. "Not brothers, nor parents, but sons, if living, or their male issue are heirs to the deceased, but of him, who leaves no son, nor a wife, nor a daughter, the father shall take the inheritance; and, if he leave neither father, nor mother, the brothers.

187. "To the nearest *sapinda,* male or female, after him in the third degree, the inheritance next belongs; then, on failure of *sapindas* and of their issue, the *samánódaca,* or distant kinsman, shall be the heir; or the spiritual preceptor, or the pupil, or the fellow-student, of the deceased:

188. "On failure of all those, the lawful heirs are such Brahmans as have read the three Védas, as are pure in body and mind, as have studied their passions; and they must consequently offer the cake: thus the rites of obsequies cannot fail.

189. "The property of a Brahman shall never be taken as an escheat by the king; this is fixed law; but the wealth of the other classes on failure of all heirs, the king may take.

192. "On the death of the mother, let all the uterine brothers and the uterine sisters, if unmarried, equally divide the maternal estate: each married sister shall have a fourth part of a brother's allotment.

193. "Even to the daughters of those daughters, it is fit, that something should be given from the assets of the maternal grandmother, on the score of natural affection.

194. "What was given before the nuptial fire, what was given on the bridal procession, what was given in token of love, and what was received from a brother, a mother, or a father, are considered as the sixfold separate property of a married woman.

195. "What she received after marriage from the family of her husband, and what her affectionate lord may have given her, shall be inherited, even if she die in his lifetime, by her children.

196. "It is ordained, that the property of a woman, married by the ceremonies called *Bráhma, Daiva, Ársha, Gándharva,* or *Prajápátya,* shall go to her husband, if she die without issue.

197. "But her wealth given on the marriage called Ásura, or on either of the two others, is ordained, on her death without issue, to become the property of her father and mother.

201. "Eunuchs and outcasts, persons born blind or deaf, madmen, idiots, the dumb, and such as have lost the use of a limb, are excluded from a share of the heritage;

202. "But it is just, that the heir, who knows his duty, should give all of them food and raiment for life without stint, according to the best of his power: he, who gives them nothing, sinks assuredly to a region of punishment."

Many other rules of inheritance in special cases are given.

224. "Let the king punish corporally at discretion, both the gamester and the keeper of a gaming-house, whether they play with inanimate or animate things; and men of the servile class, who wear the string and other marks of the twice-born.

225. "Gamesters, public dancers and singers, revilers of scripture, open heretics, men who perform not the duties of their several classes; and sellers of spirituous liquor, let him instantly banish from the town:

230. "For women, children, persons of crazy intellect, the old, the poor, and the infirm, the king shall order punishment with a small whip, a twig, or a rope.

232. "Such as forge royal edicts, cause dissensions among the great ministers, or kill women, priests, or children, let the king put to death; and such, as adhere to his enemies."

Following these sections comes a miscellaneous list of offenses for

which fines and punishments are prescribed. The duty of the king to cause the detection of crimes and the punishment of criminals is declared and the use of spies is recommended.

276. "Of robbers, who break a wall or partition, and commit theft in the night, let the prince order the hands to be lopped off, and themselves to be fixed on a sharp stake.

277. "Two fingers of a cutpurse, the thumb and the index, let him cause to be amputated on his first conviction; on the second, one hand and one foot; on the third, he shall suffer death.

278. "Such, as give thieves fire, such as give them food, such as give them arms and apartments, and such as knowingly receive a thing stolen, let the king punish as he would punish a thief.

280. "Those, who break open the treasury, or the arsenal, or the temple of a deity, and those, who carry off royal elephants, horses, or cars, let him without hesitation destroy.

287. "The man, who shall deal unjustly with purchasers at a fair price by delivering goods of less value, or sell at a high price goods of ordinary value, shall pay, according to circumstances, the lowest or the middle amercement.

290. "For all sacrifices to destroy innocent men, the punishment is a fine of two hundred *panas;* and for machinations with poisonous roots, and for various charms and witcheries intended to kill, by persons not effecting their purpose.

292. "But the most pernicious of all deceivers is a goldsmith, who commits frauds: the king shall order him to be cut piecemeal with razors."

After these rules for the punishment of crime there is an abrupt change of subject to a consideration of the powers and duties of a king.

301. "All the ages, called *Satya, Tréta, Dwápara,* and *Cali,* depend on the conduct of the king; who is declared in turn to represent each of those ages.

302. "Sleeping, he is the Cali age; waking, the Dwápara; exerting himself in action, the Tréta; living virtuously, the Satya.

313. "Let him not, although in the greatest distress for money, provoke Brahmans to anger by taking their property; for they, once enraged, could immediately by sacrifices and imprecations destroy him with his troops, elephants, horses and cars.

314. "Who, without perishing, could provoke those holy men, by whom, that is, by whose ancestors, under Brahma, the all-devouring fire was created, the sea with waters not drinkable, and the moon with its wane and increase?

320. "Of a military man, who raises his arm violently on all occasions against the priestly class, the priest himself shall be the chastiser; since the soldier originally proceeded from the Brahman.

326. Let the Vaisyà, having been girt with his proper sacrificial thread,

and having married an equal wife, be always attentive to his business of agriculture and trade, and to that of keeping cattle;

327. "Since the lord of created beings, having formed herds, and flocks, intrusted them to the care of the Vaisyà, while he intrusted the whole human species, to the Brahman and the Cshatriya:

329. "Of gems, pearls, and coral, of iron, of woven cloth, of perfumes and of liquids, let him well know the prices both high and low.

330. "Let him be skilled likewise in the time and manner of sowing seeds, and in the bad or good qualities of land; let him also perfectly know the correct modes of measuring and weighing.

331. "The excellence or defects of commodities, the advantages and disadvantages of different regions, the probable gain or loss on vendible goods, and the means of breeding cattle with large augmentation.

332. "Let him know the just wages of servants, the various dialects of men, the best way of keeping goods, and whatever else belongs to purchase and sale.

333. "Let him apply the most vigilent care to augment his wealth by performing his duty; and, with great solicitude, let him give nourishment to all sentient creatures.

334. "Servile attendance on Brahmans learned in the Véda, chiefly on such as keep house and are famed for virtue, is of itself the highest duty of a Súdra, and leads him to future beatitude.

335. "Pure in body and mind, humbly serving the three higher classes, mild in speech, never arrogant, ever seeking refuge in Brahmans principally, he may attain the most eminent class in another transmigration."

Chapter 10 is "On the Mixed Classes; and on Times of Distress."

4. "The three twice-born classes are the sacerdotal, the military, and the commercial; but the fourth, or servile, is once-born, that is, has no second birth from the gáyatrí, and wears no thread: nor is there a fifth pure class.

5. "In all classes they, and they only, who are born in a direct order, of wives equal in class and virgins at the time of marriage, are to be considered as the same in class with their fathers":

Here follows an account of the origin of the various sub or impure castes by intermarriages of members of the different castes and sub-castes and a designation of their several occupations.

12. "From a Súdra, on women of the commercial, military, and priestly class, are born sons of a mixed breed, called Áyogava, Cshattrí and Chandála, the lowest of mortals.

38. "From a Chandála by a Pucassi woman, is born a Sópáca who lives by punishing criminals, condemned by the king, a sinful wretch ever despised by the virtuous.

42. "By the force of extreme devotion and of exalted fathers, all of them may rise in time to high birth, as by the reverse they may sink to a lower state, in every age among mortals in this inferior world.

45. "All those tribes of men, who sprang from the mouth, the arm, the thigh, and the foot of Brahma, but who became outcasts by having neglected their duties, and called Dasyus, or plunderers, whether they speak the language of Mléch'chhas, or that of Aryas.

46. "Those sons of the twice-born who are said to be degraded, and who are considered as low-born, shall subsist only by such employments, as the twice-born despise.

64. "Should the tribe, sprung from a Brahman, by a Súdrá-woman, produce a succession of children by the marriages of its women with other Brahmans, the low tribe shall be raised to the highest in the seventh generation.

65. "As the son of a Súdra may thus attain the rank of Brahman, and as the son of a Brahman may sink to a level with Súdras, even so must it be with him, who springs from Cshatriya; even so with him who was born of a Vaisya.

74. "Let such Brahmans as are intent on the means of attaining the supreme god-head, and firm in their own duties, completely perform, in order, the six following acts:

75. "Reading the Védas, and teaching others to read them, sacrificing, and assisting others to sacrifice, giving to the poor, if themselves have enough, and accepting gifts from the virtuous if themselves are poor, are the six prescribed acts of the first-born class.

76. "But, among those six acts of a Brahman, three are his means of subsistence; assisting to sacrifice, teaching the Védas, and receiving gifts from a pure handed giver,

77. "Three acts of duty cease with the Brahman, and belong not to the Cshatriya; teaching the Védas, officiating at a sacrifice, and, thirdly, receiving presents:

78. "Those three are also (by the fixed rule of law) forbidden to the Vaisya; since Manu, the lord of all men, prescribed not those acts to the two classes, military and commercial.

79. "The means of subsistence peculiar to the Cshatriya, are bearing arms, either held for striking or missile, to the Vaisya, merchandise, attending on cattle, and agriculture: but with a view to the next life, the duties of both are almsgiving, reading, sacrificing."

A statement is then given in detail of the occupations that may be followed by the twice-born in cases of necessity, where they are unable to live in the manner appropriate to their respective castes.

115. "There are seven virtuous means of acquiring property, succession, occupancy or donation, and purchase or exchange, which are allowed to all classes; conquest, which is peculiar to the military class; lending at interest, husbandry or commerce, which belong to the mercantile class; and acceptance of presents, by the sacerdotal class, from respectable men.

116. "Learning, except that contained in the scriptures, arts, as mixing perfumes and the like, work for wages, menial service, attendence on cattle, traffick, agriculture, content with little, alms, and receiving high interest on money, are ten modes of subsistence in times of distress.

117. "Neither a priest nor a military man, though distressed, must receive interest on loans, but each of them, if he please, may pay the small interest permitted by law, on borrowing for some pious use, to the sinful man, who demands it.

120. "The tax on the mercantile class, which in times of prosperity must be only a twelfth part of their crops, and a fifteenth of their personal profits, may be an eighth of their crops in a time of distress, or a sixth, which is the medium, or even a fourth in great publick adversity; but a twentieth of their gains on money, and other movables, is the highest tax; serving men artisans, and mechanics must assist by their labour, but at no time pay taxes.

129. "No superfluous collection of wealth must be made by a Súdrá, even though he has power to make it, since a servile man, who has amassed riches, becomes proud, and, by his insolence or neglect, gives pain even to Brahmans.

Chapten 11 is "On Penance and Expiation." Penances are prescribed as religious observances for the good of the individual and to relieve him from the degradation resulting fom his transgression. Some other matters are treated of in the chapter.

1. "Him, who intends to marry for the sake of having issue; him, who wishes to make a sacrifice; him, who travels; him, who has given all his wealth at a sacred rite; him, who desires to maintain his preceptor; his father, or his mother; him, who needs a maintenance for himself, when he first reads the Védas; and him, who is afflicted with illness;

2. These nine Brahmans let mankind consider as virtuous mendicants, called *snátacas;* and, to relieve their wants, let gifts of cattle or gold be presented to them in proportion to their learning.

3. "To these most excellent Brahmans must rice also be given, with holy presents at oblations to fire and within the consecrated circle; but the dressed rice, which others are to receive, must be delivered on the outside of the sacred hearth; gold and the like may be given anywhere.

4. "On such Brahman as well known the Véda, let the king bestow, as it becomes him, jewels of all sorts, and the solemn reward for officiating at the sacrifice.

9. "He, who bestows gifts on strangers, with a view to wordly fame, while he suffers his family to live in distress, though he has power to support them, touches his lips with honey, but swallows poison; such virtue is counterfeit:

10. "Even what he does for the sake of his future spiritual body to

the injury of those, whom he is bound to maintain, shall bring him ultimate misery both in this life and in the next."

Where a sacrifice is to be performed and some necessary article is lacking the Brahman performing the sacrifice is authorized to take it from one having sufficient possessions.

34. "A soldier may avert danger from himself by the strength of his arm; a merchant and a mechanic, by their property; but the chief of the twice-born, by holy texts and oblations to fire.

36. "Let not a girl nor a young woman married or unmarried, nor a man with little learning, nor a dunce, perform an oblation to fire; nor a man diseased, nor one uninvested with the sacrificial string;

40. "The organs of sense and action, reputation in this life, a heavenly mansion in the next, life itself, a great name after death, children and cattle, are all destroyed by a sacrifice offered with trifling presents: let no man, therefore, sacrifice without liberal gifts.

69. "To kill an ass, a horse, a camel, a deer, an elephant, a goat, a sheep, a fish, a snake, or a buffalo, is declared an offense, which degrades the killer to a mixed tribe.

70. "Accepting presents from despicable men, illegal traffic, attendance on a Súdra master, and speaking falsehood, must be considered as causes of exclusion from social repasts.

71. "Killing an insect, small or large, a worm, or a bird, eating what has been brought in the same basket with spirituous liquor, stealing fruit, or flowers, and great perturbation of mind on trifling occasions, are offenses which cause defilement.

94. "Since the spirit of rice is distilled from the *Mala,* or filthy refuse of the grain, and since *Mala* is also a name for sin, let no Brahman, Cshatriya or Vaisya drink that spirit.

95. "Inebriating liquor may be considered as of three principal sorts: that extracted from dregs of sugar, that extracted from bruised rice, and that extracted from the flowers of the *Madhúca* as one, so are all; they shall not be tasted by the chief of the twice-born.

98. "When the divine spirit, or the light of the holy knowledge, which has been infused into his body, has once been sprinkled with any intoxicating liquor, even his priestly character leaves him, and he sinks to the low degree of a Súdra.

127. "For killing intentionally a virtuous man of the military class, the penance must be a fourth part of that ordained for killing a priest; for killing a Vaisya, only an eighth; for killing a Súdra, who had been constant in discharging his duties, a sixteenth part.

132. "If he kill by design a cat, or an ichneumon, the bird *Chása,* or a frog, a dog, a lizard, an owl, or a crow, he must perform the ordinary penance required for the death of a Súdra, that is the *chándráyana.*"

Penances and purifications are required for eating prohibited foods of which there is a long list.

166. "For taking what may be eaten, or what may be sipped, a carriage, a bed, or a seat, roots, flowers, or fruit, an atonement may be made by swallowing the five pure things produced by a cow, or milk, curds, butter, urine, dung:

211. "Those penances, by which a man may atone for his crimes, I now will describe to you; penances, which have been performed by deities, by holy sages, and by forefathers of the human race.

212. "When a twice-born man performs the common penance, or that of *Prajápati,* he must for three days eat only in the morning; for three days, only in the evening; for three days, food unasked but presented to him; and for three more days nothing.

213. "Eating for a whole day the dung and urine of cows mixed with curds, milk, clarified butter, and water boiled with cusa-grass, and then fasting entirely for a day and a night, is the penance called *Sántapana* (either from the devout man *Sántapana,* or from tormenting).

214. "A twice-born man performing the penance, called very severe, in respect of the common, must eat, as before, a single mouthful, or a ball of rice as large as a hen's egg, for three times three days; and for the last three days, must wholly abstain from food.

215. "A Brahman, performing the ardent penance, must swallow nothing but hot water, hot milk, hot clarified butter, and hot steam, each of them for three days successively, performing an ablution and mortifying all his members.

216. "A total fast for twelve days and nights, by a penitent with his organs controlled and his mind attentive, is the penance named *paráca,* which expiates all degrees of guilt.

217. "If he diminish his food by one mouthful each day, during the dark fortnight, eating fifteen mouthfuls on the day of the opposition, and increase it, in the same proportion, during the bright fortnight, fasting entirely on the day of the conjunction, and perform an ablution regularly at sunrise, noon, and sunset, this is the *chándráyana,* or the lunar penance:

218. "Such is the penance called ant-shaped or narrow in the middle; but, if he perform the barley shaped, or broad in the middle, he must observe the same rule, beginning with the bright half-month, and keeping under command his organs of action and sense.

223. "The oblation of clarified butter to fire must every day be made by the penitent himself, accompanied with the mighty words, earth, sky, heaven; he must perfectly abstain from injury to sentient creatures, from falsehood, from wrath, and from all crooked ways.

224. "Or, thrice each day, and thrice each night for a month, the penitent may plunge into water clothed in his mantle, and at no time conversing with a woman, a Súdra, or an outcast.

225. "Let him be always in motion, sitting and rising alternately, or,

if unable to be thus restless, let him sleep low on the bare ground; chaste as a student of the Véda, bearing the sacred Zone and staff, showing reverence to his preceptor, to the gods, and to priests.

226. "Perpetually must he repeat the *Gáyatrì*, and other pure texts to the best of his knowledge: thus in all penances for absolution from sin, must he vigilantly employ himself.

229. "In proportion as a man, who has committed a sin, shall truly and voluntarily confess it, so far he is disengaged from that offense, like a snake from his slough;

230. "And, in proportion as his heart sincerely loathes his evil deed, so far shall his vital spirit be freed from the taint of it.

235. All the bliss of deities and of men is declared by sages, who discern the sense of the Véda, to have in devotion its cause, in devotion its continuance, in devotion its fulness.

236. "Devotion is equal to the performance of all duties; it is divine knowledge in a Brahman; it is defense of the people in a Cshatriya; devotion is the business of trade and agriculture in a Vaisya; devotion is dutiful service in a Súdra.

244. "Even Brahma, lord of creatures, by devotion enacted this code of laws; and the sages by devotion acquired a knowledge of the Védas.

245. "Thus the gods themselves, observing in this universe the incomparable power of devotion, have proclaimed aloud the transcendent excellence of pious austerity.

249. "Sixteen suppressions of the breath, while the holiest of texts is repeated with the three mighty words, and the trilateral syllable, continued each day for a month, absolve even the slayer of a Brahman from his hidden faults.

250. "Even a drinker of spirituous liquors is absolved by repeating each day the text *apa* used by the sage Cautsa, or that beginning with *preti* used by Vasishtha, or that called *máhitra*, or that, of which the first word is *suddhavatyah*.

251. "By repeating each day for a month the text *ásyavámíya*, or the hymn *Sivasancacalpa*, the stealer of gold from a priest becomes instantly pure.

262. "A priest who should retain in his memory the whole Rigvéda, would be absolved from guilt, even if he had slain the inhabitants of the three worlds, and had eaten food from the foulest hands.

263. "By thrice repeating the *mantras* and *brahmanas* of the *Rĭch*, or those of the *Yajush*, or those of the *Saman*, with the *Upanishads*, he shall perfectly be cleansed from every possible taint.

264. "As a clod of earth, cast into a great lake, sinks in it, thus is every sinful act submerged in the triple Véda.

265. "The divisions of the *Rĭch*, the several branches of the *Yajush*, and the manifold strains of the *Sáman* must be considered as forming the triple Véda: he knows the Véda, who knows them collectively.

266. "The primary triliteral syllable, in which the three Védas themselves are comprised, must be kept secret, as another triple Véda, he who knows the Véda, who distinctly knows the mystic sense of that word."

The 12th and last chapter is "On Transmigration and Final Beatitude."

3. "Action, either mental, verbal, or corporal, bears good or evil fruit, as itself is good or evil; and from the actions of men proceed their various transmigrations in the highest, the mean, and the lowest degree:

4. "Of that three-fold action, connected with bodily functions, disposed in three classes, and consisting of ten orders, be it known in this world, that the heart is the instigator.

5. "Devising means to appropriate the wealth of other men, resolving on any forbidden deed, and conceiving notions of atheism or materialism, are the three bad acts of mind:

6. "Scurrilous language, falsehood, indiscriminate backbiting, and useless tattle, are the four bad acts of the tongue:

7. Taking effects not given, hurting sentient creatures without the sanction of law, and criminal intercourse with the wife of another, are the three bad acts of the body; and all the ten have their opposites which are good in an equal degree.

8. "A rational creature has a reward or a punishment for mental acts, in his mind; for verbal acts, in his organs of speech; for corporal acts, in his bodily frame.

9. "For sinful acts mostly corporal, a man shall assume after death a vegetable or mineral form; for such acts mostly verbal, the form of a bird or a beast; for acts mostly mental, the lowest of human conditions:

12. "That substance which gives a power of motion, to the body, the wise call *cshétrajnya,* or *jívátman,* the vital spirit; and that body, which thence derives active functions, they name *bhútátman,* or composed of elements:

13. "Another internal spirit, called *mahat,* or the great soul, attends the birth of all creatures imbodied, and thence in all mortal forms is conveyed a peception either pleasing or painful.

14. "Those two, the vital spirit and reasonable soul, are closely united with five elements, but connected with the supreme spirit, or divine essence, which pervades all beings high and low:

15. "From the substance of that supreme spirit are diffused, like sparks from fire, innumerable vital spirits, which perpetually give motion to creatures exalted and base.

16. "By the vital souls of those men, who have committed sins in the body reduced to ashes, another body, composed of nerves with five sensations, in order to be susceptible of torment, shall certainly be assumed after death;

17. "And, being intimately united with those minute nervous particles, according to their distribution, they shall feel, in that new body, the pangs inflicted in each case by the sentence of Yama.

18. "When the vital soul has gathered the fruit of sins, which arise from a love of sensual pleasure, but must produce misery, and, when its taint has thus been removed, it approaches again those two most effulgent essences, the intellectual soul and the divine spirit:

19. "They two, closely conjoined, examine without remission the virtues and vices of that sensitive soul, according to its union with which it acquires pleasure or pain in the present and future worlds.

20. "If the vital spirit had practised virtue for the most part, and vice in a small degree, it enjoys delight in celestial abodes, clothed with a body formed of pure elementary particles;

21. "But, if it had generally been addicted to vice, and seldom attended to virtue, then shall it be deserted by those pure elements, and, having a coarser body of sensible nerves, it feels the pain to which Yama shall doom it:

22. "Having endured those torments according to the sentence of Yama, and its taint being almost removed, it again reaches those five pure elements in the order of their natural distribution.

24. "Be it known, that the three qualities of the rational soul are a tendency of goodness, to passion, and to darkness; and, endued with one or more of them, it remains incessantly attached to all those created substances:

25 "When any one of the three qualities predominates in a mortal frame, it renders the embodied spirit eminently distinguishable for that quality.

26. "Goodness is declared to be true knowledge; darkness, gross ignorance; passion, an emotion of desire or aversion; such is the compendious description of those qualities, which attend all souls.

31. "Study of scripture, austere devotion, sacred knowledge, corporeal purity, command over the organs, performances of duties, and meditation on the divine spirit, accompany the good quality of the soul:

32. "Interested motives for acts of religion or morality, perturbation of mind on slight occasions, commission of acts forbidden by law, and habitual indulgence in selfish gratifications, are attendant on the quality of passion:

33. "Covetuousness, indolence, avarice, detraction, atheism, omission of prescribed acts, a habit of soliciting favors, and inattention to necessary business, belong to the dark quality.

38. "Of the dark quality, as described, the principal object is pleasure; of the passionate, wordly prosperity; but of the good quality the chief object is virtue: the last mentioned objects are superior in dignity.

40. "Souls, endued with goodness, attain always the state of deities; those filled with ambitious passions, the condition of men; and those im-

mersed in darkness, the nature of beasts; this is the triple order of transmigration.

42. "Vegetable and mineral substances, worms, insects, and reptiles, some very minute, some rather larger, fish, snakes, tortoises, cattle *shakals,* are the lowest forms, to which the dark quality leads.

43. "Elephants, horses, men of the servile class, and contemptible *Mléchhas,* or barbarians, lions, tigers, and boars are the mean states procured by the quality of darkness:

44. "Dancers and singers, birds, and deceitful men, giants, and bloodthirsty savages, are the highest conditions, to which the dark quality can ascend.

45. "*J'hallas,* or cudgel-players, *Mallas,* or boxers and wrestlers, *Natas,* or actors, those who teach the use of weapons, and those who are addicted to gaming or drinking, are the lowest forms occasioned by the passionate quality:

46. "Kings, men of the fighting class, domestic priests of kings, and men skilled in the war of controversy, are the middle states caused by the quality of passion:

47. "*Gandharvas, or aerial* musicians, *Guhyacas,* and *Yacshas,* or servants and companions of *Cuvéra,* genii attending superior gods, as the *Vidyadharas* and others, together with various companies of *Apsarases* or nymphs, are the highest of those forms, which the quality of passion attains.

48. Hermits, religious mendicants, other Brahmans, such orders of demigods as are wafted in airy cars, genii of the signs and lunar mansions. and Daityas, or the offspring of Diti, are the lowest of states procured by the quality of goodness:

49. "Sacrificers, holy sages, deities of the lower heaven, genii of the Védas, regents of stars not in the paths of the sun and moon, divinities of years, Pitrĭs or progenitors of mankind, and the demigods named Sádhyas, are the middle forms, to which the good quality conveys all spirits moderately endued with it:

50. "Brahmá with four faces, creators of worlds under him, as Marichi and others, the genius of virtue, the divinities presiding over (two principles of nature in the philosophy of Capila) *mahat,* or the mighty, and *avyacta,* or unperceived, are the highest conditions, to which, by the good quality, souls are exalted.

Then follows an account of the particular incarnations which the soul must endure for the various offenses.

83. "Studying and comprehending the Véda, practising pious austerities, acquiring divine knowledge of law and philosophy, command over the organs of sense and action, avoiding all injury to sentient creatures, and showing reverence to a natural and spiritual father, are the chief branches of duty which ensure final happiness.

84. "Among all those good acts performed in this world, said the sages, is no single act held more powerful than the rest in leading men to beatitude?

85. "Of all those duties, answered Bhrigu, the principal is to acquire from the Upanishads a true knowledge of one supreme God; that is the most exalted of all sciences, because it ensures immortality:

90. "He, who frequently performs interested rites, attains an equal station with the regents of the lower heaven; but he, who frequently performs disinterested acts of religion, becomes forever exempt from a body composed of the five elements:

91. "Equally perceiving the supreme soul in all beings and all beings in the supreme soul, he sacrifices his own spirit by fixing it on the spirit of God, and approaches the nature of that sole divinity, who shines by his own effulgence.

94. "To patriarchs, to deities, and to mankind, the scripture is an eye giving constant light; nor could the Véda-Sástra have been made by human faculties; nor can it be measured by human reason unassisted by revealed glosses and comments: this is a sure proposition.

95. "Such codes of law as are not grounded on the Véda, and the various heterodox theories of men, produce no good fruit after death, for they are all declared to have their basis on darkness.

101. "As fire with augmented force burns up even humid trees, thus he, who well knows the Véda, burns out the taint of sin, which has infected his soul.

108. "If it be asked, how the law shall be ascertained, when particular cases are not comprised under any of the general rules, the answer is this: "That, which well-instructed Brahmans propound, shall be held incontestable law.

109. "Well instructed Brahmans are they, who can adduce ocular proof from the scripture itself, having studied, as the law ordains, the Védas and their extended branches, or Védángas, Mínánsà, Nyáya, Dharma-Sástra, Puránas.

110. "A point of law, before not expressly revealed, which shall be decided by an assembly of ten such virtuous Brahmans under one chief, or, if ten be not procurable, of three such under one president, let no man controvert.

111. "The assembly of ten under a chief, either the king himself or a judge appointed by him, must consist of three, each of them peculiarly conversant with one of the three Védas, of a fourth skilled in the Nyáya, and a fifth in the Mínánsà philosophy; of a sixth, who has particularly studied the Niracta; a seventh, who has applied himself most assiduously to the Dharma-Sástra; and of three universal scholars, who are in the three first orders.

112. One, who has chiefly studied the Rĭgvéda, a second, who principally knows the Yajush, and a third best acquainted with the Sáman,

are the assembly of three under a head, who may remove all doubts both in law and casuistry.

113. Even the decision of one priest, if more cannot be assembled, who perfectly knows the principles of the Védas, must be considered a law of the highest authority; not the opinions of myriads, who have no sacred knowledge.

118. "Let every Brahman with fixed attention consider all nature, both visible and invisible, as existing in the divine spirit, for when he contemplates the boundless universe existing in the divine spirit, he cannot give his heart to iniquity:

119. "The divine spirit alone is the whole assemblage of gods; all worlds are seated in the divine spirit; and the divine spirit no doubt produces, by a chain of causes and effects consistent with free-will, the connected series of acts performed by embodied souls.

122. "But he must consider the supreme omnipresent intelligence as the sovereign lord of them all, by whose energy alone they exist; a spirit, by no means the object of any sense, which can only be conceived by a mind wholly abstracted from matter, and as it were slumbering; but which, for the purpose of assisting his meditation, he may imagine more subtle than the finest conceivable essence, and more bright than the purest gold.

123. Him some adore as transcendently present in elementary fire; others, in Manu, lord of creatures, or an immediate agent in the creation; some, as more distinctly present in Indra, regent of the clouds and atmosphere; others in pure air; others, as the most High Eternal Spirit.

124. "It is he, who, pervading all beings in five elemental forms, causes them by the gradations of birth, growth, and dissolution, to revolve in this world, until they deserve beatitude, like the wheels of a car.

125. "Thus the man, who perceives in his own soul the supreme soul present in all creatures, acquires equanimity toward them all, and shall be absorbed at last in the highest essence, even that of the Almighty himself."

The fundamental principles of this code are more ancient than the code itself. Castes had existed from a considerably earlier time, and the religious ideas are based on and taken from the Védas. When it is considered that the system of laws embodied in this code was in force in its essential features more than three thousand years ago, and that the vast population of India is still so strongly attached to it, that the British government finds it expedient to adjust the rights of litigants in accordance with its rules, it must be accorded preeminence for stability and immutability over all other codes ever promulgated. It is not, however, to be inferred that this code in its purity has been observed by all the Brahmans in all ages. On the contrary its maxims have been ignored or corrupted at different times and in different places, and

rulers have interpolated laws of their own, for which they have claimed the sanction of Manu. The learned Hindus also hold that some of these laws were in force only during the first three ages of the world but are now obsolete; such laws however are neither numerous nor of marked importance.

INSTITUTES OF JUSTINIAN

Among the opening paragraphs of the first of the four books of the Institutes are the following, *"Justitia est constans et perpetua voluntas jus suum cuique tribuendi."* Justice is the constant and perpetual disposition to render everyone his due.

"Jurisprudence is the knowledge of things divine and human; the science of what is just and unjust."

"The precepts of the law are to live honestly, to hurt no one, to give to every one his due."

"The Roman law like the Grecian is divided into written and unwritten. The written consists of the *plebiscites,* the decrees of the senate, ordinances of the princes, edicts of the magistrates and answers of the licensed lawyers."

"The unwritten law is that which usage has approved, for daily customs established by the consent of those who use them take the character of law."

The third title is "Of the right of persons" and begins by dividing persons into freemen and slaves, "slavery is when one man is subject to the dominion of another according to the law of nations, though contrary to natural right." Slaves are defined as the issue of slave women, captives sold as such and persons above the age of twenty who allow themselves to be sold for a share of the price. The child of a woman free at the time of conception, or during pregnancy, or at the time of birth was free. A free man who became a slave and was afterward manumitted regained the status of a free man. Slaves might be manumitted in a great variety of ways, by public declaration in the face of the church or the presence of friends, by letter or by will, and at any time. Prior to Justinian's legislation freedmen were divided into three classes, those who obtained the greater liberty and became Roman citizens, those who became Latins, and the *Dedititii* who were little less than slaves still. Justinian abolished these distinctions and made all freedmen citizens. An insolvent master could not manumit his slaves and thereby deprive his creditors of payment. An insolvent master might make a slave his heir and thereby give him his freedom, charged with the payment of the master's debts. A slave made heir by the will of his master became free, whether so declared or not. By the law Fusia Caninia masters were limited in manumitting by testament. Justinian abolished the restrictions. Originally the master had full power to inflict death on a slave, and the property acquired by the slave of course belonged to the master. By the

constitution of Antoninus restrictions were placed on the power of masters to inflict extraordinary punishments, and in cases of gross ill treatment it was provided that the slave might be sold to another master and the price given in lieu of the slave. The *patria potestas* over children was preserved with substantial modifications under Justinian. Sons *in potestate* could only marry with consent of the father, but if he were *non compos* a son or daughter might marry without his consent. Marriage with persons related in direct line, whether by blood or adoption, was prohibited, and also among collaterals within the limits of brothers and sisters, uncles and nieces or great nieces. A man could not marry his aunt by blood or adoption, nor his great aunt, but marriages between first cousins were allowed. Marriage with a wife's daughter or a daughter-in-law was prohibited, also with a wife's mother or a step-mother and all polygamy was forbidden. A son of a husband by a former wife might marry the daughter of a wife by a former husband and *e contra*. Children born out of lawful wedlock were not under the power of the father and did not inherit from him. A natural son who was made a Decurian became subject to the father's power, and subsequent legal marriage legitimated children born before it. Adopted children were subject to paternal power the same as natural only where the adopting parent was of his blood. Adoption might be as a grand-son or grand-daughter. By adrogation the whole family of the adopted son passed under the power of the adopting parent. Adrogation was by imperial rescript and only allowed on conditions and compliance with certain forms.

At the death of the father the sons became independent, but grandsons came under the power of their father, if living and they had not been emancipated. If the father were sentenced for a crime to be deported to an island to work as a slave in a mine, his sons ceased to be under his power. Although a son were a soldier, a senator or a consul he was still under his father's power, but the emperor by conferring the patrician dignity on him emancipated him from his father's power. Parents were allowed to manumit their children and grandchildren before the proper magistrate, and they might emancipate a son and retain power over his children or grandchildren. Parents might assign tutors to children not arrived at the age of puberty, and in default of such a testament the agnates, nearest male relation on the father's side, were vested with the tutelage, which corresponded for their protection to the paternal power, during infancy. Tutors of children not so provided for might be appointed by governors of the provinces, praefects and praetors, and, where the estate was small, by the inferior magistrates. The tutors administered the affairs of their pupils, and were bound to account to them for their estates when they arrived at the age of puberty. A person contracting with the pupil bound himself, but not the pupil. Tutelage terminated at the age of fourteen in males and twelve in females, and thereafter the estates of minors were placed under the charge of curators until they were twenty-five years old. Curators were

appointed by the same magistrates as the tutors, and testamentary curators had to be confirmed by the magistrate. Curators were also appointed for the insane, deaf mutes or other incompetents, who were not able to manage their affairs. Tutors and curators might be compelled to serve and elaborate provisions were made to insure their faithfulness. A rather singular title is that which treats of diminution of condition of the person, of which there were three degrees. The greater is when a man loses both his liberty and rights as a citizen, the less or mesne when he loses his rights as a citizen but retains his liberty, and the least when an independent man comes under the power of another by adoption, or when a son is emancipated by his father. The right of fishing in rivers and ports is declared to be common.

The first book of the institutes treats of persons, the second of the division of things and the acquisition of dominion over them. Things common to mankind are declared to be the air, running water, the sea, rivers, ports, all the seashore over which the greatest winter flood extends, the banks of rivers, theatres, public grounds of a city, churches, the walls of a city, grounds used for burial and other consecrated uses. Riparian ownership of river banks was allowed, but not of the sea coast. Property in wild beasts birds and fish was dependent on possession, and in case of escape the title was lost. Property in wild bees was gained by hiving them, and fresh swarms belonged to the owner of the hive from which they came out so long as they remained in sight of the owner, after that they belonged to the taker. Geese and fowls were subjects of ownership. Whatever was taken from enemies in war, including captives, belonged to the captors. Whatever was gradually added to land by alluvion became the property of the land-owner, but if suddenly moved in a body it remained the property of the former owner. An island formed in a river belonged to the riparian proprietors in equal parts if in the middle, and to the one if on one side of it. The title to articles manufactured from the material of another was in the owner of the material, if in such form that it could be again reduced to the material of which it was made, otherwise it belonged to the manufacturer. Where materials were mixed by consent, the whole belonged to both in common. If one built a house on his own land with the materials of another he became the owner of it, but liable to pay double value for the materials, and if one built with his own materials on land of another the house belonged to the owner of the land. But one in bona fide possession of land might be protected by exception of fraud against the claim of the owner, who refused to pay the value of the materials and cost of the labor. A tree planted in the ground of another belonged to the owner of the land. Grain also belonged to the owner of the soil, but the sower, if acting in good faith, might also be protected by an exception of fraud. A poem written on the paper or parchment of another belonged to the owner of the material, but the writer, if in possession of the material in good faith, might demand pay for the

writing. A different rule was applied to a picture painted on the tablet of another, the painter being allowed to keep it on payment for the tablet.

The bona fide occupant of land by defective title was not required to account for mesne profits, but could hold only the fruits he actually had gathered. A rather strange mixture of logic and moralizing occurs in Lib. II T. I Sec. 37. "Among the produce of animals we not only reckon milk, skins and wool but also their young, and therefore lambs, kids, calves, colts and pigs, appertain by natural right to the usufructuary, but the offspring of a female slave cannot be thus considered, but belongs to the proprietor, for it seems absurd that man should be included as produce when nature has furnished all kinds of produce for his use." It certainly seems absurd that the child of the slave should be the property of the one entitled to the use of the mother, and equally so that it should belong to the master.

The ancient distinction between *res mancipi* and *res nec mancipi,* which had lost much of its significance, was entirely obliterated by Justinian, who provided: "Things are also acquired by traditions, for nothing is more conformable to natural equity than to confirm the will of him who desires to transfer his property to another, therefore corporeal things of whatever kind may be delivered and when delivered by the owner are aliened. Stipendiary and tributary possessions, in the provinces, may be aliened in the same manner, for between these and the Italian estates we have now taken away all distinction, so that on account of a donation, a marriage portion or any other cause, stipendiary and tributary possession may undoubtedly be transferred by livery"; but it is provided that where the price is not paid or secured or credit given the title remains in the seller. The owner of the thing sold might entrust the delivery to another, who could deliver with equal effect. Property in a store house might be delivered by delivering the keys. Where the owner of goods threw them away, the finder got good title to them, but if thrown out of a ship in a storm to lighten it, anyone finding and appropriating the goods to his own use was guilty of theft. Things are divided into corporeal and incorporeal. "Things corporeal are tangible as lands, slaves, vestments, gold, silver and other things innumerable. Things incorporeal are those which are not tangible, but consist in rights and privileges, as inheritances, usufructs, uses and all obligations however contracted. "Of the same class are rights of rural and city estates termed servitudes." Servitudes of passage ways and aqueducts, over lands and of support from walls in cities, etc. are defined, and are said to require an estate in land to support them, the servitude being attached to the realty and not a personal privilege.

Usufruct is defined to be the right of using and enjoying without consuming the property of another. A usufruct could only be created by will, by fact or stipulation, and might be of lands, houses, slaves, cattle and other things, except those which are consumed in the use. The

usufruct terminated on the death of the usufructuary, and also by the greater and middle diminution of condition, and from misuse of the thing given. On termination of the usufruct the whole property revests in the proprietor. A distinction was further drawn between the usufruct and naked use, the former might be transferred, but the latter was personal and could not be.

Possession obtained in good faith of movables ripened into full title in three years, and of things immovable in ten years, if the parties are present and twenty years if one be absent, but no title could be gained by prescription of a free person, a fugitive slave or a sacred religious thing, nor for things stolen or seized by violence, even though bought in good faith, nor for things belonging to the imperial treasury. The possession of the ancestor and heir might be joined in making a prescription, as also that of seller and buyer. Title to property might also be passed by donation. This might be in anticipation of death, and not to take effect except on the event of the death of the donor, or a simple gift *inter vivos*. A donation might in some cases be revoked for ingratitude. Donations in consideration of marriage, both antenuptial and post-nuptial, were recognized. A husband was prohibited from aliening or mortgaging property obtained as a marriage portion with his wife, even with her consent.

By the ancient law everything acquired by children under the power of the father, except the *peculium castresne,* property acquired by the son in military service, belonged to the father, but this rule was modified by Justinian, so that the father's full title extended only to that which was acquired by the son by means of the father's property. Whatever the son acquired by his own exertion remained his, subject to the right of the father to the usufruct of it. The father might emancipate the son, and in that case was entitled to the usufruct of one-half the property of the son as the price of emancipation. As to the acquisitions of slaves the master took everything. Where a slave was merely held in usufruct, the proceeds of his labors and dealings went to the usufructuary, but whatever he gained by other means, as gifts or inheritance, went to the proprietor.

A most important title of the law is that relating to testaments and inheritances. Great formalities were required in making testaments. It must be in writing, signed and sealed by the testator and seven witnesses, all in the presence of each other and at one time; and the name of the heir was required to be expressed in the handwriting of the testator or a witness. Women, minors under the age of puberty and slaves were incompetent as witnesses. No person under power of the testator could be a witness. Neither the heir nor his father or brothers under power of the father could be witnesses, but legatees were not rejected. The will might be written on a tablet of wax, paper, parchment or any other substance. A nuncupative will might be made without writing in the

presence of seven witnesses. Strict formalities in making wills were dispensed with in the case of soldiers in actual service, and by the rescript of Trajan it was declared, that if the soldier "did in the presence of witnesses, purposely called, declare what person should be his heir and to what slaves he should give liberty, he shall be reputed to have made his testament without writing and his will shall be ratified." Persons under the power could not make a will, except of property acquired by military service. To disinherit a child it was necessary to mention him in the will, and this applied also to a posthumous child, to grandchildren whose parents were dead and to adopted children male and female. This rule did not apply in case of a soldier in actual service, a mother or a maternal grandfather. A testator might make his own slave his heir, but, if he named the slave of another, the gift could only be accepted by the master's order. The testator might name as many heirs and in such proportions as he pleased. A testator might provide for a substitution in case the heir named died within the age of puberty, but not for an heir above that age, except by gifts in trust, *fidei-commissum.* Slaves and children under the power were bound to accept the inheritance and thereby to pay the debts of the testator, but a stranger named as heir could accept or reject at pleasure. Justinian modified the law so as to allow an acceptance chargeable with debts only to the value of the estate. A legacy was defined as "a gift directed by the deceased to be fulfilled by the heir." Specific property belonging to another might be given as a legacy, so that the heir would be bound to buy and deliver it or pay the value of it. Legacies might be of lands, slaves and debts as well as of money or chattel property. Very minute provisions were made for the construction and effect of wills, both in nominating heirs and legatees. The peculiar principles governing the Roman family and the possession of slaves, who might be affected by change of condition, occasion many refinements and distinctions in the law. Not more than three-fourths the inheritance was allowed to be given in legacies. An important branch of the law was that relating to trusts, *fidei-commissum.* This was a direction or request that the heir deliver the whole or a part of the estate to another in accordance with the terms imposed by the testator. At first compliance with such requests was not compulsory, but dependent on the good faith of the heir, but from the time of Augustus they were treated as binding and enforced by the praetors. The law with reference to these trusts was filled with nice questions and many refinements. As in case of legacies the trust might be to procure and deliver property belonging to another, in which case the heir must procure and deliver it or pay the value. The will might direct the manumission of a slave either of the testator or of another owner, and in the latter case the heir was bound to buy and manumit the slave. Property might also be disposed of by a codicil, which required no solemnity of execution, and did not necessitate the execution of a testament. An heir

could not be made by a codicil, but property could be taken away from the heir by means of a trust. Testaments improvidently made could be avoided as to one-fourth of the estate on complaint of children under certain conditions. In default of a valid testament inheritances went to the proper heirs *"suos haeredes."* who at the death of the deceased were under his power; children inherited equally and descendants of deceased children took the shares of their parents. When there were no lineal descendants, the inheritance passed to the nearest agnates *i.e.,* those related through males, to the exclusion of the cognates; those related by adoption took the same as if related by blood. This rule was modified so as to admit sons and daughters of a sister to inherit from a deceased uncle along with the agnates, but their descendants could not take as long as there were agnates. The whole of the inheritance passed to those in the nearest degree equally. Mothers might inherit from sons who died without issue. In case of a failure of proper heirs or agnates the succession passed to cognates. Agnates related in the tenth degree might inherit, but cognates only to the seventh. The degree of relationship of two persons was computed by counting from one to the common ancestor and from him down to the other, each generation in each line counting as a degree. The estate of a freed man in default of proper heirs went to his patron, and in certain cases the patron of a wealthy freedman was entitled to a share with the children of the freedman. Where no one succeeded to an estate as heir, the goods might be sold for the payment of debts. The subject of the disposition of property of deceased persons fills a full third of the Institutes.

The next title is *De Obligationibus,* which are divided into civil and Praetorian, and again into obligations by contract, by quasi-contract, by malfeasance and by quasi-malfeasance. Obligations by contract were classified as arising from a thing, from words, by writing or by consent of parties. The first of these was termed a *mutuum* and included loans of money or goods of any sort to be returned in kind, and which could be enforced by the action *certi condictio.* In the case of the *mutuum* the property in the thing passed by the transfer. Where the article delivered was to be used and returned, it was called a *commodatum.* In case of the *mutuum* the receiver was bound absolutely to make return, but in case of the *commodatum* he was held to the highest diligence in taking care of it, but not liable for loss by superior force or extraordinary accident, unless he took the thing abroad and lost it through perils of the journey, in which case he was liable. In case of a deposit the depositary was only liable for loss through his fraud and not for negligence. In case of a pledge to secure a debt the bailee was held to strict diligence in preserving the property. Verbal obligations arose from question and answer, and the forms anciently in use are given thus. *Spondes?* Do you undertake? *Spondeo.* I undertake. *Promittis?* Do you promise? *Promitto.* I promise. *Dabis?* Will you deliver.

Dabo. I will deliver. These particular words are however declared unnecessary, and any forms of expression having the same meaning are equally binding. The performance of a contract might be required immediately and absolutely, in the future, or conditionally on the happening of some event, and was given effect according to its terms, but where acts were stipulated for, a penalty for non performance was necessary. Two or more persons might be bound to perform the same obligation or entitled to enforce it, but a single payment discharged all. Of two promissors one might be bound absolutely and the other only conditionally. The contracts of a slave inured to the benefit of his master, and, if owned by several masters, to each in proportion to his ownership. There were judicial stipulations, where security was required by a judge against fraud, or for pursuing a slave who had fled; Praetorian stipulations, required to insure compliance with some order, and conventional stipulations, "and of these stipulations there are as many kinds as of things to be contracted for." All manner of property was subject to stipulation, but slaves and persons under the power could not stipulate with their masters, though a son could bind himself by his contract with a person other than his father. Pupils under tutorship could only contract with the consent of their tutors, and the contracts of madmen, mutes and deaf persons were invalid. A verbal obligation between absent persons was void, but a writing was valid, unless it could be clearly shown that one or the other of the parties to the contract was absent from the place where it was made during the whole day of its date. A stipulation might be made to take effect just before or after the death of the obligor or obligee, though before Justinian's time it would not have been binding. No man could stipulate for another. "Therefore if a man should stipulate that a certain thing shall be given to Titus it will not avail, but, if he add a penalty as do you promise to give me so many *aurei* if you do not give the thing stipulated to Titus, the penalty may be enforced." But a stipulation for the benefit of the stipulator and another was good. One who undertook for the performance of another was not bound, unless he promised under penalty. A stipulation was ineffectual where it failed to show that the parties referred to and agreed on the same thing, or where performance was illegal, immoral or impossible. Suretyship was recognized and enforced against the *fide-jussors* in all kinds of contracts. The custom of money lenders, then as now, was to exact security, and the *fide-jussor* stood in the same case as the modern surety. He and his heirs alike were held, and his obligation might precede or follow the contract of the principal, and each surety was bound for the whole debt. Contribution among sureties was not enforced, unless demanded at the time of the suit on the obligation. If one surety paid the whole debt of an insolvent principal he had to bear the whole loss. The obligation of the surety might be less, but never greater than that of the principal, and the *fide-jussor* might recover the

sum paid from his principal. A written obligation for the payment of money could not be avoided on the ground that the money was not advanced, unless an exception was brought within two years. "Obligations are made by consent in buying, selling, letting, hiring, partnerships and mandates. An obligation thus entered into is said to be contracted by consent, because neither writing nor the presence of parties is absolutely necessary. Nor is delivery necessary to make the contract take effect, for it suffices that the parties consent, hence these contracts may be entered into by absent parties by letters or messengers." "The contract of buying and selling is perfected as soon as the price is agreed upon, although it is not paid nor even an earnest given." A distinction is drawn between sale and barter, and in support of it a passage from the Iliad is quoted. On a sale the buyer at once becomes liable for the price and subject to the risk of loss, whether delivery was made or not, but a sale might be conditional. In distinguishing sales from contracts of location and conduction, letting and hiring, a singular question is suggested, namely where lands are transferred in perpetuity with a reservation of a fixed yearly rental, whether this is a sale or a hiring. It was finally settled that it was neither, but a contract resting on its own terms and under which, if there were no express provision otherwise, in case of a total destruction of the property the loss should fall on the proprietor, but a partial loss must be borne by the tenant. The hirer of property was bound to take such care of it as the most diligent would take of his own.

General partnerships as to all kinds of business, and special as to a single line, were recognized, and also the right to share profits and losses in any proportions agreed on, but the share of gain only was mentioned in the contract, losses were governed by the same rule. A partnership might be determined at the pleasure of either party, but, if one renounced to gain a fraudulent advantage, he might be compelled to share it with the other partner. Death of a partner or a sale of all his property to pay his debts also worked a dissolution of the partnership. Partners were held to the same care in the management of the partnership property that they exercised with reference to their own.

Mandates for the transaction of any business were divided into five classes, solely for the benefit of the mandator, jointly for his benefit and that of the mandatary, solely for the benefit of a third person, jointly for the mandator and a third person or jointly for the benefit of the mandatary and a third person, but a mandate solely for the benefit of the mandatary was null! A mandate could only be for a lawful act, and was revokable before performance. Th mandatary might refuse to accept the mandate as he pleased, but having accepted he was bound to perform or promptly renounce, and an action of mandate was given to enforce performance.

Quasi contracts resulting from transactions not expressly authorized, or from dealings necessitated by the relation of the parties, as tutor and

pupil or tenants in common of lands, heir and legatee, payments by mistake, etc. were recognized as binding and enforceable. Obligations might be discharged by payment by the debtor or by any one for him or by acceptillation. By what was termed the Aquilian stipulation, all forms of obligation might be reduced to a set form and discharged by an acceptillation, by which payment in full was acknowledged. An obligation might also be discharged by a novation, through which another took the place of the original debtor, but to constitute a novation the intent to discharge the original debtor must be expressed, otherwise both the original and subsequent promissor would be bound.

Obligations might also arise from malfeasance and quasi-malfeasance. Thefts were divided into manifest, where the thief was caught in the act or while carrying away the stolen property, and not manifest, where not so caught. A theft was called *conceptum* when the thing stolen was found on the person in the presence of witnesses. For a manifest theft the thief was liable to pay quadruple, and for theft not manifest double, the value of the thing stolen. The conversion of a pledge or of property otherwise entrusted to a bailee without the consent of the bailor was regarded as a theft. Theft of the person might be committed of free persons under the power, and a debtor might steal his own property, as in case of a pledge. Accessaries were liable as well as principals, but no action of theft could lie between parents and children or master and slave, though it might against the accessary of the child or slave. The action might be brought by any person interested in the safety of the thing stolen, as a creditor or bailee for a pledge. Where property was loaned, the owner might sue the thief or the borrower, but not both. An action of theft was always for the penalty, another and separate form of action being allowed for the recovery of the property. Where property was taken by force, by the action *vi bonorum raptorum* the owner might recover quadruple damages, whether manifest or not manifest, if brought within one year, but if afterward, the single value only, but the recovery included the value of the property which could not be specifically recovered. Where property was forcibly seized under a claim of ownership or right, the taker was liable to a penalty of the value of it, and this applied to forcible seizure of houses and lands as well as of movables.

An action for injurious damage was given for killing a slave or cattle. No liability attached for necessarily killing a robber, or for killing another by accident without fault. If a soldier killed a slave while exercising in his appointed place he was not liable, but any other person killing a slave by accidentally striking him with a javelin was liable. A surgeon, who having performed an operation on a slave allowed him to die of neglect, was liable, as also for want of skill. A mule driver, who killed a slave from want of care or skill as a driver, was liable. One who killed a slave or beast of another was liable for the highest price which

the slave or beast would have brought within that year, and if a slave should have been made heir and killed before entry into the heirship and the inheritance be thereby lost to the master, this also might be added as damages. Other consequential damages were also recoverable. Both a civil and a criminal action might be prosecuted by the master. An action was also allowed for every injury to slaves, cattle or property, but the recovery was limited to the highest price that could have been obtained within thirty days previous to the injury. An action was given for slander, libel, insults to women and various other wrongs, and damages awarded according to circumstances, among which were the condition of the injured person, "so that one estimate may be adopted in the case of a steward or agent and a lower one in the case of an inferior slave." An injury might be aggravated by the place of its commission, as in the theater, market or presence of the praetor, or by the rank of the injured party, and an injury inflicted on a senator by one of mean condition, on a parent by a child or a patron by his freedman, called for a heavier punishment than where the parties were equal in rank. For every injury the injured party might prosecute a civil or criminal action, and the suit might also be maintained against one who counseled or caused the injury to be done, but the right of action was lost unless complaint was promptly made.

A judge might be sued by an action of quasi-malfeasance for giving an unjust judgment, and was subject to such penalty as a superior judge might impose. The occupier of a chamber, from which anything was thrown or spilt causing damage, was liable for the injury regardless of the person who committed the act, and must pay double damages. The master of a ship or inn was liable to be sued for quasi-malfeasance for every theft or damage committed in his ship or inn. Actions in court were divided into those *in personam*, where it was sought to enforce a contract, recover damages or compel the performance of some act or duty, and *in rem* where the subject of the action was some specific property, whether recovery of the thing itself was sought or merely the enforcement of a right with reference to it, as of an easement. Fictions were allowable to enable a trustee, who, having no title to the property entrusted to his care, should be deprived of the possession of it, to recover by alleging a prescriptive right. Goods of a debtor, fraudulently transferred to avoid payment, might be recovered by the creditors. There were many and varied forms of action for the enforcement of different rights *in personam* and *in rem*. Although fathers and masters were not legally bound for the debts of sons and slaves, an action *de peculio* was allowed against them, so that a recovery of the debt of the son or slave might be had to the extent of his *peculium* or separate estate. Actions were also allowed to determine whether a person was free or slave, legitimate or bastard, and these were classed as actions *in rem*. There were also mixed actions, as for goods taken by force, in which a recovery of both the price of the goods taken and triple its value as

damages was allowed. The idea of mixture rests, not on recovery of the property itself and damages, but value and penalty. Another kind of mixed action, more logically so-called, was for the division of property among heirs or tenants in common, in which the judge had power to apportion the property in equal or unequal proportions and award compensation to those receiving less than their share. "All actions are for the single, double, triple or quadruple value; for no action extends farther."[1] The single value was sued for on a stipulation, a loan, a sale, a purchase, letting and hiring, a mandate, and very many other causes, the double value in actions of theft not manifest, of injury by the law Aquilia and some cases of deposit, also for corrupting a slave or detaining a legacy left to a holy place, for triple value when any one inserts a greater sum than is allowed in a libel of convention, that officers may exact a greater fee from the defendant; for quadruple value for manifest theft, putting in fear, for giving money to another to corruptly influence him to do or not do a particular business, or for extorting illegal fees from a defendant. Actions were also classified as of good faith or strict right. Those of good faith were from buying and selling, letting and hiring, business transacted, mandate, deposit, partnership, tutelage, loan, pledge, partition of things owned in common, the demand of an inheritance and those in prescribed words for estimates and commutation. In all actions of good faith the judge had full power to determine according to justice and right how much should be restored to the plaintiff, and to deduct from the recovery any sum due from the plaintiff to the defendant, and this right of set off was extended to cases of strict right, except for deposits. Some actions were styled arbitrary, where the judge was allowed to exercise his discretion in awarding judgment. If a plaintiff intentionally demanded more than his debt, unless a minor or acting under mistake in certain cases, he lost his debt under the ancient practice, but this was modified so that a penalty of triple damages was substituted, though to just what cases this applied it is difficult to determine. If a plaintiff modestly asked less than was due, he might still recover the whole amount. Where there was a mistake in describing the property sought, an amendment was allowed to correct it. In some cases a suit might be for the whole or so much as the situation allowed, as for the debt of a son or slave to be paid only out of his *peculium,* or where a woman sued for her marriage portion where the husband was unable to pay the whole. In these cases the judgment would be for the amount of the *peculium* or the husband's estate. "If any one sues his parent, patron or partner, the plaintiff cannot recover a greater sum than his adversary is able to pay. It is the same if one is sued for his donation."[2] Where a debtor turned out all his property to his creditors and afterward acquired more,

[1] Lib. IV-Tit. XI-Sec. XXI.
[2] Lib. IV-Tit. VI-Sec. XXXVIII.

they might sue for the balance unpaid, but could not recover judgment for more than the debtor was able to pay. A master could be sued on contracts made by his slave by his direction, and for contracts in a business entrusted to the slave, and also for the contracts of a free person or the slave of another entrusted with the conduct of his shop or business. Where a slave borrowed money and expended the whole or a part for the benefit of the master, the master was liable to pay all that was expended for his benefit, and the slave's *peculium* only was liable for the balance. Different forms of action, called *tributoria, de peculia and de in rem verso,* were adapted to the different classes of cases against a master on account of the transactions of his slave. Similar rules applied to the dealings of children under the power, but a suit could not be maintained either against the child or parent for money lent the child while under the power.

Noxal actions were allowed against the master for the thefts, robberies and injuries of his slaves, and the master might pay the judgment or surrender the slave in satisfaction of it, and if the slave could satisfy his new master in money he might be manumitted on application to the praetor, against the will of the new master. A noxal action followed the ownership of the slave, and in case of a sale the new master became liable, and of manumission the freedman himself. A cause of action against a free man, who afterward became a slave, was converted into a noxal action against the slave. No cause of action could arise in favor of a master against his slave, nor in favor of the slave against the master. Under the ancient law a similar forfeiture for the act of son or daughter was allowed as in case of a slave, but this ceased to be the law before Justinian's time. Noxal actions were allowed for injuries caused by horses, cattle, etc. which were accustomed to do such injury, and by giving up the animal the owner was discharged from further liability. There was no liability for injuries caused by dogs or wild beasts, unless kept near a road or passage way, in which case the keeper was liable for double damages.

A suit might be brought in the name of the party interested or of a procurator, tutor or curator, though by the ancient law suit in the name of another was only permitted in a public cause, for liberty or tutelage. Whoever was appointed to sue for another was called a procurator, and no particular formality of appointment was required. By the ancient practice a defendant was required to give security for the performance of the judgment, and where a suit was brought by a proctor, tutor or curator, he had to give security that his acts would be ratified by his principal, but by the law of Justinian's time a defendant was not required to give security for the payment of the judgment, but only for his personal appearance till the cause was ended, and this security might be with sureties or by a promise with or without oath according to the quality of the defendant. If a procurator failed

to produce written authority or confirmation of his power to act by his client in court, he was required to give security for the ratification of his acts. A defendant when sued might appear, name his procurator and give the required security or, in case of his failure to appear, any other person might defend for him on giving security for the payment of the judgment.

There were various limitations as to the time within which an action might be brought, those given merely by the praetor's authority being generally limited to a year, the duration of his term of office, while those arising under the laws, the decrees of the senate and edicts of the emperors, were mostly allowed for a longer period, and an action for manifest theft was perpetual. Penal actions arising from theft, robbery, injury and consequential damages could not be maintained against, but might be in favor of the heir, except actions of injury. Not all actions on contracts survived to the heir, as where a testator commits a fraud through which nothing is added to the property of the heir. Judgments in penal actions contested by the principals, however, passed both to and against the heir. An action might be settled and dismissed at any time before judgment on payment by the defendant. A defendant sued on a contract extorted by fraud or fear was allowed an exception of fraud or fear, and in a suit on a stipulation for the repayment of money the defendant might have an exception *pecuniae non memeralae,* that he had not received the money. Exceptions were of many kinds, some allowed by law, some by the authority of the praetor, some were perpetual, and peremptory, others temporary and dilatory, the former barring, the latter merely delaying the action; but a plaintiff was subject to costs and a penalty for commencing suit prematurely. A soldier or a woman could not act as a procurator. To the exception of the defendant the plaintiff might plead matter of avoidance by replication, to which, though apparently sufficient, the defendant might reply by a triplication, and so on till an end was reached. Whatever defense a debtor could make was generally available equally to his bondsmen, except where the debtor turned over all his goods, and was entitled to an exception *si bonis cesserit.*

Interdicts were forms of words by which the praetor commanded or prohibited something to be done, and were mainly used in controversies concerning the possession of property. They were divided into prohibitory, restoratory and exhibitory, by which the purpose of each is fairly expressed, the latter supplying to some extent the place of our writ of habeas, and by which the production of a slave, freedman or child might be required and rights with reference to his custody determined. By an interdict called *Quorum Bonorum* the possession of goods of a deceased person might be taken from the heirs and given to a person appointed to take charge of them by the praetor. For the retention of possession of property there were interdicts styled *uti*

possidetis for the retention of houses and lands and *utrubi* for the possession of movables, ownership depending in many cases on possession, which might be maintained in person, by another or even by intention. An interdict for the recovery of possession, called *unde vi,* was allowed where one had been forcibly evicted from house or land, and the penalty of forcible seizure of property was that the guilty party forfeited the property if it belonged to him, and if it did not, not only was he required to make restitution, but also to pay the value of it as a penalty for the seizure. Interdicts might be simple or double, simple where the plaintiff required something to be exhibited or restored. *Uti possidetis* and *utrubi* were double interdicts in which each party was regarded as much plaintiff and defendant as the other.

A defendant could not plead to an action till he swore that he believed his defense to be valid. In some cases by a denial the defendant exposed himself to double damage. A plaintiff was also required to swear that he did not sue maliciously, but believing he had a good cause. The advocates on both sides were also required to take a similar oath. An unjust litigant was liable to pay damages and costs of suit to his adversary. In some cases infamy resulted to the party condemned in a civil suit, as of theft, robbery, injury and fraud, and also of tutelage, mandate, deposit and partnership.

The first step in a law suit was *in jus vocando,* calling the adverse party into court. Children and freedmen were not allowed to call their parents or patrons into court without first obtaining leave of the praetor. Judges were admonished not to decide otherwise than as the laws, constitutions and customs directed. The form given for a judgment in a noxal action is certainly a model of brevity and definiteness. *"Publium Moevium Lucio Titio in decem aureos condemni aut noxam dedere."* In actions *in rem* the recovery was not only of the property but of its fruits and increase as well.

Public actions were such as might be prosecuted by anyone. Among capital offenses were enumerated any act against the emperor or the republic, adultery, sodomy, murder, rape, carrying weapons for the purpose of killing and causing death by magic or by the sale of poison medicines. For the crime of parricide, deemed most execrable of all, the law Pompeia prescribed the following punishment, "he shall be sewed up in a sack, with a dog, a cock, a viper and an ape, and being confined in this narrow deadly enclosure shall be thrown into the sea or river according to the situation of the place." The killing of a child or any person occupying the relation of parent was within the law. Forgery of a will or other instrument by a slave was punished with death, by a freeman, with deportation. Judges, who while in office embezzled public funds, were punishable with death, as were also their accomplices, but others for like offenses were punishable with deportation only. Kidnapping also might be punished with death or a

milder punishment. Other offenses were generally less severely punished, by deportation, condemnation to work in the mines, fines and forfeiture of goods.

The foregoing is a brief outline of the system of laws which had been developed at Rome and in the empire during a period of approximately 1300 years.

THE PENAL CODE OF CHINA

(Ta-Tsing Leu-Lee)

The following summary of the provisions of the penal code of China is made from a translation of the code in force under the Ta-Tsing dynasty, made by Sir George Thomas Staunton and printed by Cordell & Davis, London, in 1810. This gives a view of the law as it stood before it was materially modified by foreign influences.

Though denominated a penal code, it is not merely a code providing punishments for the violation of what in European and American states would be denominated crimes, but would be here denominated a code of civil as well as criminal laws.

That the Chinese have long comprehended the necessity for fixed rules governing the conduct and decisions of officers and magistrates, is clearly shown by the concluding paragraph of the preface to the edition published by authority of the emperor Shun-Chee, the first of the Manchu dynasty in 1647.

"Wherefore, officers and magistrates of the interior and exterior departments of our empire, be it your care diligently to observe the same, and to forebear in future to give any decision, or to pass any sentence, according to your private sentiments, or upon your unsupported authority.

"Thus shall the magistrates and people look up with awe and submission to the justice of these institutions, as they find themselves respectively concerned in them: the transgressor will not fail to suffer a strict expiation for his offenses, and will be the instrument of deterring others from similar misconduct; and, finally, the government and the people will be equally secured for endless generations in the enjoyment of the happy effects of the great and noble virtues of our illustrious progenitors."

The purposes sought to be accomplished by the laws as expressed in the prefatory edict of the Emperor Kaung-Hee second of the present dynasty, appear to be as commendable as those on which any European code or American constitution is framed.

"The chief ends proposed by the institution of punishments in the empire, have been to guard against violence and injury to repress inordinate desires, and to secure the peace and tranquillity of an honest and unoffending community.

"Laws have accordingly been enacted, numerous, as well as particular in their application, and subsequently varied and augmented at different times, as circumstances were found to require, but without ever losing sight of those principles of affection and benevolence, of which our Illustrious Predecessors, who laid the foundation of these institutions, were invariably observant."

The manner of accomplishing these purposes, however, differs radically from that pursued in the West. The code begins with preliminary tables exhibiting the scale of punishments, the instruments to be used and rules governing pecuniary payments to be made in lieu of corporal punishment. and some other matters.

TABLE I

Scale of Punishment Offenses against Public and Private Property.

	Pecuniary Malversation	Theft	Bribery for a lawful object	Bribery for an unlawful object	Theft of Public Property	Embezzlement of Public Property
	Amount in oz. of Silver	Ditto	Ditto	Ditto	Ditto	Ditto
20 blows with the bamboo	1 or less	. . .	. . .	. . .	. . .	. . .
30 blows with the bamboo	1 to 10	. . .	. . .	. . .	. . .	. . .
40 blows with the bamboo	20 ——	. . .	. . .	. . .	. . .	. . .
50 blows with the bamboo	30 ——	. . .	. . .	. . .	. . .	. . .
60 blows with the bamboo	40 ——	1 or less	1 or less	. . .	. . .	. . .
70 blows with the bamboo	50 ——	10 ——	10 ——	1 or less	1 or less	. . .
80 blows with the bamboo	60 ——	20 ——	20 ——	1 to 5 oz.	1 to 5 oz.	1 or less
90 blows with the bamboo	70 ——	30 ——	30 ——	10 ——	10 ——	1 to 2, 5
100 blows with the bamboo	80 ——	40 ——	40 ——	15 ——	15 ——	5
60 blows with the bamboo and 1 year's banishment	100 ——	50 ——	50 ——	20 ——	20 ——	7, 5
70 blows with the bamboo and 1½ year's banishment	200 ——	60 ——	60 ——	25 ——	25 ——	10

TABLE I (Continued)

	Pecuniary Malversation	Theft	Bribery for a lawful object	Bribery for an unlawful object	Theft of Public Property	Embezzlement of Public Property
	Amount in oz. of Silver	Ditto	Ditto	Ditto	Ditto	Ditto
80 blows with the bamboo and 2 year's banishment	300 —	70 —	70 —	30 —	30 —	12.5
90 blows with the bamboo and 2½ year's banishment	400 —	80 —	80 —	35 —	35 —	15
100 blows with the bamboo and 3 year's banishment. Dist.lees and upwards.	500 — and upwards	90 —	90 —	40 —	40 —	17.5
100 blows with the bamboo and perpet. banish.	2000	100 —	100 —	45 —	45 —	20
100 blows with the bamboo and perpet. banish.	2500	110 —	110 —	50 —	50 —	25
100 blows with the bamboo and perpet. banish.	3000	120 —	120 —	55 —	55 —	30
Death — to be strangled	. . .	Upwards of 120 oz.	Upwards of 120 oz.	80 to 120 If an inferior Officer.	80 in extreme Cases	. . .
Death — to be beheaded	. . .	. . .	. . .	. . .	. . .	80 in extreme Cases

Table III

Scale of pecuniary Redemption in such cases as are not legally excluded from the Benefit of general Acts of Grace and Pardon, and which, though not necessarily redeemable, have, by an Edict of the 8th Year of the Emperor Kien-Lung, been made redeemable upon Petition.

Rank of the Offender	Sentence	Pecuniary Commutation in Ounces of Silver
An Officer above the 4th Rank	Death by Strangulation or Decollation	12,000
" of the 4th Rank		5,000
" of the 5th or 6th Rank		4,000
" of the 7th or any inferior Rank, or a Doctor of Literature		2,500
A Graduate or Licentiate		2,000
A Private Individual		1,200
An Officer above the 4th Rank	Perpetual Banishment	7,200
" of the 4th Rank		3,000
" of the 5th or 6th Rank		2,400
" of the 7th or any inferior Rank, or a Doctor of Literature		1,500
A Graduate or Licenciate		1,200
A Private Individual		720
An Officer above the 4th Rank	Temporary Banishment of Blows with the Bamboo	4,800
" of the 4th Rank		2,000
" of the 5th or 6th Rank		1,500
" of the 7th or any inferior Rank, or a Doctor of Literature		1,000
A Graduate or Licentiate		800
A Private Individual		480

The principle of Table III is the reverse of that prevailing in Europe during feudal times. The higher the rank of the offender, the greater the pecuniary compensation required in lieu of the punishment indicated by Table I. Table II prescribes a scale of pecuniary redemption by redeemable punishments based on the same principle. The highest scale is imposed on those well able to pay, less on those not altogether destitute, still less on the young, the old and females. Punishments with the bamboo authorized to be actually inflicted are by Table IV made much less than the nominal punishments indicated in Table I, thus 10 blows are reduced to 4, 50 to 20 and 100 to 40. The bamboo to be used in inflicting the blows is required to be a straight and polished piece, the branches cut away, 5 *che* and 5 *tsun* in length, in breadth 1½ *tsun* by 1 *tsun,* in weight, 1½ *kin.* These are the dimensions of the lesser bamboo which in use is required to be held by the smaller end. The *che* is a measure of a trifle over 12½ inches of which the *tsun* is a tenth part. The *kin* exceeds the English pound by about one-third. The dimensions given are for the lesser bamboo. The greater is of the same length, 2 *tsun* by 1½, and weighing 2 *kin.* The *Kia* or *Cangue* fastened

about the neck as a punishment is described as "a square frame of dry wood, 3 *Che* long, 2 *Che* 9 *Tsun* broad, and weighing in ordinary cases 25 *Kin*." "The greater and less criminals shall all be confined by an iron chain 7 *Che* long and weighing 5 *Kin*." "The hand-cuffs shall be made of dry wood 1 *Che* and 6 *Tsun* long by 1 *Tsun* in thickness and shall be used to confine capital offenders of the male sex only." Following these tables, descriptions of punishments and the systems used to inflict them, comes table VI entitled "Degrees Of Relationship And Of Mourning, seemingly a wide departure from the subject of the preceeding tables. Perhaps nothing better illustrates the peculiarities of Chinese customs, principles and laws than this table which is as follows:

"The mourning for the nearest among relations in the first degree, shall be worn for three years, and shall be made of the coarsest hempen cloth, without being sewn at the borders.

The mourning for other relations in the first degree shall be worn for three or five months, and be made of middling hempen cloth, sewn at the borders.

The mourning for relations in the second degree, shall be worn for nine months, and be made of coarse linen-cloth.

The mourning for relations in the third degree, shall be worn for five months, and be made of middling coarse linen-cloth.

The mourning for relations in the fourth degree, shall be worn for three months, and be made of middling fine linen-cloth.

The full mourning for three years, shall be worn:

By a son, for his father or mother.

By a daughter, for her father or mother, when living under the parents' roof, although affianced to her intended husband, or although once married, if afterwards divorced and sent home.

By a son's wife, for her husband's father or mother.

By a son and his wife, for his father's substituted first wife; for the wife of his father substituted in the place of his mother, and for the wife of his father, who nursed him.

By an inferior wife's son and his wife, for his natural mother, and for his father's first wife.

By an adopted son and his wife, for his adopted parents.

By a grandson and his wife, for his paternal grand-parents.

By a wife, whether the first or inferior one, for her husband."

The first section of the 1st book, begins: "The lowest degree of punishment is a moderate correction inflicted with the lesser bamboo, in order that the transgressor of the law may entertain a sense of shame for his past, and receive a salutary admonition with respect to his future, conduct," and follows with schedules of the degrees of offenses; the number of blows to which they subject the offender nominally and the number

actually to be inflicted; from the 1st to the 5th with the lesser bamboo and those ranging from 60 to 100 blows with the larger bamboo. The next scale of punishments is that of temporary banishment to a distance not exceeding 500 *Lee,* 10 *Lee* being equal to about 3 geographical miles. Punishment with the bamboo is also inflicted together with the banishment. Perpetual banishment with 100 blows of the bamboo to distances of from 2000 to 3000 Lee is the 4th degree of punishment. The 5th and highest degree is death by strangulation or decollation. Capital sentences, except for atrocious crimes, are not to be executed until ratified by the Emperor.

"Instruments of torture of the following dimensions, may be used upon an investigation of a charge of robbery and homicide:

"The instruments for compressing the ankle-bones, shall consist of a middle piece, 3 *Che* 4 *Tsun* long, and two side-pieces, 3 *Che* each in length; the upper end of each piece shall be circular, and 1 *Tsun* 8 decimals in diameter; the lower ends shall be cut square, and, 2 *Tsun* in thickness: At a distance of 6 *Tsun* from the lower ends, four hollows, or sockets, shall be excavated, 1 *Tsun* 6 decimals in diameter, and 7 decimals of a *Tsun* in depth each; one, on each side the middle-piece, and one in each of the other pieces, to correspond. The lower ends being fixed and immovable, and the ankles of the criminal under examination being lodged between the sockets, a painful compression is effected by forcibly drawing together the upper ends.

"The instrument of torture for compressing the fingers, shall consist of 5 small round sticks, 7 *Tsun* in length, and 45/100 of a *Tsun* in diameter each: the application of this instrument is nearly similar to that of the former.

"In those cases wherein the use of torture is allowed, the offender, whenever he contumaciously refuses to confess the truth, shall forthwith be put to the question by torture; and it shall be lawful to repeat the operation a second time, if the criminal still refuses to make a confession. On the other hand, any magistrate who wantonly or arbitrarily applies the question by torture, shall be tried for such offense, in the tribunal of his immediate superior; and the latter shall make due inquiry into the circumstances, on pain of being himself accused before the supreme court of judicature at Pekin, if guilty of wilful concealment or connivance.

"Ordinary prisoners are to be confined with the small chain: the *Cangue,* or moveable pillory is never to be used, except expressly directed by the laws; nor to exceed 25 *Kin* in weight, unless otherwise specially determined and expressed.

"When a sentence of banishment is passed against the relations, or others, implicated in the guilt of an offender, the corporal punishment, which is usually inflicted in different degrees, proportionate to the duration of the banishment, shall be understood to be altogether remitted.

"From the 25th of the 4th moon, to the last day of the 6th moon of each year (in consideration of the heat at that season), the punishment of the lesser bamboo shall be remitted altogether; and that of the greater bamboo shall be reduced one degree, and further mitigated, by inflicting only eight for every ten blows to which the offender is condemned. This indulgence shall not, however, be extended to any other offenders beside those who are actually to be discharged within the period above mentioned. During the same interval, a particular degree of relaxation shall also be allowed to prisoners in general; and offenders sentenced to wear the *Cangue* shall be permitted to lay it aside, provided they can find securities for their subsequently fulfilling the law, by resuming it at the expiration of the said period.

"Offenders convicted of thieving, robbing, wounding, or assaulting shall be excluded from the benefit of the last-mentioned regulation.

"No capital execution shall take place during the period of the first or sixth moons of any year; and in the event of any conviction of a crime in a court of justice during the said intervals, for which the law directs immediate execution, the criminal shall, nevertheless, be respited until the first day of the moon next following.

"The mitigation of the law concerning the infliction of corporal punishment during the summer months, shall take effect without any particular reference to the Emperor."

In Section II offenses of a treasonable nature are defined, and include, rebellion, disloyalty, desertion (which includes the murder of father, mother, uncle, aunt, grandfather, or grandmother), parricide massacre which is the murder of 3 or more persons in one family, sacrilege. "Impiety is discoverable in every instance of disrespect or negligence toward those to whom we owe our being, and by whom we have been educated and protected. It is likewise committed by those who inform against or insult such near relations while living, or who refuse to mourn for their loss, and to show respect to their memory when dead." "Discord in families is the breach of the legal or natural ties which are founded on connections to whom, when deceased, the ceremony of mourning is legally due." Insubordination and incest, are also classed as treasonable.

"The crimes here arranged and distributed under ten heads, being distinguished from others by their enormity, are always punished with the utmost rigor of the law; and, when the offense is capital, it is excepted from the benefit of any act of general pardon; being likewise, in each case, a direct violation of the ties by which society is maintained, they are expressly enumerated in the introductory part of this code, that the people may learn to dread, and to avoid the same."

Section III designates the privileged classes. The first includes the imperial household and the Emperor's relations as well as those of his mother, grandmother and wife, within the first, second and third degrees.

The second class includes ancient and distinguished servants of the crown. The third those who have performed illustrious service, especially in war. The fourth those eminent for wisdom and virtue, the fifth, men distinguished for great ability, the sixth those especially distinguished for zeal in the public service:

"This privilege is to be enjoyed by all those who possess the first rank in the empire; all those of the second, who are at the same time employed in any official capacity whatever; and all those of the third, whose office confers any civil or military command."

"The Emperor esteems and protects those who are distinguished for their wisdom and eminent services, even to the second and third generation."

Persons included within these privileged classes, cannot be tried for offenses other than those of a treasonable nature, and by the express command of the Emperor. A similar privilege is extended to the father, mother, grandmother, wife, son and grandson, of persons belonging to either of these classes, and the final decision of all such causes is made by the Emperor. Offenses committed by officers at court or in the provinces, are required to be reported to the Emperor and a trial can only be had by his command. An inferior officer may report injurious treatment by his superior, as well as a superior officer make complaint of his subordinate. Tartars enrolled as banner-men are to be punished with the whip instead of the bamboo, and when guilty of offenses punishable with banishment, are to be confined with the *cangue* for a number of days proportioned to the prescribed banishment, for 1 year 20 days, 2 years 30 days, and in lieu of perpetual banishment from 45 to 90 days. Very elaborate provisions are made with reference to mitigations of punishment, in consideration of the relation of different parties to the offense, and of their conduct with reference to confessions, voluntary surrender and aid in procuring the arrest of participants in crime. There is a large class of offenses, punishable as crimes in which there is no intentional wrong doing, founded on imputable misconduct and negligence. The punishment in these cases is mitigated, however. Judicial officers are liable to punishment for unjust judgments, either of acquittal or conviction, and the clerk of the court as well as the judge must suffer, but with a reduction of three degrees where the sentence has been executed, and four where it has not been. A reduction of sentences by a degree means dropping down to the next lower one in the scale, as from 50 blows to 40, two years banishment to a year and a half. As a part of their punishment for dereliction all public officials are liable to degradation or dismissal from office.

"When any offender under sentence of death for an offense not excluded from the contingent benefit of an act of grace, shall have parents or grandparents who are sick, infirm, or aged above seventy years, and

who have no other male child or grandchild above the age of sixteen to support them, beside such capitally convicted offender, this circumstance, after having been investigated and ascertained by the magistrate of the district, shall be submitted to the consideration and decision of His Imperial Majesty."

Astronomers convicted of offenses punishable with banishment suffer 100 blows and may redeem themselves from further punishment by the payment of a fine. There is also a mitigation of punishments in favor of artisans, musicians and women, for minor offenses. Persons under fifteen or over seventy, except for heinous offenses, are allowed to redeem themselves. Expedition in the dispatch of public business is strictly enjoined and punishment is meted out for failure to execute orders, transmit or deliver dispatches or carry out any imperial orders. "Five days shall be allowed to discharge business of small importance, ten days for business of ordinary importance and twenty days for business of high importance." A distinction is made between principles and accessaries differing somewhat from that observed in Europe and America.

"As for instance; if a man engages a stranger to strike his elder brother—the younger brother shall be punished with ninety blows, and two years and a half banishment, for the offense of striking his elder; but the stranger shall be only punished with twenty blows, as in common cases of an assault. Also, if a younger relation introduces a stranger to steal to the amount of ten *leang* or ounces of silver of the family property, he shall only be punished as wasting, or disposing of without leave, the family property to that extent, whereas the stranger shall be punished as in common cases of theft." (Sec. 30).

"All relations connected in the first and second degree and living under the same roof, maternal grand-parents and their grandchildren, fathers and mothers-in-law, sons and daughters-in-law, grandchildren's wives, husbands' brothers and brothers' wives, when mutually assisting each other, and concealing the offenses, one of another, and moreover, slaves and hired servants assisting their masters and concealing their offenses, shall not, in any such cases, be punishable for so doing."

"In like manner, though they should inform their relations of the measures adopted for their apprehension, and enable them to conceal themselves, and finally to effect their escape, they shall still be held innocent."

"When relations in the third and fourth degrees assist and protect each other from punishment in the manner here described, they shall for such conduct be liable to punishment, but only in a proportion of three degrees less than would have been inflicted on strangers under the same circumstances." (Sec. 32).

Degrees of relationship are counted quite differently from the rules either of the Roman or common law.

"Whatever is declared in the laws to concern relations in the first degree, grand-parents or grandchildren, shall likewise be understood to extend equally to great-grand-parents, and great-great-grand-parents, great-grand-children, and great-great-grand-children, except in cases of constructive crimes, when the law shall be taken literally."

"Also, the father's principal wife, the father's wife substituted in the place of the principal wife after her death, the father's wife substituted in the place of the natural mother upon her death, and the adopted mother, shall all hold equal rank with the natural mother, and be understood to be referred to, in all laws in which the mother of the party concerned is only stated generally, except in the case of such mother having been divorced, or in the case of her killing, or attempting to kill, such son-in-law."

"Also, except in cases of constructive offenses, whatever the law states relative to the sons, shall be applicable to the daughters also." (Sec. 38).

"A day shall be considered to have elapsed when the hundred divisions are completed—(at present, according to the Imperial Almanac, the day consists of ninety-six divisions). A day's work or labour shall, however, be computed only from the rising to the setting of the sun."

"A legal year shall consist of 360 days complete, but a man's age shall be computed to the number of years of the cycle elapsed since his name and birth were recorded in the public register."

"When the law speaks of several persons, three at least are to be understood; but when simply stating the circumstances of an agreement or combination, any number not less than two may be implied." (Sec. 41).

The imperfection of the code and the difficulties attending the decision of cases not clearly provided for, are recognized in several places. Section XLIV provides:

"From the impracticability of providing for every possible contingency, there may be cases to which no laws or statutes are precisely applicable; such cases may then be determined, by an accurate comparison with others which are already provided for, and which approach most nearly to those under investigation, in order to ascertain afterwards to what extent an aggravation or mitigation of the punishment would be equitable.

Provisional sentence conformable thereto shall be laid before the superior magistrates, and after receiving their approbation, be submitted to the Emperor's final decision. Any erroneous judgment which may be pronounced in consequence of adopting a more summary mode of proceeding, in cases of a doubtful nature, shall be punished as a wilful deviation from justice."

"All the appointments and removals of officers, whether civil or military, shall depend solely upon the authority of the Emperor. If any great officer of state presumes to confer any appointment upon his own authority,

he shall suffer death by being beheaded, after remaining in prison the usual time." (Sec. 48.)

"The official messengers who are employed in the several districts of the empire under the jurisdiction of the cities of the first, second, and third order, for the transmission of dispatches relative to ordinary public business, or to the punishment of public transgressors, shall perform the services upon which they are respectively employed, within the periods which, with a due regard to the distance, and other circumstances, are in each case by law established. For one day's delay beyond the legal period, they shall be liable to a punishment of 10 blows, which shall be increased one degree, until it amounts to 40 blows, for every additional day's delay. If the governing magistrates in any of the aforementioned districts and divisions of command, do not, when the administration of public affairs requires, send immediately the necessary orders for instructions to the officers subject to their authority, such neglect shall be punished with 100 blows."

"The attention due to the repairing and inspecting of roads and bridges; to accidents and affrays; to the seizing of criminals; confiscation of property, and to any other such specific objects, being noticed and enforced elsewhere in this code, the neglect thereof is not to be punished as a breach of this general article." (Sec. 51).

As official appointments are in theory at least, based on the qualifications of candidates, as ascertained from the regular literary examinations, it is regarded as of great importance, that the examiners be fair and make true reports.

"Whoever confers degrees of honour on persons who are not worthy, or who are under any disqualifications; and whoever, on the contrary, refuses at the proper time to confer such degrees upon those who are entitled to them by their merit, as well as duly qualified, shall be punished with 80 blows for a single instance of such offense, and one degree more severely, as far as 100 blows, for every two additional instances which may be proved upon investigation. If the individual so improperly graduated is aware of his being ineligible, he shall be punished as a participator in the offense, but otherwise shall be held innocent."

"If the presiding examiner of the merits of the candidates designedly makes a false report in any instance, by elevating or depressing their respective claims, the punishment of such examiner shall be two degrees less than that of the officer who confers the degrees improperly. If the report is erroneous, but not designedly false, the punishment shall be less by three degrees, but liable in all cases to be increased whenever there is conviction of bribery and corruption." (Sec. 52.)

"The laws and statutes of the empire have been framed with deliberation, are sanctioned with appropriate penalties against transgressors, and are published to the world for perpetual observance."

"All the officers and others in the employ of government ought to study diligently, and make themselves perfect in the knowledge of these laws, so as to be able to explain clearly their meaning and intent, and to superintend and ensure their execution."

"At the close of every year, the officers and other persons employed by government, in every one of the exterior and interior departments, shall undergo examination on this subject before their respective superiors, and if they are found in any respect incompetent to explain the nature, or to comprehend the several objects, of the laws, they shall forfeit one month's salary when holding official, and receive 40 blows when holding any of the inferior, situations."

"All those private individuals, whether husbandmen, or artificers or whatever else may be their calling or profession, who are found capable of explaining the nature, and comprehending the objects, of the laws, shall receive pardon in all cases of offenses resulting purely from accident, or imputable to them only from the guilt of others, provided it be the first offense, and not implicated with any act of treason or rebellion."

"Whosoever, in the employ of government, fraudulently perverts or misconstrues, or presumptuously changes, abrogates or confounds the law upon any case, so as to produce disturbance and insurrection in the country, shall suffer death by being beheaded, after the usual period of imprisonment." (Sec. 61.)

"Whenever an Imperial Edict is issued on any subject, whoever wilfully omits the execution of any thing that is commanded therein, shall be punished with 100 blows. In the case of the edict of the Imperial prince elect, the punishment shall be the same. A failure in any such respect, from neglect or inadvertence, shall be punished three degrees less severely."

"Moreover, any one who delays or postpones the execution of an Imperial edict for one day, shall be punished with 50 blows, and one degree more severely as far as 100 blows for each additional day of delay." (Sec. 62.)

Book II of the Second Division of which Section LXI is the first, relates to the conduct of magistrates and enjoins the performance of various official duties.

"When a family has omitted to make any entry whatever in the public register, the head or master thereof, if possessing any lands chargeable with contributions to the revenue, shall be punished with 100 blows; but if he possess no such property, with 80 blows only, and the family shall in the former case be registered as accountable for future public service, according to the amount of its taxable property, and in the latter, according to the number of male individuals of full age of which it consists."

"When any head or master of a family, has among his household

strangers who constitute, in fact, a distinct family, but omits to make a corresponding entry in the public register, or registers them as members of his own family, he shall be punished with 100 blows, if any such stranger possesses taxable property, and with 80 blows if he should not possess any; and in all cases, the register shall be duly corrected, by the insertion of a description of such strangers as a distinct family." (Sec. 75.)

"All persons whatsoever shall be registered according to their accustomed professions or vocations, whether civil or military, whether postmen, artisans, physicians, astrologers, laborers, musicians, or of any other denomination whatever; wherever a military employment is represented as a civil one, or an artisan endeavours to pass himself as a mere laborer, or when any other device is employed to lessen the individual's liability to the public service, such individual shall be punished with 80 blows, and the magistrate who negligently consents to such omission, irregularity, or confusion in the entries on the public register, shall be equally punishable."

"Whoever falsely represents himself to belong to any military establishment in garrison, or in the field, and thereby evades all public service whatever, shall receive 100 blows, and be sent into the ulterior and perpetual military banishment." (Sec. 76.)

"No religious houses of the sects of Foe and Tao-se, except those which have been heretofore lawfully constituted and established, shall be privately maintained, appropriated, or endowed, whether upon a new, or in addition to an old foundation, or in any other manner whatsoever." (Sec. 77.)

"Whoever appoints his heir and representative unlawfully, shall be punished with 80 blows. When the first wife has completed her fiftieth year, and has no children living, it is allowed to appoint the eldest son by the other wives to the inheritance; but if any other than the eldest of such sons is so appointed, it shall be deemed a breach of this law."

"If a person, not having sons himself, educates and adopts the son of a kinsman, having other sons, but afterwards dismisses such adopted son, such person shall be punished with 100 blows, and the son shall be sent back to, and supported, as before, by the adopting parents."

"Nevertheless if the adopting parent shall have subsequently had other sons, and the natural parents, having no other, are desirous of receiving their son back again, they shall be at liberty so to do."

"Whoever asks for, and receives into his house as his adopted son, a person of a different family name, is guilty of confounding family distinctions, and shall therefore be punished with 60 blows; the son so adopted shall, in such cases, always be returned to his family. In like manner, whoever gives away his son to be adopted into a family of a

different name, shall suffer the punishment decreed by this law, and receive such son back again. Nevertheless, it shall be lawful to adopt a foundling under three years of age, and to give the child the name of the family into which it is adopted; but such adopted child shall not be entitled to the inheritance upon failure of the children by blood."

"If the relative appointed to the inheritance, on failure of children, is not the eldest in succession, it shall be deemed a breach of this law; the relative so appointed shall be sent back to his place in his own family, and the lawful heir appointed in his stead."

"Whoever brings up in his family, as a slave, the male or female child of a freeman, shall be punished with 100 blows, and the child shall regain its freedom." (Sec. 78.)

"In all districts of the empire, 100 families shall form a division, and shall consult together, in order to provide a head and ten assessors, who are to attend successively, in order to assist in the collection of the taxes, and duly to ascertain the performance of all other public duties and services."

If there are any other persons who, falsely assuming authority under the characters of deputies, assistants, and the like, create disturbances and harass the people, they shall be punished with 100 blows and banished."

"The elders, who are to be appointed to these offices, shall be chosen among the most respectable persons of maturer age who belong to the district, and no person shall be eligible to, or accept, the said offices, who has ever held any civil or military employments, or who has ever been convicted of any crime. Whoever accepts the same, in defiance of this law, shall be punished with 60 blows, and dismissed; the officer of government, who sanctions such undue appointment, shall be punished with 40 blows, at the least, and eventually suffer such further punishment as he may be liable to, in consequence of being guilty of receiving a bribe for an unlawful purpose." (Sec. 83.)

"Sons or grandsons who form to themselves a separate establishment for their parents and grand-parents, and also make a division of the family property, shall, provided such parents and grand-parents personally prosecute, be punished, on conviction, with 100 blows."

"Also, the sons of the same parents, who shall form to themselves separate etsablishments, and divide their respective proportions of the inheritance, previous to the expiration of the lawful period of mourning, shall be punished with 80 blows, provided they are convicted upon an information laid by an elder relation in the first degree, and provided that they had not been expressly directed to do so in the last will of their parent deceased." (Sec. 87.)

"Any younger and inferior member of a family, living with the others under the same roof, who applies to his own use, or otherwise disposes

of, the joint family-property without permission, shall be punished with 20 blows, if the value amounts to 10 ounces of silver; and one degree more severely as far as 100 blows, for every additional 10 ounces value."

"An unjust or partial division of the patrimony between the elder and younger branches of a family, upon their separation, shall likewise be punished agreeably to the tenor of this law." (Sec. 88.)

"All poor destitute widowers and widows, the fatherless and childless, the helpless and the infirm, shall receive sufficient maintenance and protection from the magistrates of their native city or district, whenever they have neither relations nor connexions upon whom they can depend for support. Any magistrate refusing such maintenance and protection, shall be punished with 60 blows."

"Also, when any such persons are maintained and protected by government, the superintending magistrate and his subordinates, if failing to afford them the legal allowance of food and raiment, shall be punished in proportion to the amount of the deficiency, according to the law against an embezzlement of government stores." (Sec. 89.)

There are numerous regulations designed to enforce the collection of taxes and prevent frauds on the revenue. Provision is made by Section XCI for an abatement of taxes in districts suffering from a temporary calamity as excessive rain, overflows, drought, unseasonable frosts, locusts and the like. Public officers are required to examine and report any such cases. The system of mortgaging land is somewhat peculiar and seems to be designed to protect the revenue.

"Whoever takes lands or tenements by way of mortgage, without entering into a regular contract, duly authenticated and assessed with the legal duty by the proper magistrate, shall receive 50 blows, and forfeit to government half the consideration money of the mortgage. If the mortgagor does not transfer to the mortgagee unreservedly the whole produce of the land upon which the taxes are charged and made payable to government, he shall be punished in proportion to the extent of the property, in the following manner: if from one to five *meu,* with 40 blows, and one degree more severely for each five additional *meu,* until the punishment amounts to 100 blows; the land so illegally mortgaged shall be forfeited to government."

"If the proprietor of lands and tenements already mortgaged, attempts to raise money thereon by a second mortgage, the amount obtained upon such false pretences shall be ascertained, and the offender punished accordingly, as in the case of an ordinary theft to the same extent, except that he shall not be liable to be branded."

"The pecuniary consideration received by the fraudulent mortgagor shall be restored always to the mortgagee, unless such mortgagee is himself privy to the unlawfulness of the transaction, in which case it shall be forfeited to government."

"The said mortgagee and the negotiator of the bargain, when either of them is acquainted with the unlawfulness of the transaction, shall moreover receive the same punishment as the mortgagor. In all such cases, the first and lawful mortgagee shall remain in possession."

"If, after the period, specified in the deed by which any lands or tenements are professed to be mortgaged or pledged by the proprietor, is expired, the said proprietor offers to redeem his property by the payment back of the original consideration upon which he had parted with it, it shall not be allowed the mortgage to refuse to comply; any instance of such refusal shall subject him to the punishment of 40 blows, and to the forfeiture of all the produce of the land which he may have reaped after the expiration of such period. Nevertheless, this law shall only have effect when the proprietor is really able at the expiration of the prescribed period to redeem his lands, and not otherwise." (Sec. 95.)

The duty of cultivating the land is strictly unjoined.

"In every district of the empire, when the lands which have been entered on the public registers as liable to the land-tax, and as subjecting the proprietors to the demands of personal service, are, without any cause, such as inundation, drought, or other calamity, neglected and omitted to be duly cultivated; as, for instance, if the established mulberry, hemp, and other similar plantations are not duly kept up, the head inhabitant of the district shall be held responsible, and punished according to the relative extent of the uncultivated to that of the cultivated portion of the registered lands in his district. If the uncultivated portion is one-tenth of the whole, he shall be punished with 20 blows, and one degree more severely, as far as 80 blows, for each additional tenth uncultivated. The presiding magistrate of the city of the third order, to which the district is subjected, shall likewise be punishable, but less severely by two degrees in each case than the head inhabitant. The assessors of the chief magistrate shall suffer punishment as accessaries to his offense."

"The individual proprietor also, who suffers his land to remain uncultivated, or who neglects his mulberry, hemp, or other plantations, shall be punished according to the proportion which the neglected part bears to the whole of his registered property, if it amounts to one-fifth, with 20 blows, and one degree more severely for every additional fifth left uncultivated."

"His lands shall moreover be assessed with the land-tax in proportion to the amount of the produce they are judged capable of yielding, and the contribution shall be levied on the proprietor accordingly." (Sec. 97.)

Trespasses on land and taking the fruit belonging to others is punished with the bamboo.

"When a marriage is intended to be contracted, it shall be, in the

first instance, reciprocally explained to, and clearly understood by, the families interested, whether the parties who design to marry are or are not diseased, infirm, aged, or under age; and whether they are the children of their parents by blood, or only by adoption; if either of the contracting families object, the proceedings shall be carried no further; if they still approve, they shall then in conjunction with the negotiators of the marriage, if such there be, draw up the marriage-articles, and determine the amount of the marriage presents."

"If, after the woman is thus regularly affianced by the recognition of the marriage-articles, or by a personal interview and agreement between the families, the family of the intended bride should repent having entered into the contract, and refuse to execute it, the person amongst them who had authority to give her away shall be punished with 50 blows, and the marriage completed agreeably to the original contract. Although the marriage-articles should not have been drawn up in writing, the acceptance of the marriage-presents shall be sufficient evidence of the agreement between the parties."

"If after the female is affianced, but previous to the completion of the marriage, her family promises her in marriage to another, the person having authority to give her away shall be punished with 70 blows; if such promise is made after the first marriage is actually completed (that is to say, the bride is personally presented to and received by the bridegroom), the punishment shall be increased to 80 blows."

"If the family of the intended bridegroom after having agreed as aforesaid, repents of the contract, and makes marriage-presents to another woman, the same punishment shall be inflicted, as in the cases already mentioned. The bridegroom shall be obliged to receive his originally intended bride; and the female, to whom he is secondly affianced, shall retain the marriage-presents made to her, and be at the same time at liberty to marry another person." (Sec. 101.)

"Whoever lends any one of his wives, to be hired as a temporary wife, shall be punished with 80 blows,—whoever lends his daughter in like manner, shall be punished with 60 blows; the wife or daughter in such cases, shall not be held responsible."

"Whoever, falsely representing any of his wives as his sister, gives her away in marriage, shall receive 100 blows, and the wife consenting thereto, shall be punished with 80 blows."

"Those who knowingly receive in marriage the wives, or hire for a limited time the wives or daughters of others, shall participate equally in the aforesaid punishment, and the parties thus unlawfully connected, shall be separated; the daughter shall be returned to her parents, and the wife to the family to which she originally belonged; the pecuniary consideration in each case shall be forfeited to government. Those

who ignorantly receive such persons in marriage, contrary to the laws, shall be excused, and recover the amount of the marriage-presents." (Sec. 102.)

"Whoever degrades his first or principal wife to the condition of an inferior wife or concubine, shall be punished with 100 blows. Whoever, during the life-time of his first wife, raises an inferior wife to the rank and condition of a first wife, shall be punished with 90 blows, and in both cases, each of the several wives shall be replaced in the rank to which she was originally entitled upon her marriage."

"Whoever, having a first wife living, enters into marriage with another female as a first wife, shall likewise be punished with 90 blows; and the marriage being considered null and void, the parties shall be separated, and the woman returned to her parents." (Sec. 103.)

"If any man or woman enters into an equal marriage during the legal period of mourning for a deceased parent, or any widow enters into a second and equal marriage within the legal period of mourning for her deceased husband, the offending party shall be punished with 100 blows."

"If it is not an equal match, that is to say, if a man takes an inferior wife from a subordinate rank or a woman connects herself in marriage as one of the inferior wives of her husband, the punishment attending a breach of this law shall be less by two degrees." (Sec. 105.)

"Whoever marries a wife or a husband upon equal terms of espousal having a father, mother, grand-father or grand-mother at the same time under confinement in prison for a capital offense, shall be punished with 80 blows;—whoever at such time receives in marriage, or becomes by marriage, a subordinate wife, shall suffer punishment less by two degrees."

"Nevertheless, if any such person enters into the marriage state at such period, by the express command of his or her parent or grand-parent in prison, no punishment shall ensue, provided the usual feast and entertainment is omitted; otherwise a punishment of 80 blows shall be inflicted." (Sec. 106.)

"Whenever any persons having the same family-name intermarry, the parties and the contractor of the marriage shall each receive 60 blows, and the marriage being null and void, the man and woman shall be separated, and the marriage-presents forfeited to government." (Sec. 107.)

"In general all marriages between persons who through another marriage are already related to each other in any of the four degrees, and all marriages with sisters by the same mother, though by a different father, or with the daughters of a wife's former husband, shall be considered as incestuous, and punished according to the law against a criminal intercourse with such relations."

"A man shall not marry his father's or mother's sister-in-law, his father's or mother's aunt's daughter, his son-in-law's or daughter-in-law's sister, or his grandson's wife's sister, on pain of receiving 100 blows for such offense."

"Whoever marries his mother's brothers or mother's sister's daughter, shall receive 80 blows, and in these as well as the foregoing cases the marriage shall be annulled and the marriage-present forfeited." (Sec. 108.)

"Whoever marries a female relation beyond the fourth degree, or the widow of a male relation equally remote, shall be punished with 100 blows. Whoever marries the widow of a relation in the fourth degree, or of a sister's son, shall be punished with 60 blows, and one year's banishment. Whoever marries the widow of any nearer relation, shall be punished according to the law against incestuous connexions with such persons. Nevertheless, when the connexion had been broken by a divorce, or an intervening marriage with a stranger, the offence shall in general be only punished with 80 blows."

"Whoever receives in marriage any of his father's or grandfather's former wives, or his father's sisters, shall, whether they have been divorced or re-married, in all cases suffer death, by being beheaded. Whoever marries his brother's widow, shall be strangled."

"The foregoing cases, in general apply to first wives only, and the punishment of marrying the inferior wives of such relatives as aforesaid, shall be less in each case by two degrees."

"Whoever marries any female relation in the fourth, or any nearer degree, shall be punished according to the law concerning incest, and all such incestuous marriages shall be null and void." (Sec. 109.)

Officers of government marrying into families subject to their jurisdiction or having an interest in legal proceedings before them, are subject to 80 blows. For forcibly abducting and marrying a woman death by strangulation is the penalty. An officer or clerk of government who marries a female musician or comedian is punishable with 60 blows and the marriage declared void. Priests of Foe or Tao-sse, who marry, are punishable with 80 blows and expulsion from the order. A master who obtains in marriage for his slave the daughter of a free man, is punishable with 80 blows and the members of her family, who knowingly consent, are subject to like punishment.

"If a husband repudiates his first wife, without her having broken the matrimonial connexion by the crime of adultery, or otherwise; and without her having furnished him with any of the seven justifying causes of divorce, he shall in every such case be punishable with 80 blows. Moreover, although one of the seven justifying causes of divorce should be chargeable upon the wife, namely, (1) barrenness; (2) lasciviousness; (3) disregard of her husband's parents; (4) talkativeness; (5) thievish propensities; (6) envious and suspicious temper; and, lastly,

(7) inveterate infirmity; yet, if any of the three reasons against a divorce should exist, namely, (1) the wife's having mourned three years for her husband's parents; (2) the family's having become rich after having been poor previous to, and at the time of, marriage; and, (3) the wife's having no parents living to receive her back again; in these cases, none of the seven aforementioned causes will justify a divorce, and the husband who puts away his wife upon such grounds, shall suffer punishment two degrees less than that last stated, and be obliged to receive her again."

"If the wife shall have broken the matrimonial connexion by an act of adultery, or by any other act, which by law not only authorizes but requires that the parties should be separated, the husband shall receive a punishment of 80 blows, if he retain her."

"When the husband and wife do not agree, and both parties are desirous of separation, the law limiting the right of divorce shall not be enforced to prevent it."

"If, upon the husband's refusing to consent to a divorce, the wife quits her home and absconds, she shall be punished with 100 blows, and her husband shall be allowed to sell her in marriage; if, during such absence from her home, she contracts marriage with another person, she shall suffer death, by being strangled, after the usual period of confinement." (Sec. 115.)

There are various other provisions relating to marriage, and divorce and denouncing penalties for misconduct of the parties. Book IV treats of public property and coinage, the collection of revenue and imposes penalties for misconduct in reference thereto. There are numerous provisions enjoining, on all officers handling public funds, watchfulness of each other and the duty to report any misconduct. Book V. regulates duties and customs. Its first provision is as follows:

"Whoever, not having a license, engages in a clandestine traffic in salt, that is to say, possesses any quantity however small of this article for sale, shall be punished with 100 blows, and banished for three years." (Sec. 141.)

An important part of the revenues of the state is derived from the salt monopoly maintained by the government. Various other articles of merchandise are subject to taxation. The law against usury like all other laws, is enforced with the bamboo; the limit allowed as interest is rather high being 3% per month, but arrears of interest cannot exceed the principal. The payment of the debt and interest is also enforced with the bamboo, and a delay of three months in the payment of a debt of 5 *leang* or more is punished with 10 blows and 10 more for each additional delay of a month up to 40 blows. The failure to pay larger debts may subject him to more blows. A creditor who attempts to collect his debt by forcibly seizing the property of the debtor is liable

to 80 blows, if he accepts the wife or children of his debtor in pledge for payment, he shall be punished with 100 blows, if the creditor takes the wife or children and carries them off by force, he is subject to an increase of two degrees of punishment, and if guilty of criminal conduct toward the wife must suffer death by strangulation. Trustees having charge of the goods or live stock of another, who misappropriate or waste the property are liable to the bamboo, and frauds are similarly punished. Book VII treats of sales and markets, and provides for appointments of commercial agents in every city, public market and village district, who are required to keep registers of the ships and merchants who arrive and the quantity of their goods. Section 154 contains a provision which might give ample employment to the officials, if put in force in America.

"When the parties to the purchase and sale of goods do not amicably agree respecting the terms, if one of them monopolizing, or otherwise using undue influence in the market, obliges the other to allow him an exorbitant profit; or if artful speculators in trade, by entering into a private understanding with the commercial agent, and by employing other unwarrantable contrivances, raise the price of their own goods, although of low value, and depress the prices of those of others, although of high value, in all such cases the offending parties shall be severally punished with 80 blows each for their misconduct."

"When a trader, observing the nature of the commercial business carrying on by his neighbor, contrives to suit or manage the disposal or appreciation of his own goods in such a manner, as to derange, and excite distrust against the proceedings of the other, and thereby draws unfairly a greater proportion of profit to himself than usual, he shall be punished with 40 blows."

"The exorbitant profit derived from any one of the foregoing unlawful practices, shall, as far as it exceeds a fair proportion, be esteemed a theft, and the offender punished accordingly, whenever the amount renders the punishment provided by the law against theft more severe than that hereby established and provided. The offender shall not however be branded as in the ordinary cases of theft." (Sec. 154.)

The use of false weights or measures is punishable with 60 blows and public officers conniving at the use of false weights are punishable with from 70 to 100 blows.

"If a private individual manufactures any article for sale, which is not as strong, durable, and genuine, as it is professed to be, or if he prepares and sells any silks or other stuffs of a thinner or slighter texture and quality, narrower, or shorter, than the established or customary standard, he shall be punished with 50 blows. (Sec. 156.)

Book I of the 4th division makes provision for the observance of the sacred rites and religious duties and denounces severe punishment for

failure to observe the ceremonies which are so important a part of Chinese customs. For the details of the various observances, references are made to the Book of Rites. The health of the emperor is cared for by subjecting his physician to from 60 to 100 blows for any mistakes in his medicine, and his cook to like punishment for improper ingredients in his food or failing to test the dishes served by tasting.

"If either the superintending or dispensing officer, or the cook, introduces into His Majesty's kitchen any unusual drug, or article of food, he shall be punished with 100 blows, and compelled to swallow the same." (Sec. 163.)

"If a son on receiving information of the death of his father or mother, or a wife, receiving information of the death of her husband, suppress such intelligence, and omits to go into lawful mourning for the deceased, such neglect shall be punished with 60 blows, and one year's banishment. If a son or wife enters into mourning in a lawful manner, but previous to the expiration of the term, discards the mourning habit, and forgetful of the loss sustained, plays upon musical instruments and partakes of festivities, the punishment shall amount for such offense to 80 blows."

"Whoever on receiving information of the death of any other relation in the first degree than the above-mentioned, suppresses the notice of it, and omits to mourn, shall be punished with 80 blows; if previous to the expiration of the legal period of mourning for such relation, any person casts away the mourning habit, and resumes his wonted amusements, he shall be punished with 60 blows."

"When any officer or other person in the employ of government, has received intelligence of the death of his father or mother, in consequence of which intelligence he is bound to retire from office during the period of mourning; if, in order to avoid such retirement, he falsely represents the deceased to have been his grand-father, grand-mother, uncle, aunt, or cousin, he shall suffer the punishment of 100 blows, be deposed from office, and rendered incapable of again entering into the public service."

"On the other hand, if any officer of government falsely alleges the pretext of mourning, while his parents are still living, or after they are so long dead that the period of mourning had expired, he shall be liable to the same punishment as in the opposite case last mentioned."

"If either of the foregoing misrepresentations should be designed to effect any criminal purpose, the offender shall be liable to any aggravation of the punishment which may be comformable to the law, applicable to the case under such circumstances."

"If, previous to the expiration of the lawful term of absence in consequence of the loss of a parent, any officer or other person in the employ of government, returns to, and resumes his office or command, he shall be deprived thereof, and punished with 80 blows. If the superior officers

of the same department are aware that the return of the mourner is premature, and nevertheless permit him to resume his functions, they shall be equally punishable; but if not aware of the fact, they shall not be responsible."

"Those officers of government, who hold remote and important stations and commands, shall not be bound by the above regulations on the arrival of the intelligence of the death of their parents, as the line of conduct they are to pursue on such occasions will always be determined by express orders from the Emperor." (Sec. 179.)

"If any person, in order to hold an office under government, absents himself from a father, mother, paternal grandfather, or grandmother, who is either upwards of 80 years of age, or totally disabled by any infirmity, while such near relation has no other male offspring above sixteen years of age, to perform the duties of filial piety; or if on the contrary, any person being in office, solicits permission to retire to his family, upon a falsely alleged pretext of the age or infirmity of any such near relation as aforesaid, the offender, in either of these opposite cases, shall suffer a punishment of 80 blows."

"Whoever plays on musical instruments, or partakes of feasts at home or abroad, while her husband, or his or her father, mother, paternal grandfather or grandmother, are in confinement upon a charge of a capital offense, shall also be liable to the aforesaid punishment." (Sec. 180.)

Funerals are strictly regulated, and failure to observe the established rites is punishable with from 80 to 100 blows.

The 5th division contains the military laws for the government of the imperial palace, the guards and the army. The regulations are quite minute and voluminous and not deemed of especial interest. The size of the empire of China with its single head renders rapid communication between its remote parts necessary. The Chinese were far in advance of the Europeans in establishing a system of transmitting dispatches, and it was only with the advent of railroads and telegraphs that the postal system of the West became superior to that of China. It is provided in Section 238:

"The military post-soldiers charged with the transmission of government orders and dispatches, must proceed on their route at the rate of 300 *lee* in a day and a night: If through dilatoriness they exceed the time to the extent of three quarters of an hour (an hour and a half European computation), they shall be punished with 20 blows; and the punishment shall increase by a progressive ratio of one degree for each additional delay of three-quarters of an hour, until it amounts to 50 blows."

"Immediately that the dispatches of government arrive at any military post or station, the post-master shall not fail to forward them, whether many or few, under the charge of the soldiers who are placed under his jurisdiction for that purpose."

Not only are provisions made for swift messengers, but post-houses are stationed at convenient distances along all the roads and the post master general of the district is required to keep them in repair under penalty of 50 blows. Severe penalties are denounced against messengers failing in their duty and against any one interfering with them in making their journeys.

The 6th subdivision is devoted to criminal laws. High treason is thus defined and punished:

"High treason, is either treason against the state, by an attempt to subvert the established government; or treason against the Sovereign, by an attempt to destroy the palace in which he resides, the temple in which his family is worshipped, or the tombs in which the remains of his ancestors are deposited."

"All persons convicted of having been principals or accessaries to the actual or designed commission of this heinous crime, shall suffer death by a slow and painful execution."

"All the male relations in the first degree, at or above the age of sixteen, of persons convicted as aforesaid; namely, the father, grandfather, son, gradsons, paternal uncles, and their sons respectively, shall, without any regard to the place of residence, or to the natural or acquired infirmities of particular individuals, be indiscriminately beheaded."

"All the other male relations at or above the age of sixteen, however distant their relationship, and whether by blood or by marriage, shall likewise suffer death, by being beheaded, if they were living under the same roof with the treasonable offender, at the time the offence was committed."

"The male relations in the first degree, under the age of sixteen and the female relations in the first degree, of all ages, shall be distributed as slaves to the great officers of state." (Sec. 254.)

"All persons convicted of writing and editing books of sorcery and magic, or of employing spells and incantations, in order to agitate and influence the minds of the people, shall be beheaded, after remaining in prison the usual period. If the influence of such acts shall not have extended beyond a few persons, the criminal shall be banished perpetually to the distance of 3000 *lee;* and generally, the punishment shall be proportionate to the nature of the case, and therefore more or less severe according to circumstances."

"All persons who are guilty of retaining in their possession, and concealing from the magistrates, any books of the above description, shall be punished with 100 blows, and banished for three years." (Sec. 256.)

"All persons guilty of stealing the consecrated oblations offered up by the Emperor to the spirits of Heaven and Earth, or any of the sacred utensils, cloths, meat-offerings, and precious stones used on such occasions, shall whether principals or accessaries to the offense, whether previously

entrusted or not with the charge of the said articles, in all cases, be beheaded." (Sec. 257.)

"All persons guilty of having been principals or accessaries to the crime of stealing an Imperial edict, after it has received the impression of the great Imperial seal, shall be beheaded." (Sec. 258.)

"All persons concerned as principals or accessaries in the offense of forcibly rescuing, or attempting to rescue any lawful prisoner, shall suffer death by being beheaded, after confinement during the usual period." (Sec. 267.)

Theft is punishable by a graduated scale ranging from 60 blows for stealing one ounce of silver to death by strangulation for taking 120 ounces. Larceny of property is punishable according to the same scale of value. Where the theft is from a relation by blood or marriage in the first degree, it is reduced five degrees, from those in the second degree, four degrees, in the third, three and in the fourth two and from other relations one degree less than if from a stranger.

"All persons guilty of digging in, and breaking up another man's burying-ground, until at length one of the coffins which had been deposited therein, is laid bare and becomes visible, shall be punished with 100 blows, and perpetual banishment to the distance of 3000 *lee*."

"Any person who, after having been guilty as aforesaid, proceeds to open the coffin, and uncover the corpse laid therein, shall be punished with death, by being strangled, after undergoing the usual confinement." (Sec. 276.)

This section is long and contains many provisions for punishing the desecration of burying grounds. The punishment of robbery is generally capital but there are various grades of this offense to which less penalties are assigned.

The distinction between principal and accessary of this code makes the contriver of the crime principal and the others accessaries. Actual participation in the perpetration of the crime is not made the basis of distinction between them. Attempts and designs to commit crime though not carried into execution are also punishable in a less degree. Homicide in various degrees is defined and punished with death.

"Any person convicted of a design to kill his or her father or mother, grandfather or grandmother, whether by the father's or mother's side; and any woman convicted of a design to kill her husband, husband's father or mother, grandfather or grandmother, shall, whether a blow is or is not struck in consequence, suffer death by being beheaded. In punishing this criminal design, no distinction shall be made between principals and accessaries, except as far as regards their respective relationships to the person against whose life the design is entertained. If the murder is committed, all the parties concerned therein, and related to the deceased as above mentioned, shall suffer death by a

slow and painful execution. If the criminal should die in prison, an execution similar in mode shall take place on his body. The accessaries more distantly related, shall be punished according to the law particularly applicable to the cases of persons so related; and those accessaries who are not related at all, shall be punished as similar offenders would be in ordinary cases." (Sec. 284.)

An adulterer and his paramour, caught in the act, may be immediately killed by the husband, but not afterward.

"All persons rearing venomous animals, or preparing drugs of a poisonous nature, for the purpose of applying the same to the destruction of men, or instructing others so to do, shall be beheaded, although no person is actually killed by means of such drugs or animals. The property of the person guilty of this crime, shall be forfeited to government, and his wives and children, as well as the other inmates of his house, although innocent of the crime, shall be perpetually banished to the distance of 2000 *lee*." (Sec. 289.)

Killing by accident or mistake is punished less severely according to circumstances.

"If a wife strikes and abuses her husband's father or mother, grandfather, or grandmother, and the husband, instead of accusing her before a magistrate, kills her in consequence of such offense, he shall be punished with 100 blows."

"If a wife, having been struck and abused by her husband, in consequence thereof kills herself, the husband shall not be responsible. When a wife, after her husband's father and mother, grandfather and grandmother are dead, is guilty of disrespect to their memory only, or is charged with some other fault not worthy of death according to the laws, if thereupon the husband kills her, he shall suffer the punishment of death, by being strangled, after the usual period of confinement." (Sec. 293.)

"Whoever is guilty of killing his son, his grandson, or his slave, and attributing the crime to another person, shall be punished with 70 blows, and one and one half year's banishment."

"Any person attributing, previous to burial, the death of his father, mother, grandfather or grandmother; and any slave in like manner, attributing the death of his master to a person innocent thereof, shall, if aware of the falsehood of the imputation be punished with 100 blows, and three years banishment." (Sec. 294.)

"When unskilful practitioners of medicine or surgery, administer drugs, or perform operations with the puncturing needle, contrary to the established rules and practice, and thereby kill the patient, the magistrates shall call in other practitioners to examine the nature of the medicine, or of the wound, as the case may be, which proved mortal; and if it shall appear upon the whole to have been simply an

error, without any design to injure the patient, the practitioner of medicine shall be allowed to redeem himself from the punishment of homicide, as in cases purely accidental, but shall be obliged to quit his profession forever." (Sec. 297.)

"If it shall appear that a medical practioner intentionally deviates from the established rules and practice, and while pretending to remove the disease of his patient, aggravates the complaint, in order to extort more money for its cure, the money so extorted shall be considered to have been stolen, and punishment inflicted accordingly, in proportion to the amount."

"If the patient dies, the medical practitioner who is convicted of designedly employing improper medicines, or otherwise contriving to injure his patient, shall suffer death by being beheaded, after the usual period of confinement."

Section 302 contains minute provisions for the punishment of assaults of many kinds, the number of blows to be inflicted depending on the nature of the injury or indignity offered. Quarreling, fighting and wounding another within the Imperial Palace is punished more severely than elsewhere. Striking or wounding a person of the Imperial blood is also an aggravated offense but not punishable capitally unless the injury amounts to incurable infirmity. Assaulting an officer of the government is also an aggravated offense but not made a capital crime. Apprentices striking their masters are liable to two degrees heavier punishment. A slave striking a free person is punished one degree more severely, and a free person striking a slave one degree less severely, but killing a slave is a capital offense. A slave designedly striking his master is punishable with death. If the master intentionally kills his slave he is liable to 60 blows and one year's banishment, and if he designedly kills a hired servant he shall be strangled.

"Any person who is guilty of striking his father, mother, paternal grandfather or grandmother; and any wife who is guilty of striking her husband's father, mother, paternal grandfather or grandmother, shall suffer death by being beheaded. Any person who is guilty of killing such a near relation, shall suffer death by a slow and painful execution.

"Any person who kills so near a relation, purely by accident, shall still be punished wth 100 blows and perpetual banishment to the distance of 3000 *lee*. In the case of wounding purely by accident, the person convicted thereof, shall be punished with 100 blows and three years banishment; in these cases, moreover, the parties shall not be permitted to redeem themselves from punishment by the payment of a fine, as usual in the ordinary cases of accident."

"If a father, mother, paternal grandfather or grandmother, chastises a disobedient child or grandchild in a severe and uncustomary manner, so that he or she dies, the party so offending shall be punished with

100 blows. When any of the aforesaid relations are guilty of killing such disobedient child or grandchild designedly, the punishment shall be extended to 60 blows and one year's banishment." (Sec. 319.)

"Whoever, upon perceiving a father, mother, paternal grandfather or grandmother, to be struck by any person, immediately interposes in defense of such near relation, and strikes the aggressor, shall, unless striking such a blow as to produce a cutting wound, be entirely justified and free from responsibility; and even if the wound inflicted by the individual who interposes under such circumstances is severe, he shall be punished less severely by three degrees than in ordinary cases; excepting only those instances in which the blows struck prove mortal, when the punishment shall be the same as in ordinary cases. To entitle however, any person to the benefit of this law, it must always be strictly proved that the blows were inflicted on the impulse of the moment, and actually in defense of such aforesaid relation." (Sec. 323.)

"In ordinary cases, all persons guilty of employing abusive language shall be liable to a punishment of 10 blows; and persons abusing each other, shall be punishable with 10 blows respectively." (Sec. 324.)

Abusive language to officers is punished more severely,

"All the subjects of the empire, whether soldiers or citizens, who have complaints and informations to lay before the officers of government, shall address themselves in the first instance, to the lowest tribunal of justice within the district to which they belong, from which the cognizance of the affair may be transferred to the superior tribunals in regular gradation. Any individual who instead of addressing himself to the proper magistrate within his district, proceeds at once to lay his complaint and information before a superior tribunal, shall be punished with 50 blows, although his complaint should be just, and his information correct."

"It is however lawful to appeal to a superior magistrate, when the inferior officer of justice refuses to receive the information and complaint, or decides thereon unjustly; but not otherwise."

"Whoever, in order to present an information, detains an officer of justice in his public progress and whoever, for the same purpose, summons any officer of justice to his tribunal by beat of drum, shall be punished with 100 blows; if his information be false and complaint groundless; and if he should be likewise guilty of the crime of a false and malicious accusation against any person, he shall be punished as much more severely as the law applicable to such cases of criminality may authorize."

"Nevertheless, if his cause is found to be a just one, the irregularity of his proceedings shall be pardoned." (Sec. 332.)

"Any person who addresses and presents an information and complaint to an officer of government, containing direct criminal charges against a particular individual, without having inserted therein his (the infor-

mant's) proper name and family name, shall, although the charges should prove true, be punished with death, by being strangled at the usual period." (Sec. 333.)

"When an information concerning a charge of high treason or rebellion is regularly presented to an officer of government, if he does not immediately receive and act thereon, that is to say, take measures for seizing culprits, and preventing the progress of such disorders, he shall be liable to a punishment of 100 blows and three years banishment, although no evil consequences should ensue from his neglect; but if through his inattention, considerable numbers are suffered to assemble tumultuously, attacking forfeited stations, ravaging the country, and distressing the inhabitants, such officer of government shall suffer death, by being beheaded at the usual period." (Sec. 334.)

"Whenever any information is laid before a magistrate, who is related by blood or by marriage to the accuser or to the accused, who was educated by, or had ever served under either party, or who, lastly, had been habitually the enemy or public adversary of either; in all such cases the magistrate must decline to act thereon, and shall therefore transfer it forthwith to another jurisdiction."

"Any magistrate who takes cognizance of a case under such circumstances, shall be liable to a punishment of 40 blows; although he should have pronounced a just and impartial sentence:—otherwise, he will be liable to the severe punishment attending an intentional deviation from justice." (Sec. 335.)

"Whoever lays before a magistrate a false and malicious information, in which some person is expressly charged with a crime punishable with any number of blows, not exceeding 50, shall suffer a punishment two degrees more severe than that which the accused would have merited had the accusation been true. If the crime falsely alleged was punishable with more than 50 blows, or with temporary or perpetual banishment the punishment of the accuser shall be three degrees more severe than that to which the accused is rendered liable; but shall not, in these, or in any of the preceding cases, be so increased as to become capital." (Sec. 336.)

This is a long section with many modifying clauses and seems to indicate that malicious prosecutions are very numerous.

"In all cases of exciting and disposing others to inform and prosecute, the person who draws up the information for the prosecutor, and by any aggravation or extenuation deviates from the truth, shall be liable to the same punishment as the false accuser; except in a capital case, when his punishment shall be reduced one degree. In the case of hiring any person to present and prosecute a false accusation, the person hired shall be liable to the same punishment as the false accuser, under the same mitigation in capital cases, as in the preceding instances." (Sec. 340.)

"All civil and military officers, and also all persons who have employments without rank under government, shall, when convicted of accepting a bribe for a lawful or for an unlawful purpose, be punished in proportion to the amount thereof, as stated in the subjoined table; and moreover be deprived of their rank and offices, if having any; and if not, of their actual employments whatever they may be. Those who are not in the receipt of any salary, or of a salary not amounting to one stone of rice per month in value, shall be punished less severely, in every case, by one degree." (Sec. 344.)

There are many sections relating to bribery of and extortion by public officers against which punishments are denounced. Forgeries and frauds of many kinds are defined and their punishments declared, ranging all the way from minor punishment with the bamboo to beheading for forging an imperial edict.

"Criminal intercourse by mutual consent with an unmarried woman, shall be punished with 70 blows; if with a married woman, the punishment shall be 80 blows."

"Deliberate intrigue with a married or unmarried woman shall be punished with 100 blows."

"Violation of a married or unmarried woman; that is to say, a rape, shall be punished with death by strangulation."

"An assault with an intent to commit a rape, shall be punished with 100 blows, and perpetual banishment to the distance of 3000 lee. In these cases, however, the conviction of the offender must be founded on decisive evidence of force having really been employed."

"Criminal intercourse with a female under twelve years of age, shall be punished as a rape in all cases." (Sec. 346.)

"Civil or military officers of government, and the sons of those who possess hereditary rank, when found guilty of frequenting the company of prostitutes and actresses, shall be punished with 60 blows."

"All persons who are guilty of negotiating such criminal meetings and intercourse, shall suffer the punishment next in degree." (Sec. 374.)

"In all civil and military jurisdictions, where there are private soldiers attached to the government stations, or laborers employed in the public works; whenever such persons are suffering under any disease or infirmity, the officer in command shall duly communicate the circumstance to the officer whose province it is to furnish medicines and medical aid to the sick; if he fails to make such communication, or in the event of such communication having been made, if the proper officer does not provide sufficient medical assistance, the individual neglecting his duty shall be liable to the punishment of 40 blows; and this punishment shall be increased to 80 blows, whenever the sick person dies in consequence of such neglect." (Sec. 377.)

"All the accessaries, as well as principals, to the crime of wilfully

and maliciously setting on fire any residence, either of an officer of government, or of any private individual, their own only excepted, or to the crime of, in the same manner setting fire to any government or private building, treasury, or store-house, in which public or private property of any kind is stored and deposited, shall be punished with death, by being beheaded at the usual period." (Sec. 383.)

"All persons who, after having entered into the service of government as constables, bailiffs, theif-takers, or in any capacity of that description, at any time allege pretexts of excusing themselves from the duty of pursuing and seizing offenders; or do not actually pursue and seize those offenders, with the place of whose retreat they are acquainted, shall in each case, be liable to the punishment next in degree to that which is due to the offender, or to the most guilty of the offenders, if there should be more than one, whom their neglect had occasioned to remain at large." (Sec. 387.)

Many penalties are denounced against officials for neglect or misconduct with reference to the arrest, detention and punishment of offenders.

"Whenever the individuals committed to prison, have no families or relations by whom they may be supplied with necessaries, the superior authorities shall be addressed for leave to supply them with clothes and provisions, and, whenever they are sick, with medicines and medical assistance; leave shall also be asked in favor of those who are not charged with capital crimes, that they may, when sick, be released from their fetters and handcuffs; and in favor of those who are only liable to a punishment of 50 blows or less, that they may when sick be let out of prison, upon sufficient security being given for their return; and lastly, in favor of those who are dangerously sick or incurably infirm, that their families may have free access to them." (Sec. 401.)

"It shall not, in any tribunal of government, be permitted to put the question by torture to those who belong to any of the eight privileged classes, in consideration of the respect due to their character; to those who have attained their seventieth year, in consideration of their advanced age; to those who have not exceeded their fifteenth year, out of indulgence to their tender youth and lastly, to those who labour under any permanent disease or infirmity, out of commiseration for their situation and sufferings. In all such cases, the offenses of the parties accused shall be determined on the evidence of facts and witnesses alone; and all officers of government who disregard the restrictions of this law, shall be punished either according to the law against a designed, or the law against a careless aggravation of the punishment of an offender, according as the said misconduct on the part of the magistrate is attributable to design, or to inattention."

"Moreover, in all cases in which the circumstances or connexion between the parties produce a legal incapacity, or in the case of individuals

arrived at eighty, or under ten years of age, or entirely and permanently infirm, it shall not be permitted even to require or to receive their testimony; every breach of this law in any tribunal of government, shall be punished accordingly with 50 blows, and the clerk of the court esteemed, as in all other cases of misconduct in a joint and official capacity, the principal offender." (Sec. 404.)

A very curious table is contained in Section CCCCIX giving the punishments to be inflicted on the clerk of the court, the deputy or executive officer, the assessors and the presiding magistrate for wrong judgments, divided into classes, the first where a wrong judgment is made by design and the second through error of judgment. The clerk of the court is punished most severely and the presiding magistrate least.

"Female offenders shall not be committed to prison except in capital cases, or cases of adultery."

"In all other cases, they shall, if married, remain in the charge and custody of their husbands, and if single, in that of their relations, or next neighbours, who shall, upon every such occasion, be held responsible for their appearance at the tribunal of justice, when required."

"All magistrates committing women to prison contrary to the provisions of this law, shall suffer the punishment of 40 blows."

"If any female who is condemned to corporal punishment, or to the question by torture, is discovered to be with child, she shall be sent back to the custody of the responsible persons aforesaid, and not be subjected to punishment or to the question by torture, until 100 days complete are elapsed from the period of her delivery." (Sec. 420.)

"All magistrates who authorize the execution of any capitally convicted offender, without waiting for the Imperial rescript, containing the ratification of the sentence grounded upon their final report of the case, shall be punished, at the least, with 80 blows."

"After the warrant of execution is received, a further delay shall be allowed, of three days, during which if the criminal is executed, or after which, if he is not immediately executed, the responsible officer of government shall be liable to the punishment of 60 blows. Nevertheless, in the case of robbers, and those who are sentenced to be executed for any of the ten treasonable offenses, a breach of this law shall only be punished with 40 blows." (Sec. 421.)

"If after a sentence is pronounced against an offender in a tribunal of justice, he is permitted to redeem himself from banishment or corporal punishment, in a case that is not by law redeemable; or if he is banished or corporally punished, in a case that is redeemable, the punishment of such false construction of the laws, shall be only one degree less severe than that of an entirely unjust and groundless sentence, under similar circumstances."

"If an offender who, conformably to the laws, ought to be strangled, is beheaded; or beheaded, when he ought to have been strangled; such deviation, if wilful, shall be punished with 60 blows; if committed by mistake, with 30 blows." (Sec. 422.)

"A determinate quantity of silks and stuffs, and of military weapons, shall be annually manufactured and prepared for the public service, in each subdivision of the department of public works; and if any of the workmen fail to provide in due season their assigned proportion, they shall be liable, at the least, to a punishment of 20 blows; and the punishment shall be increased as far as 50 blows, at the rate of one degree for every additional tenth deficient: the punishment of the superintending officer of the work, shall be one degree less severe, and that of the officer superintending the supplies, two degrees less severe, than that of the workman."

"On the other hand, if the raw materials are not delivered to the workmen in sufficient quantities, and at proper times, the superintending officer of the manufactory shall suffer a punishment of 40 blows, and the superintendent of supplies a punishment of 30 blows; the workmen shall, in such cases, be excused." (Sec. 430.)

"When any of the government residences, granaries, treasuries, manufactories, or other buildings, are in a defective or ruinous condition, the officer having charge thereof, shall immediately report the same to his superior, and state the nature of the repairs that are required; and he shall be liable to a punishment of 40 blows, whenever he neglects to do so: if, in consequence of such neglect, any public property should happen to be injured or destroyed, he shall, besides the aforesaid punishment to which he is liable, be obliged to make good the same to government."

"On the other hand, if, a regular notice having been given to the superior officer, the latter neglects to authorize the necessary repairs, he alone will be liable, both to the punishment, and to the obligation of making good the amount of the contingent damages." (Sec. 431.)

"If any of the governors of cities of the first, second, or third order, or of any other provincial sub-divisions, instead of inhabiting the public buildings expressly allotted to their use, hire, and reside in private houses belonging to the inhabitants of the districts under their authority, they shall, for every such offense, be punishable with 80 blows." (Sec. 432.)

"When the embankments of great rivers are not duly repaired and maintained, or repaired unseasonably, the superintending officer in that department shall be punished with 50 blows; if any lands, goods, or other articles of property of any kind, are damaged by an inundation in consequence of such neglect and misconduct, the punishment shall be increased to 60 blows; and if any persons are killed or injured, to 80 blows. In the case of private embankments, the responsible persons

neglecting to repair them at the proper seasons, shall be liable to a punishment of 30 blows; and if any damage ensues, in consequence of such neglect, to a punishment of 50 blows."

"Nevertheless, in respect to those sudden and impetuous inundations, which are produced by heavy rains, or other similar causes, and which sometimes wash away, and break down irresistibly, all ordinary embankments; as it is not in the power of man always to foresee and guard against such accidents, the parties usually held responsible, shall not be liable in such cases to any punishment." (Sec. 434.)

"Any person who encroaches upon the space allotted to public streets, squares, high-ways, or passages of any kind; that is to say, who appropriates a part of any such space to his own use, by cultivating it, or building on it, shall be punished with 60 blows, and obliged to level and restore the ground to its original state."

"Any person who opens a passage through the wall of his house, to carry off filth or ordure into the streets or high-ways, shall be punished with 40 blows; but in the case of a passage being opened to carry off water only, no penalty or punishment shall be inflicted." (Sec. 435.)

"The repair of all bridges, whether permanent or formed for temporary use, of boats only; and also of all roads and high-ways, shall come under the cognizance and jurisdiction of the governors of the cities of the different orders, their assessors, and deputies; and there shall be a special examination of the same, during the interval between the harvests of each year, in order to ascertain that the bridges are maintained in a firm and complete condition, and that the roads are solid and even: when the regular communication by any of the said established roads and bridges is interrupted, for want of due attention to the necessary repairs, the responsible magistrate shall suffer a punishment of 30 blows for his neglect; also in places of customary communication, where bridges ought to be built, or ferry-boats stationed for the accommodation of the inhabitants, a failure to do so in either case, shall be punished with 40 blows." (Sec. 436.)

THE CIVIL CODE OF FRANCE

The Code Napoleon, which with the amendments since made is now called the Civil Code of France, contains twenty-two hundred and eighty-one sections and is published in a single volume. The preliminary title provides that laws become enforceable from the moment the promulgation can have become known, that the law can have no retroactive effect, that laws of police and public order are binding on all who live in the territory, that all real estate is governed by French law, and laws relating to the status of French people apply to those residing in foreign countries.

4. "A judge who refuses to render judgment under pretence that the

law is silent, obscure or insufficient, may be prosecuted as being guilty of denying justice."

5. "Judges are not allowed to decide cases submitted to them by way of general and settled decisions."

6. "Laws relating to public order and morals cannot be derogated from by private agreement."

Book I is "Of Persons," the first title is "Of the Enjoyment and Loss of Civil Rights." It furnishes rules for determining who are French and who are aliens and how civil rights may be acquired and lost. The second title is "Of Certificates of Civil Status." All births must be reported to the officer of civil status by a certificate in due form showing day and hour of birth, sex, name and names of parents and this certificate must be duly recorded. "Before the celebration of a marriage the officer of civil status shall make two publications on Sunday at an interval of eight days in front of the door of the city hall." The marriage must be celebrated within a year or a new publication must be made. "The marriage shall not be celebrated before the third day after and exclusive of the day of the second publication." Instruments of opposition may be served and be entered on the register, and the marriage cannot be celebrated until the opposition is withdrawn or adjudged insufficient.

75. "Upon the day designated by the parties, after the time for the publications, the officer of civil status shall read to the parties in the city hall, in the presence of four witnesses, related, or not, the papers above mentioned relating to the civil status of the parties and to the formalities of marriage, and he shall also read Chapter VI. of the respective rights and duties of husband and wife of the title of marriage."

"He shall ask the future husband and wife and the persons authorizing the marriage, if they are present, to declare whether a marriage contract has been made, and in case of the affirmative, the date of this contract and also the name and residence of the notary who made it.

"He shall receive from each party, one after the other, the declaration that they wish to take each other as husband and wife; he shall declare in the name of the law that they are united by marriage and he shall immediately draw up a certificate to that effect."

"No burial shall take place without a permit of the officer of civil status." Certificates of death are required to be made and the formalities connected with them are given in detail. Provision is also made for certificates of civil status of soldiers and sailors. Corrections of certificates of civil status may be applied for and granted by the Tribunal of the place where the certificate has been drawn up.

The interested parties shall be summoned if necessary.

After this follow Titles Third. "Of Domicil" and Fourth "Of Absentees." Where a person has been absent from his domicil five years

his absence may be adjudged and his presumptive heirs or legatees put in provisional possession of his property, but if the absentee left a power of attorney his absence cannot be established till after ten years.

125. "Provisional possession is only a deposit, which secures to those who obtain it the administration of the property of the absentee and which makes them accountable to him if he appears or if he is heard from."

After thirty years absence or one hundred years from the birth of the absentee the property may be finally divided among the heirs or devisees. If the absentee returns or his existence is established the proceeding is avoided.

Title Fifth is "Of Marriage," and is divided into eight chapters.

Males must be eighteen and females fifteen to contract a marriage, but the President of the Republic may grant dispensations for serious causes. A son under twenty-five and a daughter under twenty-one must have the consent of father and mother or the father alone in case of disagreement. Many formalities are required. Marriages may be annulled by action brought by a party or a parent, whose consent was required but not given, if brought within the periods limited.

203. "The husband and wife, by the sole fact of the marriage, assume together the obligations of supporting, maintaining and educating their children."

"Children owe support to their father, mother and other ascendants who are in want."

206. "Sons-in-law and daughters-in-law owe likewise under the same circumstances support to their father-in-law and mother-in-law, but this obligation ceases:

1. When the mother-in-law has contracted a second marriage;

2. When the husband and wife owing to whom the affinity existed and the children born of his or her marriage with such wife or husband are dead."

212. "Husband and wife owe each other fidelity, support, and assistance."

213. "A husband owes protection to his wife; a wife obedience to her husband."

214. "A wife is bound to live with her husband and to follow him wherever he deems proper to reside. The husband is bound to receive her, and to supply her with whatever is necessary for the wants of life, according to his means and condition."

215. "A wife cannot sue in court without the consent of her husband, even if she is a public tradeswoman, or if there is no community, or she is separated as to property."

217. "A wife, even when there is no community, or when she is separated as to property, cannot give, convey, mortgage, or acquire property, with or without consideration, without the husband joining in the instrument or giving his written consent."

If the husband refuse to allow his wife to sue or execute an instrument, the Tribunal of First Instance may grant her leave. A married tradeswoman may bind herself by her contracts in her business without the consent of her husband.

227. "Marriages are dissolved:

1. By the death of the husband or wife;

2. By a divorce lawfully decreed;

3. By a final sentence against the husband or wife to a punishment occasioning civil death." (Civil death was abolished in 1854.)

228. "A wife cannot contract a second marriage until ten months have elapsed since the dissolution of the previous marriage."

Title Sixth is "Of Divorce."

Adultery, violence, cruelty, gross insults and a sentence to degrading corporal punishment are grounds of divorce. By the Code Napoleon the wife can sue the husband for a divorce on the ground of adultery only when he brought his concubine into their common residence. This clause was striken out by amendment in 1884, and the same rules now apply to both husband and wife. Divorces may be either absolute or from bed and board. The court has power to make provision for temporary care of property and support and the care of the children. Publication of the proceedings by the press is prohibited under penalty. Appeals from judgments of divorce may be taken to the Court of Cassation and such an appeal stays execution.

Alimony may be granted to either party, not exceeding one-third the income of the other. The court determines as to the custody of the children.

Title Seventh is "Of Paternity and Filiation." It gives rules for determining the legitimacy of children and for the acknowledgement of natural children. Title Eighth is "of adoption and officious guardianship."

343. "Persons of either sex can only adopt when they are over fifty years of age; when, at the time of the adoption, they have no children nor legitimate descendants, and when they are at least fifteen years older than the individuals whom they propose to adopt."

Adoption cannot take place before the adopted is of full age, nor till after the Tribunal of First Instance of the District in which the adopter resides has determined that there is occasion for it.

361. "Every individual over fifty years of age, without children or legitimate descendants, who wishes, during the minority of a person to attach that person to himself in a legal way, may become his officious guardian by obtaining the consent of the father and mother of the child, or of the survivor of them, or in default thereof the consent of the family council, or finally, if the child has no parents who are known, the consent of the administrators of the asylum where he has been received or the municipality of the place of his residence."

362. "A married person cannot become an officious guardian without the consent of the husband or wife."

364. "Such guardianship shall only be allowed in favor of children of less than sixteen years of age.

It carries with it, without prejudice to any special stipulations, the obligation to support the ward, to bring him up, and to place him in a condition to earn a living."

Title Ninth is "Of Paternal Authority."

376. "If the child has not yet commenced his sixteenth year, the father can have him incarcerated during a period of time not exceeding one month: for that purpose the Presiding Justice of the Tribunal of the District must at his request issue an order of arrest."

377. "From the beginning of the childs sixteenth year, until his majority or emancipation, the father can only ask that the child be incarcerated for six months at the utmost: he shall apply to the Presiding Justice of said Tribunal, who, after having conferred with the King's Attorney (Republic's Attorney), shall issue an order of arrest or refuse it, and may in the former case reduce the time of the incarceration asked for by the father."

378. "In either case there shall be no writing and no judicial proceedings with the exception of the order of arrest itself, in which the reasons shall not be stated.

"The father shall only be bound to sign an undertaking to pay all the expenses and to furnish proper support."

Title Tenth is "Of Minority, of Guardianship, and of Emancipation."

The period of minority extends to the age of twenty-one years. A father is administrator of the property of his minor children, and in case of his death the mother is entitled to the guardianship.

391. "The father, nevertheless, may appoint a special counsel to the surviving mother who is guardian, without whose advice she cannot take any steps in connection with the guardianship.

"If the father specifies the purposes for which the counsel is appointed, the guardian shall be able to act in all other matters without his assistance."

In case the mother remarries, her husband becomes joint guardian with her. If father and mother be dead the grandparents are entitled to the guardianship.

405. "When a child who is a minor and not emancipated shall be without father or mother or guardian appointed by his father or mother or male ascendants, and also when the guardian of one of the classes above mentioned shall fall under one of the causes of exclusion hereafter referred to, or shall have been duly excused, the appointment of the guardian shall be made by the family council."

407. "A family council shall be composed, not counting the Justice

of the Peace, of six blood relatives, or relatives by marriage, chosen as well in the country where the guardianship takes rise as within a distance of two myria-meters, and one-half of such relatives shall be on the paternal side and one-half on the maternal side, following the order of proximity in each line.

A blood relative shall be referred to a relative by marriage of the same degree; and among relatives of the same degree the older shall be preferred to the younger."

409. "When the blood relatives or relatives by marriage in one or the other line shall not be sufficiently numerous on the spot or within the distance designated by article 407, the Justice of the Peace shall call the blood relative or relatives by marriage domiciled at a greater distance, or citizens of the country known to have had continuous relations of friendship with the minor's father or mother."

410. "The Justice of the Peace may, even if there is a sufficient number of blood realtives or relatives by marriage on the spot, allow citations to be issued to blood relatives or relatives by marriage who are of a nearer degree or of the same degree as the blood relatives or relatives by marriage present, whatever may be the distance at which they are domiciled. This, however, shall be done in such a way as to omit some of the latter, and so that the number mentioned in the foregoing articles shall not be exceeded."

412. "The blood relatives, relatives by marriage, or friends so called, shall be bound to appear in person or to be presented by a special attorney.

An attorney-in-fact cannot represent more than one person."

416. "The family council shall be presided over by the Justice of the Peace, who has a deliberative vote or a casting vote in case of division."

420. "In every case of guardianship there shall be an assistant guardian appointed by the family council.

"His duties shall be to protect the interests of the minor when they conflict with those of the guardian."

There are many provisions relating to exemption from service as guardians and incapacity to act as such. The family council determines the amount to be allowed as yearly expenses of the minor and of the administration, and a sale or mortgage of real estate must be authorized by the family council and approved by the Tribunal of First Instance. The family exercises a general supervision over the guardian and the guardian must furnish the assistant guardian statements of his accounts when called for by the council.

476. "A minor is emancipated by right by his marriage."

477. "A minor, even unmarried, can be emancipated by his father, or in default of his father, by his mother, when he has reached the full age of fifteen years.

"Such emancipation takes place upon the sole declaration of the father or mother, received by the Justice of the Peace attended by his clerk."

A minor who has no father or mother may be emancipated at eighteen by the family council.

489. "A person of full age who is in a usual state of imbecility, insanity or madness, shall be interdicted, even if such condition is accompanied by lucid moments."

Application for interdiction is made to the Tribunal of First Instance.

494. "The Tribunal shall order the family council, composed in the manner specified in section 4 of chapter II. of the Title of Minority, of Guardianship and of Emancipation, to give its opinion on the condition of the person whose interdiction is sought for."

After receiving this opinion the Tribunal examines the defendant and decides the case. If the interdiction is allowed a guardian and an assistant guardian are appointed in the same manner as in the case of guardians of minors, and the interdicted person is assimilated to a minor as to his person and property. Spendthrifts may be prohibited from disposing of their property without the assistance of counsel appointed by the Tribunal.

Book 2 treats "Of Property and of Different kinds of Ownership."

Real estate includes lands, buildings, crops till cut or gathered and structures for use on the land.

524. "The things which an owner of a piece of property has placed thereupon for the use or cultivation of such property are real estate by destination.

"Thus, the following things are real estate by destination, when they have been placed by the owner for the use and cultivation of the property:

Cattle used for farming purposes;

Farming implements;

Seeds given to farmers or settlers paying rent in kind;

Pigeons belonging to the pigeon house;

Warren rabbits;

Beehives;

Fish in the ponds;

Wine presses, boilers, stills, vintage tubs and barrels;

The necessary implements for working ironworks, paper-mills and other factories;

Straw and manure.

"All personal articles which the owner has placed upon the property to remain there perpetually are also real estate by destination."

528. "Bodies which can move from one place to another, whether they move themselves, such as animals, or whether they cannot move without the assistance of extraneous power, such as inanimate things, are personal property of nature."

Bonds, annuities and shares in financial, commercial and manufacturing companies are personal property even though the company owns lands.

"Private individuals have the free disposal of what belongs to them subject to the restrictions established by law."

The Second title of Book 2 is "Of Ownership," and defines the rights of owners to what the thing produces and of a land owner to accretion from alluvion. What is added imperceptibly belongs to the riparian owner, and he loses what is imperceptibly washed away; but where a considerable portion of a field, which can be identified, is moved across or down a stream, the owner may claim or hold it within one year. If a stream navigable for boats or rafts opens a new bed, abandoning the old, the owners of the land occupied by the new bed take the old way of compensation.

"When the right of accession applies to two movable things belonging to two different owners, it is entirely governed by the principles of natural equity." The rules given as examples generally give the thing constructed from materials of two owners, or materials of one and labor of another, to the one contributing the principal value with compensation to the other for what he has furnished.

Title Third is "Of Usufruct, of Use and Habitation."

582. "A usufructuary has the right to the enjoyment of all kinds of fruits, whether natural, cultivated, or civil, which the thing of which he has the usufruct can produce."

583. "Natural fruits are those which result from the spontaneous production of the earth. The increase and young of cattle are also natural fruits.

"Cultivated fruits of land are those obtained by cultivation."

584. "Civil fruits are the rents of houses, the interest on sums due, and payments of annunities.

"The prices of leases on shares are also included in the class of civil fruits."

585. "Natural and cultivated fruits hanging from branches or standing upon roots when the usufruct begins, belong to the usufructuary.

"Those which are in the same state when the usufruct comes to an end belong likewise to the owner, without compensation from either side for ploughing and sowing, but also without prejudice to the portion of fruits which might belong to the settler paying in kind, if there was such a settler at the beginning or at the termination of the usufruct."

586. "Civil fruits are supposed to be gained day by day and belong to the usufructuary in proportion to the duration of his usufruct. This rule applies to the prices of leases on shares as well as to rents of houses and other civil fruits."

587. "If a usufruct includes things which cannot be used without being consumed, such as money, grain, liquors, the usufructuary has the right to use them, but on condition of returning others in like quantity, quality and value, or their estimation at the end of the usufruct."

A usufructuary may lease or assign his right to another. He may continue to work mines already opened but not open new ones. The usufructuary is bound to make ordinary repairs but not to rebuild or reconstruct. Heavy repairs are to be made by the owner. The right of the usufruct is forfeited by committing waste or allowing the property to deteriorate for want of repairs.

625. "The right of use and habitation are acquired and lost in the same manner as usufruct."

634. "The right of habitation cannot be assigned or let."

Title Four is "Of Servitudes or Land Burdens." There are sixty-four sections under this title dealing with the use of streams and springs of water, party walls, ditches and hedges, the repair of buildings where various floors belong to different owners, windows and rights of way. This title is remarkably full and clear in its provisions with reference to party walls and other works near or upon the boundaries of land and is designed to facilitate the erection of buildings by the owners of adjacent lots on the boundary with equal burdens to each owner.

Book 3 is "Of the Different Ways of Acquiring Property." Title First is "Of Successions" and deals at length with the inheritance of property.

745. "Children of their descendants inherit from their father and mother, grandfathers and grandmothers, and other ascendants, without distinction of sex nor of primo-geniture, and even if they are born of different marriages.

"They inherit in equal shares and "per capita" when they are all of the first degree and inherit in their own right; they inherit "per stirpes" when all or part of them take by representation."

746. "If a decedent has left no issue, or brothers or sisters or descendants of them, the succession is divided in halves between the ascendants of the paternal line and the ascendants of the maternal line.

"The ascendant who is of the nearest degree takes the half alloted to his line to the exclusion of all others.

"The ascendants of the same degree inherit "per capita."

750. "In case of the previous decease of the father and mother of a person who has died without issue, his brothers and sisters or their decendants are called to the succession to the exclusion of the ascendants or other collateral relatives.

"They inherit either in their own right or by representation, as is provided in section 2 of the present chapter."

751. "If the father and mother of the person who has died without issue have survived him, his brothers and sisters or their representatives are only entitled to one-half of the succession. If only the father or mother survives, they are entitled to take three-quarters."

752. "The division of the half or of the three-quarters belonging to the brothers and sisters, according to the provisions of the previous

article, is made between them in equal portions if they are all of the same marriage; if they are of different marriages the division is made by halves between the two paternal and maternal lines of the decedent: those of full blood take in both lines and those of the mother's and those on the father's side each take in their line only; if there are brothers and sisters on one side only, they inherit the whole, to the exclusion of all relatives in the other line."

"Relatives beyond the twelfth degree do not inherit."

Natural children inherit from parents if lawfully acknowledged by them but not from relatives of their parents. In case there are legitimate children the natural child takes only one third of the portion he would have had if legitimate.

767. "When the decedent leaves no relatives of a degree entitling them to inherit, and no natural children, the property of the succession belongs absolutely to the surviving husband or wife, not divorced and against whom no judgment of separation from bed and board has become final.

"The surviving husband or wife not divorced who does not inherit the full ownership and against whom no judgment of separation from bed and board has become final has upon the succession of the predeceased wife or husband a right of usufruct which is:

"Of one-quarter, if the decedent leaves one or several children born of the marriage;

"Of the smallest portion of a lgitimate child, which portion shall not exceed one-quarter, if the decedent has children born of a previous marriage;

"Of one-half in all other cases, whatever may be the number and the kind of heirs;

"The calculation shall be made upon a total composed of all the property existing at the death of the decedent, to which shall be fictitiously added the property which he has disposed of, either by instrument *inter vivos* or by will, for the benefit of persons entitled to inherit, not exempt from collation.

"But the surviving husband or wife can only exercise his or her right against the property which the decedent has not disposed of by instrument *inter vivos* or by will without prejudice to the rights to the reserve and the rights of reversion.

"He or she shall cease to exercise this right if he or she has received from the decedent advantages, even made by preciput and above the share, of which the amount reaches the proportion of the rights which the present law grants to him or her, and if this amount is less, he or she can only claim the balance of his or her usufruct.

"Until the final division, the heirs can, by giving sufficient security, ask that the usufruct of the surviving husband or wife be changed into

a corresponding annuity. If they disagree, the Tribunals may in their discretion order this change.

"In case of a new marriage the usufruct of the husband or wife ceases if there are descendants of the decedent."

768. "If there is no surviving husband or wife, the succession escheats to the State."

A succession can be accepted absolutely, or under benefit of inventory, or renounced by the heir. The effect of the benefit of inventory is to relieve the heir from liability for the debts of the succession beyond the value of the property inherited. Numerous sections relate to the division of estates among heirs and the protection of the rights of creditors.

843. "Every heir, even a beneficiary heir, coming into a succession shall return to his co-heirs everything he has received from the decedent, directly or indirectly, by donation *intev vivos:* he cannot keep the donations nor claim the legacies left to him by the decedent unless these donations and legacies have been made to him expressly by preciput and above his share or with exemption from collation."

852. "The expense of support, maintenance, tuition, apprenticeship, the ordinary expenses of fitting out, those for weddings and usual gifts, shall not be collated."

Provision is made in detail for collation in particular cases by contribution or taking less of the estate.

870. "The co-heirs contribute among themselves to the payment of the debts and liabilities of the succession, each one proportionately to what he takes."

871. "A legatee under universal title contributes with the heirs *pro rata* to what he takes, but a special legatee is not liable for the debts and expenses, with the exception of the action upon a mortgage which may lie against the real estate devised."

When division of an estate is made, the title of each to the part assigned him is warranted by his co-heirs and in case of ejectment they must indemnify him in proportion to their shares of the whole estate. "Divisions of estates can be rescinded on account of violence or fraud."

Title Second is "Of Donations Inter Vivos and of Wills."

894. "A donation *inter vivos* is an act by which the donor divests himself at the time and irrevocably of the thing given in favor of the donee, who accepts it."

895. "A will is an instrument by which a testator disposes, for the time when he will be no longer living, of the whole or part of his property, and which he can revoke."

"Entails are prohibited.

"Every provision by which a donee, an heir appointed, or a legatee shall be required to keep property and to return it to a third party shall be void, even as against the donee, the heir appointed or the legatee.

"Nevertheless, property which is free and which forms part of the endowment of a hereditary title which the King has created in favour of a Prince or of the head of a family can be transmitted by way of inheritance, as is provided by the Imperial Act of the 13th March, 1806, and by the *senatus consultum* of the 14th August following."*

* (This change was repealed in 1849.)

Some exceptions are given however and this does not interfere with giving the usufruct to one and the title to another. Adults of sound mind may make donations or wills but,

905. "A married woman cannot make a donation *inter vivos* without the special assistance or consent of her husband, or without having been authorized by the Court in accordance with what is provided by articles 217 and 219 of the Title Of Marriage.

"She does not require the consent of her husband, nor the authorization of the Court, to dispose of property by will."

913. "Advantages resulting from donations *inter vivos* or from wills cannot exceed one-half of the property of the person who has made such disposition, if he leaves one legitimate child at his death; one-third if he leaves two children; one-fourth if he leaves three or a greater number."

Descendants of whatever degree are included as children and donation cannot exceed half if the donor leaves ascendants in both lines and three-fourths if he leaves them in one line.

916. "If there are no ascendants and descendants, advantages by donations *inter vivos* or by wills can exhaust all the property."

920. "Donations, either *inter vivos* or *mortis causa*, which exceed the portion of property which can be disposed of, shall be reduced to that portion when the succession becomes open."

931. "All instruments containing a donation *inter vivos* shall be executed before notaries in the ordinary form of contracts, and the original shall remain with them, or otherwise such instruments shall be void."

A donation is not operative until accepted by a formal instrument.

939. "When a donation is made of property which can be mortgaged, the transcription of the deeds containing the donation and the acceptance and notice of acceptance which might have taken place by a separate instrument, shall be made at the bureau of mortgages in the District where the property is situated."

953. "A donation *inter vivos* can only be revoked for non-execution of the conditions under which it was made, on account of ingratitude, or if children have been born to the person."

Revocations for ingratitude must be enforced by action and for the specified cause. The grounds of revocation are, seeking to take the life of the donor, cruelty toward him, the commission of a felony or serious wrong, or refusal to give the donor support.

967. "Every person can dispose of his property by will, either in the

form of an appointment of an heir or of the making of a legacy or under any other denomination sufficient to express his wish."

969. "A will can be holographic, or can be made as a public instrument, or in the mystic form."

970. "A holographic will shall not be valid unless it is wholly written, dated, and signed, in the hand of the testator. It is not subject to any other formality."

971. "A will made in the public form shall be received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses."

972. "If a will is received by two notaries, it shall be dictated by the testator and shall be written out by one of the notaries as it is dictated.

If there is only one notary, it shall also be dictated by the testator and written out by such notary.

In both cases it shall be read over to the testator in the presence of the witnesses.

All of which shall be expressly mentioned."

976. "When a testator desires to make a mystic or secret will, he shall be obliged to sign the instrument, whether he has written it himself or whether he has caused it to be written out by another person. The paper containing his will, or the paper used as an envelope, if there is one, shall be closed and sealed. The testator shall present it thus closed and sealed to the notary and to six witnesses at least, or he shall have it closed and sealed in their presence; and he shall declare that the contents of this paper are his will, written and signed by him, or written out by another person and signed by him: the notary shall draw up a certificate of superscription which shall be written out on this paper, or on the sheet used as an envelope; such certificate shall be signed as well by the testator as by the notary, and also by the witnesses. All of which shall be done without interruption and without attending to other business; and in case the testator should not be able to sign the certificate of superscription, owing to a cause having arisen since the signing of the will, the declaration which he makes thereof shall be mentioned, and in such case it shall not be necessary to increase the number of witnesses."

Soldiers and sailors may execute wills before certain officers designated, and citizens on voyages at sea or in foreign parts may make them before witnesses in the forms pointed out. Very full provisions are made with reference to the distribution of legacies, the appointment of executors and the form and effect of marriage contracts.

1091. "Husband and wife may, by their marriage contract, make to each other, reciprocally or the one to the other, such donations as they may deem proper, subject to the rules hereafter expressed."

1094. "The husband or wife may, either by the marriage contract or during the marriage, in case he or she leaves no children or descendants, dispose in favour of the other in full ownership of all which he or she

could dispose of in favor of a stranger, and besides, of the usufruct of the whole portion of which the law does not allow the disposal to the detriment of heirs.

"And in case the husband or wife who is the donor leaves children or descendants, he or she may give to the other either a quarter in full ownership, and the usufruct of another quarter, or only the usufruct of one half of all his or her property."

The subject of succession, donations and wills covers eighty-three pages of the code or nearly one-sixth of the whole.

Title Third is "Of Contracts or Conventional Obligations in General." It covers one hundred and nine pages and is in main a clear statement of the law of contracts generally recognized by all commercial people, though some of its provisions are peculiar. The first two chapters give definitions of various kinds of contracts and conditions essential to a valid contract.

1134. "Contracts lawfully entered into take the place of the law for those who have made them.

"They cannot be cancelled unless it is by mutual consent or for causes allowed by law.

"They must be performed in good faith."

1142. "Every obligation to do or not to do resolves itself in damages in case of non-performance on the part of the debtor."

1149. "The damages due to the creditor are generally for the loss which he has made or the profit which he has been deprived of, subject to the exceptions and restrictions hereinafter contained."

1152. "When the agreement provides that the party who fails to perform it shall pay a certain amount of damages, no larger or smaller amount can be awarded to the other party."

1153. "In the obligations which are limited to the payment of a certain sum, the damage resulting from delay in the performance shall only consist in a judgment for the interest allowed by law, subject to the special rules applying to commerce and to security.

"These damages are due without the creditor being obliged to show any loss.

"They are only due from the day of the demand, except in the cases in which the law makes them run as a matter of right."

1156. "The common intention of the contracting parties should be sought in contracts rather than taking the literal meaning of the words."

Various sorts of conditions are defined and the rights and liabilities of parties to joint and several, divisible and indivisible contracts are stated in accordance with principles of equity.

1235. "Every payment supposes a debt; what has been paid without being due is subject to be reclaimed.

"One is not allowed to reclaim payment in case of natural obligations which have been voluntarily paid."

1236. "An obligation can be paid by any person who has no interest therein, provided such party acts in the name of and for the purpose of releasing the debtor, or if he acts in his own name, provided he is not subrogated to the rights of the creditor."

1237. "The obligation to do a thing cannot be satisfied by a third party against the wish of the creditor, when the latter is interested in having it fulfilled by the debtor himself."

1249. "Subrogation to the rights of a creditor for the benefit of a third person who pays his is either conventional or legal."

"1250. "Such subrogation is conventional:

"1. When the creditor receiving payment from a third person subrogates him to his rights, actions, privileges or mortgages against the debtor: such subrogation must be express and made at the same time as the payment;

"2. When the debtor borrows a sum for the purpose of paying his debt and of subrogating the lender to the rights of the creditor. In order that such a subrogation should be valid, it is necessary that the instrument by which the loan is made and the receipt thereof should be drawn up before notaries; that in the instrument for the loan it shall be declared that the sum has been borrowed to make the payment, and that in the receipt it shall be declared that the payment has been made with the moneys furnished for that purpose by the new creditor. Such subrogation takes place independently of the wish of the creditor."

1251. "Subrogation takes place by right:

"1. For the benefit of the person who, being himself a creditor pays another creditor, who is preferred to him on account of his privileges or mortgages;

"2. For the benefit of the purchaser of a piece of real estate who applies the price of his purchase to the payment of the creditors to whom this hereditament was mortgaged;

"3. For the benefit of the person who, being bound with others or for others to the payment of the debt, had an interest in satisfying it;

"4. For the benefit of the heir with benefit of inventory who has paid with his moneys the debts of the succession."

A debtor has the right to appropriate his payment to such debt as he means to discharge and may relieve himself from an obligation by a tender and "consignation," that is a deposit of the thing tendered and notice of the time and place of making the deposit.

1265. "An assignment of property is the abandonment made by a debtor of all his property in favour of his creditors when he finds himself unable to pay his debts."

1266. "A voluntary assignment of property is one which creditors accept voluntarily and which has no other effect than the one resulting from the very conditions of the contract entered into between them and the debtor."

1268. "A judicial assignment is an advantage which the law grants to a debtor who has been unfortunate and has acted in good faith; he is

allowed to make in court to his creditors the abandonment of all his property, notwithstanding any stipulation to the contrary, for the purpose of securing the liberty of his person."

1270. "Creditors cannot refuse a judicial assignment outside of the cases excepted by law.

"The assignment carries with it the release of the execution against the person.

"Otherwise, it only releases the debtor to the extent of the value of the property abandoned; and in case such property is insufficient, if he acquires more property he is obliged to abandon it until full payment has been made."

1271. "Novation takes place in three ways:

"1. When the debtor contracts towards his creditors a new debt which is substituted for the old one, and extinguishes it;

"2. When a new debtor is sustained for the old one, who is released by the creditor;

"3. When, owing to a new agreement, a new creditor is substituted for the old one, as to whom the debtor is released."

1282. "A voluntary surrender of an original instrument under private signature by a creditor to a debtor is proof of release."

Various rules of evidence of contracts and payments are stated. Written instruments are classified as public, made by a public officer, or private, made by the parties.

1326. "A note or a promise under private signature by which a single party binds himself to another to pay a sum of money or an appreciable thing, must be wholly written in the hand of the person who signs it, or at least, it is necessary that, besides his signature, he should have written in his own hand *Good for,* or *Approved,* with the sum or the quantity of the thing written out in full;

"Except in case the instrument emanates from traders, workmen, farm laborers, vine-dressers, laborers hired by the day, and servants."

1329. "The books of merchants shall not be taken as proof against persons who are not traders for the articles therein mentioned, with the exception of what is stated with respect to oaths."

1330. "The books of merchants shall be held as proof against themselves, but the person who wishes to derive an advantage from them cannot divide them as to the contents which may be in opposition to his claim."

1341. "It shall be necessary to execute an instrument drawn up in the presence of notaries or made under private signature for all things of which the sum or value exceeds one hundred and fifty francs, even in case of a voluntary deposit, and no proof of witnesses in favour or against the contents of the instrument, nor as to what is alleged to have been said previously, at the time, or since the making of the same, shall be allowed, even if the sum or value in dispute is less than one hundred and fifty francs:

"All of which is without prejudice to what is mentioned in the laws relating to commerce."

1357. "Judicial oaths are of two kinds:

"1. Those which one of the parties proffers to the other to make the judgment in the case depend upon them. They are called decisive oaths;

"2. Those which are proffered by the Judge of his own accord to either of the parties."

1358. "A decisive oath can be proffered in all kinds of controversies whatsoever."

1359. "It can only be proffered with respect to a fact which is personal to the party to whom it is proffered."

1360. "It can be proffered at all stages of the case, and even if there does not exist a commencement of proof of the claim, or of the exception in connection with which it is proffered."

1361. "A person to whom an oath is proffered and who refuses to take it, or who does not consent to have it taken by his opponent, or an opponent to whom it has been left to take the oath and who refuses to take it, shall be defeated in his claim or in his exception."

1366. "A Judge may proffer an oath to one of the parties, either to make the decision of the case result from it, or only to fix the amount of the judgment."

1367. "A Judge can only of his own accord proffer an oath, either upon the claim or upon the exception set up, under the two following conditions; it is necessary:

"1. That the claim of the exception should not be fully established:

"2. That it should not be wholly without proof.

"Outside of these two cases the Judge must either admit or reject the claim absolutely."

1371. "Quasi-contracts are the purely voluntary acts of an individual from which a certain agreement results in favour of a third party, and sometimes a reciprocal agreement between two parties."

1377. "When a person thought by mistake he owed a debt and has paid it, he has the right to claim it back from the creditor.

"Nevertheless, this right ceases in case the creditor has suppressed his written proof in consequence of the payment, subject to the remedy of the person who has paid against the real debtor."

1383. "Every one is responsible for the injury which he has caused not only owing to his own act, but owing to his negligence or his imprudence."

Father and mother are liable for injuries caused by their minor children; masters and employers for those by their servants, and schoolmasters and mechanics for those of their pupils and apprentices.

1385. "The owner of an animal, or the person who uses it while he has the use of it, is liable for the injuries which the animal has caused, whether the animal was under his care or whether it was lost or got loose."

1386. "The owner of a building is responsible for the injuries caused by its destruction when such destruction has taken place owing to his not keeping it in good order or owing to bad construction."

Title Fifth is "Of Marriage Contracts and the respective rights of husband and wife."

1387. "The law only regulates conjugal relations with respect to property when there is no special agreement, but the husband and wife may enter into any agreement they deem proper, provided it is not contrary to good morals, and besides, is subject to the following restrictions."

1388. "A husband and wife cannot derogate from the rights resulting from the husband's marital powers over the person of the wife and of the children or which belong to the husband as head of the family, nor from the rights conferred upon the survivor of the husband or wife under the Title Of Paternal Authority and the Title Of Minority, of Guardianship and of Emancipation, nor from the prohibitory provisions of the present code."

1389. "They cannot make any agreement or renunciation of which the object would be to change the legal order of succession, either with respect to themselves in the succession of their children or descendants or with respect to their children among themselves; without prejudice to the donations *inter vivos* or *mortis causa* which may be made according to the manner and in the cases provided for in the present Code."

They may in a general manner declare that they intend to marry under the system of community or under the dotal system. Community property includes all personal property of the parties owned at the time of the marriage and all real and personal property acquired afterward. It does not include the real property owned by either at the time of marriage. The community is liable for the debts of each existing at the time of the marriage, but such as are liens on the lands of one of them are chargeable against his or her share. Lands donated to or inherited by one during the marriage do not belong to the community, nor do those taken in exchange for the property of one of them. The community is liable for all personal debts of each existing at the time of the marriage, for all subsequently contracted by the husband or by the wife with his consent, and for all family expenses.

1421. "The husband has the sole management of community property.

"He can sell, convey, and mortgage it without the co-operation of his wife."

1422. "He cannot dispose *inter vivos* of the real estate belonging to the community, nor of the whole or part of the personal property, without consideration, unless it is for the establishment of children of the marriage.

"Nevertheless, he may dispose, without consideration and specifically, of the personal property in favour of all persons, provided he does not retain the usufruct for himself."

The husband also has the management of the individual property of the wife.

1441. "The community is dissolved:

1. By natural death;

2. By civil death;

3. By divorce;

4. By separation from bed and board;

5. By separation of property."

1453. "After the dissolution of the community the wife or her heirs and legal representatives have the right to accept or renounce it: any agreement to the contrary is void."

1454. "A wife who has interfered with the property of the community cannot renonunce the community.

"Acts of pure administration or preservation do not amount to an interference."

After the dissolution of the community husband and wife must each return to the community such property or sums as they owe by way of compensation for encumbrances discharged or to endow a child, and may take out individual property and the price of his or her real estate sold and used for the community. The surplus after payment of debts is then divided equally between husband and wife. A wife is only liable for the debts of the community to the extent of her share of the community property. The husband is liable for all debts contracted by him, but only for one half the personal debts of the wife.

1492. "The wife who renounces loses all her rights to the property of the community and even to the personal property which has become part of it through her.

"She only takes back the clothes and linen for her own use."

1493. "The wife who renounces has the right to take back:

"1. The real estate belonging to her when it exists in kind, or the real estate which has been purchased as a reinvestment;

"2. The proceeds of the real estate belonging to her which has been conveyed and for which a reinvestment has not been made and accepted as above stated;

"3. All the indemnities which may be due to her by the community."

The husband and wife may modify legal community by all sorts of agreements not forbidden by law. This includes the right to give the survivor the whole of the property or to assign to each or his or her heirs such unequal share as may be agreed on.

1536. "When the husband and wife have stipulated in their marriage contract that there would be a separation of property between them, the wife retains the entire management of her personal property and real estate and the free enjoyment of her income."

1537. "The husband and wife each contribute to the household expenses according to the conditions in their contract; and if there are

none in relation thereto, the wife contributes to those expenses to the extent of one third of her income."

1538. "The wife cannot in any case, nor in consequence of any agreement, convey her real estate without the express consent of her husband, or in case of his refusal, without being authorized by the Court.

"Any general consent given to the wife to convey her real estate, either by marriage contract or since then, is void."

Chapter III is entitled "Of Dotal System."

1540. "Dowry under this system, as well as under the one provided by Chapter II, is the property which the wife brings to the husband to bear the household expenses."

1541. "Everything the wife sets apart, or which is given to her by marriage contract, is dotal unless there is an agreement to the contrary."

The husband has the management of the dotal property, but the marriage contract may give the wife a right to collect a part of her income on her own receipt. Real estate given as dowry cannot be conveyed or mortgaged during the marriage, except for the establishment of the wife's children or when it is necessary to release husband or wife from prison, furnish support for the family, or make heavy repairs, or to effect a division or pay the debts of the donor contracted previous to the marriage.

1557. "Dotal real estate may be conveyed when the marriage contract allows the conveyance thereof."

1562. "A husband, with respect to dotal property, is subject to all the obligations of a usufructuary.

"He is liable for all prescriptions which have taken effect and for any waste resulting from his negligence."

On the dissolution of the marriage the wife is entitled to the dotal property if she survives, and her heirs take it in case of her death.

1574. "All the property of the wife which has not been included in the settlement of dowry is paraphernal."

1575. "If all the wife's property is paraphernal, and if there are no provisions in the contract to make her contribute to a part of the household expenses, the wife contributes thereto to the extent of one-third of her income."

1576. "The wife has the management and enjoyment of her paraphernal property.

"But she cannot convey it or appear in court in connection with the same without the consent of her husband, or upon his refusal, without the authorization of the Court."

When the marriage is under the dotal system the parties may agree to a partnership in after acquired property. The subject of marriage contracts and rights of husband and wife is given great prominence and occupies forty-eight pages of this code, while in the statutes of England and the states of the American Union very little space is devoted to it.

The Sixth Title of the third book treats of sales. The rules given are in main merely clear statements of the generally accepted principles applicable to sales of property. There are some peculiar provisions however.

1626. "Although no stipulation as to warranty has been made upon the sale of property, the vendor is in duty bound to warrant the purchaser against the ejectment which he is subject to from the whole or part of the property sold or against the alleged charges upon such property which have not been declared at the time of the sale."

1627. "The parties may, by special agreement, add to this obligation, which exists by right, or reduce its effect: they may even agree that the vendor shall not be subject to any warranty."

1641. "A vendor is bound to warrant against the hidden defects of the thing sold which render it unfit for the use for which it was intended, or which impair its use to such an extent that the purchaser would not have acquired it or would only have given a smaller price if he had known of them."

1642. "A vendor is not responsible for the apparent defects as to which the purchaser has been able to satisfy himself."

1654. "If the purchaser does not pay the price, the vendor may ask for the cancellation of the sale."

1659. "The right of redemption or repurchase is a covenant by which the vendor retains the power of taking back the thing sold by returning the purchase price and reimbursing what is specified in article 1673."

1660. "The right of redemption cannot be stipulated for a period exceeding five years.

"If it has been stipulated for a longer time it is reduced to that period."

1674. "If the vendor has suffered a loss of more than seven-twelfths of the price of real estate, he has the right to apply for the rescission of the sale, even if he has expressly renounced in the contract the right to ask for such rescission and has declared that he abandoned any increase in the value."

1683. "Rescission for leison does not take place in favour of the purchaser."

1689. "In an assignment of a claim, of a right, or of an action against a third party the delivery takes place between the assignor and the assignee by handing over the instrument."

1682. "The sale or assignment of a claim includes the accessories of the claim, such as the security, the privileges and mortgages."

1693. "A person who sells a claim or any other incorporeal right must warrant its existence at the time of the assignment, though no warranty has been stipulated."

1699. "A person against whom a contested claim has been assigned can cause himself to be released therefrom by the assignee by reimbursing to him the actual price of the assignment, with the expenses

and just charges and interest, from the day the assignee paid the price of the assignment made to him."

The Seventh Title is "Of Exchanges."

1700. "Rescission on account of lesion does not take place in contracts of exchange."

1707. "All the other rules set down for contracts of sale shall moreover apply to exchanges."

Title Eighth is "Of Contracts of Letting."

1713. "One may let all kinds of personal property or real estate."

1714. "Letting can be done in writing or verbally."

1717. "The lessee has the right to sublet or even to assign his lease to another person if this right has not been taken away from him.

"It can be taken away wholly or in part.

"This clause is always necessary."

1719. "A lessor is bound by the nature of the contract and without any special stipulation being required:

1. "To deliver to the lessee the property leased;

2. "To keep the property in good order so that it can be applied to the use for which it has been let;

3. "To secure to the tenant the peaceful enjoyment thereof during the continuance of the lease."

1728. "A lessee is bound to two principal obligations:

1. To make use of the property leased as a prudent owner, and according to the purposes intended by the lease, or according to those presumed under the circumstances if there is no agreement to that effect;

2. "To pay the price of the lease at the times agreed upon."

1733. "He is responsible in case of fire unless he proves:

"That the fire has taken place by accident or superior force or owing to bad construction;

"Or that the fire has spread from a neighboring house."

1763. "A person who cultivates land under condition of a division of the revenue with the lessor cannot sub-let or assign his lease unless such power has been expressly granted to him therein."

1764. "In case of violation of such a condition, the owner has the right to re-enter into possession and the lessee shall be ordered to pay the damages resulting from the non-performance of the lease."

1769. "If the lease is made for several years and during the lease the whole or at least the half of a crop has been destroyed accidentally, the farmer can ask for a reduction of the price of the lease unless his loss is made up by previous crops.

"If the loss has not been made up, an appraisal of the reduction can only be made at the end of the lease, at which time an average shall be taken of all the years of his occupancy.

"Nevertheless, the judge may temporarily exempt the lessee from paying a part of the price in consequence of the loss he has sustained."

1770. "If the lease is only for one year and the loss is of the whole crop or at least of one-half, the lessee shall be released from the payment of a proportionate part of the price of the lease.

He cannot claim any reduction if the loss is less than one-half."

Under this title are also included contracts for personal service. A person can only bind himself to serve for a certain time or special enterprise. Where no time is fixed, either party may terminate the service at pleasure. The Code Napoleon contains the following;

1781. "A master shall be believed upon his affirmation:

"As to the amount of the wages;

"As to the payment of the salary for the year elapsed;

"And as to the instalments paid for the current year."

But this was repealed in 1868.

Common carriers are subject generally to the same liabilities as innkeepers for property intrusted to them and are responsible for its loss unless occasioned by accident or superior force. Workmen entrusted with materials are liable for losses resulting from their negligence, and lose labor and materials furnished by them where the property is accidentally destroyed before notice that the article is ready for delivery.

1792. "If the building constructed for a given price is destroyed, wholly or in part, owing to bad construction or even to some defect of the soil, the architect and the contractor are responsible for ten years."

1794. "An employer may of his own accord cancel a job which has been undertaken, even if the work has been already commenced, by compensating the contractor for all his expenses, his work and all he might have earned in such enterprise."

1795. "A contract for the letting of work expires by the death of the workman, the architect or the contractor."

Chapter 4 of this title relates to leases of cattle. Where there is a simple lease on equal shares, if all the cattle die the loss falls on the lessor, if only part the loss is divided.

1811. "It cannot be agreed:

"That the lessee shall bear the total loss of the cattle, although it occured by accident and not through his negligence;

"Or that he shall bear a larger part of the losses than of the profits:

"Or that the lessor, at the end of the lease, shall be entitled to something more than the cattle have produced.

"Any agreement of this kind is void.

The lessee has the sole benefit of the milk, the manure, and the labour of the cattle leased.

"The wool and the growth of the cattle are divided."

Other forms of letting cattle on shares and in connection with leases of farms are provided for.

Title Ninth is "Of Contracts of Patnership."

1834. "Every partnership must be made in writing, if it is for an object of which the value exceeds one hundred and fifty francs.

"No oral testimony shall be admitted against or beyond the contents of the articles of co-partnership, nor as to what might be alleged to have been said previously to the same or at the time therefor or since then, even in case of a sum or value less than one hundred and fifty francs."

Partnerships are divided into general and particular. General partnerships include those by which all of the property of the partners and the profits therefrom are placed in common and those where the earnings of the parties by their work are in common.

1841. "A particular partnership is one which only applies to certain specified things or to their use or to the revenue to be gathered therefrom."

1842. "A contract by which several persons become partners, either for a specified enterprise or for carrying on a trade or profession, is also a particular partnership."

1850. "Each partner is liable to the partnership for the damages occasioned by his negligence, and he cannot offset such damages against the profits which his work has brought him in connection with other business."

Most of the other rules accord with the general principles ordinarily recognized as to the rights and obligations of partners. When the shares of profits and losses are not fixed by contract they are divided in proportion to the capital contributed by each. When one partner is given the management by the articles of partnership he may act notwithstanding the objections of his partners, but in partnerships not commercial the partners are not liable for the debts jointly but only for their equal shares. The rules with reference to the dissolution of partnerships are similar to those of the common law.

Title Tenth is "Of Loans."

A loan of a thing for use and return to the owner is called a *commodatum*. The borrower is liable for its loss or injury due to his fault, but not otherwise. Loans for consumption are contracts by which the specified property is to be consumed and the same kind and quantity returned. The borrower becomes the owner and any loss falls on him. In case return of like property cannot be made the borrower must pay the value at the time when and place where the thing was to be returned.

Title Eleventh is "Of Deposits and Sequestration."

1924. "When a deposit, being for more than one hundred and fifty francs, is not established by a writing, the person who is attacked as depositary is believed on his declaration, either as to the fact itself of the deposit, or the thing which formed the object thereof, or as to the fact of its restitution."

1927. "A depositary must bestow the same care in watching over the thing which is deposited as he bestows upon the things which belong to him."

1929. "A depositary is not in any case answerable for the accidents

resulting from superior force, unless notice has been given to him to return the thing deposited."

He must return the identical thing deposited.

1949. "An obligatory deposit is one which was compulsory owing to some accident, such as a fire, complete destruction, pillage, shipwreck, or other unforeseen events."

1950. "Proof by witnesses is allowed in case of an obligatory deposit even if the amount involved exceeds one hundred and fifty francs."

1952. "Innkeepers or hotelkeepers are responsible as depositaries for the effects brought by the traveller who is stopping with them; a deposit of such kinds of effects shall be considered as an obligatory deposit."

They are responsible for thefts of the effects of travelers, but not for robberies or taking by superior force.

1955. "Sequestration is either conventional or judicial."

1956. "Conventional sequestration is a deposit made by one or several persons of a thing in dispute in the hands of a third party who binds himself to return it after the controversy is over to the person who shall obtain it by judgment."

1961. "Sequestration may be ordered by a Court:

1. In case of personal property of a debtor which has been attached;

2. In case the ownership or possession of real estate or personal property is in dispute between two or more persons;

3. In case the debtor offers certain things for his release."

Title Twelfth is "Of contingent Contracts." These are classified as: Insurance Contracts, Loans on Bottomry, Gaming and Betting and Annuities.

1965. "The law does not grant any action for a gaming debt or for the payment of a bet."

1966. "Games which tend to promote skill in the use of arms, races on foot or on horseback, tennis and other games of the same kind which develop skill and promote physical exercise, are excepted from the foregoing provisions.

"Nevertheless the Tribunal can dismiss the case when the sum seems excessive."

1967. "In no case can the loser claim back what he has voluntarily paid, unless there has been fraud, deceit or swindling on the part of the winner."

1968. "An annuity may be granted for a consideration in money, or for an article of personal property of some value, or for real estate."

1969. "It can also be granted, without consideration, by donation *inter vivos,* or by will. It must then be made in the form provided by law."

1971. "An annuity may be made either in favour of the person who furnishes the value thereof, or in favour of a third party who only has a right of enjoyment of the same."

Title Thirteenth is "Of Powers of Attorney."

1985. "A power of attorney can be given either by a public instrument or by a writing under private signature, even by letter. It can also be given verbally: but the proof thereof by witness is only admitted in accordance with the Title *Of Contracts,* or *Conventional Obligations* in *General.*

"The acceptance of the power may only be tacit, and result from the acting thereunder of the attorney-in-fact."

1991. "An attorney-in-fact is bound to carry out the power, so long as he has charge of acting under it, and he is responsible for the damages which might result from his failure to act.

"He is also bound to finish a matter commenced at the death of the principal if delay would be prejudicial."

1902. "An attorney-in-fact is answerable not only in case of fraud, but also for negligence in his management.

"Nevertheless, the responsibility in case of negligence is enforced less rigorously against a person who has acted without compensation under a power than against one receiving a salary."

1998. "A principal is bound to carry out the engagements contracted by the attorney-in-fact in accordance with the power which he has given him.

"He is only bound for what may have been done beyond it in case of his express or tacit ratification."

2003. "A power of attorney expires by the revocation of the attorney-in-fact;

By his renunciation of the power;

By the natural or civil death, the interdiction or the insolvency either of the principal or of the attorney-in-fact."

Title Fourteenth is "Of Security."

2011. "A person who answers as surety for an obligation undertakes with respect to the creditor to satisfy this obligation if the debtor does not satisfy it himself."

2013. "The security cannot exceed what is due by the debtor, nor be given under more rigorous conditions.

It can be given for a part of the debt, and under less rigorous conditions.

"The security which exceeds the debt or which is given under more rigorous conditions is not void: it shall only be cut down to the amount of the principal obligation."

2021. "A surety is only bound towards the creditor to pay him if the debtor fails to do so, and the latter's property must previously be seized, unless the surety has renounced the benefit of seizure, or unless he has bound himself jointly and severally with the debtor; in which case the effects of his undertaking are regulated by the principles which have been established for debts jointly and severally due."

But the creditor is only bound to seize the property of the principal when the surety demands it, points out the property and advances the costs.

2029. "A surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor."

2032. "A surety even before he has paid, can proceed against the debtor to be indemnified:

1. When such surety has been sued in court for payment;
2. When the debtor has become a bankrupt, or is insolvent;
3. When the debtor has undertaken to give him a release at the end of a certain time;
4. When the debt has become due by the expiration of the time for which it had been contracted;
5. At the end of ten years, when no time has been specified for the expiration of the principal obligation, unless the same is of such a nature as not to expire before a fixed time, such as a guardianship."

2033. "When several persons have become sureties for the same debtor upon the same debt, the surety who has paid the debt has a claim against all the other sureties for the share and portion of each of them.

But this claim only exists when the surety has paid in one of the cases mentioned in the foregoing article."

2037. "A surety is released when subrogation to the rights, mortgages and privileges of the creditor can no longer take place in favour of the surety owing to an act of such creditor."

2039. "A simple extension granted by a creditor to the principal debtor does not release the surety, who may in such case proceed against the debtor to compel him to pay."

Title Fifteenth is "Of Compromises."

2044. "A compromise is a contract by which the parties put an end to a controversy which has arisen or prevent a controversy about to arise.

This contract must be drawn up in writing."

2046. "A person can compromise as to the civil interests resulting from a misdemeanor.

"A compromise does not stop the action brought by the public Prosecutor."

2052. "Compromises have, between the parties, the effect of a final judgment.

"They cannot be attacked on account of an error of law, nor on account of injury."

2058. "Errors of calculation in a compromise shall be corrected."

Title Sixteenth "Of Executions Against the Person in Civil Matters" which was a part of the Code Napoleon, was repealed in 1867.

Title Seventeenth is "Of Pledges."

2072. "A pledge of personal property is called a pawn; A pledge of real estate is called *antichresis*."

2073. "A pawn confers upon the creditor the right to cause himself to be paid out of the thing pawned by way of privilege and in preference to other creditors."

2078. "A creditor cannot, in case of non-payment, dispose of a pawn; but he must have the Court's order that he shall retain the pawn as payment and to the extent of its value, according to an appraisal made by experts, or that it shall be sold at auction.

"All covenants allowing a creditor to appropriate the pawn, or to dispose of it without complying with the formalities above set forth, shall be void."

2084. "The foregoing provisions do not apply to commercial matters, nor to pawn establishments duly authorized, and as to which the laws and regulations relating to them shall be followed."

2085. "*Antichresis* can only be created by virtue of a writing.

"By such an agreement a creditor only acquires the right to collect the revenues of the real estate on condition of applying them annually to the payment of the interest, if any is due to him, and thereafter to the payment of the capital of his claim."

The creditor is bound to pay the taxes and keep the property in repair out of the revenue received from it.

2088. "A creditor does not become the owner of the real estate by the mere failure to pay at the time agreed upon; any clause to the contrary is void: in such case he can resort to legal measures to have his debtor dispossessed."

Title Eighteenth is "Of Privileges and Mortgages."

2095. "A privilege is the right which the nature of the claim gives to a creditor to be preferred to other creditors, even to mortgagees."

2101. "Privileged claims on all personal property generally are those hereinafter set forth, and can be asserted in the following order.

1. Court expenses;

2. Funeral expenses;

3. (Amended by law of 30th November, 1892). All expenses relating to the last illness, pro rata among those to whom they are due, whatever may have been its termination;

4. The wages of servants for the year elapsed and what is due for the current year;

5. Supplies of provisions furnished to the debtor or his family, viz.:— during the last six months by retail dealers, such as bakers, butchers and others; and during the last year by boarding-house keepers and wholesale dealers."

Privileged claims are allowed on certain articles of property; as to a landlord on the crops raised by or furniture of the tenant, subject to debts for seeds and implements, to the seller for the price of the thing sold while in the possession of the buyer, to an innkeeper on the effects of his guests in his inn, to a carrier for the charges on the thing carried.

Preferred creditors as to real estate are, vendors for purchase money, those who furnish purchase money to the buyer. Architects, contractors, masons and other workmen for work in constructing or repairing buildings, and one who loans the money to pay them for their work. Privileges relating to real estate must have been inscribed on the register of mortgages with certain exceptions.

2117. "Legal mortgages are those resulting from the law. Judicial mortgages are those resulting from judgments or judicial acts. Conventional mortgages are those resulting from agreements and from the special provisions of deeds and contracts."

2118. "The following property only can be mortgaged:

1. Real estate in trade and its accessories considered as real estate;

2. The usufruct of the same property and its accessories during the time of its duration."

2119. "Personal property cannot be subject to a mortgage."

2121. "The rights and claims to which a legal mortgage is attached are:

Those of married women, on the property of their husbands;

Those of minors and interdicted persons, on the property of their guardians;

Those of the State, Districts, and of public establishments, on the property of collectors and administrators who are accountable."

2122. "A creditor who has a legal mortgage can enforce his right upon all the real estate belonging to his debtor, and upon the real estate which may come to him in the future, subject to the restrictions hereinafter contained."

A judicial mortgage results from a judgment in favor of a party and from acknowledgments in the judgment of signature to an instrument containing an obligation.

2124. "Conventional mortgages can only be granted by those who have the capacity of conveying the real estate which they subject to them."

2127. "A conventional mortgage can only be granted by deed executed in the public form in the presence of two notaries or of one notary and two witnesses."

2134. "A mortgage, whether legal, judicial, or conventional, only ranks among creditors from the day of the inscription which the creditor has caused to be made on the registers of the Registrar in the form and manner directed by law, with the exceptions mentioned in the following article."

Mortgages exist independently of any inscription in favor of minors on lands of their guardian, of married women for dowries and settlements on real estate of their husbands. This is subject to various exceptions and qualifications given at considerable length. Inscriptions of privileges and mortgages are made at the office of the Registrar of Mortgages.

2150. "The Registrar enters on his register the contents of the state-

ment and hands to the appearer the instrument or certified copy of the same, and also one of the statements, at the foot of which he certifies that he has made the inscription."

2154. "Inscriptions keep the mortgage and the privilege alive for ten years from the day of their date; their effect ceases if these inscriptions have not been renewed before the expiration of this period."

2157. "Inscriptions shall be cancelled by the consent of the parties interested and having capacity therefor, or by virtue of a judgment of the highest Court, or one which has become final."

2160. "Cancellation must be ordered by the Tribunals when the inscription has been made without being based upon the law or upon an agreement, or when it has been made upon an instrument which was either irregular or has come to an end, or has been satisfied, or when the rights of privilege or mortgage have been wiped out by operation of the law."

2166. "Creditors who have a privilege or mortgage on real estate which has been inscribed follow the real estate through whatever hands it may pass and rank and are paid according to the rank of their claims or inscriptions."

2169. "If a third party in possession fails to fully comply with one of these obligations, each mortgagee has the right to cause the real estate to be sold thirty days after the service upon the original debtor of a demand and after service upon the third party in possession of a notice to pay the debt which has become due or to abandon the estate."

Where a purchaser of real estate wishes to free it from privileges and mortgages he may have his conveyance transcribed on the register of the Registrar and give notice of his purchase to the creditors. The creditors may then take the consideration paid by him to be applied according to priority, or any creditor may apply for a public sale of the property deeded. The creditor so applying must consent to raise the price one tenth above the contract price. If the purchaser becomes the highest bidder and pays more than his contract calls for he has a remedy over against the seller for the excess in price which he is compelled to pay the creditors. Registers are public and any person is entitled to a copy of any record. The Registrars are liable for omissions to record or make correct certificates.

Title Nineteenth is "Of Compulsory Ejectment and of Rank among Creditors."

2204. "A creditor may sue for ejectment:

1. From real estate or its accessories deemed to be real property owned in fee by his debtor; 2. From the usufruct belonging to the debtor upon property of the same nature."

2209. "A creditor cannot sue to have real estate which has not been mortgaged to him sold, unless the property mortgaged to him is of insufficient value."

2212. "If a debtor establishes by leases in the public form that the net and available revenue of his real estate during one year is sufficient for the payment of the principal, interest and costs of the debt, and if he offers the assignment thereof to the creditor, the proceedings may be stayed by the Judges, but may be renewed in case of an attachment or if some other obstacle to the payment arises."

2213. "A forced sale of real estate can only be applied for by virtue of an instrument in public form, and upon which execution can be issued, and for a duly established and liquidated debt. If the debt is for money, but is not liquidated, the proceedings are regular, but a public sale can only take place after the same has been liquidated."

2215. "Proceedings can result from a provisional or final judgment giving the right to immediate execution, notwithstanding an appeal; but a public sale can only take place after a final judgment of the highest Court or when a judgment has become final.

"Proceedings cannot be instituted in consequence of a judgment by default during the time the default can be opened."

Previous to all proceedings for ejectment a demand for the debt must be served on the debtor by a sheriff.

The Twentieth and last title is "Of Prescriptions."

2219. "Prescription is a way of acquiring property or of releasing oneself at the end of a certain period of time and under conditions specified by law."

2220. "A person cannot renounce prescription beforehand: he can renounce prescription which has taken effect."

2225. "Creditors or any other persons whose interest it is that prescription should have taken place can set it up, even if the debtor or owner renounces it."

2227. "The State, public institutions and districts are subject to the same prescriptions as private individuals, and can set them up in the same manner."

2228. "Possession is the retention or enjoyment of a thing or of a right which we have and which we make use of, either ourselves or by another person who holds it or makes use of it in our name."

2229. "In order that prescription should take place it is necessary to have a continuous, uninterrupted, peaceful, public and unambiguous possession in the capacity of owner."

2236. "Those who hold possession for third parties never acquire by prescription, whatever time may have elapsed.

"Thus, a lessee, a depositary, a usufructuary, and all others who hold the property of an owner, not as their own, cannot acquire it by prescription."

Prescription is interrupted by loss of possession one year, or a citation to appear in court by one who wishes to prevent the prescription or by an admission of the right of the adverse party by the one in possession. Prescription does not run against minors and interdicted persons, nor

between husband and wife, nor against a claim depending upon a condition till the condition takes place.

2260. "Prescription is counted by days and not by hours."

2261. "It takes effect when the last day of the period has passed."

A bona fide purchaser of real property gains a good title by ten years possession, where the owner resides in the district where it is situated, and in twenty years where he resides outside the district. Suits for wages are generally barred in six months, for the compensation of physicians, surgeons, dentists, druggists and solicitors, in two years, for arrears of annuities, allowances for support, rent of lands and interest on loans, in five years. Other prescriptions are made by various provisions of the code and other laws.

It must not be inferred that the quotations above given contain all the provisions on a particular subject or that a summary has been made of all matters of minor importance. The effort has been merely to give enough to indicate the general frame of the code and those rules which are peculiar to it. It contains many provisions taken from the code of Justinian, yet the absence of slavery and of the *patria potestas,* so important in the Roman law, eliminates much of that which was most conspicuous in the laws of Justinian. It is in contrast with the code of China in the fundamental particular of punishments and penalties and in most other particulars, with the code of Manu in the absence of castes and of religious dogmas, and with the laws of England and the United States, in its provisions for records of personal matters, its family council, regulation of marriage and divorce, marriage contracts, wills and donations, privileges and mortgages, and other minor particulars. The absence of all provisions concerning private corporations, railroads, telegraphs, warehouses and other minor topics familiar to the English and American lawyer is noticeable. Procedure in the courts is regulated by a separate code.

Note. The passages above quoted are from the translation of Henry Cachard published by Banks Brothers in 1895 and include amendments made prior to that time.

THE CIVIL CODE OF GERMANY

The Civil Code of Germany was promulgated by the emperor William on August 18, 1896, to become in force on January 1, 1900. It is divided into 2385 paragraphs and the translation fills an ordinary octavo volume of 535 pages. It is divided into five books subdivided into Sections, Titles and numbered paragraphs.

The first book contains "General Principles"; the first Section treats of Persons, and the first title of Natural Persons,

1. "The legal capacity of a human being begins with the completion of birth."

2. "Majority begins with the completion of the twenty-first year of age."

3. "A minor who has completed his eighteenth year of age may be declared of full age by order of the Guardianship Court.

"By the declaration of majority the minor acquires the legal status of a person of full age."

4. "The declaration of majority is permissible only if the minor gives his approval. If the minor is under parental power, the approval of the parent is also necessary, unless he has neither the care of the person nor of the property of the child. For a minor widow the approval of the parent is not necessary."

5. "The declaration of majority should issue only if it will promote the welfare of the minor."

6. Provides for interdicting persons who are insane, feeble-minded, prodigal or habitual drunkards.

The remaining paragraphs of this title prescribe rules for determining domicile and for declaring dead those who have disappeared, making different periods of time sufficient to raise a presumption of death according to the difference in age and circumstances attending the disappearance, ranging from one year in case of persons disappearing with a vessel lost at sea to ten years. "If several persons have perished in a common peril it is presumed that they died simultaneously."

The second title treats of "Juristic Persons."

21. "An association whose object is not the carrying on of an economic enterprise, acquires juristic personality by registration in the register of associations of the competent District Court."

22. "An association whose object is the carrying on of an economic enterprise acquires juristic personality, in the absence of special provisions of Imperial law, by grant from the State. The power to make such grant belongs to the State in whose territory the association has its seat."

23. "An association whose seat is not in any state may, in the absence of special provisions of imperial law, be granted juristic personality by resolution of the Federal Council."

24. "Unless it is otherwise provided, the place where the affairs of an association are managed is deemed to be its seat."

25. "The constitution of an association having juristic personality so far as it does not depend on the following provisions, is determined by the articles of association."

26. "The association must have a directorate. The directorate must consist of several persons.

"The directorate represents the association in judicial proceedings and all other affairs; it is in the position of a statutory agent. The extent of its representative authority, as against third persons, may be limited by the articles."

Directors are appointed by resolution of the members, and may be removed under certain limitations. The articles of association may be altered by resolution of three-fourths of the members present. A member's meeting shall be called on demand of the prescribed number of members, and the District Court may authorize the call.

38. "Membership is not transferable, and does not pass by inheritance. The exercise of the right of membership may not be delegated to another person." But the provisions of 38 do not apply where the articles provide otherwise.

An association may be dissolved by resolution of three-fourths of the members, and it loses juristic personality by the institution of bankruptcy proceedings. Juristic personality may be withdrawn for misconduct. In case of dissolution the affairs are wound up by the directorate or by liquidators.

54. "Associations which have not juristic personality are subject to the provisions relating to partnership. If a member of such an association, acting in the name of the association, enters into a juristic act with a third party, that member is personally liable; if several members so act, they are liable as joint debtors."

Registration of associations is made in the District Court where the association is not one carrying on an economic enterprise. The articles of association must be signed by seven members, must state the objects, name and seat of the association, and should also contain provisions containing the admission and withdrawal of members, the contributions made by them, the constitution of the directorate and the provisions relating to meetings of members. On registration the name receives the title of "registered association". Changes in the directorate and in the articles must be registered. If the number of members falls below three, juristic personality is withdrawn. Proceedings connected with the dissolution of associations and the settlement of their affairs must be reported for registration, and the records are open to public inspection.

Section Second deals with things, gives the definition of different terms used to designate different classes of things, distinguishing movable things from lands, gives rules for determining what is deemed a part of the

land and what movable and some for determining rights to the fruits of things and the burdens to be borne by those whose rights are limited in duration.

The third section treats of Juristice Acts. The first title deals with "disposing capacity."

104. "A person is incapable of disposing—

1. Who has not completed his seventh year of age;

2. Who is in a condition of morbid disturbance of the mental activity incompatible with a free determination of the will, in so far as the condition is not temporary in its nature;

3. Who has been interdicted on account of insanity."

105. "The declaration of intention of a person incapable of disposing is void. A declaration is also void which is made in a condition of unconsciousness or temporary disturbance of the mental activity."

Following these paragraphs are others relating to contracts of minors and others under disability, ratification and repudiation of them, giving rules as to void and voidable acts of persons under disability similar in most particulars to the rules prevailing in most countries.

The succeeding titles of this section deal with "Declaration of Intention," "Contract", "Conditions—Limitation of Time", Agency—Power of Agency", and "Approval—Ratification." Though the arrangement of these titles and the treatment of the subjects is peculiar the substance of the rules declares is substantially the same as the Roman Civil Law, with some provisions with reference to formalities made necessary by changed conditions. Dealings by telegraph and telephone are recognized in matters not requiring writings or official attestation.

The fourth section deals with "Periods of Time—Dates". The rules accord with those usually followed in the business world.

The fifth section is entitled "Prescription".

194. "The right to demand an act or forbearance from another is subject to prescription. A claim arising from a relation of family law is not subject to prescription, so far as it has for its object the establishment for the future of the condition proper to the relation."

195. "The regular period of prescription is thirty years." 196 gives seventeen classes of claims for which the period of prescription is two years. These include most claims for goods sold and delivered and services rendered including those of carriers and professional men. The period is four years for claims for interest and instalments of principal, for arrears of rent, annuities, recurrent acts stipulated for in the transfer of a farm, salaries, pensions, allowances for maintenance and all other periodical payments. Full provisions are made for determining the time from which the prescription begins to run and the states of fact which will have the effect of suspending its operation.

225. "Prescription may neither be excluded nor made more onerous by juristic act. Prescription may be facilitated, especially by shortening the period of prescription."

The sixth section deals with "self-defence and self-help" in six paragraphs declaring the rules generally recognized on these subjects.

The seventh section treats of "Giving of Security."

232. "If a person has to give security, he may do so:

(a) By lodging money or negotiable instruments;

(b) By pledge of claims which have been registered in the Imperial debt ledger or the state debt ledger of one of the States;

(c) By pledge of moveables;

(d) By charging hypothecas on land situate within the Empire;

(e) By pledge of claims secured by hypotheca on land situate within the Empire, or by pledge of land charges or annuity charges on land situated within the Empire.

If security cannot be given in this manner it is permissible to furnish a proper surety."

235. "If a person has given security by lodging money or negotiable instruments, he is entitled to exchange the money lodged for suitable negotiable instruments, or the negotiable instruments lodged for other suitable negotiable instruments, or for money."

The leading purpose of this section seems to be to enable the person giving security to do so with his own property without involving his friends as sureties. Its provisions may be studied with profit by American legislators.

The Second Book treats of the "Law of Obligations". The first title is "Obligation of Performance". It covers not only obligations for the payment of money, delivery of property, and performance of contractual obligations but also negligence in the non-performance of duties which the debtor is bound to perform.

246. "If by law or juristic act a debt is to bear interest, four per cent. per annum shall be paid, unless some other rate is specified."

247. "If a higher rate of interest than six per cent. per annum is agreed upon, the debtor may, after the expiration of six months, give notice of the payment of the principal, six months notice being required. The right of payment on notice may not be excluded or limited by contract. These provisions do not apply to obligations to bearer."

A contract for interest on interest is void, except when made by banking institutions for interest on deposits. These seem to be the only restrictions on usury.

The second title is "Default of the Creditor" and declares his duties to accept performance, and to make counter-performance on his part where obligated so to do.

The arrangement of the subjects covered by the remainder of the second book is as follows:

Second Section. Obligations ex Contractu.

First Title. Creation of an Obligation—Scope of a Contract.

A contract impossible of performance is void, but may subject the maker to damages if he knew of the impossibility.

310. "A contract whereby one party binds himself to convey his future property or a fractional part of his future property or to charge it with a usufruct, is void."

"A contract whereby one party binds himself to convey his present property or to charge it with a usufruct, requires judicial or notarial authentication."

Second Title. Mutual Contracts.

Third Title. Promise of Performance in favor of a Third Party.

328. "An act of performance in favor of a third party may by contract be stipulated for in such manner that the third party acquires a direct right to demand the performance," and this right may be inferred from circumstances, and it may also be inferred where the parties to the contract have the power to change or take away the third party's right.

335. "The promisee may, unless a contrary intention of the contracting parties is to be presumed, demand performance in favour of the third party, even though the right of the performance is in the latter."

Fourth Title. Earnest—Stipulated penalty.

"In case of doubt the earnest is not deemed to be a forfeit," and in case of doubt shall be credited on the performance, and if the contract is rescinded shall be returned. If the giver of the earnest is responsible for the failure of performance or the contract is rescinded for his fault the holder may retain it."

340. "If the debtor has promised the penalty for the case of his non-fulfilling his obligation, the creditor may demand the forfeited penalty in lieu of fulfillment. If the creditor declares to the debtor that he demands the penalty, the claim for fulfillment is barred.

"If the creditor has a claim for compensation for non-performance, he may demand the forfeited penalty as the minimum amount of the damage. Proof of further damage is admissible."

343. "If a forfeited penalty is disproportionately high, it may be reduced to a reasonable amount by judicial decree obtained by the debtor." . . . "

Fifth Title. Rescission.

Third Section. Extinction of Obligations.

First Title. Fulfilment.

Second Title. Lodgment.

372. "A debtor may lodge for the benefit of his creditor, money, negotiable instruments and other documents and valuables in a public place designated for that purpose, if the creditor is in default of acceptance. The same rule applies if, for any other reason affecting the creditor personally, or in consequence of uncertainty concerning the identity of the creditor, not due to negligence, the debtor cannot fulfill it with safety."

373. "If the debtor is bound to perform only after counter-performance has been effected by the creditor, he may make the right of the creditor to

receive the thing lodged dependent upon counter-performance by the creditor."

374. "The lodgment shall be made in the lodgment-office of the place where the performance is to be effected; if the debtor makes the lodgment in any other place, he shall compensate the creditor for any damage arising therefrom. The debtor shall without delay notify the creditor of the lodgment; if he fails to do so he is liable for compensation. The notification may be dispensed with if it is impracticable."

376. "The debtor has the right to withdraw the thing lodged. The right of withdrawal is barred:

1. If the debtor declares to the lodgment-office that he waives the right of withdrawal;

2. If the creditor declares his acceptance to the lodgment-office.

3. If non-appealable judgment between the creditor and the debtor declaring the lodgment legitimate is presented at the lodgment-office."

379. "If the right to withdraw the thing lodged is not barred, the debtor may refer the creditor to the thing lodged.

"As long as the thing is on lodgment the creditor bears the risk, and the debtor is not bound to pay interest or compensation for emoluments not drawn.

"If the debtor withdraws the thing lodged, the lodgment is deemed not to have been made."

380. "In so far as a declaration of the debtor recognising the creditor's right to receive is necessary or adequate as evidence of such right according to the regulations governing the lodgment-office, the creditor may demand from the debtor the delivery of the declaration under the same conditions under which he would have been entitled to demand the performance, if the lodgment had not taken place."

Provision is made for the sale of movables not suitable for lodgment, if the creditor is in default, and lodgment of the proceeds.

Third Title. Set-off.

Fourth Title. Release.

Fourth Section. Transfer of Claims.

398. "A claim may by contract with another person, be transferred by the creditor to him. On the conclusion of the contract the assignee takes the place of the assignor."

399. "A claim is not assignable if the performance cannot be effected in favor of any person other than the original creditor without alteration of its substance, or if assignment is excluded by agreement with the debtor."

400. "A claim is not assignable if it is not subject to judicial attachment."

404. "The debtor may set up all defenses against the assignee which at the time of the assignment of the claim, were available against the assignor."

406. "The debtor may also set off against the assignee an existing

claim which he has against the assignor, unless he had knowledge of the assignment at the time of the acquisition of the claim, or unless the claim did not become due until after he had acquired such knowledge and after the maturity of the assigned claim."

410. "The debtor is bound to perform in favor of the assignee only upon production of an instrument of assignment executed by the assignor. A notice or a warning by the assignee is of no effect, if it is given without production of such an instrument, and the debtor without delay rejects it for this reason. These provisions do not apply if the assignor has given written notice of the assignment to the debtor."

413. "The provisions relating to the transfer of claims apply *mutatis mutandis* to the transfer of other rights, unless the law provides otherwise."

Fifth Section. Assumption of Debt.

Sixth Section. Plurality of Debtors and Creditors.

Seventh Section. Particular kinds of Obligations.

First Title. Sale—Exchange.

Second Title. Gift.

518. "For the validity of a contract whereby an act of performance is promised gratuitously, judicial or notarial authentication of the promise is necessary. If a promise of debt or acknowledgment of debt of the kind specified in 780, 781, be made gratuitously, the same rule applies to the promise or the declaration of acknowledgment."

519. "A donor is entitled to refuse fulfilment of a promise made gratuitously in so far as, having regard to his other obligations, he is not in a position to fulfil the promise without endangering his own maintenance suitable to his station in life or the duties to furnish maintenance to others imposed upon him by law. If the claims of several donees conflict, the claim which first arose takes priority."

521. "A donor is responsible only for wilful default and gross negligence."

522. "A donor is not bound to pay interest for default."

A donor is bound to make good a defect of title or fraudulently concealed defect of quality in the thing given, and to acquire title to an article promised that he does not own.

528. "Where the donor after the execution of the gift, is not in a position to maintain himself in a manner suitable to his station in life, and to fulfil the statutory duty to furnish maintenance imposed on him in favor of his relatives by blood, his wife, or his former wife, he may demand the donee to return the gift under the provisions relating to the return of unjustified benefits. The donee may avoid the return by payment of the sum necessary for such maintenance. . . . "

529. "The claim to the return of a gift is barred if the donor has brought about his poverty wilfully or by his gross negligence, or if at the time of his impoverishment ten years have elapsed since the delivery of the object given. The same rule applies if the donee, having regard

to his other obligations, is not in a position to return the gift without endangering his own maintenance suitable to his station in life, or the fulfilment of the duties to furnish maintenance to others imposed upon him by law.

530. "A gift may be revoked if the donee renders himself guilty of gross ingratitude by any serious misconduct towards the donor or a near relation of the donor. The right to revoke belongs to the heirs of the donor only if the donee has wilfully and unlawfully killed the donor, or prevented him from revoking."

(All of the foregoing provisions relating to gifts are unknown to the Common Law of England and the United States.)

534. "Gifts which are made in compliance with a moral duty or the rules of social propriety are not subject to recall or revocation."

Third Title. Ordinary Lease. Usufructuary Lease.

559. "The lessor of a piece of land has, by way of security for his claims arising from the lease, a right of pledge over the things brought upon the premises by the lessee. The right of pledge may not be enforced for future claims for compensation nor for any rent for a later time than the current and following year of the lease. It does not extend to things not subject to judicial attachment."

560. "The lessor's right of pledge is extinguished by the removal of the things from the land unless the removal takes place without the knowledge or in spite of an objection of the lessor. The lessor may not object to the removal if it takes place in the regular course of business of the lessee, or in accordance with the ordinary affairs of life, or if the things remaining on the premises are evidently sufficient for the security of the lessor."

562. "The lessee may prevent the enforcement of the lessor's right of pledge by giving security; he may release each individual thing from the right of pledge by giving security to the extent of its value."

Fourth Title. Loan for Use.

Fifth Title. Loan for Consumption.

Sixth Title. Contract for Service.

618. "A master has so to fit up and maintain rooms, appliances and implements which he has to provide for the performance of the service and so to regulate the services which are to be performed under his orders or under his direction that the servant is protected against danger to life and health as far as the nature of the service permits.

"If the servant is taken into the household, the master shall make such arrangements and regulations with regard to living and sleeping rooms, sustenance, and time for labor and for recreation as are necessary with regard to the health, morality and religion of the servant."

619. "The obligations imposed upon the master by 617, 618 may not be avoided or limited by contract in anticipation."

Where the termination of the service is not fixed by contract various

notices to terminate it are required corresponding generally with the periods by which the compensation for the service is measured.

626. "Notice to terminate the service relation may be given by either party without observance of any term of notice if a grave reason exists."

630. "On the termination of a continuous service relation the servant may demand from the other party a written testimonial as to the service relation and its duration. The testimonial shall on demand contain a statement as to his efficiency and conduct in service."

Seventh Title. Contract for Work.

Eighth Title. Brokerage.

Ninth Title. Promise of Reward.

Tenth Title. Mandate.

662. "By the acceptance of a mandate the mandatary binds himself gratuitously to take charge of an affair for the mandator entrusted to him by the latter.

671. "A mandate may be revoked at any time by the mandator, and terminated by notice at any time by the mandatary.

"The mandatary can give notice only in such manner that the mandator can make other arrangements for the charge of the affair, unless a grave reason exists for the improper notice. If he gives improper notice without such reason, he shall compensate the mandator for any damage arising therefrom.

"If a grave reason exists the mandatary is entitled to give notice even though he has waived the right to do so."

676. "A person who gives advice or a recommendation to another is not bound to compensate for any damage arising from following the advice or the recommendation, without prejudice to his responsibility resulting from a contract or an unlawful act."

Eleventh Title. Management of Affairs without Mandate.

677. "A person who takes charge of an affair for another without having received a mandate from him or being otherwise entitled to do so in respect of him, shall manage the affair in such manner as the interest of the principal requires, having regard to his actual or presumptive wishes."

679. "The fact that the management of the affair is opposed to the wishes of the principal is not taken into consideration if, without the management of the affair, a duty of the principal the fulfilment of which is of public interest or a statutory duty to furnish maintenance to others by the principal would not be fulfilled in due time."

680. "If the management of the affair has for its object the averting of an imminent danger which threatens the principal the agent is responsible only for wilful default and gross negligence."

Twelfth Title. Deposit.

688. "By a contract of deposit the depositary is bound to keep in his custody a moveable delivered to him by the depositor."

689. "Remuneration for the custody is deemed to have been tacitly agreed upon if under the circumstances the undertaking of the custody is to be expected only for remuneration."

690. "If the custody is undertaken gratuitously, the depositary shall be responsible only for such care as he is accustomed to exercise in his own affairs."

Thirteenth Title. Delivery of Things to Innkeepers.

701. "An innkeeper who makes a business of receiving and lodging guests shall compensate a guest received in the course of business for any damage which the latter suffers through the loss or damage of things brought upon his premises. The duty to make compensation does not arise if the damage is caused by the guest, an attendant of the guest, or a person whom he has received, or if it occurs by reason of the character of the things, or by *vis major*."

"Things are deemed to have been brought upon the premises which the guest has delivered to the innkeeper or the innkeepers servant who has been appointed to receive the things or in the circumstances are deemed to have been so appointed, or which he has brought to a place designated to him by them, or in the absence of such designation, to a place provided for such purpose. A posted notice whereby the innkeeper disclaims liability is of no effect."

702. "For money, negotiable instruments, and valuables the innkeeper is liable under 701 only to the amount of one thousand marks, unless he receives these articles into his custody with knowledge of their character as valuables, or refuses to undertake the custody, or unless the damage is due to the fault of himself or his servants."

704. "The innkeeper has a right of pledge over the things brought upon the premises by the guest by way of security for his claims for lodging and other services afforded to the guest in satisfaction of his needs, including disbursements."

Fourteenth Title. Partnership.

709. The management of the affairs of the partnership belongs to all the partners in common; for every affair the consent of all the partners is necessary."

"If in accordance to the contract of partnership, the majority of the votes is to decide, the majority shall, in case of doubt, be reckoned according to the number of partners."

711. "If, according to the contract of partnership, the management of affairs belongs to all or to several partners in such manner that each is entitled to act alone, then each may oppose the undertaking of any affair by another. In case of opposition the affair must be left undone.

"If a partnership is not entered into for a fixed time, every partner may at any time give notice of its dissolution."

725. "If a creditor of one partner has levied judicial attachment on the share of the partner in the partnership property, he may give notice

of the dissolution of the partnership without observance of any term of notice, unless his title in the debt is only provisionally executory.

"So long as the partnership exists the creditor may not enforce the rights of the partner arising out of the partnership, with the exception of the claim to a dividend."

Fifteenth Title. Community of Ownership.

744. "The management of the common object belongs to the participants in common. Each participant is entitled to take any measure necessary for the preservation of the object without the consent of the other participants; he may require that they give their approval in advance for such a measure."

745. "By a vote of the majority regulations for management and use corresponding to the character of the common object may be determined upon. The vote of the majority shall be reckoned according to the value of the shares."

747. "Each participant may dispose of his share. The participants may dispose of the common object only as a whole and only when they are acting in common."

752. "The dissolution of the community is effected by partition in kind, if the common object or objects can be distributed without diminution of value into similar parts proportional to the shares of the participants. The distribution of equal parts among the participants is made by lot.

753. "If partition in kind is impossible, the dissolution of the community is effected by sale of the common object under the provisions relating to sale of pledges; in the case of land, by compulsory auction and distribution of the proceeds, if alienation to a third person is not permitted, the object shall be sold by auction among the participants."

Sixteenth Title. Annuities.

Seventeenth Title. Gaming—Betting.

762. "No obligation is created by gaming or betting. What has been given by reason of the gaming or betting may not be demanded back on the ground that no obligation existed.

"These provisions apply also to an agreement whereby the losing party, for the purpose of satisfying a gaming debt or a bet, incurs an obligation toward the other party, e.g. an acknowledgment of debt."

763. "A lottery contract or a raffle contract is binding if the lottery or the raffle is ratified by the government. In all other cases the provisions of 762 apply.

764. "If a contract purporting to be for the delivery of goods or negotiable instruments is entered into with the intention that the difference between the price agreed upon and the exchange or market price at the time of delivery shall be paid by the losing to the winning party, the contract shall be deemed to be a gaming contract. This applies also if only one of the parties knows or ought to know of this intention."

Eighteenth Title. Suretyship.

774. "Where the surety satisfies the creditor the claim of the creditor against the principal debtor is transferred to him. The transfer may not be enforced to the detriment of the creditor. Defenses of the principal debtor arising from a legal relation existing between him and the surety remain unaffected.

Nineteenth Title. Compromise.

Twentieth Title. Promise of debt—Acknowledgment of Debt.

780. "For the validity of a contract whereby an act of performance is promised in such manner that the promise itself is to create the obligation, a written statement of the promise is necessary unless some other form is prescribed.

782. "If a promise of debt or an acknowledgment of debt is issued in consequence of an agreed account, or by way of compromise, the written form prescribed in 780, 781 is unnecessary."

Twenty-first Title. Orders to pay or deliver.

790. "A drawer may revoke his order as against the drawee, so long as the drawee has not accepted the order in favor of the payee, or has not made payment or delivery. This applies even though the drawer by the revocation acts contrary to an obligation imposed upon him in favor of the payee."

791. "An order to pay or deliver is not extinguished by the death or occurrence of disposing incapacity of one of the parties."

Twenty-Second Title. Obligations to Bearer.

793. "If a person has issued an instrument in which he promises to perform an act in favor of the bearer of the instrument, the bearer may require him to effect the promised performance, unless he is not entitled to dispose of the instrument. The maker is, however, released from his obligation by performing in favor of a bearer, even though the latter is not entitled to dispose of the instrument. The validity of the signature may, by a provision contained in the instrument, be made subject to the observance of a particular form. For the signature a subscription made by means of mechanical reproduction is sufficient."

794. "The maker is bound by an obligation to bearer even if it has been stolen from him, or lost by him, or has otherwise passed into circulation without his consent.

"The validity of an obligation to bearer is not affected by the fact that the instrument is issued after the maker has died or has become incapable of disposing."

795. "Obligations to bearer issued within the Empire in which the payment of a certain sum of money is promised may be put in circulation only with the ratification of the Government.

"The ratification is given only by the central authority of the State in whose territory the maker has his domicile or his industrial location. The giving of the ratification and the conditions under which it is given shall be published in the Deutscher Reichsanzeiger.

"An obligation which has passed into circulation without the ratification of the Government is void; The maker shall compensate the bearer for any damage caused by its issue."

796. "The maker may set up against the bearer of the obligation only the defenses which affect the validity of the issue, or appear from the instrument itself or which the maker has directly against the bearer."

Twenty-third Title. Production of Things.

This title gives an interested party the right to inspect things or documents in the possession of another.

Twenty-fourth Title. Unjustified Benefits.

812. "A person who, through an act performed by another, or in any other manner, acquires something at the expense of the latter without legal ground, is bound to return it to him. He is so bound even if a legal ground originally existing disappears subsequently, or a result originally intended to be produced by an act of performance done by virtue of a juristic act is not produced.

"Recognition of the existence or non-existence of a debt, if made under a contract is also deemed to be an act of performance."

813. "The value of an act of performance done for the purpose of fulfilling an obligation may be demanded back even if there was a defense to the claim whereby the enforcement of the claim was permanently barred. . . . "

814. "The value of an act of performance done for the purpose of fulfilling an obligation may not be demanded back if the person performing knew that he was not bound to effect the performance, or if the performance was in compliance with a moral duty, or the rules of social propriety."

821. "A person who incurs an obligation without legal ground may refuse performance, even if the claim for release from the obligation has been barred by prescription."

822. "If the recipient of a benefit transfers such benefit gratuitously to a third party, and if in consequence of this the obligation of the recipient for return of the benefit is excluded, the third party is bound to return the benefit as if he had received it from the creditor without legal ground."

Twenty-fifth Title. Unlawful Acts.

823. "A person who, wilfully or negligently, unlawfully injures the life, body, health, freedom, property or any other right of another is bound to compensate him for any damage arising therefrom."

"A person who infringes a statutory provision intended for the protection of others incurs the same obligation. If, according to the purview of the statute, infringement is possible without any fault on the part of the wrong-doer, the duty to make compensation arises only if some fault can be imputed to him."

824. "A person who maintains or publishes, contrary to the truth, a statement calculated to endanger the credit of another, or to injure his

earnings or prosperity in any other manner, shall compensate the other for any damage arising therefrom even if he does not know of its untruth, provided he ought to know it.

"A person who makes a communication the untruth of which is unknown to him, does not thereby render himself liable to make compensation, if he or the receiver of the communication has a legal interest in it."

833. "If a person is killed, or the body or health of a person is injured, or a thing is damaged by an animal, the person who keeps the animal is bound to compensate the injured party for any damage arising therefrom."

835. "If land over which its owner does not have the sporting rights is damaged by wild boar, red deer, elk, fallow deer, roe, deer, or pheasants, the person who has the sporting rights is bound to compensate the injured party for the damage. The duty to make compensation extends to all damages which the animals do to products of the land which have been harvested, though not yet gathered in.

"If the exercise of the sporting rights belonging to the owner is withdrawn from him by law, the person who is by law entitled to exercise the sporting rights has to make compensation for the damage. If the owner of a piece of land over which the sporting rights, on account of the situation of the land, can be exercised only in common with the sporting rights of another piece of land, has leased the sporting rights to the owner of such another piece of land under a usufructuary lease, the latter is responsible for the damage.

"If, for the purpose of a common exercise of the right of sporting, the land-owners of a district have been united by law into an association which is not liable as such, they are responsible for damages in proportion to the size of their landed properties."

847. "In the case of injury to the body or health of another, or in the case of the deprivation of liberty, the injured party may also demand an equitable compensation in money for the damage which is not a pecuniary loss. The claim is not transferable, and does not pass to the heirs, unless it has been acknowledged by contract, or an action on it has been commenced."

"A like claim belongs to a woman against whom an immoral crime or offense is committed, or who is induced by fraud, or by threats, or by an abuse of a relation of dependence to permit illicit co-habitation."

The foregoing extracts show the arrangement, scope and general character of the second book and those provisions which appear to be peculiar to this code.

Law of Things

Third Book. First Section. Possession.

859. "A possessor may forcibly resist unlawful interference. If a movable is taken away from the possessor by unlawful interference, he

may retake it by force from the wrongdoer if he be caught in the act or immediately pursued.

"If a possessor of land is deprived of possession by unlawful interference, he may, immediately upon being dispossessed, recover possession by the expulsion of the wrongdoer."

Second Section. General Provisions Relating to Rights over Land.

873. "For the transfer of ownership of land, or the creation of any right in another over land, or for the transfer of or the creation of a charge upon such right, a real agreement between the person entitled and the other party relating to the change of title and registration of the change of title in the land register are necessary, unless the law provides otherwise.

"Before the registration the parties are bound by the agreement only if the declarations have been judicially or notarially authenticated, or have been made or filed in the land registry office, or if the person entitled has delivered to the other party an authorization for registration conformable with the provisions of the Land Registration Act."

879. "The order of priority among several rights to which land is subject is determined, if the rights have been registered in the same division of the land register, by the order of registration. If the rights have been registered in different divisions, the right registered as of earlier date has priority; rights registered as of the same date have equal rank.

"The registration is conclusive for the order of priority, even though the real agreement necessary according to 873 for the acquisition of the right has not been completed till after the registration. A diffierent arrangement of the order of priority requires registration in the land register."

883. "A caution may be entered in the land register for securing a claim for the concession or release of a right affecting land or affecting a right over land, or for the alteration of the rank or substance of such a right. The registration of a caution is also permissible for securing a future or conditional claim.

"A disposition which is made affecting the land or the right after the registration of the caution is ineffective, in so far as it would defeat or impair the claim. This applies even where the disposition is made by means of compulsory execution or distraint, or by a trustee in bankruptcy.

The rank of the right for the concession of which the claim is made is determined by the date of the registration of the caution."

885. "The registration of a caution is effected by virtue of a provisional decree, or of an authorization by the person whose land or right is affected by the caution. It is not necessary for the issue of the provisional decree that prima facie evidence be given that the claim to be secured is likely to be endangered. In the registration reference may be made to the provisional decree or to the authorization for registration for fuller specification of the claim to be secured."

Third Section. Ownership.

First Title. Scope of Ownership.

903. "The owner of a thing may, in so far as the law or the rights of third parties admit, deal with the thing as he pleases and exclude others from any interference with it."

904. "The owner of a thing is not entitled to forbid the interference of another with the thing, if the interference is necessary for averting a present danger and the threatened injury is disproportionately great in comparison to the injury caused to the owner by the interference. The owner may require compensation for the damage caused to him."

905. "The right of the owner of a piece of land extends to the space above the surface and to the substance of the earth beneath the surface. The owner may not, however, forbid interference which takes place at such a height or depth that he has no interest in its prevention."

906. "The owner of a piece of land may not forbid the discharge of gases, vapors, odors, smoke, soot, heat, noise, vibrations and similar interferences proceeding from another piece of land, in so far as the interference does not, or does not essentially, injure the use of his land, or is caused by a use of the other land which is customary according to the local customs for lands in such situation. Discharge by a special conduit is not permitted."

907. "The owner of a piece of land may prevent the construction or erection, on an adjoining piece of land, of structures from which it can be foreseen with certainty that their condition or use will result in an inadmissible interference with his land. If a structure complies with the provisions of the State law which prescribe a specified distance from the boundary or other protective measures, the removal of the structure can be required only if the inadmissible interference actually takes place.

"Trees and shrubs are not structures within the meaning of these provisions."

Second Title. Acquisition and Loss of Ownership of Land.

925. "The real agreement of the alienor and the acquirer necessary according to 873 for the transfer of ownership of land must be declared at the land registry office in the presence of both parties simultaneously.

A conveyance by agreement made subject to any condition or limitation of time is of no effect."

Third Title. Acquisition and Loss of Ownership of Movables.

929. "For the transfer of ownership of a moveable it is necessary that the owner deliver the thing to the acquirer and make a real agreement with him that the ownership shall pass. If the acquirer is in possession of the thing the real agreement as to the passing of ownership is sufficient."

930. "Where the owner is in possession of the thing a real agreement

between him and the acquirer relating to a legal relation whereby the acquirer acquires indirect possession takes the place of delivery."

932. "By an alienation made under 929 the acquirer becomes owner even though the thing does not belong to the alienor, unless he is in bad faith at the time at which according to these provisions he would acquire ownership. In the case provided for by 929 sentence 2, this applies, however, only where the acquirer had acquired possession from the alienor.

"The acquirer is in bad faith if it is known to him, or unknown in consequence of gross negligence, that the thing does not belong to the alienor."

935. "Ownership may not be acquired under 932 or 934 if the thing has been stolen from the owner, or has been lost, or has otherwise become missing. Where the owner was only indirect possessor, the same rule applies if the thing has been missed by the possessor.

"These provisions do not apply to money or instruments to bearer nor to things which are alienated by means of public auction."

937. "A person who has a movable for ten years in his proprietary possession acquires ownership thereof (usucaption).

"Usucaption is excluded if the acquirer was in bad faith at the time of acquiring proprietary possession, or if he subsequently learns that the ownership does not belong to him."

947. "If movables become attached to each other in such manner that they become essential component parts of a single thing, the former owners become co-owners of such thing; their shares are determined in proportion to the value which such movables had at the time of the incorporation. If one of the things is to be regarded as the principal thing, the owner of the principal thing acquires sole ownership."

958. "A person who takes proprietary possession of an ownerless movable acquires ownership of such movable.

"Ownership is not acquired if the appropriation is forbidden by law, or if by taking possession the right of another to appropriate the movable is violated."

961. "If a swarm of bees migrates, they become ownerless, unless the owner pursue them without delay, or gives up the pursuit."

965. "A person who finds a lost thing and takes possession of it shall give notice without delay to the loser, or the owner, or any other person entitled to receive it. If the finder does not know the persons who are entitled to receive it, or if their residence is unknown to him, he shall without delay give notice to the police authority of the finding and of the circumstances which may be material for the discovery of the persons entitled to receive the thing. If the thing is not worth more than three marks, notification is not required."

971. "The finder may demand a reward from the person entitled to receive the thing. The reward amounts to five per cent. of the value of

the thing up to three hundred marks, and one per cent. on value in excess; in the case of animals one per cent. If the thing has a value only for the person entitled to receive it, the reward shall be determined in an equitable manner. The claim is barred if the finder violates the duty of giving notice, or conceals the finding on inquiry being made."

973. "Upon the lapse of one year from the notice of the finding to the police authority the finder acquires ownership of the thing, unless within such period a person entitled to receive it has become known to the finder, or has notified the police authority of his right. Upon the acquisition of ownership all other rights over the thing are extinguished."

Fourth Title. Claims arising from Ownership.

Fifth Title. Co-ownership.

1011. "Every co-owner may enforce as against third parties any claims arising from ownership in respect of the entire thing."

Fourth Section. Heritable Building Rights.

1012. "A piece of land may be charged with a right in such manner that the person in whose favor the right is created has an alienable and heritable right to have a structure upon or beneath the surface of such land."

1014. "The limitation of a heritable building right to a part of a building, e.g. to one particular story, is not permissible."

1016. "A heritable building right is not extinguished by the destruction of the structure."

1017. "The provisions relating to land apply to heritable building rights. . . . "

Fifth Section. Servitudes.

First Title. Real Servitudes.

1018. "A piece of land may be charged with a right in favor of the owner for the time being of another piece of land in such manner that the latter may use the land in certain ways, or that certain acts may not be done on the land, or that the exercise of a right is excluded which arises from the ownership of the servient tenement in respect of the other land."

Second Title. Usufruct.

1030. "A thing may be charged with a right in such manner that the person in whose favor the right is created is entitled to draw the emoluments of the thing. A usufruct may be limited by the exclusion of certain classes of emoluments."

Third Title. Limited personal Servitudes.

1090. "A piece of land may be charged with a right in such manner that the person in whose favor the right exists is entitled to use the land in certain ways, or that some other authority belongs to him which can constitute the substance of a real servitude."

1092. "A limited personal servitude is not transferable. The exercise of the servitude can be transferred to another person only if the transfer is authorized."

Sixth Section. Real Right of Preemption.

1094. "A piece of land may be charged with a right in such manner that the person in whose favor the right exists is entitled to preemption as against the owner.

The right of preemption may also be created in favor of the owner for the time being of another piece of land."

Seventh Section. Perpetual Charges on Land.

1105. "A piece of land may be charged with a right in such manner that periodical acts of performance are to be done with the means derived from the land in favor of the person in whose favor the right exists."

"A perpetual charge may also be granted in favor of the owner for the time being of another piece of land."

Eighth Section. Hypotheca—Land Charge—Annuity Charge.

First Title. Hypotheca.

1113. "A piece of land may be charged with a right in such manner that to the person in whose favor the right is created a specified sum of money is to be paid out of the land in satisfaction of a claim belonging to him. A hypotheca may also be granted for a future or a conditional claim."

1115. "In the registration of a hypotheca, the name of the creditor, the amount of the claim, and, if the claim bears interest, the rate of interest, and where other accessory payments are to be made, their amount must be stated in the land register; for the rest reference may be made to the authorization for fuller specification of the claim.

"In the case of the registration of a hypotheca for loan for consumption made by a credit institution whose charter has been made public by the competent authority, a reference to the charter is sufficient for the specification of such accessory payments as are to be made according to the charter in addition to interest."

1116. "A certificate of hypotheca is issued for the hypotheca."

1136. "An agreement is void whereby the owner binds himself to the creditor not to alienate the land nor to subject it to further rights."

Second Title. Land Charge—Annuity Charge.

1191. "A piece of land may be charged in such manner that a specified sum of money is to be paid out of the land to the person in whose favor the charge is made. The charge may also be made in such manner that interest upon the sum of money, as well as other accessory payments, is to be paid out of the land."

1192. "The provisions relating to hypothecas apply *mutatis mutandis* to land charges, except in so far as a contrary intention appears from the fact that a land charge does not presuppose a claim. The provisions relating to interest on a hypothecary claim apply to interest on a land charge."

1199. "A land charge may be granted in such manner that a specified

sum of money is to be paid out of the land at regularly recurring periods. In granting an annuity charge the amount, by payment of which the annuity charge may be redeemed must be specified. The redemption sum must be stated in the land register."

Ninth Section. Pledges of Moveables and of Rights.

First Title. Pledge of Moveables.

1204. "A moveable may for the security of a claim, be charged in such manner that the creditor is entitled to seek satisfaction out of the moveable. A pledge may also be granted as a security for a future or a conditional claim."

1205. "For the grant of a pledge it is necessary that the owner deliver the thing to the creditor and make a real agreement with him to the effect that the pledges shall belong to the creditor. If the creditor is in possession of the thing, a real agreement as to the creation of the pledge is sufficient. The delivery of a thing which is in the indirect possession of the owner may be replaced by the owner transferring the indirect possession to the pledgee and notifying the pledge to the possessor."

1228. "The satisfaction of the pledgee out of the thing pledged is effected by sale. The pledgee is entitled to sell the thing pledged as soon as the claim is due in whole or in part. If the object owed is not money, the sale is permissible only if the claim has been transmuted into a money claim."

1229. "An agreement made before the right to sell has arisen whereby the ownership of the thing is to pass or is to be transferred to the pledgee if satisfaction is not made, or is not made in due time, is void."

1235. "The sale of the thing pledged is to be effected by means of public auction." But if it has an exchange or market value it may be sold at private sale at the current price. A month's warning to the pledgor prior to the sale is required.

1259. "The special provisions of 1260 to 1271 apply to a pledge affecting a ship entered in the ship register."

1260. "For the grant of such a pledge a real agreement between the owner of the ship and the creditor that the pledge shall belong to the creditor, and an entry of the pledge in the ship register, are necessary. . . .

"In the registration must be stated the name of the creditor, the amount in money of the claim, and, if the claim bears interest, the rate of interest. For the detailed description of the claim, reference may be made to the authorization for registration."

1268. "The pledgee may seek satisfaction out of the ship and its accessories only by virtue of an executory title according to the provisions applicable to compulsory execution."

Second Title. Pledge of Rights.

1273. "A right can also be the object of pledge. The provisions relating to pledge of moveables apply *mutatis mutandis* to pledge of rights in so far as a contrary intention does not appear from 1274 to 1296."

1274. "The grant of a pledge of a right is effected according to the provisions applicable to the transfer of rights. If for the transfer of the right the delivery of a thing is necessary, the provisions of 1205, 1206 apply. So long as a right is not transferable, a pledge of the right may not be granted."

Family Law

First Section. Civil Marriage.

First Title. Betrothal.

1297. "No action can be brought upon a betrothal for the fulfilment of the promise to marry. A promise to pay a penalty in case of non-fulfilment of the promise is void."

1298. "If a betrothed person withdraws from the betrothal, he (or she) shall compensate the other party to the betrothal, the latter's parents, and any third parties who have acted in *loco parentis,* for any damage caused by their having incurred outlay or obligations in expectation of the marriage. He shall also compensate the other party to the betrothal for any damage which the latter suffers through having, in expectation of the marriage, taken other measures affecting his (or her) property or employment. The damage shall be made good only in so far as the incurring of the outlay or obligations and the other measures were reasonable under the circumstances. The duty to make compensation does not arise if a grave reason for the withdrawal exists."

Second Title. Conclusion of Marriage.

1303. "A man may not marry before attaining majority; a woman may not marry before the completion of her sixteenth year of age. Dispensation from this provision may be granted to a woman." The approval of the parent or guardian is required for those lacking disposing capacity or under age."

1310. "A marriage cannot be concluded between relatives by blood in the direct line, nor between brothers and sisters of full blood or half blood, nor between relatives by marriage in the direct line. A marriage cannot be concluded between persons one of whom has had sexual intercourse with parents, grandparents, or descendants of the other. Relationship by blood, within the meaning of these provisions, exists also between an illegitimate child and his descendants on the one side, and the father and his relatives by blood on the other side."

1317. "The marriage is concluded by the parties to the betrothal, personally and simultaneously present, declaring before a registrar their intention to enter into wedlock with each other. The registrar must be ready to receive the declarations. The declarations cannot be made subject to any condition or limitation of time."

Third Title. Void and Voidable Marriages.

1324. "A marriage is void if in the conclusion of the marriage the form prescribed in 1317 has not been observed." But if entered in the

marriage register and followed by cohabitation ten years or three years and until one of them dies it is validated.

A marriage is void if one of the parties was incapable of disposing, married to another, or if they are related within the prohibited degrees.

It may be avoided if procured by mistake of identity, fraud or duress.

Fourth Title. Re-marriage in case of Declaration of Death.

1348. "If one spouse, after the other spouse has been declared dead, concludes a new marriage, the new marriage is not void merely because the spouse declared dead is still alive, unless both spouses at the conclusion of the marriage knew that he (or she) was living at the time of the declaration of death.

"Upon the conclusion of the new marriage the former marriage is dissolved. It remains dissolved even if the declaration of death is revoked in consequence of an action to set it aside."

Fifth Title. Effects of Marriage in General.

1354. "The right to decide in all matters affecting the common conjugal life belongs to the husband; he determines especially the place of abode and the dwelling.

"The wife is not bound to conform to the decision of the husband if the decision appears to be an abuse of his right."

Sixth Title. Matrimonial Regimes.

1363. "By the conclusion of the marriage the property of the wife becomes subject to the management and usufruct by the husband. Contributed property includes also the property which the wife acquires during the marriage."

1365. "The management and usufruct by the husband does not extend to the separate property of the wife."

Separate property includes clothing, ornaments, property acquired from her labor or business, that so declared in the marriage contract, that acquired by succession or legacy.

1389. "The husband shall bear the expenses of the joint household. In so far as the net income of the contributed property is necessary for the maintenance of the husband and of the wife and the descendants of the marriage, she may require him to spend the net income for such maintenance without regard to his other obligations."

1391. "If it is to be apprehended, owing to the conduct of the husband, that the rights of the wife will be infringed in a manner seriously endangering the contributed property, she may require her husband to give security."

1395. "The wife requires the approval of the husband for making any disposition affecting the contributed property."

If the husband consents to her carrying on a separate business further consent to transactions in such business is unnecessary.

1410. "Creditors of the husband may not demand satisfaction out of the contributed property."

1415. "As between the spouses the following are borne by the separate property:

(1) The liabilities of the wife arising from any unlawful act committed by her during the marriage, or arising from any criminal proceedings instituted against her on account of such an act;

(2) The liabilities of the wife arising from any legal relation affecting her separate property, even if they have arisen before the date of the marriage or before the time at which the property became separate property;

(3) The costs of any action to which the wife is a party relating to any of the liabilities specified in (1) and (2).

1427. "The husband shall bear the expenses of the joint household. For defraying the expenses of the joint household the wife shall make a reasonable contribution to her husband out of the income of her property, and the earnings of her work, or of any separate business carried on by her. The husband may claim contribution in respect of past expenses only in so far as such contribution was in arrear after demand made by the husband. This claim of the husband is not transferable."

II.—Contractual Régimes

1432. "Both spouses may regulate their property relations by contract, and may also terminate or modify the matrimonial régime even after the date of the marriage."

1434. "A marriage contract must be entered into before a court or a notary in the presence of both parties simultaneously."

1443. "The common property is subject to the management of the husband. The husband is also entitled to take possession of all things forming part of the common property or to dispose of such property, or to bring actions relating to such property in his own name. By the husbands acts of management the wife is personally bound neither to third parties nor to her husband."

1445. "The husband requires the approval of his wife for disposal of any land forming part of the common property, or for incurring an obligation to make such a disposition."

1449. "If the husband disposes of any right forming part of the common property without the necessary consent of his wife, she may enforse such right in Court against third parties without the concurrence of the husband."

1483. "If any descendants of the marriage are living at the time of the death of one of the spouses, the community of goods is continued between the surviving spouse and the descendants of the marriage who would be entitled to inherit in case of statutory succession. The share of the deceased spouse in the common property does not belong to his (or her) estate in this case; for the rest the succession to the spouse takes place according to the general provisions.

"If there are other descendants besides the descendants of the marriage, their rights to inherit and their shares in the estate are determined

in such manner as if the continued community of goods had not been created."

1526. "Separate property of the wife includes that which has been declared to be separate property in the marriage contract, or is acquired by the wife under 1369 or 1370.

The husband does not have separate property.

The same rules which apply to the separate property under the régime of general community of goods apply to the separate property of the wife."

1527. "It is presumed that the property existing at any time is common property."

1529. "The expenses of the joint household are borne by the common property. The common property also bears the charges upon the contributed property of both spouses; the extent of such charges is determined according to the provisions of 1384 to 1387, applicable to the contributed property of the wife under the régime of management and usufruct."

1550. "The contributed property of a spouse is excluded from the common property."

1558. "Entries in the marriage property register shall be made in the District Court in whose district the husband has his domicile."

Paragraphs 1363 to 1563 deal with property rights and pecuniary obligations growing out of the marriage relation. To an American lawyer the subject of the charges against the separate property of the wife, the property contributed by each and the common property appears to be treated in very minute detail and with many very indefinite provisions.

Seventh Title. Divorce.

A marriage may be dissolved on any one of the following grounds

Adultery or any act punishable under 171,175 of the Criminal Code.

An attempt against the complaining party's life.

Wilful desertion for one year.

Grave breach of marital duty by dishonest or immoral conduct or gross ill-treatment.

Insanity continuing for three years without hope of recovery.

Divorce is granted by judicial decree and the petition for it must be filed within six months after the petitioner had knowledge of the ground for it.

Second Section. Relationship.

First Title. General Provisions.

Second Title. Legitimate Descent.

1591. "A child born after the conclusion of a marriage is legitimate, if the wife conceived the child before or during the marriage, and the husband cohabited with the wife within the period of possible conception. The child is not legitimate if it is evidently impossible under the circumstances that the wife has conceived the child by the husband." . . .

1592. "The period of possible conception is the period between the 181st day and the 302nd day, both inclusive, before the day of the birth of the child." . . .

1593. "The illegitimacy of a child born during the marriage or within 302 days after the dissolution of the marriage, may not be set up unless the husband has repudiated the legitimacy, or has died without having lost the right of repudiation."

Third Title. Duty to Furnish Maintenance.

1601. "Persons related by blood in the direct line are bound to furnish maintenance to one another."

1602. "A person is entitled to maintenance only if he is not in a position to maintain himself.

"An unmarried minor child may, even if he has property, claim maintenance from his parents in so far as the income of his property and the earnings of his work are not sufficient for his maintenance."

1606. "Descendants are liable to furnish maintenance before relatives by blood in the ascending line are liable. The descendants' duty to furnish maintenance is determined according to the statutory order of succession and according to their respective shares in the inheritance.

"Among relatives by blood in the ascending line those of nearer degree are liable before those of remoter degree; relatives of the same degree are liable in equal shares. The father is, however liable before the mother; if the mother has the right of usufruct of her childs property she is liable before the father is liable."

Fourth Title. Legal Status of Legitimate Children.

1626. "A child is under parental power so long as he is a minor."

1627. "A father has, by virtue of his parental power, the right and the duty to take care of his child's person and property."

In the management of the child's property the parent is subject to the direction of the Guardianship Court as to matters of importance.

1684. "The parental power belongs to the mother:

(1) If the father has died, or has been declared dead;

(2) If the father has forfeited the parental power and the marriage has been dissolved.

In the case of declaration of death the parental power of the mother begins at the date which is deemed to be the date of death."

Fifth Title. Legal Status of Children Born of Void Marriages.

1699. "A child born of a void marriage who, if the marriage were valid, would have been legitimate, is deemed to be legitimate in so far as both spouses did not know at the time of the marriage that the marriage was void. The provision does not apply if the marriage was void owing to some defect in form, and the marriage has not been entered in the marriage register."

Sixth Title. Legal Status of Illegitimate Children.

1705. "An illegitimate child has the legal status of a legitimate child in respect of his mother and her relatives by blood."

1708. "The father of an illegitimate child is bound to furnish the child, until the completion of his sixteenth year of age, maintenance suitable to the mother's station in life. Maintenance includes all the necessaries of life and the expenses of education and of preparation for a profession." . . .

Seventh Title. Legitimation of Illegitimate Children.

1719. "An illegitimate child acquires, by reason of the fact that the father marries the mother, the legal status of a legitimate child from and after the celebration of the marriage."

1723. "An illegitimate child may, upon the application of the father, be declared legitimate by order of the public authority."

1726. "For the declaration of legitimation the approval of the child and, if the child has not completed his twenty-first year of age, the approval of the mother are necessary. If the father is married, he requires also the approval of his wife. . . ."

Eighth Title. Adoption.

1741. "A person who has no legitimate descendants may adopt another by contract with the latter. Such a contract requires the confirmation of the competent Court."

1744. "The adoptor must have completed his fiftieth year of age, and must be at least 18 years older than the adopted child." This requirement is subject to dispensation.

Third Section. Guardianship.

First Title. Guardianship over Minors.

This title contains very full and detailed provisions for the appointment of guardians by the Guardianship Court, the management of the affairs of the ward and the supervision of the Court.

1858. "A family council shall be established by the Guardianship Court, if the father or the legitimate mother of the ward has directed its establishment. . . ."

1860. "A family council consists of the judge of the Guardianship Court as president, and no less than two nor more than six members."

1872. "A family council has the rights and the duties of the Guardianship Court. The duty to conduct its affairs is imposed upon the president. Members of a family council may exercise their functions only in person. They are responsible in the same manner as a judge of a Guardianship Court."

Second Title. Guardianship over Persons of Full Age.

1896. "If a person of full age has been interdicted, a guardian is appointed for him."

1897. "Except so far as a contrary intention appears from 1898 to 1908, the provisions applicable to guardianship over a minor apply to guardianship over a person of full age."

Third Title. Curatorship.

1909. "A curator is appointed for a person under parental power or

guardianship, to take charge of the affairs of which the parent or guardian is prevented from taking charge. . . ."

A curator may also be appointed for a person of full age who is unable to take care of his own affairs.

Law of Inheritance

Fifth Book. First Section. Order of Succession.

Heirs are divided into the following classes:

First, Descendants of the deceased.

Second, Parents of the deceased and their descendants.

Third, Grandparents of the deceased and their descendants.

Fourth, Great granparents and their descendants.

Fifth, and subsequent classes, remoter ancestors and their descendants.

Children inherit in equal shares, and the descendants of a deceased child take *per stirpes*. Parents inherit in equal shares. Heirs of the second and third classes take also by representation and on the principle of equality among those standing in the same position.

1930. "A relative by blood is not entitled to inherit so long as there is a relative by blood of a preceding class."

1931. "The surviving spouse of the deceased, in the capacity of statutory heir, is, concurrently with relatives by blood of the first class, entitled to one fourth the inheritance, or, concurrently with relatives by blood of the second class or grandparents, to one half of the inheritance. If there are both grandparents and descendants of the grandparents, the spouse takes also the share in the other half which would devolve upon such descendants as provided for in 1926. If there are neither relatives by blood of the first or second class nor grandparents, the spouse takes the whole inheritance."

Second Section. Legal Status of an Heir.

First Title. Acceptance and Disclaimer of an Inheritance.—Supervision of the Probate Court.

1942. "An inheritance passes to the heir entitled to inherit, subject to his right of disclaiming it. The Treasury may not disclaim an inheritance devolving upon it as statutory heir."

Second Title. Liability of an Heir for the Liabilities of the Estate.

1967. "An heir is liable for the liabilities of the estate.

The liabilities of the estate include not only the debts incurred by the deceased, but also the obligations imposed upon the heir as such, e.g. the obligations arising from any rights to compulsory portions, legacies and testamentary burdens."

1968. "The heir bears the funeral expenses of the deceased suitable to the latters station in life."

1975. "The liability of an heir for the liabilities of an estate is limited to the estate, if a curatorship over the estate has been established for the

satisfaction of the creditors of the estate (i.e., administration of the estate), or if bankruptcy proceedings have been instituted against the estate."

1994. "The Probate Court shall, upon the application of a creditor of the estate, fix a period for the heir to file the inventory. After the expiration of the period the heir is liable without limitation for the liabilities of the estate unless an inventory has been filed within such period. The applicant shall offer prima facie proof of his claim. The validity of the fixing of the period is not affected by the fact that the claim proves to be non-existent."

2007. "If an heir is entitled to several shares in the inheritance, his liability for the liabilities of the estate in respect of each of the shares is determined just as if the shares belonged to different heirs. In cases of the right of accrual and in those provided for by 1935 this applies only where the shares are unequally charged."

Third Title. Petitio Hereditatis.

This title deals with the recovery of the estate by the heir from those in possession of it.

Fourth Title. Plurality of Heirs.

2032. "If the deceased leaves several heirs, the estate becomes the common property of the heirs."

2033. "Each co-heir may dispose of his share in the estate. A contract whereby a co-heir disposes of his share requires judicial or notarial authentication. A co-heir may not dispose of his share in the individual objects belonging to the estate."

2034. "If a co-heir sells his share to a third party, the other co-heirs are entitled to preemption. The period for the exercise of the right of preemption is three months. The right of preemption passes by inheritance."

2058. "The heirs are liable as joint debtors for the common liabilities of the estate."

Third Section. Wills.

First Title. General Provisions.

2064. "A person may make a will only in person."

This title deals with the construction to be given to certain gifts, the presumptions attending them and the avoidance of testamentary dispositions.

Second Title. Appointment of Heirs.

2087. "If a testator has bequeathed his property or an aliquot part of his property to a beneficiary, the disposition is deemed to be the appointment of an heir even if the beneficiary has not been named as an heir.

"If particular objects only have been given to the beneficiary, it is not to be presumed, in case of doubt, that he is to be an heir, even if he has been named as an heir."

2088. "If a testator has appointed only one heir, and if the appoint-

ment is limited to an aliquot part of the inheritance, the statutory succession takes place in respect of the other parts. The same rule applies, if the testator has appointed several heirs with a limitation of each to an aliquot part, and the parts do not exhaust the whole inheritance."

Third Title. Appointment of Reversionary Heirs.

2100. "A testator may appoint an heir in such manner that the latter does not become an heir until after another person has previously become an heir."

This paragraph is followed by forty-six others dealing in detail with the rights and liabilities of limited and reversionary heirs.

Fourth Title. Legacies.

2147. "An heir or a legatee may be charged with a legacy. Unless the testator has otherwise provided, the heir is deemed to have been charged."

2150. "A legacy given to an heir (a preferential legacy) is deemed to be a legacy even if the heir himself is charged therewith."

2160. "A legacy is inoperative if the legatee was not living at the time of the accrual of the inheritance."

Fifth Title. Testamentary Burdens.

Sixth Title. Executors.

2197. "A testator may by will appoint one or more executors. The testator may appoint a substitutional executor to act in the event of the original appointee failing or ceasing to be an executor before or after acceptance of the office."

2205. "The executor shall administer the estate. He is entitled to take possession of the estate and to dispose of any objects belonging thereto. He is entitled to make gratuitous dispositions only so far as they are made in compliance with a moral duty or the rules of social propriety."

2211. "The heir may not dispose of any object belonging to the estate subject to the administration of the executor. The provisions in favor of those who derive rights from a person without title apply *mutatis mutandis.*"

2212. "A right subject to the administration of the executor may be enforced in court only by the executor."

2214. "Creditors of the heir who are not creditors of the estate may not have recourse to objects belonging to the estate subject to the administration of the executor."

Seventh Title. The Making and Revocation of a Will.

2229. "A person who is limited in disposing capacity does not require the consent of his statutory agent for making a will. A minor may not make a will until he has completed his sixteenth year of age. A person who is interdicted on account of feeble-mindedness, prodigality or drunkenness, may not make a will. Such incapacity begins immediately on the presentation of the application, by virtue of which the interdiction takes place."

2231. "A will may generally be made in the following manner:

(1) Before a judge or notary;

(2) By a declaration of the testator, written and signed with his own hand, stating the place where and the date at which it is made."

2233. "In superintending the making of a will, the judge must be attended by a registrar or by two witnesses; the notary must be attended by another notary or by two witnesses."

2238. "The will shall be made in the following manner: The testator either makes an oral declaration of his last will to the judge or notary, or delivers to him a written statement accompanied by an oral declaration that the written statement contains his last will. The written statement may be delivered open or sealed. It may be written by the testator himself or by any other person. A minor or a person who cannot read may make a will only by oral declaration."

2239. "All persons taking part in superintending the making of a will must be present during the whole proceedings."

2240. "A protocol relating to the making of the will must be drawn up in the German language."

2241. "The protocol must contain—

(1) The name of the place and date of the proceedings;

(2) The names of the testator and of all persons taking part in the proceedings;

(3) The declarations of the testator required by 2238, and, where a written statement is delivered, the fact that the written statement has been delivered."

2242. "The protocol must be read out to and ratified by the testator, and signed by him with his own hand. In the protocol the fact that this has been done must be recorded. The protocol should on demand be laid before the testator for his perusal.

"If the testator declares that he cannot write, a record of such declaration in the protocol is substituted for his signature. The protocol must be signed by all the persons taking part in the proceeding."

2253. "A will or any particular dispositions contained therein may be revoked by the testator at any time.

"Interdiction of the testator on account of feeble-mindedness, prodigality, or habitual drunkenness does not prevent the revocation of a will made before the interdiction."

Eighth Title. Joint Wills.

2265. "A joint will may be made only by a married couple."

2272. "A joint will may be withdrawn from official custody only by both spouses in the manner provided for by 2256."

Fourth Section. Contract of Inheritance.

2278. "Each of the parties to a contract of inheritance may make contractual dispositions *mortis causa*.

"Dispositions other than those relating to the institution of an heir, legacies, and testamentary burdens may not be made."

2286. "The right of the testator to dispose of his property by juristic act *inter vivos* is not limited by a contract of inheritance."

2299. "Either of the contracting parties may unilaterally make any disposition in the contract of inheritance which may be made by will. To such a disposition the same applies as if it had been made by will. The disposition may also be revoked by any contract whereby a contractual disposition may be revoked. Where the contract of inheritance is revoked by the exercise of the right of rescission or by contract, the disposition is thereby invalidated, unless the contrary intention of the testator is to be inferred."

Fifth Section. Compulsory Portion.

2303. "If a descendant of a testator is excluded from succession by disposition *mortis causa,* he may demand his compulsory portion from the heir. The compulsory portion is equal to one-half the statutory portion. The same right belongs to the parents and spouse of the testator, if they have been excluded from succession by a disposition *mortis causa.*"

2305. "If a share in the inheritance has been left to a compulsory beneficiary which is less than one-half of his statutory portion, the compulsory beneficiary may claim the deficiency from his co-heirs as his compulsory portion."

2333. "A testator may deprive a descendant of his compulsory portion—

(1) If the descendant makes an attempt against the life of the testator, or of his spouse, or of any of his descendents;

(2) If the descendant has been guilty of wilful corporal illtreatment of the testator or his spouse; in the case of illtreatment of his spouse, however, only where the descendant is also descended from such spouse;

(3) If the descendant has been guilty of any crime, or any serious wilful offense against the testator or his spouse;

(4) If the descendant maliciously commits a breach of his statutory duty to furnish maintenance to the testator;

(5) If the descendant leads a dishonorable or immoral life contrary to the testator's wishes."

2334. "A testator may deprive his father of his compulsory portion if the latter has been guilty of any of the offenses specified in 2333 (1), (3), (4). The testator has the same right against his mother if she has been guilty of any such offense."

2335. "A testator may deprive his (or her) spouse of his (or her) compulsory portion if the spouse is guilty of an offence by virtue of which the testator is entitled to petition for divorce as provided for in 1565 to 1568."

Sixth Section. Unworthiness to Inherit.

2339. "A person is unworthy to inherit—

(1) Who has wilfully and unlawfully killed or attempted to kill the testator, or has brought him to a condition in consequence of which the testator has become incapable, down to the date of his death, of making or revoking a disposition *mortis causa;*

(2) Who has wilfully and unlawfully prevented the testator from making or revoking a disposition *mortis causa;*

(3) Who has, by fraud or unlawful threats, induced the testator to make or revoke a disposition *mortis causa;*

(4) Who has, in respect of a disposition *mortis causa* made by the testator, been guilty of any act punishable under the provisions of 267 to 274 of the Criminal Code. . . ."

Seventh Section. Renunciation of Inheritance.

2348. "A contract of renunciation requires judicial or notarial authentication."

Eighth Section. Certificate of Inheritance.

2353. "The Probate Court shall issue to the heir on demand a certificate relating to his right of inheritance, and, where he is entitled only to a share in the inheritance, relating to the value of his share."

2359. "The certificate of inheritance may be issued only if the Probate Court holds that the facts necessary to support the application have been established."

Ninth Section. Purchase of an Inheritance.

2371. "A contract whereby an heir sells the inheritance which has devolved on him, requires judicial or notarial authentication."

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In testimony whereof We have signed with Our own hand and have affixed the Imperial Seal.

Given in the New Palace, the 18th day of August, 1896.

WILLIAM,

Prince of Hohenlohe.

On the same day an Introductory Act was also promulgated providing that the Civil Code should take effect on January 1, 1900. And also The Act relating to Alterations in the Act for the Organization of the Judiciary, The Code of Civil Procedure and the Bankruptcy Act; the Act Relating to Compulsory Auction and Compulsory Management; the Land Registration Act, and the Voluntary Jurisdiction Act. This act contains many important provisions concerning the application of the Civil Code to aliens and to the validity of the laws of the States included within the Empire.

MAGNA CHARTA

John, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Earl of Anjou: To the Archbishops Bishops, Abbots, Earls, Barons, Justiciaries, the Foresters, Sheriffs, Governors, Officers, and to all Bailiffs and other faithful subjects, greeting:

Know that we, in the presence of God, and for the health of our soul and the souls of our ancestors and heirs, to the honor of God, and the exaltation of the holy Church, and amendment of our kingdom, by the advice of our venerable fathers, Stephen, Archbishop of Canterbury, primate of all England and cardinal of the holy Roman Church, Henry, archbishop of Dublin, William, bishop of London; Peter of Winchester, Jocelin of Bath and Glastonbury, Hugh of Lincoln, Walter of Worcester, William of Coventry, Benedict of Rochester, bishops; and Master Pandulph the Pope's sub-deacon and ancient servant brother; Aymeric, master of the temple in England; and the noble persons—William Mareschal, Earl of Pembroke, William, Earl of Salisbury; William, Earl of Warren; William, Earl of Arrundel; Alan de Galoway, constable of Scotland; Warin Fitz-Gerald; Peter Fitz-Herbert, and Hubert De Burgh, seneschal of Poictou; Hugo de Neville, Matthew Fitz-Herbert, Thomas Basset, Alan Basset, Philip de Albiney, Robert de Roppele, John Marescall, John Fitz-Hugh, and others, our liege men,—have in the first place granted to God and by this our present charter confirmed for us and our heirs forever.

I. The Church of England shall be free and enjoy her whole rights and liberties inviolable. And we will have them to be so observed, which appears from hence; that the freedom of elections, which was reckoned most necessary for the Church of England, of our own free will and pleasure we have granted and confirmed by our charter, and obtained the confirmation from Pope Innocent III, before the discord between us and our barons, which charter we shall observe and do will it to be faithfully observed by our heirs forever.

II. We have also granted to all the freemen of our kingdom, for us and for our heirs forever, all the unwritten liberties to have, and to hold, them and their heirs of us and our heirs.

III. If any of our earls or barons, or others who hold of us in chief by military service, shall die, and at the time of his death his heir is of full age and owes a relief, he shall have his inheritance by the ancient relief, that is to say, the heir or heirs of an earl for a whole earl's barony, by a hundred pounds; the heir or heirs of a baron, for a whole barony, by a hundred pounds; the heir or heirs of a knight, for a whole knights fee, by a hundred shillings at most, and he that oweth less shall give less, according to the ancient custom of fees.

IV. If the heir of any such be under age, and shall be in ward, when he comes of age, he shall have his inheritance without relief or fine.

V. The warden of the land of such heir who shall be under age shall take of the land of such heir only reasonable issues, reasonable customs, and reasonable services; and that without destruction and waste of the men or things (upon the estate): and if he commit the guardianship of those lands to the sheriff, or any other, who is answerable to us for the issues of the land, we will compel him to give satisfaction and the land shall be committed to two lawful and discreet tenants of that fee, who shall be answerable for the issues to us or to him whom we shall assign. And if we give or sell the wardship of any such lands to any one, and he shall make destruction or waste upon them, he shall lose the wardship, which shall be committed to two lawful and discreet tenants of that fee, who shall in like manner be answerable to us, as hath been said.

VI. But the warden so long as he has the wardship of the land, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things pertaining to the land, out of the issues of the same land; and shall restore to the heir, when he comes of full age, the whole land stocked with ploughs and carriages, according as the time of wainage shall require and the issues of the land can reasonably bear.

VII. Heirs shall be married without disparagement (so as that before matrimony shall be contracted those who are nearest to the heir in blood shall be made acquainted with it).

VIII. A widow after the death of her husband, shall forthwith and without any difficulty have her marriage and her inheritance; nor shall she give anything for her dower or her marriage or her inheritance which her husband and she held at the day of his death. And she may remain in the capital messuage or mansion house of her husband forty days after his death, within which time her dower shall be assigned.

IX. No widow shall be distrained to marry herself, so long as she has a mind to live without a husband. But yet she shall give security that she will not marry without our assent, if she holds of us; or without the consent of the lord of whom she holds, if she holds of another.

X. Neither we nor our bailiffs shall seize any land or rent for any debt, so long as there shall be chattels of the debtor upon the premises sufficient to pay the debt, nor shall the sureties of the debtor be distrained, so long as the principal debtor is sufficient for the payment of the debt.

XI. And if the principal debtor fail in the payment of the debt, not having wherewithal to discharge it, then the sureties shall answer the debt, and if they will they shall have the lands and rents of the debt, or until they shall be satisfied for the debt which they paid for him; unless the principal debtor can show himself acquitted thereof against the said sureties.

XII. If anyone have borrowed anything of the Jews, more or less, and dies before the debt be satisfied, there shall be no interest paid for that debt, so long as the heir is under age, of whomsoever he may hold. And if the debt falls into our hands, we will take only the chattels mentioned in the charter or instrument.

XIII. And if anyone shall die indebted to the Jews, his wife shall have her dower and pay nothing of that debt; and if the deceased left children under age, they shall have necessaries provided for them according to the tenement of the deceased, and out of the residue the debt shall be paid; saving however the service of the lords. In like manner let it be with the debts due to other persons than the Jews.

XIV. No scutage or aid shall be imposed in our kingdom, unless by the common council of our kingdom, except to redeem our person, and to make our eldest son a knight, and once to marry our eldest daughter; and for this there shall only be paid a reasonable aid.

XV. In like manner it shall be concerning the aids of the city of London; and the city of London shall have all of its ancient liberties and free customs, as well by land as by water.

XVI. Furthermore, we will and grant that all other cities and boroughs and towns and ports shall have all their liberties and free customs and shall have the common council of the kingdom concerning the assessment of their aids, except in the three cases aforesaid.

XVII. And for the assessing of scutages we shall cause to be summoned the archbishops, bishops, abbots, earls, and great barons of the realm, singly by our letters.

XVIII. And furthermore we shall cause to be summoned, in general by our sheriffs and bailiffs, all others who hold of us in chief at a certain day; that is to say, forty days before their meeting, at least, to a certain place; and in all letters of such summons we will declare the cause of the summons.

XIX. And summons being thus made, the business shall proceed, on the day appointed, according to the advice of such as shall be present, although all that were summoned come not.

XX. We will not for the future grant to anyone that he may take aid of his own free tenants, unless to redeem his body, and to make his eldest son a knight, and once to marry his eldest daughter; and for this there shall only be paid a reasonable aid.

XXI. No man shall be distrained to perform more service for a knights fee or other free tenement, than is due from thence.

XXII. Common pleas shall not follow our court, but shall be holden in some certain place. Trials upon the writs of *novel disseisin,* and of *mort d'ancestor,* and of *darrein presentment* shall be taken, but in their proper counties, and after this manner; we, or (if we shall be out of the realm) our chief justiciary, shall send two justiciaries through every county four times a year, who, with the four knights chosen out of every shire

by the people, shall hold the said assizes in the county, on the day and at the place appointed.

XXIII. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them as is necessary, according as there is more or less business.

XXIV. A freeman shall not be amerced for a small fault; but according to the degree of the fault, and for a great crime in proportion to the heinousness of it, saving to him his contenement, and after the same manner a merchant, saving to him his merchandise.

XXV. And a villein shall be amerced after the same manner, saving to him his wainage, if he falls under our mercy. And none of the aforesaid amercements shall be assessed but by the oath of honest men of the neighborhood.

XXVI. Earls and barons shall not be amerced but by their peers, and according to the quality of the offense.

XXVII. No ecclesiastical person shall be amerced but according to the proportion aforesaid, and not according to the value of his ecclesiastical benefice.

XXVIII. Neither a town nor any person shall be distrained to make bridges over rivers unless anciently and of right they are bound to do it.

XXIX. No sheriff, constable, coroner, or other our bailiffs shall hold pleas of the crown.

XXX. All counties, hundreds, wapentakes, and tithings shall stand at the old rents without any increase except in our demesne lands.

XXXI. If any one that holds of us a lay fee dies, and the sheriff or our bailiff show our letters patent of summons concerning the debt due to us from the deceased, it shall be lawful for the sheriff or our bailiff to attach and register the chattels of the deceased, found upon his lay fee, to the value of the debt, by the view of lawful men so as nothing be removed until our whole debt be paid, and the rest shall be left to the executors to fulfill the will of the deceased. And if there be nothing due from him to us, all the chattels shall remain to the deceased; saving to his wife and children their reasonable shares.

XXXII. If any freeman die intestate his chattels shall be distributed by the hands of his nearest relations and friends, by view of the church, saving to everyone his debts which the deceased owed.

XXXIII. No constable or bailiff of ours shall take corn or other chattels of any man unless he presently give him money for it or has respite of payment from the seller.

XXXIV. No constable shall distrain any knight to give money for castle guard, if he himself shall do it in his own person or by another able man, in case he shall be hindered by any reasonable cause.

XXXV. And if we shall lead him or if we shall send him into the army he shall be free from castle guard for the time he shall be in the army, by our command.

XXXVI. No sheriff or bailiff of ours or any other shall take horses or carts of any for cartage.

XXXVII. Neither shall we or our officers take any man's timber for our castles or other uses, unless by consent of the owner of the timber.

XXXVIII. We will retain the lands of those convicted of felony but one year and a day, and then they shall be delivered to the lord of the fee.

XXXIX. All weirs for the time to come shall be demolished in the rivers of Thames and Medway and throughout all England except upon the sea coast.

XL. The writ which is called *praecipe* for the future shall not be granted to any one of any tenement whereby a freeman may lose his cause.

XLI. There shall be one measure of wine and one of ale through our whole realm, and one measure of corn; that is to say, the London quarter and one breadth of dyed cloth and russets and haberjects; that is to say, to ells within the testa. And the weights shall be as the measures.

XLII. From henceforward nothing shall be given or taken for a writ of inquisition from him that desires an inquisition of life or limbs but shall be granted gratis and not denied.

XLIII. If any one holds of us by fee farm or socage or burgage, and holds lands of another by military service, we will not have the wardship of the heir or land which belongs to another man's fee by reason of what he holds of us by fee farm, socage or burgage. Nor will we have the wardship of the fee farm, socage or burgage, unless the fee farm is bound to perform military service.

XLIV. We will not have the wardship of an heir, nor of any land which he holds of another by military service, by reason of any petit sergeanty he holds of us, as by the service of giving us daggers, arrows or the like.

XLV. No bailiff for the future shall put any man to his law upon his single accusation, without credible witnesses produced to prove it.

XLVI. No freeman shall be taken or imprisoned, or disseized or outlawed, or banished, or in any wise destroyed, nor will we pass upon him or commit him to prison unless by the legal judgment of his peers or by the law of the land.

XLVII. We will sell to no man, we will deny to no man, nor defer right and justice.

XLVIII. All merchants shall have safe and secure conduct to go out of and to come into England, and to stay there; and to pass as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil tolls except in time of war, or when they shall be of any nation at war with us.

XLIX. And if there shall be found any such in our land, in the beginning of a war, they shall be attached without damage to their bodies or goods, until it may be known to us, or our chief justiciary, how our merchants be treated in the nation at war with us, and if ours be safe there they shall be safe in our land.

L. It shall be lawful for the time to come for anyone to go out of our kingdom and return safely by land or water, saving his allegiance to us, unless in time of war by some short space for the common benefit of the kingdom; except prisoners and outlaws, according to the law of the land, and people in war with us, and merchants who shall be in such condition as is above mentioned.

LI. If any man hold of any escheat, as of the manor of Wallingford, Nottingham, Bologne, Lancaster, or of other escheats which are in our hands, and are baronies, and dies, his heirs shall not give any other relief or perform any other service to us than he would to the baron if the barony were in possession of the baron; we will hold it after the same manner the baron held it.

LII. Those men who dwell without the forest from henceforth shall not come before our justiciaries of the forest upon summons, but such as are impleaded or are pledges for any that were attached for something concerning the forest.

LIII. We will not make any justiciaries, constables, sheriffs, or bailiffs, but what are knowing in the law of the realm and are disposed duly to observe it.

LIV. All barons who are founders of abbeys and have charters of the king of England for the advowson, or are entitled to it by ancient tenure, may have the custody of these when void, as they ought to have.

LV. All woods that have been taken into the forests, in our own time shall forthwith be laid out again, and the like shall be done with the rivers that have been taken and fenced in by us, during our reign.

LVI. All evil customs concerning forests, warrens, and foresters, warreners, sheriffs and their officers, rivers and their keepers, shall forthwith be inquired into, in each county, by twelve knights of the same shire, chosen by the most creditable persons in the same county and upon oath, and within forty days after the said inquest, be utterly demolished so as never to be restored.

LVII. We will immediately give up all hostages and engagements delivered unto us, by our English subjects, as securities for their keeping the peace and yielding us faithful service.

LVIII. We will entirely remove from our baliwicks the relations of Gerard de Athyes, so as that for the future they shall have no baliwick in England. We will also remove Engelard de Cygony, Andrew, Peter and Gyon from the chancery, Gyon de Cygony, Geoffrey de Martyn and his brothers and his nephew, Geoffrey, and their whole retinue.

LIX. And as soon as peace is restored we will send out of the kingdom all foreign soldiers, crossbowmen and stipendiaries who are come with horses and arms to the injury of our peace.

LX. If any one has been dispossessed or deprived by us, without the legal judgment of his peers, of his lands, castles, liberties, or rights we will forthwith restore them to him; and if any dispute arises upon this head, let the matter be decided by the five and twenty barons hereafter mentioned for the preservation of the peace.

LXI. As to all those things of which any person has, without the legal judgment of his peers, been dispossessed or deprived, either by King Henry, our father, or our brother, King Richard, and which we have in our hands, or are possessed by others, and we are bound to warrant and make good, we shall have a respite, till the term usually allowed the croises; excepting those things about which there is a suit depending, or whereof an inquest hath been made by our order before we undertook the crusade. But when we return from our pilgrimage, or if we do not perform it, we will immediately cause full justice to be administered therein.

LXII. The same respite we shall have for disforesting the forest which Henry, our father, or our brother Richard, have afforested; and for the wardship of the lands which are in another's fee, in the same manner as we have heretofore enjoyed those wardships, by reason of a fee held of us by knight service; and for the abbeys founded in any other fee than our own, in which the lord of the fee claims a right. And when we return from our pilgrimage, or if we should not perform it, we will immediately do justice to all the complaints in this behalf.

LXIII. No man shall be taken or imprisoned upon the appeal of a woman for the death of any other man than her husband.

LXIV. All unjust and illegal fines and all amercements imposed unjustly and contrary to the law of the land shall be entirely forgiven; or else be left to the decision of the five and twenty barons, hereafter mentioned, for the preservation of the peace, or of the major part of them, together with the aforesaid Stephen, archbishop of Canterbury, if he can be present, and others whom he shall think fit to take along with him; and if he cannot be present, the business shall notwithstanding go on without him. But so that if one or more of the aforesaid five and twenty barons be plaintiffs in the same cause, they shall be set aside, as to what concerns this particular affair, and others be chosen in their room, out of the said five and twenty, and sworn by the rest to decide that matter.

LXV. If we have dissiezed or dispossessed the Welsh of any lands, liberties, or other things without the legal judgment of their peers, they shall immediately be restored to them. And if any dispute arise upon this head, the matter shall be determined in the *marches* by the judgment of their peers; for tenements in England, according to the law of England, for tenements in Wales according to the law of Wales; for a tenement of the marches according to the law of the marches. The same shall the Welsh do to us and our subjects.

LXVI. As for all those things of which any Welsh man hath, without the legal judgment of his peers, been disseized or deprived by King Henry our father, or our brother King Richard; and which we either have in our hands or others are possessed of, and we are obliged to warrant it, we shall have a respite till the time generally allowed the croises; excepting those things about which a suit is depending, or

whereof an inquest has been made by our order, before we undertook the crusade. But when we return, or if we stay at home and do not perform our pilgrimage, we will immediately do them full justice according to the law of the Welsh and of the parts aforementioned.

LXVII. We will without delay dismiss the son of Llewelin and all the Welsh hostages, and release them from the engagements they entered into with us for the preservation of the peace.

LXVIII. We shall treat with Alexander, king of the Scots, concerning the restoring of his sisters and hostages and rights and liberties, in the same form and manner as we shall do to the rest of our barons of England; unless by the engagements which his father, William, late king of Scots, hath entered into with us, it ought to be otherwise; and this shall be left to the determination of his peers in our court.

LXIX. All the aforesaid customs and liberties which we have granted to be holden in our kingdom, as much as it belongs to us towards our people, all our subjects, as well clergy as laity, shall observe, as far as they are concerned towards their dependents.

LXX. And whereas for the honor of God and the amendment of our kingdom and for quieting the discord that has arisen between us and our barons, we have granted all the things aforesaid; willing to render them firm and lasting, we do give and grant our subjects the following security; namely, that the barons may choose five and twenty barons of the kingdom, whom they think convenient, who shall take care with all their might to hold and observe and cause to be observed the peace and liberties we have granted them, and by this our present charter confirmed. So as that if we, our justiciary, our bailiffs or any of our officers, shall, in any case, fail in the performance of them towards any person, or shall break through any of these articles of peace and security, and the offense is notified to four barons chosen out of the five and twenty aforementioned, the said four barons shall repair to us, or our justiciary, if we are out of the realm, and laying open the grievance shall petition to have it redressed without delay; and if it is not redressed by us, or, if we should chance to be out of the realm, if it is not redressed by our justiciary, within forty days, reckoning from the time it has been notified to us, or to our justiciary if we should be out of the realm, the four barons aforesaid shall lay the case before the rest of the five and twenty barons, and the said five and twenty barons, together with the community of the whole kingdom, shall distrain and distress us all the ways possible; namely, by seizing our castles, lands, possessions, and in any other manner they can, till the grievance is redressed according to their pleasure; saving harmless our own person and the persons of our queen and children. And when it is redressed they shall obey us as before.

LXXI. And any person whatsoever in the kingdom may swear that he will obey the orders of the five and twenty barons aforesaid in the execution of the premises and that he will distress us jointly with them

to the utmost of his power; and we give public and free liberty to any one that will swear to them and never shall hinder any person from taking the same oath.

LXXII. As for those, our subjects, who will not of their own accord swear to join the five and twenty barons in distraining and distressing us, we will issue our order to make them take the same oath as aforesaid.

LXXIII. And if any one of the five and twenty barons dies or goes out of the kingdom or is hindered any other way from putting the things aforesaid in execution, the rest of the said five and twenty barons may choose another in his room in their discretion, who shall be sworn in like manner as the rest.

LXXIV. In all things that are committed to the charge of these five and twenty barons, if when they are all assembled together they shall happen to disagree about any matter, or some of them summoned will not or cannot come, whatever is agreed upon or enjoined by the major part of those who are present shall be reputed as firm and valid as if all the five and twenty had given their consent, and the aforesaid five and twenty shall swear that all the premises they shall faithfully observe, and cause with all their power to be observed.

LXXV. And we will not by ourselves or others, procure anything whereby any of these concessions and liberties be revoked or lessened, and if any such thing be obtained, let it be null and void; neither shall we ever make use of it either by ourselves or any other.

LXXVI. And all the ill will, anger, and malice that hath arisen between us and our subjects, of the clergy and laity, from the first breaking out of the dissensions between us, we do fully remit and forgive. Moreover all trespasses occasioned by the said dissension from Easter in the sixteenth year of our reign, till the restoration of peace and tranquillity, we hereby entirely remit to all, clergy as well as laity, and so far as in us lies do fully forgive.

LXXVII. We have moreover granted them our letters patent, testimonial of Stephen lord archbishop of Canterbury, Henry lord archbishop of Dublin, and the bishops aforesaid, as also of master Pandulph for the security of the concessions aforesaid.

LXXVIII. Wherefore, we will, and firmly enjoin, that the church of England be free, and that all men in our kingdom have and hold all the aforesaid liberties, rights and concessions, truly and peacefully, freely and quietly, fully and wholly, to themselves and their heirs, in all things and places forever, as is aforesaid.

LXXIX. It is also sworn, as well on our part as on the part of the barons, that all the things aforesaid shall faithfully and sincerely be observed.

Given under our hand, in the presence of the witnesses above named, and many others, in the meadow called Running Mead between Windelfore and Stanes, the fifteenth day of June, the seventeenth year of our reign.

CONSTITUTION OF THE UNITED STATES OF AMERICA

PREAMBLE

We the people of the United States in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

ARTICLE I

Section 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Sec. 2. The house of representatives shall be composed of members chosen every year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not when elected be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this Union according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Sec. 3. The senate of the United States shall be composed of two

senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.[1]

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; . . . When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as a part of the constitution.[1]

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not when elected be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote unless they be equally divided.

The senate shall choose their other officers, and also a president *pro tempore* in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to law.

Sec. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

[1] As amended in 1913.

Sec. 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absence members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house, during the sessions of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Sec. 6. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 7. All bills for raising revenue shall originate in the House of Representatives, but the Senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States. If he approve he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like

manner as if he had signed it, unless the Congress, by their adjournment, prevent its return, in which case it shall not be a law.

Every order, resolution, or vote, to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States, and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 8. The Congress shall have power—

To lay and collect taxes, duties, imposts, and excises; to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States;

To borrow money on the credit of the United States;

To regulate commerce with foreign nations, and among the several States, and with the Indian tribes;

To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies, throughout the United States;

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

To provide for the punishment of counterfeiting the securities and current coin of the United States;

To establish post offices and post roads;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

To constitute tribunals inferior to the supreme court;

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces;

To provide for calling forth the militia to execute the laws of the union, suppress insurrections and repel invasions;

To provide for organizing, arming, and disciplining, the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular

states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

Sec. 9. "The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Sec. 10. No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imports, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or

engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE II

OF THE EXECUTIVE

Section 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

Each State shall appoint, in such manner as the Legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[The electors shall meet in their respective states, and vote by ballot for two persons, of whom one, at least, shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the vote shall then be counted. The person having the greatest number of votes shall be the president, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for president; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the president. But in choosing the president the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the president, the person having the greatest number of votes of the electors shall be the vice-president. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the vice-president.]*

The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

*See Twelfth Amendment.

In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president; and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected. The president shall at stated times receive for his services a compensation which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Before he enter on the execution of his office he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will to the best of my ability, preserve, protect and defend the constitution of the United States."

Sec. 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Sec. 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive embassadors and other public ministers; he shall take care that the laws he faithfully executed, and shall commission all the officers of the United States.

Sec. 4. The president, vice-president and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

ARTICLE III

OF THE JUDICIARY

Section 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges both of the supreme and inferior courts shall hold their offices during good behavior, and shall at stated times receive for their services a compensation which shall not be diminished during their continuance in office.

Sec. 2. The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting embassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting embassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as congress may by law have directed.

Sec. 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted.

ARTICLE IV

MISCELLANEOUS PROVISIONS

Section 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

Sec. 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand

of the executive authority of the state from which he fled be delivered up to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state, under the laws thereof, escaping into another, shall in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Sec. 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state may be formed by the junction of two or more states, without the consent of the legislatures of the states concerned as well as of the congress.

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.

Sec. 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.

ARTICLE V

The Congress, whenever two-thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

ARTICLE VI

All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the confederation.

This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and the several States, shall be bound

by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE VII

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

Done in convention, by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven, and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

GEORGE WASHINGTON,
President, and Deputy from Virginia.

New Hampshire
JOHN LANGDON,
NICHOLAS GILHAM.

Massachusetts
NATHANIEL GORMAN,
RUFUS KING.

Connecticut
WM. SAM'L JOHNSON,
ROGER SHERMAN.

New York
ALEXANDER HAMILTON.

New Jersey
WIL. LIVINGSTON,
WM. PATTERSON,
DAVID BREARLEY,
JONA. DAYTON.

Pennsylvania
B. FRANKLIN,
ROBT. MORRIS,
THOS. FITZSIMONS,
JAMES WILSON,
THOMAS MIFFLIN,
GEO. CLYMER,
JARED INGERSOLL,
GOUV. MORRIS.

Delaware
GEO. READ,
JOHN DICKINSON,
JACO. BROOM,
GUNNING REDFORD, JR.,
RICHARD BASSETT.

Georgia
WILLIAM FEW,
ABR. BALDWIN.

Maryland
JAMES MCHENRY,
DANL. CARROLL,
DAN. OF ST. THOS. JENIFER.

Virginia
JOHN BLAIR,
JAMES MADISON, JR.

North Carolina
WM. BLOUNT,
HU: WILLIAMSON,
RICH'D DOBBS SPAIGHT.

South Carolina
J. RUTLEDGE,
CHARLES PINCKNEY,
CHAS. COTESWORTH PINCKNEY,
PIERCE BUTLER.

Attest: WILLIAM JACKSON, *Secretary.*

AMENDMENTS TO THE CONSTITUTION

Proposed by Congress and ratified by the Legislatures of the several states pursuant to the fifth article of the original constitution.

Article I. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article II. A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Article III. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Article IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Article VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Article VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact tried by jury shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Article VIII. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX. The enumeration in the constitution, of certain rights, shall not be construed to deny or disparge others retained by the people.

Article X. The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Article XI. The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Article XII, Sec. 1. The electors shall meet in their respective states and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each, which lists they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest number not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of vice-president of the United States.

Article XIII, Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.[1]

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Article XIV,[2] Sec. 1. All persons born or naturalized in the

[1] Declared Adopted Feb. 18, 1865.

[2] Declared Adopted July 28, 1868.

United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportiond among the several States according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a senator or representative in congress or elector of president or vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The congress shall have power to enforce by appropriate legislation the provisions of this article.

Article XV, Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.

Sec. 2. The congress shall have power to enforce this article by appropriate legislation.

(Declared adopted March 30, 1870.)

Article XVI. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states and without regard to any census or enumeration.

(Ratified Feb'y, 1913.)

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