

SIXTY-SIXTH YEAR.

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THE  
NORTH AMERICAN  
REVIEW.

EDITED BY ALLEN THORNDIKE RICE.

August, 1880.

- I. Ruined Cities of Central America.....THE EDITOR.
- II. The Law of Newspaper Libel.....JOHN PROFFATT.
- III. Nullity of the Emancipation Edict.....RICHARD H. DANA.
- IV. The Census Laws.....CHARLES F. JOHNSON.
- V. Principles of Taxation.....Professor SIMON NEWCOMB.
- VI. Prince Bismarck, as a Friend of America and as a Statesman. Part  
II.....MORITZ BUSCH.
- VII. Recent Literature.....CHARLES T. CONGDON.
  - I. Cowper.
  - II. The English Poets.
  - III. Vignettes in Rhyme, and other Verses.
  - IV. The Poems of Richard Henry Stoddard.
  - V. Songs of the Springtides.

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# EXPLORATION

OF THE

## Ancient Cities of Central America.

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AN announcement has been made of the departure for Mexico of an expedition whose object is to make a thorough and systematic investigation of the splendid monuments of antiquity so abundant in Central America and the conterminous states of Mexico. That expedition is now in the field, and an early number of

### THE NORTH AMERICAN REVIEW

will contain the first of a series of articles fully detailing its operations. These papers, to be continued until the labors of the explorers shall be completed, will be written by the chief of the expedition, M. CHARNAY, who is a skilled literary artist, as well as an archæologist, and is familiarly acquainted through his reading and his actual explorations with the whole subject of Central American antiquities. All the noteworthy features of the ruined cities, the buildings themselves, as well as the more interesting details of their ornamentation, the bas-reliefs, and the hieroglyphics, will be

#### Illustrated with Engravings

after photographs taken on the spot by the artist of the expedition.

The record of an expedition like this must possess a very special interest for every intelligent American who is curious about the early history of man upon this continent. Indeed, the spectacle of these groups of gorgeously ornate edifices, hid in the heart of the forests, and forgotten for generations, is a standing challenge to American science and American scholarship.

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Tros Tyriusque mihi nullo discrimine agetur.

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# NORTH AMERICAN REVIEW.

No. CCLXXXV.

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AUGUST, 1880.

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## RUINED CITIES OF CENTRAL AMERICA.

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WE have always thought it strange that, while the sources of the Nile or the exact topography of the north or south pole has excited wide and unwearied interest, the past of an American race which has left imperishable monuments of its vigor should, even among ourselves, have been viewed with comparative indifference. The story of the Spanish rule in America is familiarly known to all men. Even in England every schoolboy knows who imprisoned Montezuma and who strangled Atahualpa. But how many Americans of our day have any adequate conception of the stately edifices of monumental Mitla, or of Palenque, with its magnificent palace, its terraces and temples, its pyramids and sculptured ornaments? How many, indeed, have any knowledge whatever of the innumerable splendid relics which, having defied the havoc of time, still crowd the entire nucleus of New Spain, and speak to us so eloquently of a noble culture, reaching back far beyond the conquest. Yet it might have been expected that every American who takes an interest in the history of this continent, or even in the history of the human race, would be curious to know who reared the stately structures which, in importance, far surpass any found in the land of Montezuma. More, no doubt, would be known to us of a territory so full of interest and so close at hand, but for the untimely end of the distinguished traveler John L. Stephens, the lax manner in which the work has been since conducted, and the consequent

ebb in popular interest. It would, however, be unjust to criticise with severity a work which demands more ample means and support than have hitherto been accorded to any of the numerous individuals who have purposed the exploration of these mysterious regions. But we are happy that it should now be in our power to signalize the departure of an expedition to Central America which it is hoped will, through the united efforts of a munificent gentleman and two powerful governments, not only win the good will and support of the local authorities, but also have at its disposal the necessary funds for the proper conduct of such an enterprise.

The expedition will have for its object a systematic investigation of the so-called "ruined cities" and other remains of ancient civilization in Central America and Mexico. It is dispatched under the joint auspices of the Governments of the United States and France. The expense will be jointly defrayed by Mr. Pierre Lorillard, of New York, the original promoter of the undertaking, and by the French Government. The expedition is under the charge of M. Désiré Charnay. It is thoroughly equipped, and comprises an efficient staff. The means are provided not only of photographing bas-reliefs and hieroglyphic inscriptions, but of making careful casts of them by the process of M. Lotin de Laval. Copies of these casts will first be presented to the Smithsonian Institution at Washington, and to the French Government—the latter collection to be permanently preserved in the Trocadéro of Paris. The collection and preservation of these casts will be one of the most distinctive and valuable features of the present enterprise, offering, as they will, to students of all countries, an ample field for investigation, and possibly the materials requisite for a solution of the linguistic problem. The exploring party will visit Mount Alban, Mitla, Palenque, and other great centers of ancient civilization. Its route will lie through Oaxaca, Tehuantepec, and Guatemala, terminating in the peninsula of Yucatan, where the ground is to a great extent fresh. Among the untamable Mayas and other warlike tribes where it is only possible to travel safely in armed force, the party will be able to secure a guard one hundred strong. From an expedition which is favored by such varied advantages, it is hardly unreasonable to expect many valuable and interesting accessions to our knowledge of the ancient and contemporary races of Central America.

Although the idea of equipping such an expedition has for many years been entertained by Mr. Lorillard, yet not only was



its execution originated independently on both sides of the Atlantic—both in France and in America—but two similar though separate enterprises were actually, as often happens, taking form simultaneously. Indeed, it was only while actively engaged in organizing the American party that the present writer became aware of the existence of “another Richmond in the field,” and it augurs well for the success of the undertaking that he encountered no serious difficulty in reconciling and amalgamating what would otherwise have developed into two rival schemes.

As now constituted, the mission bears an international character, though, in fairness to France, we must state that the predominance of American interests has been fully recognized by her. She has gracefully recognized the conspicuous generosity of Mr. Lorillard by permanently associating his name with the proposed collection at Paris; and, among other privileges accorded to America, we may be excused for referring to an official letter of agreement by which the French Minister concedes to us the privilege of laying before the readers of this “Review” the earliest accounts from the pen of the explorer, as he at brief intervals reports the progress of the expedition.

While, however, the scheme has thus in a limited sense a peculiar relation to the United States, it has an equal interest and value for the curious in all parts of the world. The vexed question of origin attracts at once the philosopher and the ethnologist, the theologian and the Darwinian. The historian sees looming through the mist of tradition and pictured hieroglyphics the life of powerful nations. The artist or architect stands mute before the sculptured evidence of marvelous skill and taste, of grand powers of architectural design and engineering resource, in a race of semi-barbarians. And all marvel how nations which have left such noble proofs of their vigor, and which, without the immediate directing influence of any foreign civilization, passed through every stage of social economy, from that of tribal savagery to a golden age of culture and wealth, should have finally perished and vanished utterly from the world's knowledge as though by enchantment. It is not astonishing that the only memorials of their existence—the only links connecting them with the human family—should exercise a strange moral influence. We believe M. Charnay, the chief of the present expedition, to be thoroughly imbued with the spirit in which alone this subject should be approached. His achievements, as a practical *Americanist*, are already known to the world of science. He brings

to his task the experience and reflection so rare, and, in the present instance, so essential to success. Apart from the intimate knowledge of Mexico which he has gained during two previous journeys, he has also traveled widely in the East and in Australasia, and has made a special and comparative study of Javanese antiquities. M. Charnay is the author of two works relating to Mexico—one an entertaining book of travel, the other a singularly valuable contribution on the subject of the antiquities. In the authorship of the latter work, “*Cités et Ruines Américaines*” (Paris, 1863), he was associated with the famous architect, M. Viollet-le-Duc. It is especially remarkable for its great folio album of magnificent photographs. In a traveler of such experience and observation we have every hope that the expedition will possess, what is so vital to its success, an able, enthusiastic, and responsible leader.

Whatever may have been the other causes which combined to prevent any systematic explorations of the present nature, the principal one may no doubt be found in the isolated position of the country and its distance from the world’s great thoroughfares. It is curious to observe to what an extent we owe what little knowledge we possess, even of the antiquities, to men who were first attracted to the spot by schemes for the formation of new commercial highways. At the time of the conquest another and most potent reason against systematic exploration lay in the wealthy and alluring kingdom of the neighboring Aztecs, and hither flocked the restless and intrepid spirits of Castile to luxuriate amid the delights of a New World, and to return after a few years laden with the treasures of America.

It is difficult, if not impossible, to conceive the shock which must have been produced on the Continent of Europe by the discovery of America. All the marvels of Eastern fable pale before the vision of a New World emerging like a mirage from the Western seas, peopled by strange races, glorious in the richness of its tropical vegetation, its forests teeming with curious animal forms, its mines reputed to contain inexhaustible stores of gold and gems. The bounds of human empire had suddenly been widened, and the world’s compass was increased by an unknown quantity. Soon the American dependencies of the Castilian crown alone embraced a territory almost as large as Europe. From the equator northward and southward, far into the temperate zone, Spanish rule was extended. Thence came gold and silver to be coined in all the mints and curiously wrought in all the jewelers’ shops of Europe and

Asia. Soon the cultivation of indigenous and exotic plants, with the enforced labor of slaves, was found to be not an inferior source of wealth, and from the Spanish dominions in America were exported tobacco, chocolate, indigo, sugar, coffee ; nor in this enumeration of their sources of wealth must we omit their exports of hides, cochineal, and quinquina.

Truly this was a land of milk and honey, where, if one would believe some of the chroniclers of the day, the buildings were more sumptuous than the palace of Aladdin, and the very fountains more wonderful than the golden water of Parizade. The lust of gold was the supreme passion of all classes, and, while all efforts were bent on the spoliation and oppression of an ingenious and diligent population, men's minds were turned aside from any serious attention to the relics of a race that had already flourished and decayed. Small wonder, indeed, that the Spanish Viceroy, who, leaving behind him the curses of Mexico, entered Madrid with a long train of gilded coaches and of sumpter-horses, trapped and shod with silver, spared himself the pains of such laborious inquiries. But, although we hear of no investigations on the spot, the New World offered to the thinkers of the day no small field for speculation, and, where knowledge failed, fancy was substituted—to what purpose can best be understood after a perusal of Mr. Bancroft's learned chapter on this subject in his "Native Races of the Pacific States." For illustrations of the spirit in which the problems of the New World were discussed, we need not seek beyond the pages of that great work.

Of the innumerable questions to which the discovery of America gave rise, the most difficult to answer, perhaps, was that regarding the origin of the newly discovered races. Not so thought the theologian, who was content to look upon the aborigines as straggling members of the Hebrew stock, whose ancestors had found their way thither—it did not much matter how—from the primal abode of man in Asia Minor. He saw in the discovery only another evidence of the truth of Holy Writ. Were not these Indians the lost tribes of Israel? In this easy manner was the question settled, then ; but in later times it has again cropped up, to receive answers as diverse as as they are often ridiculous. The theory of an Asiatic immigration obviously was suggested by a certain resemblance between the products of plastic art on the opposite shores of the Pacific, and by the close proximity in the north of the two continents. But, as Friedrich Müller and others have pointed out, the supposed influence of Asia must have shown itself conspicuously in matters of every-day

life—in the simpler industries, in a knowledge of materials, in the common possession of various plants and animals. But in all these circumstances the respective civilizations of America and of China and Japan are wholly different. If, however, the theory of an Asiatic immigration across the Pacific is to be put aside as untenable, what can be said in favor of the theories which connect the red-man with the Mongolian or Samoyed, the Cymric or Gallic Celts, the Polynesian or the Iberian Basque?

The study of language has led to some singular misconceptions. The famous Abbé Brasseur de Bourbourg, a profound but eccentric student of American antiquities, discovered what he thought unmistakable affinities between the Maya and Quiche languages and Greek, Latin, French, English, German, and other languages. These languages, indeed, he regards as derivatives from the Maya-Quiche. But to understand this topsy-turvy doctrine presupposes a knowledge of the Abbé's origin theory. At first his belief was that civilization began in the Occident instead of in the Orient, as has always been supposed. In support of this opinion he cited as his principal authority a Nahua manuscript, which he entitles "Codex Chimalpopoca," and which purports to be a history of the kingdoms of Calhuacan and Mexico. Subsequently, however, he sacrificed the theory over which he had spent so much time and labor. The Codex began to have for him a new meaning. In an allegorical sense it referred to the mighty cataclysm which submerged the cradle of civilization. From this time Brasseur became a convert to the Atlantis theory, believing that the American Continent originally occupied the Gulf of Mexico and Caribbean Sea, extending so far across the Atlantic as to have possibly included the Canaries. But at a remote period this continent was engulfed by a tremendous convulsion of nature. The continuity of the Americas was destroyed by the submersion which included in its area Yucatan, Honduras, and Guatemala. A subsequent upheaval of the continent was, however, sufficient to restore this portion of the surface. Such is an outline of Brasseur's theory; and, entirely apart from his wild conjectures and still wilder arguments, it is worthy of observation that science has in recent times gone to show that a vast extent of dry land formerly existed between America and Europe. The judgment passed by Mr. Bancroft on the Abbé's speculations is eminently just; he says that, in perusing Brasseur's "Quatre Lettres," the reader is "continually harassed by long, rambling digressions—literary no-thoroughfares, as it

were—into which he is beguiled in the hope of coming out somewhere, only to find himself more hopelessly lost than ever ; for any mythological evidence the Pantheons of Phœnicia, Egypt, Hindostan, Greece, and Rome are probed to their most obscure depths ; comparative philology is as accommodating to the theorist as ever, which is saying a great deal ; the opinions of geologists, who never dreamed of an Atlantis theory, are quoted to show that the American Continent formerly extended into the Atlantic in the manner supposed." It is certainly wise, even were Brasseur's original documents obtainable and intelligible, to reject his "double meaning" as an hallucination, and to regard his first rendering of the Codex as more reliable, if indeed any reliance can be placed upon his labors.

The earlier theories furnish many instances of ingenious hypotheses and *naïve* credulity. To those whose sole desire was to make the history of man in America conform to revelation, Noah's ark presented itself as a convenient *deus ex machina*. Lescarbot fails to see why Noah should have experienced any difficulty in reaching America, when—his reason is remarkable—"Solomon's ships made voyages lasting three years." Another opinion is, that the sons of Noah reached America by land ; while Orrio, in order to show that one human pair was equal to the task of populating the Old World and the New, assures us that "one woman can in two hundred and ten years become the ancestor of one million six hundred and forty-seven thousand and eighty-six persons." In support of a derivation from Noah, we are constantly referred to the tradition of a foreign origin and the native flood-myths. According to Lord Kingsborough, who is a willing believer in Scriptural analogies, the Mexican tradition of the deluge bears "unequivocal marks of having been derived from a Hebrew source." But there is little reason to doubt that such of these traditions as are not wholly spurious are in the most essential parts "improved" by the Spanish chroniclers and priests, who were not unaccustomed to draw upon their imaginations for their facts. As a sequel to the flood-myths we come upon traditions of the building of a tower of refuge, and this has led some writers to identify the Americans with certain of the builders of Babel, who were scattered over the earth after the confusion of tongues. Indeed, there is no limit to the fancy of the chroniclers. Fuerites, the chronicler of Guatemala, gives an interesting account of the fabled descent of the Toltecs—the builders of many of the finest structures of Central America—from

the house of Israel. These amusing stories and speculations have their counterpart in the more or less frivolous theories which are put forward in later times without the excuse of being warped by a religious purpose. The Celtic theory is supported upon characteristic grounds. It is based upon the idea that our old friend the Welsh prince Madoc, son of Owen Gwynedd, established his colony in Mexico, and the proof of this startling assertion is threefold. "First, the Mexicans believed that their ancestors came from a beautiful country afar off, inhabited by white people; secondly, they adored the cross; and, thirdly, several Welsh names are found in Mexico." In further corroboration various stories are told which are supposed to point to existing traces of the Welsh colony. A story of this kind, appearing in the "Gentleman's Magazine" for 1740, is told by the Rev. Morgan Jones, and illustrates the heavy drafts that have so frequently been made on public credulity. Along with five companions, the reverend gentleman was taken prisoner by the Tuscarora tribe. Being about to be killed, his life was saved by the accident of a soliloquy in his native tongue. The Indians were able to converse freely in Welsh, and Mr. Jones remained among them for four months, and "did preach to them in the same language three times a week." Again, in 1801, a certain Lieutenant Roberts met an Indian chief at Washington who spoke Welsh as fluently "as if he had been born and brought up in the vicinity of Snowdon." This Indian said this was the language spoken by his tribe, the Asguaws, who preserved the tradition of an origin from beyond sea, and conformed to a law which forbade the acquisition by their children of any other speech till after twelve years of age. Several instances of a similar character are cited in support of the pretensions of the Scotch and Irish to be the progenitors of the Americans, and all one can say is that these claims are just as strong as those, for instance, of the Hellenes and Pelasgians.

But all these theories of the origin of the American races from an Israelitish stock, or from a Kymric or a Gaelic, may be safely dismissed as the fruits of misguided enthusiasm and perverted ingenuity. There remain, then, three hypotheses, each of which has its strenuous advocates, namely: First, that the American races are *autochthonic*, and this was held by Agassiz, in accordance with his doctrine of multiple centers of creation; second, that they are of one blood with the races inhabiting the Eastern Continent, from whom they were separated by the subsidence of the intervening

land ; third, that they represent a migration from Asia *via* Behring Strait or across the Pacific in lower latitudes. Either of the first two hypotheses, could it be proved, would harmonize many apparently conflicting circumstances connected with Mexican civilization. At the same time it would give to that civilization the peculiar interest which must attach to an independent development, presenting a curious and suggestive parallel to that with which we are familiar. True, there are striking resemblances between the architectural styles of America and of several Old World countries, and slight, but seemingly real, though in fact fortuitous, points of affinity in language, while a consensus of traditions shows an aboriginal knowledge of certain countries beyond the sea inhabited by "white-faces." But this is not overwhelming evidence against either the Atlantis or the *autochthonic* theory, and is as nothing indeed compared with the proof that can be adduced against any of the other theories. On the other hand, as has been suggested, the strangeness of the implied connection between the Old World and the New disappears if we admit the possibility—no very unlikely contingency—of stray vessels having found their way at various times to these distant shores. To this slight admixture of foreign elements we might not unreasonably attribute certain striking points of identity existing between the artistic forms of the Eastern and the Western Continent, and which could hardly have had a separate origin in both. They are but few in number, and chief among them are to be named the sphinx-like statues at the base of the pyramid at Izamal, and the representation, on pottery, of elephants equipped for war purposes.

It is difficult to say whether we may expect much new light to be thrown on this phase of the subject from future investigation ; but we can rest assured that a nearer approach will be made to the truth on the acquisition of fuller and clearer knowledge. Until comparatively recent years, in the absence of any well-authenticated account of the remains of Mexican civilization, there was a disposition to regard as apocryphal the glowing descriptions of Cortes and the Spanish chroniclers. Dr. Robertson, the historian, lays it down "as a certain principle that America was not peopled by any nation of the ancient world which had made considerable progress in civilization." In other words, the civilization of America began with the Spanish conquest ! In saying this, Dr. Robinson is only repeating the commonly accepted opinion of his time ; and it may be pleaded in excuse of such an opinion that the ruined monuments of

Central America, which impress us so vividly as the signs of a by-gone prosperity and civilization, were then unknown. The extent and power of that civilization we have had some means of estimating, but no satisfactory conclusion has yet been arrived at regarding its age. It is remarked by Mr. Hubert H. Bancroft that "the tendency of modern research is to prove the great antiquity of American civilization as well as of the American people; and, if either was drawn from a foreign source, it was at a time probably so remote as to antedate all Old World culture now existing, and to prevent any light being thrown on the offspring by a study of the parent stock." This is a curious commentary on the "certain principle" of the distinguished author of "The History of America." Yet there are many, again, who would join issue with Mr. Bancroft on the vexed questions he so ably raises, and on which we have so many and diverse opinions recorded by explorers within the past century. It is, indeed, only within this recent period that we hear of any notable efforts to elucidate the subject of the antiquities. The existence of some of the more important ruins was first discovered in 1750, when a party of Spaniards, traveling in Chiapas, stumbled upon the so-called Casas de Piedras, subsequently named Palenque, after the neighboring village. It was not till 1786 that the King of Spain dispatched the expedition of which Captain Del Rio took charge. To Rio's report was added a commentary by Dr. Paul Felix, in which the people were derived from the Egyptians. This document, after being neglected or withheld by the Government, fell into English hands after the revolution, and an English version was published in 1822. This, the first account of the antiquities given to Europe, failed to awaken public interest, partly, no doubt, because the whole narrative was too novel and startling, too full of gorgeous and vivid tints, to be at once accepted with general credence. Meantime Charles IV of Spain had sent out another expedition, under Captain Dupaix, who was aided by a secretary, a draughtsman, and a detachment of dragoons. The expedition lasted over three seasons, from 1805 to 1807. The drawings and MSS. went out of sight at the time of the revolution, and, some time after, were almost accidentally discovered in the Cabinet of Natural History in Mexico. Twenty-eight years after the date of the expedition, in 1834-'35, Dupaix's work saw the light in the shape of four costly volumes. Then followed Lord Kingsborough's still more expensive work, which, as regards its material, is little more than a rehash of Dupaix, and in respect of its opinions is a storehouse of analogies



in support of the Hebrew theory. Colonel Galendo was the only other practical investigator in the field up to the time of Waldeck's expedition, which lasted over two years, and the funds for which were provided by an association in Mexico. All previous work, however, was far surpassed in excellence by that of Stephens and Catherwood, the accurate, lively narrative of the former being in every way worthy of the remarkable drawings of the latter. During their two visits to the country, they accomplished, by their individual efforts, infinitely more than any of the previous expeditions, bringing to our knowledge upward of forty ruined cities, besides making the most painstaking examination of Copan, Quiche, Palenque, and Uxmal. The region embracing Yucatan, Guatemala, and Nicaragua has also been ably treated by Mr. E. G. Squier, and in the same territory, at Uxmal and Chichen Itza, Waldeck has been carefully supplemented by the labors of M. Désiré Charnay. In our own time we find the number both of theoretical and practical workers increased so largely that we can do no more than name a few such, as Dr. Scherzer, Dr. Boyle, Rosny, Dr. Bernonitti, Stephens Salisbury, Jr., and Larrouza, whose important work in five volumes was published in Mexico, 1875-'79. Last, but of the first importance, we will name Mr. Hubert H. Bancroft's careful work, which is an admirable cyclopædia of the whole subject.

One of the distinctive features of Mexican architecture is the pyramidal form of the buildings or their substructures. On this account, chiefly, an attempt has been made to trace a connection between America and Egypt, in civilization if not in race; but, as Fergusson points out, the two kinds of pyramids are widely different. The towering structure of Mexico, as a matter of fact, is not a pyramid at all in the conventional sense. It is distinguished by the fact that it almost invariably forms the basis of some superstructure. It is, indeed, little more than an arrangement of gradually diminishing terraces; where this is not the case the pyramid is a truncated mound, intended, it is generally thought, as a place of sacrifice. Most of the ruined towns have such mounds, but the great pyramid at Izamal is peculiar in consisting of two pyramidal piles of masonry, one on the top of the other, the base of the whole measuring no less than eight hundred and twenty feet on each side, and the first platform six hundred and fifty feet. The pyramidal form is also finely seen in the Casa del Gobernador at Uxmal, which is described as, of all the structures of the kind, the most stately in form and proportions. Here three successive terraces form the

base which holds aloft the grand ornate building, and add to its look of spacious magnificence. The sculptured ornament at Uxmal is of a special character. It resembles arabesque in its general appearance, but is richly diversified, the parts being wrought into a sort of "sculptured mosaic," having possibly a symbolical meaning. According to Stephens, the carved work is equal to the finest of the Egyptian. It would be impossible, he says, with the best instruments of modern times, to cut stone more perfectly. And yet, as far as is known, the ancient sculptor was ignorant of the existence of iron, and had to rely in the formation of his tools upon chert or flint. Add to this the difficulty of quarrying large masses of stone, conveying them long distances through a rough country, and of raising them to great altitudes, and the construction of these vast edifices seems truly marvelous. But it is not our present intention to discuss at length the subject of Mexican civilization, aware as we are that matters of the greatest interest would arrest the attention at every step. We must leave the antiquities to the future consideration of M. Charnay.

Yet, for the benefit of readers who may be unacquainted with the results of antiquarian research in Yucatan and the neighboring states of Mexico and Central America, we will venture upon a rapid sketch of the ruins of Uxmal, and also note a few of the principal objects of interest to be found at Palenque.

The site of Uxmal is in the northwestern portion of Yucatan, about latitude  $20^{\circ} 25'$  north, and longitude  $89^{\circ} 45'$  west. It is as yet impossible to determine with any approach to certainty the ends which its ruined edifices were designed to serve, but it is at least highly probable that they were originally palaces, temples, council-halls, and courts of justice; possibly some of them may even have been monasteries or community-houses in which the ascetics of a religion analogous to that of Buddha lived in common. But this is a problem which can be solved, if at all, only by a thorough exploration of the fast-crumbling ruins, and patient discussion of the results by competent archaeologists.

The buildings at Uxmal have received from the people names supposed to express the character of their original occupancy. Thus we have the House of the Governor, that of the Nuns, that of the Dwarf, and so forth. Or they bear names founded on some peculiarity of their ornamentation or architecture, as the "House of the Old Woman," so called on account of a stone figure of an old woman found on the ground in front of it; or the "House of

the Pigeons," the meaning of which is explained below. The Governor's House (*Casa del Gobernador*) is thirty feet in height, has a frontage of three hundred and twenty-two feet, with a depth of thirty-nine feet, and stands upon three great terraces. It is built entirely of stone. Below the cornice, which extends around the entire building, the front, rear, and lateral elevations are plain; but all above "is one solid mass of rich, complicated, and elaborately sculptured ornaments forming a sort of arabesque." In the front are eleven doorways reaching nearly to the cornice, each surmounted with imposing decorations, but the central doorway is distinguished from all the others by the elaborateness of its ornamentation, as also by the fact that above it are sculptured characters evidently hieroglyphic.

The rear elevation has no doorways, windows, or openings of any kind. The ornamentation above the cornice is less elaborate than on the front. The two ends also are less ornate, but each has one doorway. The roof is flat, and was originally covered with cement; it is now overgrown with a luxuriant vegetation.

The internal plan of all the buildings is essentially the same; that of the *Casa del Gobernador* is as follows: First, a wall extending from end to end divides the interior into two narrow halls, which are again subdivided by walls, running from front to rear, into a number of separate chambers. Each front chamber communicates with the one back of it, by a doorway through the central wall. The three terraces on which this great building rests are of artificial construction, and were supported by substantial walls of stone. The lowest terrace is three feet high, fifteen feet broad, and five hundred and seventy-five feet long; the second twenty feet high, two hundred and fifty feet wide, and five hundred and forty feet in length; the third, nineteen feet high, thirty feet broad, and three hundred and sixty feet in length.

On the platform of the second terrace is another remarkable building, the *Casa de las Tortugas*, or House of the Turtles, so called on account of the row of tortoises sculptured on the cornice. It is ninety-four feet in front and thirty-four feet deep. Like the principal building of its group, its exterior decoration is restricted to the portion above the cornice, but it differs from the *Casa del Gobernador* in that its ornamentation is extremely chaste and simple. This striking monument of the architectural genius of a vanished people is unfortunately little better now than a mass of ruins.

At no great distance from the House of the Turtles stand two

buildings, each one hundred and twenty-eight feet long and thirty feet deep, each apparently the counterpart of the other, and facing one another, with an interval between them of seventy feet. The sides by which they confront each other are ornamented with sculpture, and each appears to have been surrounded by a colossal serpent in stone. In the center of both is seen, set in the façade, a fragment of a great stone ring, four feet in diameter. There are no openings whatever in the walls, whether doorways or windows. Stephens had a breach made in the wall of one of these structures, to the depth of over eight feet, and found only rough stones loosely thrown together, but no chamber. What possible use could these curious buildings have served?

Like the Casa del Gobernador, the Casa de las Monjas, the Nuns' House, stands on three terraces. It is quadrangular, with a courtyard in the center. The front, which is two hundred and seventy-nine feet long, is ornamented above the cornice with sculptures no less elaborate than those of the Governor's House. In the middle is a wide doorway and passage leading to the courtyard, and on each side are four doorways affording entrance to as many separate apartments. There are no exterior doorways in the other three buildings of the Casa de las Monjas. The four façades overlooking the courtyard present the most elaborate specimens of the sculptor's art anywhere to be seen in Uxmal. The four buildings constituting this quadrangle are divided into chambers by longitudinal and transverse walls, as in the Casa del Gobernador, except that in the front building there is no communication between the front and the rear row of chambers. One of these buildings incloses a smaller and older one, the latter being, presumably, like the "Holy House of Loretto," a house made venerable in the eyes of the devout by some miraculous event.

The House of the Dwarf stands on the summit of an artificial elevation eighty-eight feet in height, and incased in stone. Some sixty feet up the face of this mound, on a projecting platform, stands a building divided into two chambers. Its front is the most elaborately ornamented of any building in Uxmal, and is made to represent some dread semi-human monster. The wide doorway is the mouth; the lintel is carved to represent teeth; above are the eyes still perfectly distinct, though the nose has disappeared by the ravages of time. The crowning structure, the House of the Dwarf, is seventy-two feet in front and only twelve feet deep. The ornamentation is extremely chaste. The three chambers into which the

interior is divided have no communication with each other. Stephens holds it to be "beyond doubt" that the House of the Dwarf was a great temple of idols, in which human sacrifices were once offered.

The building known as Casa de Palomas, or House of the Pigeons, is two hundred and forty feet long. It is in a very dilapidated condition. How it got its name is best explained in the words of Stephens: "Along the center of the roof," says he, "running longitudinally, is a range of structures built in a pyramidal form, like the fronts of some of the old Dutch houses that still remain among us, but grander and more massive. These are nine in number, built of stone, about three feet thick, and have small oblong openings through them. These openings give them somewhat the appearance of pigeon-houses, and from this the name of the building is derived." Through a wide doorway in the middle of this building there is a passage into a courtyard, bounded on the right and left by ruined buildings. At the lower end of the court is a range of buildings in ruins which have also a passage through the middle, opening into a second courtyard, with a *teocalli* or House of God, about fifty feet high, at the opposite end. Like the House of the Dwarf, the building on this *teocalli* is divided into three apartments.

Such are the principal edifices still to be seen in ruins at Uxmal. But Uxmal is only one among many places—*primus inter pares*—in Yucatan, where these interesting monuments of antiquity are to be found. The remains of Palenque are still more imposing than those of Uxmal, while for the artist and the antiquarian they possess an interest that can hardly be exaggerated. To say nothing of the six noble buildings themselves which remain, known as the palace and casas No. 1, No. 2, No. 3, No. 4, and No. 5, and which exhibit a bolder architectural genius than we see at Uxmal, though no new architectural principle is introduced, the specimens of plastic art, the spirited bas-reliefs, and the numerous hieroglyphic tablets with which these buildings are decorated within and without, suffice to insure for Palenque preëminent rank among these ancient American cities.

Palenque is situated in the Mexican State of Chiapas, latitude  $17^{\circ} 30'$  north, longitude  $92^{\circ} 25'$  west. If a circle were described so as to inclose all the ruins, its area, according to Stephens, would not exceed that of the Battery Park in New York—a very inconsiderable area for a "city." But it might have once occupied a far greater area. Being solidly constructed of stone laid in mor-

tar, these buildings which remain could for generations withstand the elements, while the frail tenements of the lower classes, and even the houses of the upper class, would disappear and leave no sign. The tropical forest in its irresistible advance has, as it were, trampled into the earth the hovels of the poor and the mansions of the rich ; it is only a question of time when the palaces of the kings and the shrines of the gods will succumb to the same fate.

Of the six Palenque buildings we can notice only one, the Palace. Even of that, room is wanting here for a detailed description ; and of its numerous courts, chambers, and corridors we can particularize only one or two. This "palace," as it has been justly called, for it was in every respect a fit abode for the ruler of the state, is a one-storied structure twenty-five feet high, two hundred and eighty-four feet front, and one hundred and eighty feet deep. It stands upon a pyramidal elevation forty feet high, three hundred and ten feet front and rear, and two hundred and sixty feet on each side. This mound was originally faced with stone on all sides, and doubtless had stone steps, but the stones have long since fallen away, and now are heaped at the base of the pyramid. A pyramidal tower rises from near the middle of the palace projecting two stories above the roof, which is flat, and coated with cement. The entire building, or group of buildings, was constructed of dressed stone laid in a mortar of sand and lime, and the front was coated with stucco and painted in various bright colors. The cornice, which extends all round the building, is supported on stone piers about seven feet wide, between each pair of which is a doorway nine feet wide. Of these doorways there are fourteen in front, and there the piers were ornamented with bas-reliefs, some of which still remain as irrefragable proof of a very high artistic development. These bas-reliefs would of themselves appear to be enough to confute the theory according to which Palenque, Uxmal, and the other sites of ruins in this portion of the American Continent are only "pueblos," groups of "communal houses" such as still exist and are still inhabited in New Mexico. All of the edifices which remain of Palenque, Uxmal, etc., are richly, even profusely decorated, while the "communal houses" of the pueblos are void of all attempt at ornamentation. Indeed, to suppose that a community of barbarians would erect for themselves such palaces as these, is to attribute to them a degree of refinement never yet attained even by what is known in England as "the upper middle class."

An idea of the high artistic merit of these bas-reliefs can only

be obtained by an inspection either of the originals or of their reproductions in drawings or photographs, such as illustrate Stephens's or Charnay's volumes. In future numbers of the Review, many of these interesting monuments of indigenous American art will be illustrated with engravings after photographs to be taken by the Lorillard expedition. Suffice it, therefore, for the present, to describe roughly one of this series of bas-reliefs as a specimen of the whole. Here are seen three human figures, one of which, the principal personage, stands erect, while the other two are sitting cross-legged on the ground, the one before, the other behind him. They are all in profile, and they all exhibit a very remarkable facial angle of about forty-five degrees, as if the head above the ears had been compressed in infancy so as to assume a peaked shape. The attire of the principal figure consists of a bonnet of plumes ornamented with sundry devices, a short vest or cape, probably of feather-work (though it might be of mail), decorated with studs, and faced with a sort of breastplate, a belt around the waist supporting a close-fitting tunic made of the skin of some animal; finally, moccasins ornamented with feather-work at the top. In his hands he holds a curiously branched staff or scepter. The other two figures are naked, save that both wear wide belts. The border of this bas-relief is richly ornamented; the work measures, within the border, ten feet in height and six feet in width.

Entering at one of the doorways, we find ourselves in a grand corridor which extends the whole length of the front of the palace, and back of that is another corridor of nearly the same length—about two hundred feet. From this inner corridor doorways give access to the principal court, which occupies nearly one fourth of the whole interior. It were vain, without diagrams and figures, to attempt to convey an idea of the ground-plan of this edifice, or of its ornamentation, and we content ourselves with simply enumerating a few of the objects of interest which meet the eye. The principal court adjoins the inner corridor, as we have said, and occupies the northeast corner of the building, which itself faces eastward. Crossing the inner corridor, we descend a grand stone stairway, each of whose steps is thirty feet in length, to the floor of the court; there is a similar stairway at the opposite or western end, and the distance between the two is about seventy feet, while in the other direction the court measures eighty feet. These stairways are situated in the middle of their respective sides of the court, and the piers to the right and left of them are adorned with

bas-reliefs of the same general character as that described above, while the walls on which the piers rest have carved on them monstrous colossal figures nine or ten feet high. The court is encumbered with growing trees and with *débris*, so that excavations have to be made in order to obtain a view of the figures. Above the piers is a heavy cornice highly ornamented. "Every time we descended the steps," says Stephens, "the grim and mysterious figures stared us in the face, and it (the courtyard) became to us one of the most interesting parts of the ruins. We were exceedingly anxious to make excavations, clear out the mass of rubbish, and lay the whole platform bare ; but this was impossible. It is probably paved with stone or cement ; and, from the profusion of ornament in other parts, there is reason to believe that many curious and interesting specimens may be brought to light. This agreeable work is left for the future traveler, who may go there better provided with men and materials, and with more knowledge of what he has to encounter ; and, in my opinion, if he finds nothing new, the mere spectacle of the courtyard entire will repay him for the labor and expense of clearing it."

The pyramidal tower of the palace is in itself an enigma. It is thirty feet square at its base. Stephens, on entering this tower from one of the corridors of the palace, found within it another tower distinct from the outer one, and a stone staircase so narrow that a large man could not ascend it. This staircase ends at a stone ceiling which closes all further passage, the last step being only six or eight inches below it.

Among the most remarkable bas-reliefs found in the palace is a stone tablet set in a wall of a corridor adjoining the tower. This now famous tablet, which is four feet long and three feet wide, contains two figures with hieroglyphics in the spaces to the right and left of them. The principal figure, which is nude, sits in the Buddha attitude, cross-legged, on a couch ornamented with two heads of jaguars. The other figure bears a ludicrous likeness to an old woman arrayed in old-fashioned modern gown and cape. She is offering to the god, if god it be—or perhaps goddess—what appears to be a plumed bonnet, to take the place of the incomprehensible head-gear of the deity.

All of these bas-reliefs have inscribed on them hieroglyphics, but there are in the palace no hieroglyphical tablets, such, for instance, as exist in casa No. 1. In that building both of the corner-piers of the façade are covered with hieroglyphics, and besides these there



are three great hieroglyphic tablets, two of which are each thirteen feet long and eight feet high, and each divided into two hundred and forty squares. These tablets are a sealed book, and toward their interpretation not even a beginning has been made.

Whether or not it will be in human power to decipher these and the rest of American hieroglyphics, and to give to history the annals they so vainly strive to tell, is a question yet to be settled. In any event, however, one of the main objects of the expedition, the reproduction of the most important inscriptions, has every prospect of accomplishment. This will bring within the reach of all concerned, both in Europe and in America, problems not unworthy the attention of the highest human intellects. Nor is it unreasonable to expect that some new Champollion will do for the early annals of our continent what has been already so amply done for the history of ancient Egypt. It is true that the quiet student at Paris or Washington will, of necessity, remain cold to some of the emotions naturally evoked by the monuments which attest the prosperity of what once was one of the fairest and most populous regions of the earth. He will, perhaps, not be stirred by the feelings which have moved enthusiastic travelers. It will not be in his power to feel with Stephens when, in the midst of desolation and ruin, he conjured up the past, dispelled the gloomy forest, and fancied every structure perfect, with its terraces and pyramids re-peopled, and overlooking an immense inhabited plain. The scholar will not, perhaps, so readily as the traveler, call back into life the strange people whom Stephens fancied gazing at him in sadness from the walls of Palenque—the same people who had once, clad in fanciful costumes, adorned with plumes and feathers, ascended the terraces of the palace and the steps leading to the temples. But, though the future investigator may have no share in the genial enthusiasm of the traveler, he will have at his command all the materials that the most diligent research can obtain, for throwing light upon the origin and history of this interesting population. In careful casts and distinct photographs he will possess faithful representations of every monument. In effect he will have before his eyes Copan with all its mysteries, its columns scored with hieroglyphics, its rows of death's heads on the sculptured walls, its nameless kings and gods; and to his unimpassioned research we must trust to bring before us once more the old faith of an ancient and mighty priesthood, and the lost knowledge and strange arts of a cultivated and vanished people, whose ruins can be compared only with the ruins

of Rome in her glory. America, it has been said, is without traditions, has no past. But, just as geology shows that this Western Continent is really the "Old World," so archæological research will perhaps show that man and human civilization are as ancient here as in Europe. However that may be, these venerable monuments appeal with special force to Americans of the present day, not only on account of their value as purely scientific data, but also because they supply the links which connect us with the past.

THE EDITOR.

## THE LAW OF NEWSPAPER LIBEL.

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THE liberty of the press has been the boon for which patriots have struggled and many suffered. It has been the watchword of progress, and the shibboleth of party. It has been the battle-cry of those who contended against arrogant pretension and arbitrary power, as it has been the terror of irresponsible rulers. Claimed by its champions as the safeguard of the rights and rewards of freedom, it has been decried by its enemies as destructive of order, and inimical to the public safety. Its attainment has been signalized by determined struggle and effort from the time of the public prosecutions in England over a century ago, until now, when the freedom of the press is recognized and established under the supreme sanction of constitutional guarantees in every one of the United States.

However inestimable the right may have been once regarded, it is certain that at the present time the phrase "the liberty of the press" conveys no such idea of a public blessing as it formerly did. Unfortunately, it now suggests a dangerous and unrestrained license in the vituperation of private character, in the publication of much that is vile and demoralizing, and in the misrepresentation of public men and measures. On all sides we hear complaints of this license and abuse ; and the courts are more and more resorted to for redress.\* So now it is not so much a question of enlarging the liberty as of circumscribing it; not one of guarding it so much as restraining it. The nature and limit of this liberty have perhaps never been more aptly and elegantly stated than by Wirt, on the impeachment trial of Judge Peck, in December, 1830. The Judge was tried for punishing, as a contempt, a party for the publication of a criticism in refer-

\* The "New York Herald" published in 1869 a statement in reference to libel suits against the press ; and it appears that there were then pending no less than 756 libel suits of this character, wherein the complainants demand no less than \$47,500,000 damages. (See this article, reproduced in Hudson's "History of Journalism," p. 747.)

ence to an opinion he gave in a case. At the close of his argument for the accused, the famous Maryland orator said :

“ What is the liberty of the press, and in what does it consist? Does it consist in a right to vilify the tribunals of the country and to bring them into contempt by gross and wanton misrepresentations of their proceedings? Does it consist in a right to obstruct and corrupt the streams of justice by poisoning the public mind with regard to causes in these tribunals before they are heard? Is this a correct idea of the liberty of the press? If so, the defamer has a charter as free as the winds, provided he resort to the press for the propagation of his slander; and, under the prostituted sanction of the liberty of the press, hoary age and virgin innocence lie at his mercy. This is not the idea of the liberty of the press which prevails in courts of justice, or which exists in any sober or well-regulated mind. The liberty of the press is among the greatest of blessings, civil and political, so long as it is directed to its proper object—that of disseminating correct and useful information among the people. But this greatest of blessings may become the greatest of curses if it shall be permitted to burst its proper barriers. The liberty of the press has always been the favorite watchword of those who live by its licentiousness. It has been from time immemorial, is still, and ever will be, the perpetual *decantatum* of all libelers. To be useful, the liberty of the press must be restrained.”

The full and unrestrained license accorded the press has resulted too often in the aspersion of private character, and the invasion of domestic privacy; and therefore the tribunals of the country, by means of libel suits, are called upon very frequently to protect and vindicate one of the dearest rights of individuals—reputation. It will be, therefore, instructive, and of practical importance, to inquire what are the limits which the law has placed upon this liberty of the press; and how far it can invade private life and violate reputation without incurring a liability for libel. Let it be premised that it is rather in respect to civil liability that we intend to examine the question; for it is seldom now we witness criminal prosecutions against the press on behalf of the State for an abuse of its liberty. The prosecutions familiar at the present are those by individuals for damages for defamation, or by the State for criminal injury to such individuals. It is not intended to point out what charges or imputations are libelous, or to what extent newspapers can go, in commenting on men and things, without exposing themselves to a charge of libel. To do this we should have to enter into an ex-

amination of the whole law of libel. It will be presumed in this inquiry that there is a knowledge of the law of libel, so far as is necessary to perceive what constitutes a libelous charge; that a libel, as it is well defined, is "any malicious publication, written, printed, or painted, which by words and signs tends to expose a person to contempt, ridicule, hatred, or degradation of character."\* The definition given by Chief Justice Parsons, in *Commonwealth vs. Clap*, † has been often quoted with approval. He says, "A libel is a malicious publication expressed either in printing or writing, or by signs or pictures, tending either to blacken the memory of one dead, or the reputation of one who is alive, and expose him to public hatred, contempt, and ridicule."

It is a common understanding that newspapers have a special indulgence or privilege in their public comments, which is denied to private persons. Now this popular fallacy is misleading, not only to those who may rightfully complain against the freedom and immunity allowed the press, but as well to journalists themselves. In a certain sense newspapers are so privileged; for their publications come under the head of "privileged communications," which rebut the presumption of malice, implied when a libel is published without legal excuse. But in this respect newspapers as such enjoy no peculiar immunity; they have merely the same right which any individual has to comment on matters of public concern, or on facts of a public nature, and to criticise public performances. At present, the law takes no judicial cognizance of newspapers; and, independently of certain statutory provisions, the law recognizes no distinction in principle between a publication by the proprietor of a newspaper, and a publication by any other individual.‡ This popular error is stated and combated in a recent case before the Supreme Court of Ohio (*Wahle vs. Cincinnati Gazette Company*), where the defense to a suit for libel was that the publication was privileged, concerning which the Court says: "The question then presented is, whether or not these communications come under the head of privileged communications. Part of the answer states they were made by a public journal of a public officer. The allegations being made by a public journal, of course, makes no difference. If the communications are not privileged when made by a private

\* *Mercur, J.*, in *Barr vs. Moore*, Sup. Court of Pennsylvania, November, 1878.

† 4 Mass., 163.

‡ *Townshend on Libel*, § 252; *Foster vs. Scripps*, 13 "American Law Review," 595; *Sheckell vs. Jackson*, 10 Cushing, 26.

citizen, they would certainly not be privileged if made by a newspaper. It would be a strange rule if we were to hold that a man could with impunity spread abroad a story when he used an engine of fifty-ton power, while he would be punished if he should merely do the same thing by whispering it to an acquaintance. Wherever our laws extend, the rule is the same between private citizens and newspapers. Every person has a right to discuss all matters of public interest, and to comment favorably or unfavorably thereon, either by attack upon, or criticism of, the official acts of persons in a public station. And the freedom of the press is, when rightly understood, commensurate and identical with the freedom of the individual and nothing more. This freedom should at all times be justly guarded and protected, but so should the reputation of an individual against calumny. The right of each is too valuable to be encroached on by the other. The general liberty of the press must be construed, therefore, in subordination to the right of any person calumniated to hold it responsible for an abuse of that liberty."

The consideration we shall give to this subject at present will be principally confined to three points—those which peculiarly concern the sphere of newspaper publication, and in which journalists are most prone to expose themselves to a charge of libel. These are comments relating to public men or measures; criticism on authors, works of art, and literature; and reports of judicial proceedings. But, as preliminary to this inquiry, it will be useful to discuss some special points having a particular reference to newspapers, and relating to what may be termed *newspaper law*.

Journals are well known to be the vehicle or means of circulating reports on common or hearsay rumor, and sometimes on very unreliable authority. They quote from, and often refer impersonally to vague reports and rumors under a mistaken idea that in this manner they may evade a libelous charge. Yet it is well established that it is no less libelous to make a charge on common report, or on the authority of another named, than to make it directly. But, although a libel is not *justifiable* when the article is copied from another paper, a defendant may, however, show in mitigation of damages that it had previously been published in other papers, for this serves to show the *quo animo*.\* In the case of *Storey vs. Earley*, in the Supreme Court of Illinois, February,

\* *Hewitt vs. Pioneer Press Company*, 23 Minn., 178; *Heilman vs. Shanklin*, 60 Indiana, 424.

1878, Breese, J., says that "there is a clear distinction between a publication of slanderous matter in a newspaper as a matter of news, and the publication of slanderous matter on the personal truthfulness and responsibility of the defendant."

An editor is responsible for a libelous communication published, although the writer's name is signed.\* And the fact that a libel was published in the communication of a correspondent, was held not admissible in evidence to mitigate damages.†

On this subject, in one of our early cases in Pennsylvania,‡ the Court tersely says: "It will not be denied that if one designedly bespatters another's clothes with filth as he passes the street, though at the instigation of a third person, he would be liable for damages. And shall a printer with his types blacken the fairest reputation—the choicest jewel we enjoy—and go scot-free, merely because he has told the world that the paper is inserted at the request of another?"

This point was recently well considered in *Perret vs. New Orleans Times*.§ Certain irresponsible persons, whose residence was unknown, published in the defendant's journal an advertisement severely reflecting on certain public men. The publication was admitted, but the defense was that it was published as an advertisement; and that it was received at a late hour of the night, and during the absence and without the knowledge of the proprietors of the paper. It was denied that the defendant had any malicious intent; and, as proving an absence of malice, it was shown that as soon as the plaintiff brought the injury to the attention of the defendant, an editorial article was inserted, explanatory of the publication, which the plaintiff deemed satisfactory. The defendant was, however, held liable. The decision of the Court in this case deserves particular attention, as enunciating some sound and salutary principles in regard to newspaper defamation. The Court admitted the right of public journals to freely comment upon the acts and conduct of men in public life, to speak faithfully and boldly in the interests of the people regarding public measures, and questions of all kinds that concern the community at large. The Court then says: "Still there is a limit beyond which this freedom becomes license. The law which shields the private character and

\* *Hotchkiss vs. Oliphant*, 2 Hill, 510.

† *Talbutt vs. Clark*, 2 Moody and Rob., 312.

‡ *Runkle vs. Meyer*, 3 Yeates, 518.

§ 25 La. An., 170.

reputation of an inoffensive person from the assaults of calumny and falsehood is founded upon a public sentiment of greater power even than that of the free press. It forbids the wanton violation of the sacredness of personal character and good name."

Sometimes after an injury has been done, a paper may, by way of reparation, offer and make an explanation or retraction of a libelous charge; but, while this is commendable and entitled to consideration as a mitigation of the damage, it will not shield nor exempt a publisher from an action.\* The publication of the explanation or retraction may be offered in evidence in mitigation, just as a subsequent publication may be given in evidence to show a reiteration of the charge, and the malice of a publisher.† But neither the good intentions of the publisher nor his honest belief in the truth of the charge when it is libelous will be a justification, though they may show in mitigation, for in these cases the *intent* is a main element in the liability.‡

When an editor desires to make the *amende honorable*, he should do so promptly in a prominent part of his paper and in clear type. It will not be sufficient to put the apology among "notices to correspondents," and in fine type.§

An action lies against the proprietor of a newspaper edited by another, although the publication was made without the knowledge of such proprietor. By intrusting the conduct of the paper to another, the owner constitutes this person his general agent, and is therefore responsible for his acts in such capacity.|| In an early case in New York, this point came under the consideration of the Court, and it was determined that the proprietor of a newspaper, which is edited by another, is responsible for a libel published therein, although published without his knowledge.¶ The same rule was held in a well-known English case, *Rex vs. Walter*,\*\* which was

\* See a late instructive case in this connection: *Cass vs. New Orleans Times*, 27 La. An., 214, and *Townshend on Libel*, § 413.

† *Goodrich vs. Stone*, 11 Metcalf, 486; *Barr vs. Moore*, Sup. Court of Pennsylvania, November, 1878; *Thomas vs. Croswell*, 7 Johnson's Reports, 264.

‡ *Rearick vs. Wilcox*, 81 Ill., 77.

§ *Lafone vs. Smith*, 3 Hurl. and N., 735.

|| *Detroit Daily Post Co. vs. McArthur*, 16 Michigan, 447. This case is instructive as showing that a proprietor may be to some extent relieved from liability when he has taken due precaution to select careful and competent persons to conduct the paper.

¶ *Andres vs. Wells*, 7 Johnson's Reports, 260, decided in 1810.

\*\* 3 Esp. 21.



an indictment for libel against the proprietor of the "Times." He proved that he lived in the country, and took no part in conducting the newspaper, which was under the charge of his son. In spite of the able advocacy of Erskine, Lord Kenyon was clearly of opinion that the proprietor of a newspaper was answerable, criminally as well as civilly, for the acts of his servants or agents in conducting such newspaper.

Irony, humor, and satire are frequently indulged in to make a journal "spicy"; and as a general rule a writer may safely shield himself in this manner if his shafts are not too directly leveled, or his allusions too personal or pungent. The editor of the Denver "Tribune" published, concerning Mr. Downing, the following:

"My conscience (meaning the conscience of the said plaintiff)  
hath a thousand several tongues,  
And every tongue brings in a several tale;  
And every tale condemns me (meaning the said plaintiff)  
for a villain.

Perjury, foul perjury in the highest degree;  
Murder, stern murder in the direst degree,  
All several sins, all used in each degree,  
Throng to the bar, crying all: 'Guilty! guilty!'

*Richard III.*

—and yet Jack Downing (meaning the said plaintiff) affects to laugh with a low, guttural sound, thus: Ha! ha!! ha!!!” The complaint charged that this imputed perjury as well as murder. The article also charged that the plaintiff was a "second Boss Tweed" and a ballot-box stuffer. It was left to the jury to find what the defendant meant to charge, or whether he meant anything serious, and the jury being doubtful as to what precise charge was meant, gave the defendant "the benefit of the doubt," and the editor had a verdict in his favor.\* But irony is not always to be indulged in with impunity. Thus, where the plaintiff having published a somewhat singular article in his paper, the defendant, the editor of another paper, published an ironical article, alleging that the plaintiff had become insane; that his friends had put him in confinement, and consigned the management of his paper to an Irishman; that he had been put in a strait-jacket, etc. This was held libelous, and it was left to the jury to determine how far it was malevolent.† So humor can not always be safely indulged

\* Downing vs. Brown, 3 Colorado, 571.

† Southwick vs. Stevens, 10 Johnson's Reports, 443.

in ; it may sometimes be a dangerous instrument, even in an editor's hands. The editor will be excused, however, if he can show to the jury that he thought a communication complained of was a fictitious narrative or a mere fancy sketch, and that it was not intended for anybody in particular, although the writer intended it as a libel on the plaintiff. In such a case the writer only is liable to the party libeled.\*

We will now consider more specially the three divisions of the subject we proposed :

*1. Comments respecting Public Men.*

It is in this field that journals are most liable to abuse their privileges, and to expose themselves to the hazard of a prosecution for libel. The acknowledged privilege which they possess, in common with citizens generally, of commenting upon public affairs, criticising the actors in such affairs, exposing their shortcomings or disqualifications, has given them a license in this respect which induces them too often to assail personal reputation, and to invade domestic privacy. It is in this direction we so frequently hear complaints of the abuses of the press. Good men are said to be deterred from entering public life, or participating in public affairs, because they will be thus subjected to calumny, and exposed in their private life to adverse criticism. It must be confessed, the abuse is too frequent and the evil lamentable ; but it is well to know that, under the law as laid down by our courts, the fact of a person being a public character, or a candidate for a public office, does not necessarily subject him to be calumniated, or held up to ridicule in his private life, without redress. Our courts have lately, in several instances, laid down salutary principles for the protection of the private character of those engaged in public affairs. There is an erroneous idea abroad that a man can be calumniated in his private character, falsely ridiculed and traduced, because he happens to be a public character. There is, however, a license allowed in this respect, and a right given to criticise, which in reference to a private individual would be clearly libelous, because it is acknowledged that a service is rendered thereby to the people at large, who have a right to be informed concerning the merits and qualifications of those who seek their suffrages. It is laid down in *Parmiter vs. Coupland*,† that a much greater latitude will be extended to criti-

\* *Smith vs. Ashley*, 11 Metcalf, 367.

† 6 M. and W., 108.

cisms on persons occupying a public capacity, than to criticisms on private individuals ; and publications which would be clearly libelous if leveled against the latter, may be innocent and even commendable when directed against the former.

At the beginning of this century Chief Justice Parsons very accurately stated the ground and the limit of this privilege in *Commonwealth vs. Clap*.\* “When any man,” he says, “shall consent to be a candidate for a public office conferred by the election of the people, he must be considered as putting his character in issue, so far as it may respect his fitness and qualifications for the office. And publications of the truth on this subject, with the honest intention of informing the people, are not a libel. For it would be unreasonable to conclude that the publication of truths, which it is the interest of the public to know, should be an offense against their laws. . . . For the same reason the publication of falsehood and calumny against public officers is an offense most dangerous to the people and deserves punishment ; because the people may be deceived, and reject the best citizens to their great injury, and, it may be, to the loss of their liberties.” How well it would be if courts would particularly impress juries with the principle here laid down, in regard to liability for calumniating public characters ! The correct doctrine on this subject may be thus stated : The writer must not make the occasion one for the gratification of personal malice and vindictiveness, when commenting on public affairs. He must not make imputations of base, sordid, or corrupt motives, or dishonest conduct. He is not bound to justify to the very letter everything that he writes ; yet his inferences must not be reckless and unjust, though they may be hostile and severe. If he proceeds further, and in a spirit of reckless and inconsiderate imputation makes false charges, though he may in good faith believe in the truth of his imputations, he is guilty of a libel. †

The virulence of political and party strife at the beginning of this century was conspicuous in the historical prosecution for libel in *People vs. Croswell* ‡ in New York. Hildreth thus accurately describes this celebrated action : “While these political intrigues were in progress, a case came on for argument before the Supreme Court of New York, then sitting at Albany, in which the rights and freedom of the press were deeply involved. Ambrose Spencer,

\* 4 Mass., 163.

† Shortt on Libel, 434 ; Cockburn, J., in *Hedley vs. Barlow*, 4 F. and F., 230.

‡ 3 Johnson’s Cases, 360.

as Attorney-General, had instituted a prosecution for libel against a Federal printer for having asserted that Jefferson had paid Callender for traducing Washington and Adams. The case had been tried before Chief Justice Lewis, who had held, among other things, that in a criminal trial for libel, the truth could not be given in evidence; and that the jury were merely to decide the fact of publication, the question belonging exclusively to the court whether it were a libel or not. These points coming on for a rehearing before the Supreme Court, on a motion for a new trial, Spencer maintained with great zeal the arbitrary doctrines laid down by Lewis. Hamilton, a volunteer in behalf of the liberty of the press, displayed on the other side even more than his wonted eloquence and energy in denouncing the maxim 'The greater the truth the greater the libel,' at least in its relation to political publications. The court, after a long deliberation, was equally divided—Kent and Thompson against Lewis and Livingston. The opinion of the Chief Justice stood as law; but Hamilton's eloquence was not lost. A declaratory bill was introduced in the Assembly, then sitting, by a Federal member. The Republicans shrank from this implied censure on their candidate for Governor, and the matter was postponed to the next session. An act allowing the truth to be given in evidence was then passed, but was defeated by the council of revision, composed of the judges and Chancellor. The act, however, with some modifications, became law the next year, and such either by constitutional provisions, legislative enactment, or the decisions of the courts, is now the law throughout the United States."

A late decision in Kansas shows that, under the Constitution and statutes of that State, the truth will not be a justification in criminal as in civil actions, unless published for "justifiable ends."\* It was lately held otherwise (as the cases generally hold) in Massachusetts,† We can not but more readily subscribe to the good policy of the Kansas rule, although at the time the decision was rendered, it gave rise to much controversy in that State and in other places. Allowing the truth to be given in evidence as a justification, irrespective of the object of the publication, gives the press and libelous writers generally an immunity which may be destructive to the peace of the community, and inimical to the protection of private character. Members of legislative bodies too often have to bear the effect of journalistic rancor, and have to suffer their motives to be impugned and misrepresented. Calling

\* *Castle vs. Houston*, 17 Kan., 417.

† *Perry vs. Potter*, 124 Mass., 338.

a member of Congress a "fawning sycophant," "a misrepresentative," and charging that he had "abandoned his post in Congress" to seek a certain office, was held libelous.\*

In a case where a lawyer offered himself as a political candidate the proprietor of the "Sunday Mercury" published concerning him: "Elnathan L. Sanderson, extra-radical candidate for Assembly from the third, fourth, and eleventh wards of Brooklyn, did a good thing in his sober moments in the way of collecting soldiers' claims against the Government for a fearful percentage. The blood-money he has got from the 'boys in blue' in this way is supposed to be a big thing, and may elect him to the Assembly on the 'loyal ticket,' although the soldiers and sailors are out in full force against him." The Court held that the fact that the plaintiff was a candidate for office did not make the publication privileged.

Recent decisions in Pennsylvania, Michigan, and Illinois, show the direction which the courts are taking, and are instructive, because they limit in an important degree this assumed privilege of animadverting upon and aspersing the character of men occupying a public or *quasi* public station.

The case of *Foster vs. Scripps* † was lately decided in Michigan. This was an action for libel brought against the proprietor of the Detroit "Evening News," for publishing of the plaintiff, who was a city physician, that he had caused the death of a child by introducing scarlet fever into its system in vaccinating it. In the court below the article was held to be privileged, on the ground that the plaintiff was a city physician. The Supreme Court reversed the judgment, and Chief Justice Campbell, in giving the opinion of the Appellate Court, very ably considers the question of privileged publications. "It is not," he says, "and can not be, claimed that there is any privilege in journalism which would excuse a newspaper, when any other publication of libels would not be excused. Whatever functions the journalist performs are assumed and laid down at his will, and performed under the same responsibility attaching to all other persons. The greater extent of circulation makes his libels more damaging, and imposes special duties as to care to prevent the risk of such mischief proportioned to the peril. But, whatever may be the measure of damages, there is no difference in liability to suit. Allowing the most liberal rule as to the liability of persons in public employment to criticism for their conduct,

\* *Thomas vs. Crowell*, 7 Johnson's Reports, 264.

† 13 "Am. Law Rev.," 595.

in which the public are interested, there certainly has never been any rule which subjected persons, public or private, to be falsely traduced. The nearest approach to such license is where the person vilified presents himself before the body of the public as a candidate for an elective office, or addresses the public in open public meetings for public purposes. But even in such cases we shall not find support for any doctrine which will subject him, without remedy, to every species of malevolent attack. But where a person occupies an office like that of a city or district physician, not elected by the public, but appointed by the council, we have found no authority, and we think there is no reason, for holding any libel privileged, except a *bona fide* representation, made without malice to the proper authority, complaining on reasonable grounds."

The case of *Rearick vs. Wilcox*, in Illinois,\* considers the same subject. Here it is decided that it is no justification nor mitigation of a libel upon a candidate if there was great public excitement in the election, in which party spirit ran high, and an instruction to the jury that they might consider such excitement was held erroneous. Neither the good intentions, nor the reports which reached an editor, could justify, though, to a certain extent, they might excuse him. These decisions are noticeable, for they show the principles controlling courts in laying down the law to juries. If they were followed, there would be less distrust in the courts and in legal remedies for the vindication of private character from wanton and reckless attacks.

We are accustomed to regard the French newspaper law as severe and illiberal; but, with all the laudation of our law, we must claim that the French law manifests a more tender solicitude for the inviolability of private character, and a higher regard for the intimacy of domestic life, than our own. While a public journal in France may freely comment on a person in his public or official character, it is forbidden to pass over the threshold of the family, and reveal to public view the acts of private life. The acts taking place in the privacy of the family are not to be exposed, and must be sacred from the prying and curious eyes of the ubiquitous reporter. We could hardly expect outside of Anglo-Saxon communities such a high regard for the inviolability and the sanctity of the family. Yet to-day in France, under the law of the 11th of May, 1868, any publication in a periodical relating to facts of private life is prohibited under a fine of five hundred francs. A recent

\* 81 Ill., 77.

decision under this law shows how strictly the courts follow it. Thus, it was held to be violated when a paper published the names, and gave sketches of certain persons who entered upon a pilgrimage, although the court admitted it might be allowable to publish the fact of the pilgrimage, and its organization.\* The construction of the law appears further from a decision of the court published in the "Journal du Palais" for June, 1877, where it is held: "*Les faits de la vie privée dont la publication dans écrit périodique tombe sous le coup d'art. 11 de la loi du 11 mai, 1868, s'entendent non seulement des faits qui se passent dans la famille, mais encore de ceux qui s'accomplissent dans le monde extérieur, même dans un lieu public et avec une publicité relative lorsque l'auteur de ces faits les exécute comme homme privé.*" The law in France makes an important distinction in the mode of trying offenses of the press against private character, and offenses against men in their public or official character. In the former case there is a more summary mode, without a jury, before the "Tribunaux Correctionnels," while offenses against public men are to be tried by a jury since the law of the 15th of April, 1871. Art. III of this law provides:

*"En cas d'imputation contre les dépositaires ou agents de l'autorité publique, à l'occasion de faits relatifs à leurs fonctions, ou contre personne ayant agi dans un caractère public, à l'occasion de ces actes, la preuve de la vérité des faits diffamatoires pourra être faite devant le jury."*

The Duc de Broglie was chairman of the committee who drew up the *projet* of this law, and he made a very instructive report, showing the views that influenced the committee in relegating to the jury offenses of this character. He says: "Si l'imputation est fondée au contraire, si c'est un fait vrai qui est révélé au public, un service éminent est rendu à société, qui se trouve par là avertie du danger que lui fait courir un serviteur infidèle. Attaquer les fonctionnaires publics est le droit d'un citoyen dans un pays libre, et l'abus ne commence que quand l'attaque est poussée jusqu'à dénaturer la vérité. Si jamais la vérité est nécessaire, c'est pour discerner la limite qui sépare un acte non seulement licite, mais louable, d'un acte criminel."

We think the policy of these laws is to be commended; and it would be well if we had some similar legislation in favor of the inviolability of private life. If I am the owner of a field, I can, by virtue of that ownership, restrain the invasion of my property by

\* "Journal du Palais" for 1874, p. 563.

simply warning off all trespassers. I have a right to an exclusive and unmolested enjoyment of this property. And is not one's private character as sacred and inviolable as his house or property? If the law seeks to enter the privacy of the home, it has to issue its regular process and mandate before it can be properly done. And why can a public writer at his will pass the threshold of that home, drag to public view its intimacies, its privacy, and its confidences, simply because a person in some manner happens to attract public attention?

## 2. Criticism.

Writers in the public press frequently make themselves liable to a charge of libel by reason of an intemperate and reckless criticism of works of literature and art. They are permitted a wide latitude in this respect, on the ground that it is praiseworthy to enlighten the public in reference to such works, and improve the public taste. They can go far in condemning the productions as vicious, crude, and demoralizing; but they can not attribute unworthy and base motives, and bad faith, to the authors. Says Lord Ellenborough, in *Carr vs. Hood*\*: "Every man who publishes a book commits himself to the judgment of the public, and any one may comment on his performance. If the commentator does not step aside from his work, or introduce fiction for the purpose of condemnation, he exercises a fair and legitimate right. . . . The critic does a great service to the public, who writes down any vapid and useless publication, such as ought never to have appeared. He checks the dissemination of bad taste, and prevents people from wasting both their time and money upon trash. I speak of fair and candid criticism, and this every one has a right to publish, although the author may suffer a loss from it. . . . Reflection on personal character is another thing. Show me an attack on the moral character of the plaintiff, or any attack upon his character unconnected with his authorship, and I shall be as ready as any judge who ever sat here to protect him; but I can not hear of malice on account of turning his words into ridicule." Similar views were laid down in *Strauss vs. Francis*,† in reference to a critique in the "Athenæum," where a novel was described as "characterized by vulgarity, profanity, and indelicacy, bad French, bad German, and bad English, and abuse of persons living and dead."

The limits of criticism appear from the action brought by the

\* 1 Campbell, 358.

† 4 F. and F., 1113.



celebrated novelist Cooper against Stone,\* for a libel published in the "Commercial Advertiser." Here it was held that, while it is allowable freely to condemn and criticise an author's productions, a critic can not impute to the author false and dishonest or unworthy motives in the preparation of his book.

One of the most famous cases of this kind was an action for libel brought by Charles Reade against the editor of "The Round Table," in 1870, for a criticism on his "Griffith Gaunt." This case is reported as *Reade vs. Sweetzer*, † and the Judge's charge to the jury has been much approved as containing a correct statement of the privileges and limits of criticism. The article in "The Round Table" charged that it was "one of the worst stories that had been printed since Sterne, Fielding, and Smollett defiled the literature of the already foul eighteenth century," and that it was "not only tainted with this one foul spot, it is replete with impurity, it reeks with allusions that the most prurient scandal-monger would hesitate to make." It was denounced as unfit for circulation in families, and it was said to be doubtful whether the author had not lent his name to others to utter this work.

Judge Clerke charged the jury: "The critic may say what he pleases of the literary merits of the published production of an author, but with respect to his personal rights, relating to his reputation, the critic has no more privilege than any other person not assuming the business of criticism. For instance, he may say that the matter is crude, forced, and unnatural; that it betrays poverty of thought, and abounds with commonplaces and platitudes, being altogether flat, stale, and unprofitable, and that its style is affected, obscure, and involved. He may say, as Burke said of the style of Gibbon, that it is execrable, or that it is personally affected, absurd, or wayward. . . . The critic can call a painting a daub and an abortion, but he can not call the painter himself a low, discreditable pretender and an abortion." He further charged that a critic may not, from the sentiments and characters of the work, impute unworthy motives and evil designs to the author himself. The jury merely found for the plaintiff six cents damages, though the charge was so much in his favor.

A recent case in Massachusetts, ‡ in reference to a criticism concerning the famous "Cardiff Giant" also illustrates the limits of criticism. The article stated that the "giant" originally cost eight

\* 24 Wend., 442.

† 6 Abb., N. S. 9.

‡ *Gott vs. Pulsifer*, 122 Mass., 235.

dollars, and that "the man who brought the colossal monolith to light confessed that it was a fraud." The defendant testified that he wrote the article as a humorous comment on one in the Chicago "Tribune"; that he did not know the plaintiff, and intended no malice. Evidence on the plaintiff's part of the value of the "giant" as a scientific curiosity was ruled out. The plaintiff requested forty-one instructions to be given to the jury; but a verdict was given for the defendant. The Court on appeal held the ninth request to have been erroneously declined, and granted the promoter of the "giant" another trial, the ground being that under that direction the jury may have found that the defendant's charges were false, but that he was not liable to punishment because he intended no injury. This, the Court says, is not law; for a publisher is liable, if his comments exceed the bounds of fair criticism and produce injury, no matter what were his motives.

### 3. *Reports of Judicial Proceedings.*

Reports by newspapers of judicial proceedings, when they are true, impartial, and not garbled, are privileged. The report is not privileged if it in any wise discolours or garbles the proceedings or adds unwarrantable comments or insinuations. The English courts have gone further in restricting this privilege than our own when the proceedings are defamatory or indecent. Maule, J., in *Hoare vs. Silverlock*, § says, "Matters may appear in a court of justice that may have so immoral a tendency, or be so injurious to the character of an individual, that their publication would not be tolerated." But this statement has reference particularly to the case of individuals *voluntarily* publishing the proceedings of a trial, in order to reflect on the character of a person by some defamatory matter; but it is different in the case of newspapers, which assume the *duty*, for public information, of reporting the proceedings. They are then fully privileged, if they give a true and fair account of the proceedings, notwithstanding matter defamatory of an individual is thereby published.

In New York, the publication in newspapers of judicial and other public proceedings is protected by statute, which enacts: "No reporter, editor, or proprietor of any newspaper shall be liable to any action or prosecution, civil or criminal, for a fair and true report in such newspaper of any judicial, legislative, or other public official proceedings, or any statement, speech, argument, or debate

in the course of the same, except upon actual proof of malice, which shall in no case be implied from the fact of publication. Nothing in the preceding section contained shall be so construed as to protect any such reporter, editor, or proprietor from an action or indictment for any libelous comments or remarks superadded to and interspersed or connected with such report." \*

When it is said that the account or report of a trial must be fair and impartial, it is understood that a party must publish not merely fragments, but the whole case; not necessarily *in extenso*, for it may be abridged. He can not partially state it so as to draw unwarrantable inferences or unjust conclusions. He may comment on the proceedings, provided the comments are fair and impartial.†

Says Spencer, J., in *Thomas vs. Croswell*,‡ "There is not a *dictum* to be met with in the books, that a man, under the pretense of publishing the proceedings of a court of justice, may discolor and garble the proceedings by his own comments and constructions, so as to effect the purpose of aspersing the characters of those concerned."

The case of *Pittock vs. O'Neil* § is a good illustration, showing how dangerous it is to intersperse or accompany the account of an action with sensational and highly colored conclusions and comments of the writer. Such expressions in relation to a divorce case as "terrible story of domestic treachery and guilt," "wreck of domestic happiness," "shameless treachery and hypocrisy," "scandalous affair," etc., were held libelous; and the plaintiff had a verdict of one thousand dollars. Comments may be made on a body of men in such a reckless manner, and corrupt motives attributed to them collectively, so as to give to an individual of that body a right of action on his own account. This was the case where a newspaper article pronounced the verdict of a jury "infamous"; and added, "We can not express the contempt which should be felt for those twelve men, who have thus not only offended public opinion, but have done injustice to their own oaths." It was held that an action for libel might be maintained by a member of the jury against the publisher.¶

This is an important decision, and deserves attention from news-

\* Laws of 1854, Ch. 130, §§ 1, 2. And see *Ackerman vs. Jones*, 37 N. Y. Superior Court, 42.

† *Lewis vs. Walter*, 4 B. and Ald., 612; *Stiles vs. Nokes*, 7 East, 493.

‡ 7 Johnson's Reports, 264.

§ 63 Pennsylvania Reports, 253.

¶ *Byers vs. Martin*, 2 Colorado, 605.

papers when they comment on the verdicts of juries which they disapprove, as it leaves them open to twelve suits for libel for the same charge.

A libel may be conveyed in the head-lines of a report. Thus, where an article charged, in the heading of the report of public proceedings, that a public officer had been guilty of blackmailing, and had been dismissed from office on that account, it was held to be libelous, unless it was a fair deduction from the facts reported.\* And so where a report of proceedings in a court of law was headed, "Shameless conduct of an attorney." †

Whether newspaper writers can go to the court records and extract therefrom accounts of actions begun before any hearing has been had on the complaint, as to publish, in a suit for divorce, the substance of a bill charging a person with adultery, was a question in a recent Michigan case. ‡ The Court, although it did not decide the point, entertained a "strong impression" that such publication was not privileged. The same question arose, and was decided in *Barber vs. St. Louis Dispatch Co.*, in 1876; § and it was held that such publication was not privileged, as it was an account of an *ex parte* proceeding. The rule in England was, and until lately in this country, that the *ex parte* proceedings before coroners and committing magistrates were not privileged, and newspapers published them at their peril. But in a late English case || the rule was overthrown by Lord Cockburn, when he held that the report of an *ex parte* application made to a police magistrate was privileged, notwithstanding the magistrate decided he had no jurisdiction. A similar decision was made in Maryland in the case of *McBee vs. Fulton*, ¶ an action against the proprietor of the "Baltimore American," and it was held that newspaper and other reports of courts of justice are privileged; and this extends to preliminary examinations before justices of the peace. The reports, however, though they need not be *verbatim*, must be substantially correct, and not garbled or partial, and made *bona fide* and without malice. These decisions may be accepted as laying down the generally received doctrine on this point.

The uncertainty of the result in an action against the proprietor of a newspaper for libel, deters many from attempting to pursue this method in the vindication of their character. This uncertainty

\* *Edsall vs. Brooks*, 17 Abb. Pr., 221.

† *Scripps vs. Reilly*, 35 Michigan, 371.

‡ *Usill vs. Hales*, 26 W. R., 371.

† *Walcott vs. Hall*, 6 Mass., 514.

§ See 4 "Central Law Journal," 332.

¶ 47 Md., 403.

and distrust, it must be admitted, do not arise from any indefiniteness or uncertainty in the law. Enough has been said to show the principles by which courts are guided in expounding the law to juries; but, unfortunately, jurors bring more of their prejudices, feelings, and prepossessions to the determination of actions of this nature than to other causes; and the result is a growing distrust in legal proceedings as a vindication of injured reputation. There have of late been many remedies suggested for this miscarriage of justice; but some are too radical, and are, besides, not consonant to our system. We suggest, however, that a partial remedy for this defect might be given if the determination of such actions were given to a select jury—to what is known as a “special jury,” which is now granted in certain cases requiring peculiar knowledge, and where intricate and important questions are involved.\*

Very frequently, in actions for libel, the question in a great measure may depend upon a turn or trick of expression, a phrase of peculiar signification, or some obscure or classical allusion, which our ordinary jurors can hardly be expected to comprehend. Therefore, in prosecutions for libel, especially against the press, a party ought to have a *positive* right to demand a special or struck jury, composed of a class of men of a higher order of intelligence than those ordinarily called to serve upon juries. It should not depend, as now in many States, on judicial discretion; it should be a statutory right. The courts have on some occasions granted the right to such a jury, as where the libel was against a public officer in his official character.† In addition to this right, let such actions have a precedence on the calendar, so that an injured party may have speedy redress before the injury becomes irreparable, and the charge works its blasting effect. At present, under the long delay and continuances, a party may be irretrievably injured while waiting for the slow proceeding of a court to give him reparation; and thus a greater inducement is given to breaches of the peace, by compelling an injured party to take into his own hands the vindication of the wrong done him.

JOHN PROFFATT.

\* 3 Blackstone, 357; and see Proffatt on “Jury Trial,” § 71.

† Thomas *vs.* Croswell, 4 Johnson’s Rep., 491.

## NULLITY OF THE EMANCIPATION EDICT.

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I HAVE been greatly interested in an article in the February number of the "North American Review," by President Welling, on the Emancipation Proclamation. It presents the subject with great ability and fullness of detail, and, as far as my memory goes, it is the first article in an American periodical that has taken up the subject upon principle.

The proclamation is a past matter—was superseded by the amendment to the Constitution abolishing slavery—and it may be asked why its character and effect need now be inquired into. But it presents a great figure in history, and at the time it was issued it was supposed by many to have abolished slavery throughout the Union; and, doubtless, a great number are still of that opinion, and the pen with which it was signed is preserved as a pious relic. It is never right to allow a mistake to exist upon an important political act, and I know of none in our history about which there has been so much misconception. The proclamation presents no question of constitutional law. It is to be looked at only with reference to the nature of things, and to that universal public law which must always coincide with the nature of things. If what the proclamation assumed to do could be done at all, I see no constitutional objection to its being done by the President, as commander-in-chief, in the absence of an act of Congress. But what it assumes to do is something which neither the President, nor Congress, nor the whole people of the loyal States, by an amendment of the Constitution, or in any other manner, could have effected.

This strong statement justifies a demand for a careful examination of the proclamation. There is no difficulty, it seems to me, in its construction. The vital passage reads as follows: "By virtue of the power in me vested as commander-in-chief of the army and navy of the United States in time of actual armed rebellion against

the authority and Government of the United States, and as a fit and necessary war measure, . . . I do order and declare that all persons held as slaves within said designated States are, and from henceforth shall be, free; and that the Executive Government of the United States, including the military and naval authorities thereof, will recognize and maintain the freedom of said persons." The States and parts of States which the President designates in the proclamation were those which were beyond our military occupation and control, and he makes his proclamation in terms applicable only to such.

To fully understand the application of the proclamation, we must remind ourselves how the country then stood. The Southern States were not in the attitude of an insurrection for redress of grievances, or of rebellion against particular laws. They had declared their absolute independence of the United States, and were engaged in war against the United States for the maintenance of that independence. Whether that independence stood or fell, was to be determined by the result of the war. They had organized a confederate republic, with armies against which our powers had availed but little, and with a marine which gave us great trouble at sea. The final result of the war was then doubtful, depending in some measure upon the course which should be taken by the great states of Europe with respect to the recognition of independence. Our Government fully recognized a state of belligerency between the two powers, and we accepted and acted upon the rules which prevail in public war. As the act done by the President was professed to be done solely as "a war measure," by virtue of the powers vested in him "as commander-in-chief," and as the region upon which it was to operate was a region beyond our military occupation and control, and declared to be within that of the enemy, the only question that we need ask is whether a commander-in-chief can effectually do such an act, under such circumstances. Let us return to the proclamation. It is not a military order to take effect in the future. It is an edict purporting to operate from the time it is given out, and to operate *proprio vigore*. The slaves "are" free. Its only reference to the future is a promise that those slaves shall continue free "from henceforth," and "that the Executive Government of the United States, including the military and naval authorities thereof, will"—not create and confer, but "recognize and maintain the freedom of said persons."

We may therefore treat the proclamation as an edict purport-

ing to operate, by its own force and from the time of its signature, the actual emancipation of all existing slaves beyond our military control and occupation. It did not affect to operate at all upon slaves within our military control. On the contrary, it studiously excludes them, reserving, in its designation of the regions upon which it is to operate, those counties in the rebel States of which our armies had obtained control. It must be also remembered that at this time several of the border slave States were in the Union, their senators and representatives being in Congress, their slave Constitutions respected, the right of loyal masters to their slaves sustained, and that slavery was not abolished in the District of Columbia nor the fugitive-slave law repealed; and more than a year after this time an act of Congress (February 24, 1864) gave to the loyal master the one hundred dollars bounty for the slave which should be enlisted in the army, and assumed to pay every loyal owner of a colored volunteer in a loyal slave State a compensation of three hundred dollars, and this provision was to retroact, and this act had, of course, the approval of the President.

To show how completely the proclamation was assumed to effectuate emancipation from its date, the President enjoins upon all persons so enfranchised to abstain from all violence, unless in case of necessary self-defense, and recommends them in all cases, when demanded, to "labor faithfully for reasonable wages."

The rules of universal public law give to an invading conqueror certain powers over such territory of his enemy as he holds with a certain degree of military occupation and control. Among these powers is one respecting the emancipation of such slaves as are within that territory, and under his military control. It is not necessary to inquire nicely what kind and degree of occupation and control are required to bring these powers into force, because the proclamation is confined to territories beyond our control, and designated as within the control of the enemy. And for the same reason it is not necessary to inquire nicely into the limits of the powers of the conquering invader over the slaves in question. It is sufficient to say that this proclamation assumes to give them immediate and absolute emancipation, in spite of the condition or vicissitudes of the war. It is also sufficient for our purpose to say that no emancipation of slaves can be effected under the war power, except upon the condition of successful occupation. It is not necessary to cite any authorities for such a point. War is a contest of force, and nothing can be done under the war powers of any gov-



ernment which is not effected and sustained by force. The same reasoning applies to the Czar of Russia as to the President or the Congress. The Czar, by his edict, freed every serf in Russia ; but even he, whose will is law, could not have emancipated a serf in his enemy's occupation. The proclamation was in the nature of legislation, an edict professing to rest upon war powers ; but the thing it undertook to do can not be done in that way. It may be done by adequate force, subject to the contingencies of war, but it can not be done by anything which is a mere expression of will, even if that will be the will of an absolute sovereign. It was our policy to close all the Southern ports to foreign trade. It is surprising to remember how many persons thought at first that that could be effected by an act of Congress, and had to be taught that legislation could effect nothing beyond the line of bayonets, and that we could only close the ports by a blockade. So as to all other attempts to substitute will for force in an actual war. No one supposed the President could decree a victory, or proclaim territory to be within our military control and subject to our authority, which was not so in fact. Yet it is somewhat surprising to see how general has been the misapprehension respecting the character and effect of this proclamation. But, on further consideration, it is not matter of so much surprise. This leads us to revert to the state of things at that time, so well set forth by President Welling.

The border slaveholding States in the Union required careful treatment, and received great consideration. The President thoroughly adopted their policy, the object of which was to restore the Union without affecting slavery. In the free States there was a large political party supporting this policy, which, acting with the border slave States, it was feared might at any time obtain the control of Congress, and make a peace favorable to slavery. While this policy was in the ascendant we made little progress, suffered great reverses, and the public mind was in great agitation. The opinion increased rapidly that slavery was the real question at issue ; that it formed the strength and gave the materials to the enemy, and was the one thing that held them closely together—more closely than anything could hold the North together, unless it should be a determination to destroy slavery under the military power. President Welling has described how great was the "pressure" which was brought to bear upon the President in this direction, and how deeply it affected him. We all remember that what was demanded was a change of the policy of the war from the Ken-

tucky policy to the Massachusetts policy ; from that of the border slave States and what may be called the border politicians in the free States, to that of the people who believed that nothing could be done effectually until we took hold upon slavery.

To this pressure the President yielded and issued the proclamation. Was this proclamation what was expected? It seems, from President Welling's quotations, that Mr. Chase, who had been most earnest for the change of policy, had limited his expectations by the rules of public law, and looked only for a military order which should carry emancipation wherever the flag went, and was surprised at the position taken. Mr. Seward seems to have favored practical emancipation, but to have opposed a proclamation. From Mr. Welles's letters, it is plain that he did not advise it. It would seem, therefore, that in this, as in many other cases, the Cabinet was not consulted. I believe that, if the President had issued a proclamation in the form of a military order, requiring all slaves to be emancipated as fast and as far as the flag advanced, and pledging to the emancipated slaves our utmost efforts to secure them in their freedom, and if he had expressed it with that power and pathos of language of which the untutored Abraham Lincoln was a master, it would have answered the expectations of the country, given him the just fame of a liberator, and raised no question under public law.

I remember that, after the preliminary proclamation of the 22d of September, 1862, I had an interview with Mr. Sumner upon the subject, just before his return to Washington. It was plain that the final proclamation was to come, and I feared, from the preliminary, that it would take the form it did. I presented to him substantially the objections which are now made, but I could not secure from him a serious consideration of the objections. He was under great excitement, and, it seemed to me, was under the impression that there was a necessity overruling all other considerations for freeing all the slaves in the country, and that the proclamation would give them the status of freedom. I can not but think that if Mr. Pierce shall continue his biography to the year 1863, we shall have more light than we now have as to who is responsible for the position taken in the proclamation, and for the pressure which led to its adoption. It is plain that Mr. Lincoln himself, in urging afterward the adoption of the amendment to the Constitution abolishing slavery, doubted the effect of his proclamation. A more careful examination of those biographies and letters which have

lately been brought to light may show whether he was not subject to the same doubts at the time he issued it. I talked with Mr. Seward on the subject after the proclamation appeared, but he made no explanation, and when I asked him why, if it was simply a war measure by the commander-in-chief, he countersigned it as Secretary of State, he replied that that was a compromise, not saying between whom or what, and I did not pursue the subject.

The slaves of the South seem to have made no mistake as to their status. They knew they were not free while their masters held them and the territory. They looked to the gunboats and the Stars and Stripes, and regarded the proclamation only as a promise which would fail or be made good according to the issue of the war. As to the people of the North, they were in no humor to "reason too precisely upon the event." They were impatient under the existing policy, and looked for a change. They saw that change in the proclamation, and cared little in what form it came or what else it undertook to do. They had been disgusted by the advice that had been offered them on constitutional questions by over-technical or semi-loyal men. Jurists had advised that the prize courts were unconstitutional, that no property could be taken, at sea or on land, except in the way of penalty for treason, after a jury-trial; that we could not blockade our own ports; that though an army and a militia were constitutional, volunteers and conscriptions were not; and, at the bottom of all, that the republic could not coerce a State. It is little wonder, therefore, that they were impatient of any criticism upon the proclamation. On the other hand, unquestionable patriots, educated in a narrow school of strict construction—chief among whom was Mr. Thaddeus Stevens—were telling the people that the only way to save the Union was to run the Constitution ashore; and, to ease the conscience of doubters, the phrase "*extra constitutional*" was invented—a phrase which, in logic, meant nothing, and was never heeded by men who studied the Constitution in the light of the letters of "The Federalist," the judgments of John Marshall, the essays of Story, and the speeches of Webster.

Fortunately, the proclamation was never brought to a test. There can be little doubt that foreign states and our own judiciary would have treated it as ineffectual. When the Southern armies surrendered and dispersed, and the Confederate Government had fallen through and was abandoned, and we were in military occupation of all the strongholds of what had been, in the sense of the laws of

war, enemy territory, we were competent, under the rules of war, to emancipate every existing slave. And no doubt the proclamation of January 1, 1863, though such were not its terms, brought about a system of progressive military emancipation, taking effect as we advanced. But for the prohibition of slavery thereafter in the conquered States, under their Constitutions, as well as in the loyal States, very different action was required. The abolition of the slave system, as it stood in the Constitutions of so many States, was beyond the reach of the mere military power of the President or of Congress. It called for the ultimate, sovereign legislative action of "we, the people of the United States," in the form of an amendment of the Constitution; and this, when adopted, precluded all question as to attempted past emancipation or abolition by proclamation.

I should regret extremely if what I have felt obliged to say should lead any one to think me disposed to join in attempts to detract from the fame of Abraham Lincoln. I never failed to sustain his Administration, when at one time the conservatives, and at another the radicals, stood in threatening or dubious attitudes. His fame as a statesman, an orator, and a liberator, as a man of kind heart and serious thought, is established. Nothing can be added to it by fiction, and it would be simply fiction to represent to the people that the proclamation, as conceived and issued, abolished slavery or emancipated a slave. Knowing, as all do, of the powers of Mr. Lincoln's mind and the sincerity of his purpose, we can not but earnestly desire that further research may furnish satisfactory explanations of what is now a curiosity of history.

RICHARD H. DANA.

## THE CENSUS LAWS.

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IF the object of the framers of the Constitution had been to form either a consolidated Government, or a confederation of equal sovereign states, the general enumeration of all citizens would not have been a necessary provision of fundamental law. But since the States composing the Union are regarded as equal units in certain views and for certain purposes, while for others their rank and weight are determined by the number of their inhabitants, it became a political necessity to provide for a census at regular intervals. Advantage was early taken of the machinery created by law for this purpose, to gather in addition some statistics of industry and mortality. Before the close of the last century, the American Philosophical Society, of which Thomas Jefferson was president, memorialized Congress on this subject, representing that "the decennial census offered an occasion of great value for ascertaining sundry facts highly important to society and not otherwise to be obtained." It therefore prayed that "the next census might be so taken as to present a more detailed view of the inhabitants of the United States under several different aspects." A similar memorial was presented by the Connecticut Academy of Arts and Sciences, through its president, Timothy Dwight.

Attention to the possibilities of the census having thus been drawn by thoughtful men, a series of tentative extensions of the work has followed. The population schedule was considerably enlarged in 1800, and in 1810 the Secretary of State, then charged with the execution of the work, made the first systematic endeavor to obtain the statistics of the industries of the country. Lack of experience and organization rendered the results of little value, and it was not until 1840 that any reasonable measure of exactness was obtained. The importance of the subject was, however, now so generally recognized, that in 1849 the law was carefully remodeled

in accordance with the recommendations of several eminent statisticians, and the scope of the census was enlarged to include all the varied uses to which modern statistics are applicable. The control of the work was placed under the newly created Department of the Interior, the office of Superintendent of the Census was created, and the value of accurate social, industrial, and civil statistics received a distinct legal recognition.

The census of the United States is an unforeseen development of the germ contained in the Constitution, and the word itself signifies for Americans much more than it did originally. The results of the inquiry which at first were contained in an octavo pamphlet of fifty-two pages, and procured at an expense of \$44,000, were embodied in 1870 in three large quartos and a series of maps and graphic representations, costing in all \$3,300,000. Our decennial contribution to the data of political science is in no wise unworthy of a great nation, although perhaps we can not claim to deserve the eulogium of Moreau de Jounés when he declared that "the United States presented a phenomenon without parallel in history, that of a people who instituted the statistics of their country on the same day when they founded their government, and who regulated by the same instrument the census of the inhabitants, their civil and political rights, and the destinies of the nation."

The new and valuable features of the law of 1850 were the creation of a separate bureau in the Department of the Interior with a single responsible head, and the authoritative recognition of the importance of industrial and economic statistics. The growth of the work was like the growth of the country, in magnitude chiefly. No organic change was made in the machinery, though experience had shown that the plan was radically faulty. The execution of the work was still charged upon the United States marshals, and carried out by deputies who were not directly responsible to the Superintendent. This necessitated, of course, making the judicial districts the primary geographical divisions or census districts; an obviously inadequate arrangement, for in the thickly settled parts of the country the regular work of the marshal's office was too important to allow them to give the necessary supervision to new and extra duties, and in other places the districts were so large that it was impossible to complete the enumeration in the one hundred days contemplated by the law. In consequence the time was necessarily extended, and full returns were not received until nearly a year had elapsed from the inception of the work. The compen-

sation was unequal, and the provision for extra pay was an allowance for mileage at the "rate of ten cents a mile, the whole number of miles traveled to be ascertained by multiplying the square root of the number of dwelling-houses by the square root of the number of square miles in the subdivision," a formula which, though it has a scientific sound, is evidently too rigid and clumsy for practical use, and hardly needs the high authority of Professor Peirce to be pronounced "radically defective and vicious in its underlying mathematical principle." In spite of these disadvantages the census of 1870 is a monument of technical and executive ability. Its merits are largely due to the hereditary talent and energy of the Superintendent, who by a good fortune rare to this republic of political patronage, brings his ripened culture and experience to the supervision of the present one. It is a case in which there can be no rational objection to a third or fourth term.

The law under which the census of 1880 is being taken presents some important modifications, the need for which was clearly shown in General Walker's last report. It still leaves the census office as a bureau of the Department of the Interior, the Superintendent to be appointed by the President and confirmed by the Senate, the clerks and computers to be appointed by the Secretary. The Superintendent divides the country into districts, and the President appoints a supervisor for each district, who also must be confirmed by the Senate. The responsibility would be less divided if the Secretary or the Superintendent appointed the supervisors; but the method of the law is perhaps more in accordance with our theory of the executive. It has worked well, because in 1880 the President and Superintendent were in accord in supposing that the duties of a supervisor were to supervise the taking of the census, and not solely his own canvas for some petty office. But it is not impossible that we may have in the future a President who may regard offices as political rewards.

The supervisors subdivide their districts, and employ enumerators with the consent of the Superintendent. By a regulation of the office, every enumerator is required to report every day by postal card to his supervisor, and also to Washington, the amount of work he has done during the day. The effect of this check on indolence and procrastination will be very great. By it the Superintendent has direct control over the *personnel* of his entire corps, and will be enabled to hold his work well in hand, and to see that every private of his great army is on the march. An enumeration

to be thorough must not be desultory or protracted. General Walker possesses in a marked degree the quality—perhaps the most valuable one in an executive chief—of inspiring his subordinates with a portion of his own zeal. His bulletins of instruction are models of their kind, and go far toward informing the most ignorant with some idea of what a census should be.

The law provides that the “enumerators shall be selected without reference to their political or party affiliations.” This is so new and startling an idea in American politics, that in some districts no Democrat made application. They thought there “was some catch in it.” “They feared the Greeks, even when offering gifts.”

The second important change in the law is contained in the section which authorizes the Superintendent to “withdraw, whenever he shall deem it expedient, the schedules for manufacturing and social statistics from the enumerators of the several subdivisions, and to charge the collection of these statistics upon experts and special agents, to be employed without reference to locality, and to employ experts and special agents to investigate, in their economic relations, the manufacturing, railroad, fishing, mining, and other industries of the country, and the statistics of telegraph, express, transportation, and insurance companies.” This introduces into the theory of census-taking the modern idea of division of labor, and enlarges its scope far beyond the primary conception of a mere instrument to gather material. The machinery, which hitherto has increased in magnitude only, now suffers an organic change, and is differentiated into separate branches adapted to different functions. Its powers for the higher work of classification and induction are developed. In consequence, its efficiency in every department is increased. The enumerators are relieved from a perplexing part of their duties, and are able to keep their minds fixed definitely on the special objects they are best fitted to accomplish. The result must be a more rapid and perfect enumeration, and presumably a more thorough and scientific examination of special branches of industry. And further, it is probable that the entire cost will be less than under the former law.

Under this section, the following subjects have been committed to special experts :

The manufacture of cotton, to Edward Atkinson ; the culture of cotton, to Professor E. W. Hilgar ; the culture of tobacco, to John C. Killibrew ; mining, west of the Mississippi, to Clarence King ;



mining, east of the Mississippi, to Raphael Pumpelly ; manufacture of woolens, to George W. Bond ; coke, glass, and wages in manufacturing and mining communities, to James D. Weeks ; manufactures of iron and steel, to James D. Swank ; the fisheries, to Professor Goode ; prisons, to F. H. Wines ; cities in their industrial aspects, to Professor William Trowbridge ; cities in their sanitary and civil aspects, to Colonel Waring ; railroads, to J. H. Goodspeed ; the production and transportation of meat, to Clarence Gordon ; agriculture, to J. R. Dodge ; forestry and the lumbering industry, to Professor Charles Sargent ; ship-building, to the Hon. John Lynch ; and silk industry, to William C. Wyckoff.

The names of the above gentlemen are a sufficient guarantee of the wisdom of the law, and, if nothing more than a monograph on their specialties were expected from them, it would be a notable addition to the sum of existing knowledge.

The statistics of the production of gold and silver have heretofore been gathered, by reason of the remote and difficult nature of the country where they are mined, chiefly by correspondence, a most exasperatingly insufficient method. The successful establishments are as desirous of concealment as the unsuccessful ones are of exaggeration. The reports of mints and express companies furnish a check on the totals, but the method of sending on to the spot practical experts armed with authority, whose characters are above suspicion, and who are acquainted with the business and with the peculiar types of humanity developed by it, is the only means of procuring trustworthy details. In view of the fact that mining investments are attracting more attention than ever before, and that they are generally made without the slightest reference to real values, the worth of Mr. King's forthcoming report can hardly be exaggerated.

Mr. Pumpelly will furnish, in addition to full statistics of production, a complete set of analyses of the iron-ores of the United States, from samples taken by his experts. These results will not only be interesting in a scientific point of view, as indicating the distribution of the iron-ores, but will furnish a guide to the iron-master as to where he may look for the various ores he needs to combine, and where they can best be brought together for reduction. Hitherto, the State geological surveys have furnished the most reliable information on these points. They have generally been under the direction of competent and painstaking geologists, but their standpoints and nomenclature have differed, and their

efficiency has been hampered by insufficient means and by the necessity of obtaining immediate results. It is to be hoped that unworthy and disheartening jealousies will not tie the hands of the newly established United States geological survey, which aims at coördinating and perfecting the work of the State surveys, now for the most part abandoned.

In addition to statistics proper, several of the special agents gather materials for a general survey of industrial communities and the relations between laborers and employers, as illustrated by trades-unions, strikes, coöperative associations, etc. "The precarious and jealous nature of the union between capital and labor is the most alarming characteristic of modern society." A true understanding of the conditions is the first requisite of any attempt at amelioration. The attention of the public is generally called to labor organizations under circumstances likely to embitter feelings on both sides. The imperfect reasonings and warped judgments of the men, and the violence that is too apt to characterize their actions, prevent their case from being fairly presented. In fact, the public may be said to be substantially ignorant of this most important subject. The great problem for us is "how to make such use of our freedom as to advance to better relations between capital and labor ; and the great force of modern civilization is American public opinion."

Political economy is so obscure and complex a subject that inductions can be drawn in it only from the widest range of data. At present, the United States offers the best field for progress in this science. Its reasoners have generally dealt with abstract conditions, the A who sells goods to B, and the C who employs D, forgetting, apparently, that A and B are not equal factors, but bundles of prejudice and ignorance, whose action can not be averaged or predicted. Our country, from the simplicity of its social structure, the mobility and versatility of its citizens, and the fact that it is the largest area in the civilized world where trade is free, is the place where the natural laws of political economy work with the least friction, and where new discoveries will be most readily made. But for that very reason absolutely reliable statistics are especially valuable to the United States.

Whatever the success of the census now in operation—and there is no reason to doubt that it will be very encouraging—one thing is assured: it will demonstrate what are the best methods. The inquiries of the special agents are based on several different plans, and their combined experience must result in an increase of technical

skill and knowledge of gathering statistics. It is no small achievement to bring all the details of an organization like the census office to the highest point of working efficiency. Methods, theoretically perfect, and which would perhaps give accurate results in Connecticut, will fail if applied to Georgia. Questions which seem simplest will prove misleading even to men familiar with the subject. It is as dangerous to ask too much as to ask too little. Trade jealousies will be aroused when least expected, so as to nullify some branches of the inquiry. Hitherto the experience of each successive census has served, in some sort, as a warping port by which to drag the next up to a higher point of excellence. The census of 1880 will be a practical test of an improved method, whose working details must be perfected by experience.

CHARLES F. JOHNSON.

## PRINCIPLES OF TAXATION.

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THE object of the present article is to consider those features of our plan of taxation which stand in need of such light as may be shed upon them by political economy. Our attention will be confined to those points which seem of most practical importance in the present state of public opinion, and no exhaustive discussion of any special branch will be attempted. We shall begin with some practical hints respecting the objective points at which arguments on this subject are sometimes aimed.

Perhaps the most common error of current thought on the subject consists in considering special kinds of tax as being good or bad in themselves. If the question were tax or no tax, then each system of taxation could be separately disposed of on its own merits. But taxes of some sort must be levied in some way, because the support of government is a necessity. Our conclusions must therefore be drawn by comparing taxes of different kinds, and not by saying that this system is bad or that one good in itself. The only alternative of taxation in itself is borrowing; but this alternative is only temporary, because the money borrowed must eventually be paid by the levying of taxes. Hence it is not at all to the point to prove that any special form of taxation is bad: we may admit at the outset that every possible form is objectionable, without doing away with the necessity of making a "choice of evils."

The first subject which we propose to consider is that of the distribution of the burden under different systems of taxation. In ordinary language, taxes are divided into direct and indirect taxes. Direct taxes are supposed to be those levied on the individual himself, or his property, in such manner that he must personally bear the burden of all he pays. Indirect taxes are those levied on the products he expects to sell to others, and are therefore such, it is supposed, as he may charge to his customers. We frequently hear

it said, in a very general and sweeping way, that whenever goods or services of any sort are taxed, the owner of the goods, or the performer of the services, has only to charge the tax to his customers, and thus free himself of its burden. But the power of doing this is something to be accurately investigated, and not taken for granted in the sweeping form it often assumes.

The question is, Out of whose pocket will any given tax ultimately come, or who will be the real sufferers, not only with respect to the money which they have to pay, but with respect to the relation between their income and the cost of the commodities they have to consume? The total amount of taxes contributed by each individual will comprise not merely the obvious items of money paid to the collector and increased cost of articles necessary to comfort, but also a possible disturbance of the demand for his commodities, or a change in his power of acquiring wealth from his fellow men. In fact, it not infrequently happens that the levying of a tax puts money into the pockets of individuals. A familiar instance of this is seen when a new or increased tax is levied upon goods already in the hands of manufacturers or dealers. In this case, the market value of the goods may be suddenly increased by the whole amount of the tax without any effort whatever on the part of the holders. It is evident, in such a case as this, that the consumers will at first be sufferers without the government gaining anything. I cite this merely as an illustration.

The power of charging a tax to customers will depend upon the nature of the things on which it is levied, or upon the subjects of taxation: a classification of tax-systems with respect to these subjects is therefore necessary. For our present purpose we may divide most of the taxes levied under our system into three distinct classes, namely:

*a. Taxes levied on Individuals.*

These include not merely poll-taxes, which are now nearly obsolete, but taxes of all sorts which are levied either on special persons or on every one, without respect either to the value of his property or of his income. The distinctive feature of such a tax is, that it is independent of the ability of the payer. The principal taxes of this sort now existing are the licenses required for the practice of particular trades or professions. It will be observed that the license required of a liquor-dealer or tradesman of any sort is not dependent upon the amount of his possessions or upon

his ability, but is demanded of him simply as an individual engaged in a certain business. This is the peculiarity of what we may consider a personal tax.

*β. Taxes on Production.*

These include the excise and customs duties on productions of specified classes which, under our system, form almost the sole revenue of the General Government. Customs duties are included with those on home products because the fact that the production is that of a foreigner makes no difference in the application of the general principles we are to elucidate. The income-tax is to be included under this head, because each man's income is to be regarded as the equivalent of his entire productiveness, whether it is derived from his own powers or from an hereditary capital.

*γ. Taxes on Accumulated Property.*

There is this very important difference between a tax on production and one on accumulation: that the former is paid only once on each dollar of value produced, whereas, under the latter, every dollar saved has to make an annual contribution to the public treasury. No matter how large a percentage we levy on production, it can be borne, because the producer will always have the balance free from all future taxation so long as he chooses to keep it. But if the tax on accumulated capital should exceed the rate of profit to be derived from its use, there would be no object whatever in saving it, since the proceeds of everything one saved would have to be given up to the Government.

Taxes of each class are to be subdivided according as they are levied; firstly, on sums total expressed in money without respect to the particular things produced or possessed; or, secondly, on specially designated products. Among taxes on production an excise and customs duty is levied on special products—as tea, liquor, or tobacco. Such a duty, levied on the total product without respect to the things produced, would be in effect the equivalent of an income-tax. Again, we must distinguish taxes levied on special kinds of property, as real estate, bonds, or moneys, from those levied on the sum total of one's possessions without respect to the form in which those possessions are held. Thus, all three of the classes we have described may be divided into two orders: the one being those of which the subjects are sums total; the other those of which the subjects are specially designated persons or products. This double

classification will be made more clear by presenting it in a tabular form.

CLASSIFICATION.	ORDER A.—Taxes on totals, or unlimited taxes.	ORDER B.—Taxes confined to designated subjects.
CLASS $\alpha$ .—Taxes on persons.	Tax on every one of a certain age or sex (poll-tax).	Taxes on designated occupations (licenses).
CLASS $\beta$ .—Taxes on production.	Tax on total production of every individual (income-tax).	Taxes on designated products only (customs, excise, duties).
CLASS $\gamma$ .—Taxes on accumulation.	Taxes on one's whole possessions, without regard to their character.	Taxes on designated kinds of wealth.

The reason of the distinction between orders A and B in all classes of taxes, is that when taxes are levied on totals of any kind, as in order A, they can not be lawfully evaded ; while, when levied on especial productions or especial kinds of property, as in order B, it may be possible for one to confine himself to the production of untaxed articles or to put his wealth into an untaxed shape. For instance :

A tax on all males over twenty-one years of age can not be evaded. But a tax on liquor-sellers can be evaded by the liquor-seller giving up his occupation. A duty on imported cloth can be evaded by ceasing to import it, and one on native cloth by the manufacturer engaging in some other pursuit. But a tax on gross or net profits can not be evaded by a mere change of pursuit. A tax on carriages can be evaded by putting money in something else than carriages, but, where gross capital is taxed, a mere change of investment will not bring relief.

In our consideration we shall begin with taxes levied on designated things (order B), because the effects of such taxes can be most readily traced. Let us suppose a certain commodity, no matter what, which we may call C. In an untaxed society a certain quantity of C will be produced and sold in a year. Let us call Q this quantity and P the price per unit of quantity, so that P is the untaxed price. The total value of the product will then be  $Q \times P$ . Now, suppose a tax to be levied on C. The common impression is, that the manufacturers of C will simply add the tax to the price P,

and thus collect from their customers all that they pay the Government. But the producer may find a difficulty or disadvantage in thus increasing the price of his product. The subject seems to be thought of as if any producer could at will charge any price he pleased for his services. Now, we know that, as a general rule, the price at which any individual sells his services or his goods is the highest he can advantageously command. He may take into consideration not merely his own immediate interests, but also the future interest of his own trade or profession ; but, whatever his objects, we may be sure that his price is the maximum which will be consistent with their attainment. Hence, before the tax is levied, the price  $P$  is the highest which the manufacturer can command for his product without incurring some disadvantage. It is also clear that he can not advantageously add the whole tax to his price unless his competitors, who are also making the commodity  $C$ , unite with him in charging the higher price. If he did his custom would go to them. We must, therefore, inquire how, under the varying conditions which affect the supply and demand of different commodities, the equilibrium of price, supply, and demand, will be restored when the tax is levied.

We may assume that, in the first place, all the producers of a taxed article will attempt to add the tax to the price. If this addition caused no falling off in the demand, it would be made without difficulty, and production and consumption would both go on undisturbed—the price being raised by the whole amount of the tax. But we know very well that this is not the rule. Every increase in the price of a commodity leads people to economize in its consumption, either by going without the gratification which it yields, or by substituting some cheaper commodity for it. If this falling off in the demand were the same for all commodities, the problem would be a comparatively simple one. But we know that it is not. There are some articles the consumption of which is but slightly affected by changes in price. Such are tobacco, stimulants, condiments, medicines, and in general all commodities the habit of consuming which becomes deeply rooted, and for which substitutes can not be found.

There are other commodities, the total consumption of which will fall off rapidly as the price is raised. Among these we may include all luxuries which people can dispense with and not suffer serious inconvenience. Articles of food for which substitutes can be found, and articles of clothing which can be made to wear longer,



may be included in this class. These are the things on which people economize when they feel the pressure of hard times.

To give precision to our ideas, we may call those articles—the consumption of which rapidly diminishes when the price is raised—*sensitive*, and those of which the consumption is but slightly affected by changes in price, *insensitive*. Of course, we can not thus form two completely distinct classes, because different commodities have every degree of the quality which we call sensitiveness. The difference is therefore one of degree, not of kind. It is upon the degree in which a commodity possesses this quality that its taxability will depend.

In the case of insensitive articles there is no difficulty in collecting the tax from the consumer. The producers, on adding the tax they have paid to the price, find no falling off in the demand, and thus the levy of the tax causes no disturbance in the market. The economical questions connected with the taxation of such articles are therefore very simple, and the latter are in all countries the favorite subjects of taxation.

In the case of sensitive articles, the attempt on the part of producers to add the whole tax to the price will result in a falling off of the demand. One of two things must then follow: either the producers must submit to a smaller profit, paying the whole or a part of the tax out of their own pockets; or, the production must be reduced until the article becomes so scarce that consumers are willing to pay the tax. In the latter case some of the producers must seek another employment. Which of these alternatives shall be accepted will depend on the conditions of production. As a general rule, neither of them will be accepted in its entirety, but the compensation will be effected partly by the falling off of production, and partly by the remaining producers assuming a portion of the burden of taxation. But there may be any approximation toward one extreme or the other, and we have next to inquire into the conditions of final equilibrium.

Whether the equilibrium shall be restored by diminishing the number of producers, or by the latter paying the tax themselves and selling at the old price, will depend upon how far the elements necessary to production are, in an economic sense, monopolies. We call to mind that an economic monopoly consists not simply in a grant of some privilege, but in the possession of any special knowledge, faculty, device, or machine whereby one is enabled to gain larger profits than he could gain in any other pursuit. If the prod-

uct is a complete monopoly—if, for instance, it is a patented article, or if it is a thing which only one person or combination has a knowledge how to make—one effect will be produced. If it is a thing of which every one can engage in the production without either legal or practical difficulty, another effect will be produced. We shall find the result to be that the more the production of the article is a monopoly, the greater the proportion of the tax which will be paid by the producer.

At first sight this may appear paradoxical. The ordinary idea will be that the producer of the monopolized article, being quite at liberty to fix his own price, can most readily charge the whole tax to purchasers, and that, therefore, it is upon a monopolized article that the tax will most surely be paid by the producer. But we must remember that without the tax the producer of the patented article is supposed to charge the highest price which he can command, or which it is to his advantage to charge. He will therefore find it to his disadvantage to increase the price by the whole amount of the tax. Possibly the falling off in the demand might be so great as to entirely destroy his business should he attempt such a course. Any one possessing a real and effective monopoly is, without the tax, making a more profitable use of his monopolized powers or privileges than he could make in any other business, and is therefore able to pay the tax without being driven out of business. On the other hand, where competition is entirely free, it is to be assumed that everything is being sold at the lowest price for which it will pay to produce it. Therefore, when we tax such productions, those producers who are making the minimum of profit will not be able to pay the tax at all, and, if they find by trial that they can not collect it from their customers, they will have to go out of business. Such a number will therefore go out of business that the diminished production shall correspond to the demand with the increased price.

The result to which we are led may be summed up as follows : There are two extreme cases in which a tax upon special products is paid entirely by the consumer, namely :

1. When the product belongs to the insensitive class on which the consumer will not economize, and in which demand is therefore undiminished by an increase of price.

2. When the products taxed are those of which the price is, by free competition, brought down to the lowest limit, so that producers can not afford to pay any part of the tax, and, when they find

demand falling off in consequence of increased price, will be compelled to betake themselves to some other business. But the agencies by which the tax is thrown upon the consumer are very different in the two cases. In the first case, there is no diminution of production and consumption ; in the second, the tax is added to the price through scarcity, so that in this case there is a diminution of production which does not occur in the other.

These two cases are each an extreme of a series. On the one side, they are at the end of the series of products possessing a continually diminishing degree of sensitiveness ; on the other side, they are at the end of the series of products marked by a continual decrease in the number and importance of monopolized elements entering into their production. The rule is therefore that while, in these extreme cases, the tax may be wholly paid by the consumer, in general a greater or less portion, depending upon the conditions of production and consumption, will have to be borne by the producer.

Our next problem is to consider the effects of taxes on gross amounts of production, without respect to the individual things produced. The levying of such a tax is extremely difficult, owing to obstacles in the way of learning what the gross production of the individual is. If each individual worked only on his own account, and sold nothing but his own products, he would himself have little difficulty in ascertaining the total amount. But such a simple case as this is entirely exceptional. Wherever production is carried on upon a considerable scale, many persons have to be employed and much money expended, not only for their labor, but in the purchase of raw material. We must, therefore, to determine the actual total production of the individual, go through a complex calculation, of which the result will always be uncertain. Hence, the more complex production becomes, that is, the more advanced the state of society, the greater the difficulty which must be experienced in determining what the actual production of an individual is. Economically considered, total production may be regarded as identical with the individual income. The tax on such production is therefore nearly the same as an income-tax. As this tax is frequently a subject of practical discussion, we may devote a little attention to it.

The first thing to be said of the income-tax is, that it is, in its aims, the most equitable tax of all. In fact, the very problem which the statesman has in view when he seeks to levy a tax is, to levy according to the wealth-producing power of the individual.

This power is measured by the individual income, and thus a tax on income is really what should be, in most cases, aimed at. Indeed, a tax on commodities, if assessed on everything produced, would be nearly the same as an income-tax, because it would be distributed among society pretty nearly in proportion to incomes.

But when we consider the practical working of an income-tax, we find it to be the most unfair and demoralizing one that can be levied. It is one of the first requirements of a proper system of taxation that the amount which each man has to pay must be determined, so far as possible, independently of his own judgment. When the individual is called upon to communicate to the collector the data for assessing his taxes, a premium is offered for a failure to perform this duty. Every one knows that a not inconsiderable portion of the community will therefore fail to pay the tax. This knowledge will lead others not entirely devoid of conscience to fail also, because they know that if they make their returns they will really pay more than their share. The very fact that the tax requires a statement in which the individual is to be truthful at his own expense, renders it an unfair tax in the present state of society, and leads many who, in a better state of society, would scorn a delinquency in this respect, to consider that they are not bound to be any better than their neighbors. We may look forward to a stage in human progress in which every man will send the tax-collector semi-annually a check for the amount of his contribution, as determined by law, without the necessity of any assessment whatever. But we do nothing but mischief by assuming that we have reached this stage and acting accordingly.

This feature, however, of requiring the individual to levy his own tax, as it were, is one of the least of the difficulties in the way of a fair income-tax. How conscientious soever we may suppose every member of society to be, there is a difference between one's income proper and his income as generally understood by law. This difference is a matter of scientific interest, apart from any question of taxation; it is, therefore, worth understanding. The question turns upon the definition of income. Ordinarily, one's income is measured by the moneys which he receives from selling his labor or its product, after subducting that which he pays out for materials, or assistance in production. It might, in simple forms of business, be reached by a careful examination of accounts. But that this is not necessarily the actual income from an economical point of view will be evident if we reflect that an isolated family,

possessing plenty of machinery and capital, may be able to supply nearly all its wants by the labor of its members, and thus be enjoying what is the equivalent of a good income, and yet receive very little in the form of money from others. The point of difference is this: One's real income is what he actually produces, no matter whether used by his own family or others. His income, as ordinarily measured, is one derived from what he receives in money by selling his goods. Thus, the latter omits all that portion of the products of labor which the individual, or the combination of individuals, devotes immediately to his own use. What this portion is depends upon the nature of the society in which the individual is placed, and the character of his pursuits. If there were no such thing as exchange, except between members of the same family, there would be no estimated income by the usual method. Where one's occupation is such that he consumes no appreciable portion of his own products, the two methods of determining the income become identical. This is the case with professional men, and indeed with people generally who live in cities. The lawyer does little or no legal business for himself personally, the physician saves little by attendance on his own family; the supplies which any dealer furnishes his own family form but a small part of their annual wants; and the laborer who works for hire or the clerk who serves on a salary, consumes none at all of his own products.

But when we go into the country we find the case to be quite different. Very frequently a family may be found living in comparative affluence with a minimum of taxable income. Their stud of horses, which, in the city, might represent a moneyed expenditure of five hundred dollars per year or upward, are supported from their own farm and by the labor of their own servants. A large part of their food is produced at home, and not obtained by purchase. Their servants are supported in great part from the products of the farm; if they do their work on shares, they may be entirely supported in this way without any expenditure of nominal income on the part of the owner. With the aid of their combined labor the owner continually adds to the value of his farm by repairing buildings, erecting fences, and fertilizing the ground, without paying out any considerable sums of money. He may thus have no taxable income whatever, although in reality wealthy.

Now, in reality, all this wealth produced and enjoyed on the spot is as much an income as if it were sold for cash. It must be taken into account to measure the wealth producing power of the

owner. Hence, to levy the equitable income-tax which is desirable, it would be necessary, at least in the country, to determine not simply the value of the products sold by the farmer, but the value of everything produced upon the farm, and either consumed there without being sold or put into permanent improvement. The difficulty of distinguishing between improvements and simple repairs of loss would be such that the tax would be an entirely impracticable one. The general result is that an income-tax is, at least in this country, almost a pure fiction. When attempted, it is collected solely from certain classes of individuals, mostly dwellers in cities.

So far as we have yet considered the subject, the entire burden of taxation on any given article is borne entirely by the producers and consumers of that article, and not by the community at large. Will the distribution go further, or will it not? To take a concrete case: Let us consider the tax on tobacco. Will any part of this tax be paid by those who are neither producers nor consumers of the article? By the very theory on which this tax is levied, consumption is not materially affected. The smoker will have his pipe or cigar, no matter what he has to pay for it. A tax on tobacco is therefore paid in the first place entirely by those who smoke it, and no one else is affected. Is there any way in which the smoker can make his neighbor who does not smoke bear a part of his burden? Since, in the long run, the same total of taxes must be collected, and the only question is on what article they shall be levied, we must, in supposing the levy of an increased tax on tobacco, also suppose a diminution of the tax upon other products. Let us take food as typical of these other products. When we take the tax off of it, we make it cheaper to every consumer. Thus the consumers of food, for the moment, all gain by having to pay less money for it, while the smokers of tobacco lose by having to pay more for what tobacco they consume. The income of each class remains unaltered by the change, the effect of which is simply to increase the expenses of the smoker, and diminish those of the ordinary eater. If the former could make the latter pay his surplus to him without his giving any labor in return, the equilibrium would be restored, and the tax divided between the two. But this can not be done unless the smoker will change his habits, which, by hypothesis, he will not do. It is true that the eater must in some way spend the money which he saves by being relieved of taxation, and the smoker must go without some other articles, in consequence of the higher price which he has to pay for the tobacco. With this increased

enjoyment of the eater and diminished enjoyment of the smoker we reach the end of the economical chain of causes as dependent on the change of tax. The general money equilibrium in the community is restored, but the eater has the sole advantage of the commodities he receives in exchange for the increased sum of money he can devote to other wants than those of food, while the smoker has to go without something. Thus the effect of the tax is that certain commodities, no matter what, which without the change of tax would have been consumed and enjoyed by the smoker, are now consumed and enjoyed by the eater. Clearly, the latter reaps the whole advantage. The smoker may indeed earn his tax back by increased labor, but the existence of the tax will not help him in the matter.

This same conclusion will be reached if we consider the relations of any other pair of commodities. Let us take food and sewing-machines, for example. If we take the tax off of food and levy it on sewing-machines, the eater is relieved in precisely the same way as before. What he gains is paid partly by the manufacturer and partly by the user of the machine on which the new tax is levied. The manufacturer is in the same position with the smoker just supposed, so far as his share of the tax is concerned. He is obliged to sustain the whole loss of the tax which he pays, because he can not levy it on any one else except he changes his occupation. This he will not do, because he is already making a larger profit, owing to the rights which he possesses and the skill which he has acquired, than he could make in any other occupation.

The maker's share of the tax is not, however, the whole tax, but the whole tax diminished by the increase of price which he puts upon his machines. This latter tax is paid by the user of the machine. The latter, however, will have the power to transfer it to his customers because, since the tax is levied on all sewing-machines, the price of everything a machine produces may be raised, and the wearers of shirts have to pay a higher price for them. We will notice that, in fact, a tax upon machines is effectively a tax upon everything which the machine produces, and is therefore divided among all the consumers of the product.

Thus we see that the popular opinion that taxes of all sorts are distributed among the whole community, no matter what articles they are levied upon, and that every one who is taxed can distribute a portion among his neighbors by charging more for his services, is altogether too hasty. A tax on each class of articles, so far as paid

at all, is paid by the consumers and producers and by no one else. Some will see in this an argument in favor of taxing luxuries which the consumers will not dispense with ; others an argument against it. There is, undoubtedly, a strong and natural feeling that by making the consumers of wine and liquors pay more than their share of the expenses of government, we are administering a mild punishment for their appetites, which is all the more justifiable in that they are compelled to pay it only by gratifying the appetite. If we view this subject from the side of the let-alone principle, and admit that every man has an equal right to his tastes and appetites, and that it is nobody else's business how he indulges them, such a tax appears inequitable. But the natural way of thinking of the community is not in this direction. It is the old story over again of attacking the weak rather than the strong. The slave of his appetites, who is obliged to pay whatever is demanded of him as the condition of his gratifying them, is, in a certain sense, a weak man when compared with his temperate neighbor to whom nothing is a necessity. The very same impulse which leads us to levy upon the weak rather than the strong will justify making the consumer of whisky pay more than his share of the expenses of government.

The third class of taxes we have to consider are those levied on accumulated capital, or on the accumulations of the past in whatever form they may happen to be. The great difference between the effect of such taxes, and of those levied on production simply, consists in this : the tax on a thing produced is paid once for all, and the owner can thereafter hold it free for ever, while, when capital is taxed, the owner has to pay a perpetual annual penalty to the Government for possessing it. When, however, we consider the interest which all accumulated capital is assumed to be earning, we may regard this difference as one of degree rather than of kind. Excepting those luxuries which will both morally and economically pay a heavy excise, a tax of five per cent. on domestic productions would probably be considered a very heavy one. If, then, capital were taxed at only five per cent. on the net rate of interest it might be supposed to earn, the two classes of taxes would be equalized. Judging from the rate at which the public is now anxious to take Government four per cent. bonds, the actual net profit on capital, after deducting the expense of management and the risk, is only from four to six per cent. Five per cent. of this would be only from two to three tenths of one per cent. per annum. Such a tax would, however, among us, be considered an extremely moderate



one. It is evident that, if the tax is equal to the whole rate of interest on capital, the producer is left no motive to accumulate, since all the results of his savings are seized by the Government, unless, indeed, he is able to add his tax to the regular rate of interest on capital. When he can do this the tax is distributed, just as it is distributed when taxed articles are sold at a higher price.

We have, then, to consider to what extent and under what conditions the capitalist who is taxed can collect his assessment from those whom his capital supplies. To reach an intelligent and well-grounded conclusion on this point, we must inquire into the circumstances which determine the accumulation of capital.

Considering an individual member of society as seeking merely his own gratification, the fact is very generally overlooked that the motives impelling him to save are not so urgent as those impelling him to consume. This is because he has no immediate motive to save, for the simple reason that, under our system, he can avail himself of the savings of others by paying the current rate of interest. If he is not able to build himself a house, he can rent one belonging to another at so low an annual rental that, considering simply his own chances of life, and of the future enjoyment of anything he might save, it will hardly pay him to save money to build a house. The same remark applies to nearly every form which the accumulations of past labor may take in order to be made useful at the present time. That propensity of the civilized man which is so commonly considered the essence of selfishness, the propensity, namely, to accumulate wealth, is in its actual effects more beneficent than any other human impulse. As a general rule, the most charitable purpose to which a man can put his money is to find for it the best paying investment he can. The interest which it pays him is an index of the amount of good his money is doing to his fellow men, and the more he receives the greater the good to others. When, in familiar parlance, he "spends his money freely," he spends it all on himself; when he invests it he allows others to reap all the benefits of it. Leaving out the morbid propensity to accumulate coin, which is now nearly unknown in civilized communities, the only motive one has for accumulating is the interest which he is thus to gain. When one comes into possession of a sum of money it is entirely optional with him to spend it on his immediate personal wants, of which he has a great number ungratified, or to save it for the future. If he can gain no interest on it, it is clearly better for him to enjoy it now while he can, because, at the best, he will get

no more enjoyment out of it in the future, and may in the mean while lose it entirely—or die, and thus fail to enjoy it at all.

It is a curious fact in this connection, to which I have before called attention in this "Review," that the rate of interest has never permanently fallen much below the limit at which a young man would no longer be able to gain an interest equal to his capital during his probable life. Thirty or forty years ahead is about as far as the average man appears to look when he considers whether he shall enjoy his earnings now or save them for the future.

A general conclusion from this view of things is that the immediate cause of the increase of capital is the interest which may be gained upon it. Lessening this interest by a tax, we lessen the motive to accumulate in a far greater ratio than we would lessen the disposition to produce by levying a corresponding tax on production. The reason is that, to the individual, accumulation is less necessary than production.

Therefore, looking at the matter in the broadest light, the result is that a tax on accumulated property may be considered as paid by the owner, or by the public who get the benefit of the capital, according to our point of comparison. The capitalist may not be directly able to charge a higher rate of interest, and thus, considering only the immediate effects of the tax, he may have to pay the whole of it himself. But the result of this will be that the increase of capital will be discouraged; a scarcity will then result which will raise the rate of interest; and it may happen that the scarcity will continue until this rate is increased by the whole amount of the tax. It is of course impossible to lay down any exact law of the subject, like that which governs production. The very fact that the increase of capital is very slow and includes the work of a whole generation in its scope, renders our conclusions a little indefinite. But I think there can be no reasonable doubt that taxes on accumulated property do in the main act in this way. And, a point especially to be borne in mind is, that in our reasoning we have supposed the tax to be levied on capital universally, without any exception whatever. Of course, a tax levied specially upon capital employed in certain designated ways might be wholly or partially transferred to the consumers of the product in the same way as a tax on production.

SIMON NEWCOMB.

# PRINCE BISMARCK, AS A FRIEND OF AMERICA AND AS A STATESMAN.

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## PART II.

PRINCE BISMARCK passes for a man of inflexible character, self-assured, without ever a doubt or scruple concerning either his aims or his results. Many suppose that he must look back upon his deeds and creations as on the seventh day God the Father contemplated the world he had made. This I will not dispute. But he has also hours of weakness, moments of apparent or real dissatisfaction with his own performances or with his fortune—sad, or rather depressed moods, which take the form of despondency. The strong Prince Bismarck is then transformed into a wearied Prince Hamlet. Anon he strongly reminds us, in certain respects, of Achilles sulking in his tent before Ilion, or of the exclamation of the preacher, Solomon: "I looked on all the works that my hands had wrought, and on the labor that I had labored to do; and behold all was vanity and vexation of spirit, and there was no profit under the sun." It may be that these moods are the expression of a mystic process in his soul, of a sentiment akin to that of the philosopher who said, "The more I know, the better do I see how little I know"; but, possibly, too, they are simply the result of physical causes, over-excitement, exhaustion, disturbance of the nervous system.

One evening at Varzin, after contemplating for a while the darkening horizon, he complained to us that he had derived little pleasure or satisfaction from his political labors, which had won for him no friends, which had brought happiness to no one, either to himself, to his family, or to others. We expressed dissent, but he went on to say that "on the contrary, they had made many unhappy. But for me three great wars would not have occurred, eighty thousand men would not have fallen in battle, and parents, brothers,

sisters, widows, would not have mourned." "Nor sweethearts," some one added. "Nor sweethearts," he repeated, in monotone. "That, however, I have settled with God. Still I have reaped little or no happiness from all that I have done ; but, on the contrary, much vexation, anxiety, weariness, and ill usage." He continued for a time in the same strain. The rest of us were silent, and I was surprised. Subsequently I learned that of late years he has repeatedly expressed himself to the same effect.

In his correspondence, too, we find evidences of this Hamlet mood, and at a rather early period of his life. When, in 1859, Austria was defeated in the war with France and Italy, and Prussia was preparing to help her, Bismarck, who rightly thought that no good would come of it, but who, at that time holding a subordinate position, was unable to revoke a step that afterward was rendered unnecessary by the Peace of Villafranca, wrote as follows : "God's will be done ! but the whole thing is simply a question of time. Nations and individuals, folly and wisdom, war and peace, come and go like the waves, but the sea remains. Truly, there is in this world nothing but hypocrisy and jugglery ; and whether it is a fever or a bullet that does away this mask of flesh, off it must come, sooner or later, and then an Austrian and a Prussian will be so much alike, provided they are of the same stature, that it will not be easy to distinguish them. Even fools and wise men, when reduced to skeletons, are very much alike. This consideration, it is true, does away with special patriotism, but even now we should be driven to despair were our happiness to depend on that."

We find in these utterances much that points toward a characteristic trait, which forms the groundwork of the whole nature and action of our hero, and on which I propose to throw a little light. In him, the sense of the vanity of all human and earthly things is associated with the belief that beyond them or within them is a Something higher, a firm, everlasting stay and comfort for toiling, fighting, suffering man ; above the incessant changes of terrestrial things, a divine loadstar that never quits its place, whose light is unalterable ; on this he must keep his eyes ever fixed if he would at all times find the right way to that which will afford peace and safety to himself and to those for whom he labors, and fights, and suffers. In other words, Bismarck is a God-fearing man who seeks his strength in religion, who bases his political action upon religion, and who lives in the conviction that death is only the passage into another life, for which the present should be a preparation.

On his first appearance upon the stage of politics he expressed this conviction in the most definite terms. On June 15, 1847, he made a speech in the Landtag, in which, among other things, he said: "I am of the opinion that the idea of the Christian state is as old as the *ci-devant* Holy Roman Empire, as old as any European state; that it is the very soil in which those states struck root; and that the state which would have its permanence insured, which would even justify its own existence, must rest on the basis of religion. To me, the words 'by the grace of God,' which Christian potentates put after their names, are no empty sound; but, therein, I see the acknowledgment that princes desire to wield the scepter which God has intrusted to them in accordance with his will. But I can only recognize as God's will what is revealed in the Christian gospels; and I hold that I am justified in calling that a Christian state which sets itself the task of realizing the teaching of Christianity. If a religious basis is recognized for the state at all, that basis, in my opinion, can only be Christianity. Take away from under the state this religious basis, and you have only a casual aggregate of rights, a sort of bulwark against the war of all against all—an idea entertained by the older philosophy. But then its legislation will not refresh itself at the primal fount of everlasting truth, but will conform itself to the vague and fluctuating notions of humanity that happen to be current at the time in the minds of rulers. In such a state I do not see how communistic ideas about the immorality of property, and the high ethical value of theft as an attempt at restoring man's original rights, can be denied the opportunity of asserting themselves whenever they feel in themselves the power to do so. Such ideas are esteemed rational by those who hold them; indeed, they are regarded as the highest result of human reason. Let us not, therefore, gentlemen, derogate from Christianity in the eyes of the people by showing them that it is not essential for their law-givers;\* let us not deprive them of the comforting assurance that our legislation has its source in Christianity, and that the state aims at the realization of Christian teaching, though it may not always attain that end.

Thus Bismarck held that a state without a religious basis is unthinkable, that the religious basis of European states is Christianity, and that their object is the realization of Christian sentiments and of Christian habits of living. The justness of these

\* The matter under debate was the conferring of active and passive electoral rights upon Jews.

propositions is indisputable, though the orator did not make proper application of them at the time. It did not follow from the Christian character of the modern state that people must uphold an arbitrary theologico-political system which in the reign of Frederick William IV had identified itself with the idea of a Christian state and had usurped its name. Bismarck held this erroneous opinion then, but subsequently he repudiated it together with other errors of his youth. But what gives special significance to this speech is the stress he lays upon revelation in view of the instability of earthly truth. Here we discover a marked feature of his character. Certitude is vital air for the hero, and creative action is impossible if the convictions of the worker do not rest on the firmest foundations. Luther's whole nature finds expression in the first verse of his hymn—

“Ein' feste Burg ist unser Gott.”

There have been heroes who presumptuously or under the guidance of unconscious necessity have found in themselves the law of their conduct, and then would fain make that law the law of their nation, or, like Napoleon I, of all nations. Other heroes have taken the moral code, the conscience, of their countrymen as the rule of their own life and conduct: of these is Bismarck. But God dwells in the conscience of nations. With him, Kant's “Categorical Imperative,” the leader of Prussian and German politics has triumphed over all hindrances to his great reformatory work. With eyes steadily fixed on him, and through intimate communion with him, who is the source of all fidelity to duty and of all moral power, he has gone on from victory to victory.

Thoughts of like tenor with the above have been again and again expressed by the Chancellor during his maturer years, both in public and in private life. When in March, 1870, there was a debate in the North German Reichstag on the abolition of capital punishment, Bismarck spoke against a measure dictated by the humanitarianism of the day. “If,” he said, “I were to represent the impression the debate has made on my mind, I should say that the opponents of capital punishment overrate the value of life in this world and ascribe too great significance to death. I can understand how the death-penalty should seem harder to one who does not believe in a continuance of the individual life after the death of the body, than to one who believes in the immortality of the soul he has received from God. But when I consider the question more

closely I can hardly accept even this view. For him who possesses not the faith which I from my heart confess, that death is a passage from one life into another, and that it is competent for us to give to the worst criminal on his death-bed the comforting assurance, *Mors janua vitæ*—for him who shares not in this conviction, the enjoyments of this life must have such value that I almost envy him the sensations they yield to him. His occupations must produce for him results so satisfactory that I am unable to enter into his feelings when, fully assured that his personal existence terminates for good and all in death, he finds it worth while to live on.”

The orator made an allusion to Hamlet’s soliloquy, and then quoted a passage or two from Schiller. “I have felt to-day,” he said, “that the saying of the poet, ‘Und setzet ihr nicht das Leben ein, nie wird euch das Leben gewonnen sein’,\* and that other saying, ‘Das Leben der Güter höchstes nicht ist,’† have among us fallen into oblivion, buried in a wilderness of what, in my opinion, is a false sentimentality.”

These judgments, I take it, pronounced by this man in a tone of unalterable conviction, place before us a character that recalls the nobility and the grandeur of the ancients, and the hearty contempt of the world shown by the early Christians, when with serene composure they entered the horrid *cavea* of the Colosseum, whence there was no return. Amid his temporal concerns ever mindful of eternity; by his faith in this ever armed against vicissitude; a calm, tranquil personality, a mariner directing his course by an unerring compass—such is Bismarck; and in truth only such a genius could achieve success where hitherto the German people had wrought in vain, where many eminent men had striven to no purpose, where so many valiant Germans had sacrificed that which, though not the highest, is still a high good.

Even within the last few years Bismarck has made public profession of the same principles which he first declared thirty years ago. He is no longer by any means the representative of the hierarchical orthodox party, but he is as he always was a sincere Christian. “Christianity, not creeds,” said he to me on the 5th of October, 1878. He seldom goes to church, perhaps out of regard for his health; but in 1870, before going to the war, he felt the need of nerving himself for the combat by partaking of the Lord’s Supper. Further, I would quote one remark made by him on October 9, 1878,

\* If you do not plant life, you will never reap life.

† Life is not the highest good.

in the debate upon the socialist law : "If I were to accept the belief held by these people—For myself I will say that I lead a busy life, my position is satisfactory, and yet all this could not inspire me with the wish to live another day were it not that I possess that which the poet calls 'a faith in God and in a better future.' Rob the poor of that, and you predispose them for that weariness of life which finds expression in deeds like those we lately witnessed."

But Bismarck gave the strongest and the most emphatic proof of his strictly religious mind and heart on that memorable evening at Ferrières, as recorded in my book, "Graf Bismarck und seine Leute" (vol. i, p. 208). I will here recount rather more in detail the main points of that conversation.

It was September 28th, and we were at dinner. The company had been talking of matters more or less indifferent, as pheasant-shooting, champagne-punch, etc., when the Chancellor turned the conversation to graver topics, and at last began a longer discourse, suggested, as to the metaphor with which it began, by a spot of grease on the table-cloth ; and which at times assumed the character of a dialogue between the Chancellor and his kinsman, Herr von Katt, who sat beside him. Bismarck said—and I report him *verbatim*, for I took down his remarks stenographically : "The grease-spot (*scilicet*, the feeling that it is a noble thing to die for country and honor, even without recognition) is sinking deeper into the people now that it is soaked with blood. The corporal has essentially the same sense of duty as the lieutenant and the colonel, that is to say, among us Germans. With us this runs through every stratum of the nation. The French are a mass easily brought under the control of one man, and are then a great force. With us, each one has a mind of his own ; but when, as now, Germans are in great numbers of one mind, they can be relied upon for mighty enterprises. If they were *all* of one mind, they would be omnipotent. . . . The sense of duty in a man who submits to be shot dead, alone, in the dark (meaning, no doubt, without thought of recompense or glory for steadfastly holding the post assigned to him—without fear or hope, and with eye single to his duty), this the French have not. It comes of the residuum of faith in our people—of the fact that I know there is One who sees me, even when the lieutenant sees me not."

"Do you believe, Excellency, that they really reflect on this?" asked the Landrath von Fürstenstein, one of the guests.

"Reflect? No ; it is a feeling, a humor, an instinct—what you



please. If they reflect, it is gone ; they argue themselves out of it. How, without faith in a revealed religion, in God who wills what is good, in a Supreme Judge and a life to come, men can live together harmoniously, each doing his duty and letting every one else do his, I do not understand."

Here the Grand Duke of Weimar was announced. "I believe that he, too, will be revealed," said the Chancellor, laughing ; "but let him wait." Then he went on talking for a good quarter of an hour longer, departing now and then from his proper theme, and oftentimes repeating the same idea in different words. "Were I no longer a Christian, I would not remain an hour in the King's service. If I did not obey God, if I did not count upon him, I should certainly pay no homage to earthly masters. I should have to live, of course ; I should be in a good enough position, and should have no need of them. Why should I fret and toil unceasingly in this world, and expose myself to perplexities and ill usage, if I did not feel that I must do my duty ? I have a firm, unshaken faith in a life after death—therefore am I a royalist, otherwise I should be a republican. If I did not believe in a divine order which has destined this German nation for something good and great, I would forthwith go out of the diplomatic business, or I would never have entered it. To what original to ascribe the sense of duty I know not, except to God. Orders and titles have no charm for me. The firm stand that for ten years I have taken against all possible absurdities of the court I owe purely to my decided faith. Take from me this faith and you take from me my country. If I were not a Christian and a firm believer, if I had not the miraculous basis of religion, you would never have had such a chancellor. Give me a successor on this basis, and I retire at once. But I am living among heathen. When I say this, I do not mean to make proselytes, but needs I must confess this faith."

"But," said Katt, "surely the Greeks and Romans practiced self-denial and devotion—surely they had a love of country and did great things with it ; and many people now," he was convinced, "do the same thing from patriotic feeling and the sense of belonging to a great unity."

The Minister replied : "This self-denial and devotion to duty toward the state and the King is with us only a relic of the faith of our fathers and grandfathers in transformed shape—more indistinct and yet active, faith and yet faith no longer. . . . How gladly I should be off!" he continued ; "I delight in the woods and in

nature. Take away from me my relation to God, and I am the man to pack up to-morrow and be off for Varzin to grow my oats. I have then no King, and why? If it were not God's command, why should I submit to these Hohenzollern? They are a Swabian family no better than my own, and I should have no interest in them."

From this, in the best sense of the term, *religious tone* of our hero's whole nature—a feature in which he strongly reminds us of Cromwell—springs another of his characteristics, which I might describe as the expenditure of his entire personality upon the tasks assigned to him: he pays, or rather prepays, for his results by entire self-devotion. On the 7th of April, 1878, I had the honor of dining with the Chancellor, and, in the course of conversation, he called himself an old man. The Princess would not let this pass, so she remarked, "You are only sixty-three years of age." He replied, "Yes, that is true, but I have always lived fast, and on a cash basis" (*baar*). Then, turning to me, he added: "*Baar*, that is to say, I have always thrown my whole self into whatever I did, and have paid for it in health and strength."

But Bismarck's religion is not obtrusive. He makes no parade with it, like certain Pharisees, and his piety is free from intolerance, and from the desire of imposing upon others his own faith, or a behavior approved by the dominant Church. Very distinctly he condemns all constraint in such matters. He has never made war on Catholics as such. He has always only in so far opposed them, and made them to feel the weight of his arm, as they have avowed themselves Ultramontane, and have inscribed on their banners, and striven to make effective, the right of Rome to rule in Germany, and the competence of the Church to invade the sphere of the state. He is neither intolerant nor bigoted.

A conversation at St. Auld on the question how the United States could tolerate the Mormons with their polygamy led him to express his opinion on the subject of religious liberty in general, which he advocated very strongly; but, said he, it must be impartial and reciprocal. "Every man must be saved in his own way," he said; "I will urge this some day, and the Reichstag will certainly approve. But the church property must, of course, remain with those who stick to the old Church to which it belongs. The man who goes out must be ready to sacrifice to his conviction, or rather to his unbelief. It is not taken in bad part if Catholics are orthodox, not at all if Jews are so; but orthodoxy in Protestants

gives great offense, and the Church is constantly decried for her persecuting spirit if she expels the unorthodox. Then, when the orthodox are persecuted and derided in the press—which in Germany is unfortunately in the hands of Jews—and in society, people think that is just as it ought to be.”

At Versailles the same subject was up for discussion one evening at table, and again the Chancellor distinctly declared himself to be in favor of toleration in religious matters. “But,” he continued, “the *illuminati* are not tolerant. They persecute those who believe, not indeed with the stake, for that would not do, but with contempt and insolence in the newspapers; and among the people, so far as they belong to the party of unbelief, toleration has made but little way. I should not like to see how delighted they would be here to have Pastor Knak\* hanged.” The conversation now turned to the strict observance of Sunday in England, and the Minister declared the Sabbath rest to be good. As a proprietor he did what he could to make Sunday a day of rest from labor on his estate, only he did not wish to see people coerced. “Every one must know,” said he, “how he should best prepare for the future life. On Sunday no work should be done, not so much because it is against God’s command, as on man’s account, who needs recreation, and must have opportunity for attending to his spiritual affairs. . . . This, of course, does not apply to the service of the state, above all not to the diplomatic service, for dispatches and telegrams arrive on Sunday that must forthwith be attended to. Neither is anything to be said against our peasants bringing in their hay or corn on Sunday in the harvest after long rain, when fine weather begins on a Saturday. I could not find in my heart to forbid this to my tenants in the contract, although I should not do it myself, being able to bear the possible damage of a rainy Sunday. It is thought by our proprietors improper even in such cases to let their people work on a Sunday.”

I mentioned that pious folk in America allow no cooking on Sunday, and that in New York I was once asked to dinner, and got only cold victuals. “Yes,” replied the Chancellor, “in Frankfort, while I was still freer, we always dined more simply on Sunday, and I never used my carriage, for the sake of the servants.”

One day (it was in 1876, I think) the Chancellor went out for a ride along the boundary of his Varzin estate. To his great surprise he saw, though it was Sunday, a number of men at work in the

\* A leader among the orthodox in Berlin, since deceased.

fields with hoe and spade. "What men are those?" he asked of his overseer. "Our laborers, your Highness," was the reply; "we can not spare them in the six week-days, and now they must work their own fields on Sunday." The Prince rode home, and there immediately wrote a note to all the overseers of his estates to the effect that the cultivation of the laborers' fields should always precede that of his own, but that in future he would not permit any work to be done on Sunday. The result was that the laborers did what was necessary for their own fields in two or three days, and then went cheerfully to work on those of the Prince, so that the head overseer was soon able to report that never before had the field-work been done so quickly.

Bismarck does not favor the efforts made to introduce among us parliamentarism, as in England—not from principle, but because he holds it to be not the only system of government that promotes the happiness of the people, and because it is not adapted to Germany, inasmuch as the conditions do not exist here, where, instead of only two political parties, we have half a dozen. But he is a sincere constitutionalist, and, during the conflict, his action was, on the whole, constitutional.

His general principles of internal policy he very plainly expressed to the Frenchmen who dined with him at Versailles on January 30, 1871. He said that consistency in these matters, i. e., politics, often becomes simply blundering obstinacy and self-will. One must be guided by facts, by the way things lie, by the possibilities—taking into account the conditions, and serving his country according to circumstances, and not following one's own opinions, which are often simply prejudices. When he first entered political life, as a green young man, he had very different ideas and aims from what he had now. But he had changed his mind after thinking the matter over, and then had not shrunk from sacrificing his own wishes, if anything was to be gained thereby, to the necessities of the day. One must not force one's own inclinations and wishes upon one's country, he further remarked; and then concluded, "*La patrie veut être servie et pas dominée.*" This last remark exceedingly pleased the Frenchmen, who pronounced it true and profound. Still, one of them objected that this would subject genius to the will and opinion of the majority—though, as a rule, majorities have ever had but little understanding, little knowledge of affairs, and little character. The Chancellor very neatly replied, saying that his sense of responsibility to God was his guiding star, and declaring "*devoir*" to be a

higher and a more powerful principle than the "droit du génie" which his French visitors had lauded.

About this same time he remarked to us: "Favre has no idea how things go on our side. He has again and again reminded me that France is the land of freedom, while despotism reigns among us. I had told him, for instance, that we wanted money, and Paris must procure it. He thought we might raise a loan. That could not be done, I replied, without the Reichstag or the Landtag. 'Oh,' said he, 'you surely could raise five hundred million francs without the Chamber.' 'No, nor five francs,' I replied. He could not believe it. But I told him that I had passed four years of struggle with our popular representatives, yet it had never occurred to me to raise a loan without the consent of the Landtag; at that point I had ever halted. This seemed rather to alter his opinion; but his only remark was that in France *on ne se générerait pas*."

The conflict which arose out of the question of army reform in the years preceding 1866 produced an unpleasant state of things. It was impossible to tell the Prussian representatives that we were in this way making ready for a policy of action. The new Minister did not fail to throw out hints in a general way, but he must needs speak very plainly, and disclose his plan in detail, if he would convince and win to himself his opponents in the House of Deputies, which was, of course, quite impossible. Bismarck, therefore, be-thought him of a rather strained interpretation of the Constitution. "The budget," he said, "is a legislative act, and for such act three factors are required, to wit, the House of Deputies, the House of Lords, and the Crown. Now, if one of these three refuses assent, as in the present case, there is no budget. But the state can not stand still, and hence, in default of a budget, the Crown must dispose of the public moneys." This interpretation was correct down to the conclusion. Certainly the state must endure, even when there is no budget, but the Crown is not, therefore, constitutionally empowered to originate fundamental remedies. If the good of the state demands innovations, and the representatives of the people withhold their assent to them, then such innovations must be made on the responsibility of the Ministers, until the country has changed its mind and given assent. And it is well when the conversion is not too long delayed. So it was with army reform and the strife it called forth. When the victories of 1866 had converted the country, Bismarck, who at the same time had, in a measure, gained a victory over the opposition at home, in strict conformity with

constitutional usage, asked the Landtag to grant indemnity—that is, he now repudiated the theory that, whenever the budget is rejected by the House of Deputies, the Crown acquires unrestricted power to make organic innovations. It was, however, fortunate that before internal strife had resulted too seriously, chance gave occasion for a foreign war. In all this it was only dreamers who thought of a revolution. “Revolutions,” said the Chancellor, “are, in Prussia, the work of the kings alone.” Nevertheless, had these internal dissensions lasted much longer, and the popular mind in Prussia been so estranged from the Government as to threaten such an uprising as that of 1866, it would have been unfortunate for Germany, and indeed for all Europe.

With justice does the Chancellor object to deputies who look on their parliamentary avocation as their only business, as a trade; and it is mainly on this account that he refuses to grant a salary to members. He has repeatedly called attention to the peril of such a degradation of the office of a representative. Thus, in January, 1869, speaking in the Prussian Landtag of the difficulty of finding capable men who can amid their ordinary occupations find opportunity to fit themselves successively for the Landtag, the Zollparliament, and the Reichstag, he said: “Before long, men will make a trade of being representatives, as of being doctors or lawyers. The result will be that we shall have a special class, that of the popular representative, who gradually will come to resemble more closely a bureaucratic element than a body representing the country and in intimate communication with the people. Such men, when they fail of election to Parliament, have nothing else to do but to travel.”

In this connection I recall further the speech of May 8, 1879, in which the Chancellor, while defending his project of customs reform, remarked to the Deputy Lasker that his policy was that of a man without property. He then went on as follows: “He is one of those gentlemen who hitherto, at every step in our law-reforms, have been a majority, and of whom the Scripture says that they sow not, neither do they reap; they neither spin nor weave, yet are they clothed and fed. In other words, it must be confessed that the majority of our law-makers is made up of men who are engaged neither in manufactures nor in agriculture; and such men easily lose whatever little sympathy they may have with the interests here represented by the Government. These non-producers in our Parliament, these law-makers who live on salaries, fees, pensions, or annuities, who belong to the press, law, medicine, or other learned

professions ; but particularly the party leaders who, through their eloquence and their influence over their colleagues, are wont to control the majority, and who, year in and year out, devote themselves to this business partly through the press, partly in Parliament—these men surely ought to know that projects which have their origin in the bureau or in theory must necessarily be faulty unless they are aided by some experience and practical sense. Then, too, they ought to take to heart the maxim '*Noblesse oblige*,' for he who has thus for years enjoyed power in the legislative hall must think of the one who serves as the anvil when the hammer of legislation falls."

The Prince is equally justified in his opposition to the *doctrinaire* jurists who make their presence felt in our Parliaments. These men are dominated, or at least powerfully influenced, by the erroneous belief that all questions which touch upon their province, and in particular all constitutional questions, can be solved by the application of formal rules ; and not only the Party of Progress, but also certain leaders of less radical factions, as Lasker, Bamberger, and Von Forckenbeck, are inclined to compress the fullness and complexity of our national life within the limits of dead-letter law. In other words, jurisprudence takes too prominent a place in the ranks of our liberal parties, and the tone of the debates reminds one of a lawsuit into which the not very intelligible dogmatism of speculative professors is injected. As Herr von Benningsen, a leader of the National Liberals, and himself a jurist, remarked to me a few years ago, "Our Liberal movement is mainly an effort of the lawyers to win a higher position." He had reference to Hanoverian lawyers, but we need only glance at the important part played by this class in our whole political life to see plainly that the remark applies to all Germany. I think highly of lawyers and professors as a class ; but a teacher whose words his pupils must accept without question soon comes to think himself infallible ; and experience proves that the lawyer who is always engaged on one side in politics is apt to become obstinately dogmatic. This is, unhappily, the characteristic of the eloquence of our Parliamentary debaters, who, instead of transacting business in a rational way, are constantly engaged in petty disputes with the Chancellor. Idealists who have no practical intercourse with the people have, in the different parties, acquired an influence that is positively baneful. The consequence is, that the decision of questions of the highest importance for the welfare of the people lies in the hands of professional poli-

ticians, intriguers, and leaders of coteries. Many of the speeches made in our Reichstag are no better than those of the National Assembly of 1848—a flood of words with little sense, for the most part mere rhetorical pugilism that attacks all sorts of subjects with ready-made theories and catchwords, and that always must have the last word.

Nor is there any comfort in the fact that this phenomenon has still worse consequences among some of our neighbors—in Italy, for example, where the Minister is in the habit of giving up the field to the lawyers; for the same thing might happen here were the Government less firm than it is at present. But the “Rechtsstaat” (jurist-state), which a large proportion of our representatives from the bar and from the bench have more or less distinctly in view, inasmuch as it is purely juristic, and gives to jurists all the power, would be exactly the reverse of that which its advocates in the Parliament, and the press are striving for, or think they are striving for. It would disfranchise and disqualify all powers and classes which exist in the state alongside of the legists, and which have as good a right to have views and interests of their own. The attempt to set up a jurist-state, therefore, is in no wise better or more just than would be the attempts of theologians to set up a state on strictly theological principles, of the Vatican to make the Church supreme in political affairs, or of any class of men to constitute a state in which the feudal lord or the merchant should decide what may be done and what may not be done. It was surely well and truly said, ‘*Justitia est fundamentum regnorum.*’ Law, right, is the corner-stone of the state. But its creating and living power is something else, and *jurisprudence* has no valid claim to be regarded as the basis of the state. That creative force is, on the contrary, the natural life as a whole. Statesmanship fashions and shapes its products, and political science notes these products, grouping them in harmonious series.

Prince Bismarck, being a thoroughly candid statesman, loves candor in others, and is the sworn enemy of all simulation, all empty show, all mere phrases. He abhors florid oratory, and I have often heard him condemn the pomposity of most diplomats. Von Gergern, at one time so famous, was in his eyes a man with the mien of Jupiter, signifying nothing—a “phrasengiesskanne” (phrase-watering-pot). Jules Favre, who strove to bring into diplomacy the arts of an advocate—the impressive gestures and the high-flown oratory—was for him a comic actor. It was a delightful description



he gave us on January 31, 1871, of Waldeck, the great light of the Berlin Democrats: "He reminds me of Favre; always consistent, true to his principles, with his opinion and conclusion made up beforehand; then a stately presence, venerable white beard, voice deep from the chest, even when he speaks of trifles. All this is quite effective. He would deliver a speech in a voice quavering with earnestness, to tell you that the spoon remains in the glass, and would proclaim any man a scoundrel who did not agree with him. Everybody would declare his assent, and laud his forceful sentiments." When General Reille told him, after the battle of Sedan, that the French would blow up themselves and the fortress rather than submit to our hard conditions, the Chancellor dryly replied to this pathetic phrase, "*Faites sauter.*"

The first time I ever spoke to the Chancellor was on the 24th of February, 1870, and he asked if I knew what was the order of the day in the Reichstag. I said "No," adding that I had had too much to do to notice what was in the newspapers. "Well," he replied, "the question was about the mooted admission of Baden into the North German Confederation. Why can not people wait for that event to come about of itself? They must treat everything from a partisan point of view and as speech-makers! It is most unpleasant to have to answer such speeches, I might say such prattle. In fact, it is with these oratorical gentlemen as with many ladies who have small feet which they are always displaying in shoes much too small for them. We have the German question in good train now; but it has its own time—a year, perhaps five years, possibly even ten. I can not make it advance any quicker; no more can these gentlemen, with all their powerful and emotional eloquence."

Quite characteristic of his way of dealing with such matters were the remarks he made in our hearing at Versailles on the evening of February 2, 1871. He told us that during the day he had been to St. Cloud, and that on the way thither he had met many people with household utensils and beds, probably returning inhabitants of the villages around Paris, who, during the siege, had fled from their homes. "The women looked quite friendly," he observed, "but the men, on seeing the Prussian uniform, assumed a hostile expression and a heroic attitude. This reminds me of the old Neapolitan army which had a word of command that ordered the men to assume a like attitude. Where in our army the command would be, 'Arms to the charge, right,' in the Neapolitan army it would be, 'Faccia

feroce,' i. e., *look savage*. With the French everything lies in a magnificent attitude, a pompous speech, and an impressive, theatrical mien. If it only sounds right and looks like something, the meaning is all one. They are like the Potsdam burgher and freeholder who once told me that a speech of Radowitz had touched and affected him deeply. I asked him if he could point out any passage which had specially gone to his heart or seemed particularly fine. He could not name one. Thereupon I read the whole speech to him, and asked him what was the affecting passage. It turned out that there was nothing of the sort there, nothing either striking or affecting. In short, it was nothing but the manner and attitude of the orator, which looked as if he were saying the deepest, most interesting, and most striking things—the thoughtful glance, the devout eyes, the voice full of tone and weight. It was the same with Waldeck, though he was not so able a man or of such distinguished appearance. . . .

“The gift of oratory,” he continued, “has done much mischief in Parliamentary life. Much time is wasted because every one who fancies he has any ability must have his word even when he has nothing new to offer. Speaking is too much in the air, and too little to the point. Everything is settled beforehand in committee; hence what is said in the House is for the public and the reporters. The sole object is to exhibit before the public the orator’s power, and to be praised by the newspapers. But the time is coming when eloquence will be looked on as a faculty hurtful to the common weal, and a man will be punished who allows himself to be guilty of a long speech. But we have one body which admits no oratory whatever, and which nevertheless has done more for the German cause than any other, namely, the Council of the Confederation. True, I remember that at first some attempts were made in that direction, but I put a stop to all that, though properly I had no right to do so, albeit I was President. I said to them something like this: ‘Gentlemen, we have nothing to do here with eloquence, with speeches intended to produce conviction, for every one brings his conviction with him in his pocket—that is to say, his instructions. It is simply a loss of time. I propose that we confine ourselves here to facts.’ And so it was; there were no more long speeches. We got on all the faster with business, and the Council of the Confederation has really done a great deal.”

That the Prince has but a poor opinion of the abilities and the services of most of the members of the diplomatic corps, and that

he laughs at their pomposity and arrogance, is plain from sundry of his utterances. I cite only the following :

At Ferrières he told me a delightful story of the time when he was envoy of the Diet of the Confederation at Frankfort : "At both of the sittings of the military commission, while Rochow represented Prussia in the Diet, Austria alone smoked. Rochow would certainly have liked to do the same, but he did not venture ; besides, his king, who was not a smoker, would perhaps have disapproved of such conduct. When I came, I too hankered after a cigar, and, as I did not see why I should not have it, I asked the Power in the President's chair for a light, which seemed to give him and the other gentlemen both astonishment and displeasure. Plainly it was an event for them. That time only Austria and Prussia smoked. But the other gentlemen obviously thought the matter so serious that they reported it to their respective courts. The subject required mature deliberation, and for half a year only the two Great Powers smoked. Then Schrenkh, the Bavarian envoy, began to assert the dignity of his station by smoking. Nostitz, the Saxon, had also a strong inclination to do likewise, but as yet had not received permission from his minister. Yet when at the next session he saw Bothmer, the Hanoverian, indulging in the weed, he must—for he was intensely Austrian, and had sons in the Austrian army—have come to some understanding with Rechberg ; for he also now took out a cigar from his case and puffed away. Only he of Würtemberg and he of Darmstadt were now left, and they never smoked at all. But the honor and dignity of their states imperatively required it, and so at the next sitting the Würtemberger produced a cigar—I see it still ; it was a long, slender, yellow thing—and smoked at least half of it as a burnt-offering for the Fatherland."

One evening at Versailles the Chancellor happened to remark upon the reports of ambassadors and diplomatic agents in general, which, he said, contain nothing in a pleasing form. "It is space-work, written only because something must be written. Take, for example, the reports of our consul in Paris. As you read them you kept for ever thinking, 'Now something is coming,' but it never came. It was all very fine, and one would read on and on, but at the end it was found that in fact there was nothing at all in it." Mention was made of a military plenipotentiary, who had also figured as an historian, and of him the Minister said : "It was expected that he would render some service, and, as far as quantity goes, his

services were great. As regards form, too, the same may be said. His style is pleasing, would do credit to a novelist; but, while I peruse his reports, written in a fine, ornate hand, I find that despite their length there is nothing in them."

A few days later the conversation again turned upon diplomatic reports, and the Chancellor once more pronounced them to be for the most part of no value. "In great part they consist of paper and ink," said he. "The worst is when they make them long. With Bernstorff, one is used to his sending every time such a ream of paper with stale newspaper clippings. But when any one else writes a lengthy dispatch, one gets disgusted, because as a rule there is nothing in it. If people write history out of them, there is no proper information to be got out of it. I believe the archives will be opened to them after thirty years; they might be allowed to see them much earlier. Dispatches and reports, even when they do contain something, are unintelligible to those who do not know the persons and the circumstances. Who knows after thirty years what sort of a man the writer was—whether he saw and heard to good purpose, how he looked at things, whether he was partial or prejudiced, and whether he possessed the gift of reporting them clearly and accurately? And who has any intimate acquaintance with the persons of whom he writes? We have to know what Gortshakoff or Gladstone or Granville meant in what the envoy reports of his conversations with them. Better information may be gleaned from the newspapers, of which even governments avail themselves, and where people often say more plainly what they think. But there, too, we have to know the circumstances. The main points always lie in private letters and confidential communications, even by word of mouth, nothing of which finds its way into the records."

Since Bismarck assumed control of the Foreign Office and the external diplomacy of Germany, a very different spirit is noticeable in those circles. A vast deal of work is done in Nos. 76 and 77 Wilhelmstrasse, and the Prince himself sets a good example. The whole establishment, from top to bottom, is organized with a strictness that is almost military. Every one has to obey without question, and does obey without question or murmur, whatever he may think within his own mind. Everything moves and acts in obedience to *one* will, *one* mind, and all do what they can. The man who can not make himself the passive instrument of the genius who here toils, here commands, may go his way—there is no room here for him. There must be order, strict order, subordination, harmony,

so that the machine may do its work quickly and accurately. There must be no halting, no failure produced by the exercise of individual judgment. In times past, under an easy-going and feeble administration, things were different. Then every one pursued his own policy, and ambassadors not unfrequently did the same thing. But now that a teeming mind and a strong will are in control, and the highest interests are at stake, infractions of discipline are not tolerated. Every official, even the highest, has simply to obey orders, and must consider himself in the light of a dispatch-clerk, or as a colonel or captain under the general. The councilors are not expected to give advice, but are to act as members under the head, like the other members—the *chargés d'affaires*, ambassadors, and envoys—they have to put in execution his ideas, his views, and nothing else, with the aid of whatever knowledge or skill they may possess. Individualism and the necessity of one uniform policy go not hand in hand—a lesson which the proud and self-willed Harry von Arnim learned to his cost.

While I was employed in the Foreign Office, everything was done in its political section as in a regiment. About 10 A. M., occasionally later, seldom earlier—for the Prince worked far into the night, not going to sleep till toward dawn—a servant would announce in the central bureau, "The Prince is in the breakfast-room." That was the reveille, and the first signal for action given to the little army of the Chancellor, and he then received from the hands of the dispatch secretaries all sorts of communications coming per post or otherwise. Next came the announcement, "The Prince is in his work-room." The councilors who had business with the Chancellor could now be admitted to the presence of their chief, and the rest were notified to hold themselves in readiness to answer any summons from him. Lastly, about 10 P. M., in ordinary times, but not till late in the night when there was stress of work, the tattoo, "The Prince is in the tea-room," was sounded for those whom duty still held chained to their desks, among whom, when the Chancellor was in Berlin, was always found the faithful and ever-prompt Lothar Bucher. This brought the day's labors to an end. The workers departed, the window-shutters were closed, and the servants put out the lights.

In conclusion, it might be asked whether the German nation love the man who has raised them to political power and to high honor, who has placed them in the saddle and now expects them to ride with him in new ways; who has caused a new sun to rise for

them, brighter and fairer than any that illumined their path in past days. My answer is that many admire him openly, many others secretly in spite of themselves ; few love him, for few understand him. But they who do love him love him above all the world.

MORITZ BUSCH.

## RECENT LITERATURE.

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### I.

THERE is a kind of criticism which has in modern times come into fashion, of which Professor Goldwin Smith's "Cowper" is a fair example.\* As a condensed biography of the poet, his book may be of value to cursory readers, though we have failed to discover in it any fresh fact, or any evidence of original research. The materials which the author has employed were open to everybody, and were already familiar to every student of biography. Besides the somewhat heavy, and, we may say, stupid life by Hayley, we had already the very minute work of Southey; and, considering the entirely recluse existence of Cowper, we have sometimes thought it remarkable that we know so much of him, and are in possession of so many of the particulars of his singular and melancholy experiences. We owe this advantage—if it be an advantage—to the passion of evangelical persons for the smallest details of personal religion. Following the traditions which connect Newton, who is one of the saints of a special class of saintly persons, with the author of "The Task," these have pleased to regard the invalid and the hypochondriac as a wonderful example of the necessity of working out salvation with fear and trembling. Besides this, there have been unspeakable scandals circulated about Cowper, which we believe to be falsehoods, impure if simple. Professor Smith darkly alludes to this foolish gossip, but, if he has heard the worst of it, he does not say so.

It is doubtful whether the admirers of Cowper will be grateful for this new discussion of his infirmities. Surely, in such matters, there should be some law of limitation. What the poet did remain, and will remain while the English language is written, and some of it, of a proverbial kind, as long as it is spoken. But those

\* Cowper. By Goldwin Smith. New York: Harper & Brothers.

who love the tenderness of Cowper, his fresh and original relation to Nature, his kindly humor, his never ill-natured wit; those who have been charmed by his domestic life in its best aspects, and think of him as preëminently the poet of home and of the domestic affections; those who have found plenary evidence of his innate manliness in the strongest of his poems, and of his loving heart in the tenderest—may well ask to be excused from any further studies in morbid anatomy, from any further discussion of his weakness of body and of mind, from the prying curiosity which seeks to fathom the inscrutable, and from a renewal of the tragic tale of his infirmities. Evidently he was an invalid and a hypochondriac, with suicidal tendencies from the start. He had very old blood in his veins, and some of it was not of the best. His grandfather, the Chancellor, had been tried for murder. The poet was a weakly boy, and at Westminster School he had been ill treated. He was set to studying the law, because his grandfather had been a good lawyer, though nobody could have been less fitted for the profession than this timid and shrinking youth. At thirty-two he was a lunatic. There was an injudicious attempt to force him into the office of the Clerk of the Journals in the House of Lords, and he tried to kill himself because a horror of the publicity of the place had disturbed his intellect. Thus far, it will be observed, religion had nothing to do with his melancholy. Nor can it be held justly that it had anything to do with his subsequent despondencies. If he had remained a man of the world—if he had, at intervals, continued “to giggle and make giggle” with the London wits—it is more than probable that he would still have been subject to fits of despondency, though the remorse which he experienced would have been occasioned by secular rather than religious influences. He was a sick man all his life.

It is with pleasure that we turn from this melancholy view of Cowper’s character, and consider what a noble work he performed in spite of a hundred adverse circumstances. All here is fresh and beautiful. Usually he is cheerful, almost always he is vigorous; his poetic sense invested the homeliest natural and social objects with an exquisite charm, and he absolutely rescued English poetry from studied artificiality. Grateful for the pure enjoyment which his poetry gives us, let us try, at least while we read it, to forget that clouds and shadows were about him as he wrote, and that he smiled at the world through his bitter tears! Let us not suffer impertinent and over-curious discussion to disturb our appreciation



of one of the sweetest, most scholarly, and most vigorous of English poets !

## II.

SPECIMENS of the English poets, selections from their works with brief biographies appended, are not a novelty in literature. The work has before been done by Anderson, by Dr. Aikin, by Hazlitt, and by Thomas Campbell, some of whose critical notices are among the best things which ever came from the pen of that singularly unequal writer. We have here another book of "Elegant Extracts," in the matters of taste and critical judgment superior, perhaps, to any of its predecessors.\* Mr. Matthew Arnold, in his introduction, goes over the whole ground of what are and what are not English classics, and is particularly ample in his criticism of Chaucer and of Burns, while he has a good deal to say of what poetry is, and of how it should be read, with other writing of that speculative character of which the present generation of readers seems to be specially fond. Notices of the other poets are by other writers of greater or less reputation. All of them appear to be carefully written. And the plan, it is evident, has great advantages. A single editor, bringing to his work preconceived notions, and his preferences, if not his prejudices, might easily fall into unintentional injustice, while experience has amply shown that the general effect of his researches might be monotonous.

The exact value of compilations of this character is a little doubtful. To the thorough and earnest student it is necessarily small. Poets are not to be judged by tid-bits, and great works must suffer by this sort of dissection. Perhaps no writer can be fairly estimated by "specimens" of his production. He would have a right to say, if he could speak to the matter, that the interposition of a middleman to tell the reader what he is and what he is not to admire, is impertinent. If poetical literature shall increase in bulk in the future as it has in the past, and is still increasing at present, some guide will become absolutely necessary to those who would not waste precious time. The worst of "specimens" is, that they can give no idea of the artistic proportions of the great works from which they are rudely severed. They are incomplete, however complete in themselves they may appear to be. It might be cruel to ask anybody at this time of day to read the "Paradise Lost" or

\* The English Poets: Selections with Critical Introductions by Various Writers, and a General Introduction by Matthew Arnold. Edited by Thomas Humphrey Ward, A. M. 2 vols. London and New York: Macmillan & Co.

“The Faerie Queen” from beginning to end ; but it would be equally cruel to ask him to make up his mind critically about these great poems from half a dozen shreds and fragments of them, however judiciously selected. This remark, of course, does not apply to many entire poems of the shorter kind which are included in these volumes. Nor would we be understood to say that they are nothing better than crutches for the critically lame, or lifts for the hopelessly lazy. But, while they may help the young reader in forming his poetical taste, there can be no harm in cautioning him to search for himself in the great mine of English poetry which is so full of wealth, and alas ! of rubbish. One should not be always in leading-strings ; and no man can study for another, especially in this department of literature.

A work like this is full of somewhat melancholy suggestions. The perishable nature of poetical fame is inevitably indicated by these efforts to preserve or revive it. How many who have been of great consideration in their own day, in even the day following, are now known only to scholars, and to those who search in libraries for works which are no longer upon the counters of the booksellers ! To be ancient is to be obsolete. The lyrical writers, if once they get a hold upon the hearts of the people, are comparatively safe ; and brevity is often a passport to a precarious remembrance. But if every time sings its own songs as it should, it will not care much, in a popular sense, for the songs which are a century or two old. The very greatest poems in all languages can be counted upon the fingers of one hand. Yet our bards still go on with their production, and every week witnesses the birth of a new book of verses. If any of these shall be remembered sufficiently at some distant day to be included in a volume of “specimens,” we can not wish their writers more judicious and sensible treatment than Mr. Ward’s corps of critics has bestowed upon the English poets from Chaucer to Dryden, and promise to extend to the others from Dryden to Keble and Clough.

### III.

THERE are lyrics, at once light, elegant, and ingenious, which charm by their manner and disarm criticism by their jocund harmlessness ; Mr. Austin Dobson’s poems\* are of this description. Mr. Edmund C. Stedman, in the introduction which he has furnished to

\* Vignettes in Rhyme, and other Verses. By Austin Dobson. New York: Henry Holt & Co.

the American edition, tells us that Mr. Dobson is forty years of age, and has been a government clerk for twenty-two years. There is little suggestion of even twoscore in this pretty book, but only a certain easy and salient elasticity; and, if there are occasionally tears in the verses, they but lend fresh brilliancy to the light and lilting measure. The book, though neither serious nor earnest, has the sweetness which comes of constitutional good nature, and the polished politeness which befits songs of this description. In many of the poems there is a flavor of antiquity not in the least dusty or moldy, however; and there is everywhere that indefinable *bric-à-brac* beguilement which betrays collectors into the purchase of old china and prettily painted statuettes.

Mr. Dobson's book will be invaluable to those verse-makers who desire to distinguish themselves by writing in the old metres which have been lately revived—the rondel, the rondeau, and the ballade. Now and then, as we read him, we seem to hear the tinkling of lutes and the sweet warbling of minstrels under the windows of bowers which went long ago to dust, with their pretty and piquant inmates. Sometimes his songs remind us of the ingenious verses which break the dull and indecent monotony of Dryden's horrible comedies. We do not agree with Mr. Stedman in thinking that Mr. Dobson is like Horace, for Horace always had an earnest and serious purpose, even in his lightest mood, and never for a moment indulges in eccentricities of thought or of meter. Mr. Dobson is like Horace, however, in always writing like a gentleman; and if he sometimes cloy us by his unremitting sweetness, we have only to lay the book aside for a little while, with a certainty that the appetite for these fine cates and delicacies will be sure to return.

## IV.

IN this prosaic age and in this over-busy land, the men who devote themselves to literary pursuits and "strictly meditate the thankless Muse," are entitled to much more consideration than they are likely to receive. Mr. Richard Henry Stoddard has long been known as a poet of no ordinary capacity; but we must own to a degree of surprise, upon looking into his handsome volume,\* to find how much he has written. We may as well acknowledge at once a feeling of regret that such a poet as Mr. Stoddard undoubtedly is should not have given us some work of greater artistic propor-

\* The Poems of Richard Henry Stoddard. Complete edition. New York: Charles Scribner's Sons.

tions—not an epic, to be sure, since it seems that the world is to have no more epics ; but a poem in which his remarkable power of construction and copious resources of diction might have been more largely displayed. For there is more than one poem in this volume which shows how strong is the sweep of Mr. Stoddard's genius, and what a thorough master he is of literary resources. His life has been that of the scholar, if not of the recluse ; his tastes, originally and naturally delicate, have been matured until it would not be saying too much to call them simply perfect ; he has hand and eye, and all else that a poet should have—fancy, subtilty, and imagination. Above all, he has absolute literary sense. Here is a volume, containing we hardly dare to say how many separate and distinct poems—there are thousands of verses ; a hundred different forms are employed ; the range of subjects is wide and various—and yet we doubt if the most fastidious critic could detect in the whole a really bad line or a single solecism, or a passage which it would be easy to improve. Nobody, who has not had some experience of the matter, can know how much labor all this implies. We are sorry to say that not many American poets have written after this fashion. They may have, in some rare cases, the genius, but few of them have the patience, to do it. We do not propose to make any odious comparisons ; but those who think that slovenly writing is a mark of genius, and who have been told so by their admiring critics, would do well to learn a lesson from this painstaking poet.

Mr. Stoddard is fond of a short song, which he polishes with all the care with which a lapidary polishes a gem. He likes a bit of exquisite verse which shall be *teres atque rotundus*. The loving care with which he has perfected many of these little poems is evident in their grace, tenderness, depth of feeling, and frequent depth of thought. Open the book almost anywhere and you come across them. It is a volume to keep upon the table, and to read in during a spare moment. The brief music is like that of a bird, who gives a rapid and complete and most melodious refrain, and then flies away. Sometimes the strain is a sad one ; oftener it is calmly serene, and there is not a whine in this whole collection, which is more than can be said of a great many volumes of American poetry. Indeed, we have been much impressed by the thorough manliness of Mr. Stoddard's work. He is often pensive, as all men who think poetically must be ; but he is never maudlin. There are evidences of sorrow, and unrest, and disappointment ; but the reader may be

assured that they give no tone to the book, which, take it for all in all, is at least as healthy a volume of poems as there is in the English language. Mr. Stoddard is an artist, and an artist must sometimes paint the gloomy as well as the glad; but the general tenor of his work shows the writer to be a well-balanced and even square-shouldered man, who knows precisely what he is about, and manages even the minor key with an energy which we might call robust if it were less musical. There is tragedy in these poems and sometimes pathos, but they spring naturally from the topic, and are not pumped up for the occasion.

Many of Mr. Stoddard's poems have, indeed, a half-sportive character. Doing well whatever he undertakes, he writes *vers de société* sometimes with an easy *abandon*, which proves how sure he is of his hand. There are occasional poems, too, suggested by current topics, which are strong and self-sustained. There is a sufficient love of Nature, and frequent passages which prove it genuine. But Mr. Stoddard is substantially a poet of the passions and of the emotions; and not seldom he rises to a height of tragic expression, and depicts the darker experiences of the soul with unusual force. Yet, as we have said, he is never unpleasantly subjective. He is too good at his art for that. What is to be sung he sings naturally. What is to be told he tells in a straightforward, earnest way; and with all his other merits he has unusual power of poetical narrative. His whole book may be heartily commended to all those who care for healthy and natural poetry, and who have no desire to be either puzzled or bored.

## v.

THERE are poets who, however they may change for the better in other respects, never outgrow their mannerisms. It has been said of Mr. Wordsworth that he lost the world for a quibble, and was content to lose it. Mr. Browning is represented as having lately expressed some regret, not that he has been an obscure writer, for his own conscience doubtless acquits him upon that score, but that the majority of his readers should have found him so. Mr. Swinburne, in this new volume of poems,\* exhibits the same peculiarities which marked his earlier works. There is the same audacity of diction, profusion of double-epithets, muscular and sometimes spasmodic versatility of metre, and unbridled exuberance of imagination. Though to many the principal poems in this little

\* Songs of the Springtides. By Algernon Charles Swinburne. New York: R. Worthington.

volume will be insoluble puzzles, it will be read with great satisfaction by those who do not trouble themselves about sense, if only they are gratified by sound. If they do not understand, they will think that they do, which perhaps is just as well. There is something very fascinating about Mr. Swinburne's lyrical swing and ever-shifting variety of versification, and we wander through his pages as through some land of faery or wilderness of mingled beauty and terror. Perhaps we should not err in pronouncing him, though he does not use dramatic forms, the most dramatic of modern poets, for in his works there are often the most subtle delineations of human passion, and the most vigorous pictures of the deepest, the darkest, and the brightest experiences of human life. It seems to us that the poems in this volume are among the most intellectual which he has produced. As he has advanced in years he has lost something of that downright sensuousness which once shocked some readers of his works, and, we are obliged to add, delighted others. Whatever else it may be, this volume is at least cleanly, with no touch of prurience and no suspicion of physical coarseness.

The present volume contains Mr. Swinburne's "Birthday Ode for the Anniversary Festival of Victor Hugo"—the fine tribute of a man of genius to the genius of another. The idea of the poem is thoroughly original. Anything exactly like this piece of rhythmical criticism we do not remember to have seen in the literature of any language. All the great works of Hugo are chronologically alluded to, and, lest there should be any misunderstanding on the part of the reader, Mr. Swinburne has annexed a catalogue of Hugo's books, with reference to the places in which they are treated in the ode. He shares the Frenchman's hearty hatred of the last Emperor of France, and prints a special sonnet "On the Profane Desecration of Westminster Abbey, by the Erection of a Monument to the Son of Napoleon III." He keeps no terms with "the poisonous race," and calls upon the "elect of England's dead" to leave the abbey in disgust. Accustomed to use plain language on all occasions, Mr. Swinburne particularly uses it upon this; and speaks of Dean Stanley in a way which will shock the friends and admirers of that amiable divine—

"Who had the glory of these graves in trust,  
And turned it to a hissing."

CHARLES T. CONGDON.

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