PRINCIPLES OF GOVERNMENT;

OR,

MEDITATIONS IN EXILE.

BY

WILLIAM SMITH O'BRIEN.

WITH NOTES TO THE AMERICAN EDITION.

"Id est caput civilis prudentiæ, in quâ omnis hæc nostra versatur oratio, videre itinera flexusque rerum publicarum, ut cum sciatis quo quæque res inclinet retinere aut ante possitis occurrere." — CICERO *De Republica.*

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ELECTROTYPED AT THE
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PREFACE

TO THE AMERICAN EDITION.

THE amiable and studious author of this treatise on the "PRINCIPLES OF GOVERNMENT" has explained, in his own modest manner, the objects he had in view in undertaking it, and the method he pursued throughout. The work, he says, "is intended to be suggestive, not dogmatic;" and he invites the political student to discuss with him "a series of questions which present themselves for solution in the management of public affairs."

The American publisher, fully conscious of the responsibility of ushering a new book on the principles of public duty, into a state of society so baffled and beset with theories as this, requested the present editor to append to Mr. O'Brien's text such notes as our American experience, or Catholic principles, would seem to call for. This task he has undertaken with unfeigned unwillingness; but as it was a choice between getting the work published at all, or published with the requisite contribution of notes, we have endeavored to com-

ply with the publisher's request, fully reciprocating the writer's invitation to political students.

It is hoped that the author's attractive name will induce many of his countrymen by birth, who are, or who may become, citizens of this republic, to enter with ardor into the study of political principles. The Irish mind, from its generous impulses and an inherent ambition, is of itself well disposed towards such studies. True, the deplorably unsettled state of Ireland almost rendered impossible that patient and continued study without which great systems of policy cannot be mastered; yet in the writings of Molyneux, of Swift, Prior, Premium Madden, and Provost Hutchinson, many prime political truths are eloquently expounded; while in the orations of Grattan and O'Connell, but above and beyond all, in the works of Edmund Burke, the glorious variety and fervid sincerity of the Irish political genius finds its highest manifestation. Is not the same genius still continued in the race of these celebrated men? We firmly believe that it is, and that it only needs to be kindled and fed with fit fuel to blaze out, to enlighten and inform the continent.

M.

New York, July, 1856.

AUTHOR'S PREFACE.

THE greater part of the following work was composed during my exile in Van Diemen's Land, between the years 1850 and 1854. Whilst imprisoned in that colony, I found myself divested of almost all the ordinary interests of life, and therefore naturally endeavored to create for myself some employment which would afford occupation, if not amusement, to the many weary hours of leisure and listlessness which had been forced upon me by the circumstances of my destiny. If I had been able to command access to the requisite materials, it is probable that I should have undertaken to write a history of Ireland, or to connect my labors in some other manner with the fortunes of a country, to the service of which my life ever has been, and ever will be, devoted. But being entirely cut off from opportunities of research into matters pertaining to the nationality of Ireland, I was compelled by necessity to generalize my ideas, and to

write as a citizen of the world rather than as an Irish patriot. The same scantiness of literary resources prevented me from entering upon a new course of study, and induced me to turn to account the experience of my former life. During a period of more than twenty-five years I have had such opportunities of observation in regard of political affairs as present themselves to but few writers. I have been a member of the British Parliament during eighteen years. I have taken a part in the most perfectly organized, if not the most formidable, "agitation" that is known to recent history. As an Irish country gentleman, I have been engaged, during many years, in the details of local administration, whilst performing the duties of grand juror, magistrate, guardian of the poor, and in discharge of other similar functions. I have been associated with many voluntary societies, both in England and Ireland, founded for the propagation of knowledge and for the advancement of social progress. I have undergone imprisonment of various degrees during a period of six years; and as a transported convict, I have witnessed not only many different forms of penal discipline, but also many of the earliest processes of colonization. Under these circumstances, it occurred to me that I could not employ my time more usefully than in endeavoring to frame a synoptical view of society, and to develop, in a summary manner, principles of organization, legislation, and

administration, which are generally applicable to all free states, whatever may be the peculiar tendencies of their population.

I am very far from imagining that I have given a true and satisfactory solution to all the problems which I have placed before my readers. If I have been taught nothing else by the experience of my past life, I have at least learned from it to distrust my own judgment. I have had reason to change several opinions which I formerly entertained: and with respect to some of the questions discussed in these pages, the arguments are so nicely balanced, that I have sometimes found great difficulty in my own mind in deducing from them a peremptory conclusion. This work is intended to be suggestive, not dogmatical. I invite the political student to discuss with me a series of questions, which present themselves for solution in the management of public affairs: and after placing before him the considerations which have influenced my own judgment, I leave him to draw his own deductions. In regard to a few fundamental principles, the dictates of natural justice appear to me to be plain, explicit, irrefragable; but in the great majority of cases the decision of the inquirer must depend upon the preponderating weight of arguments which counterbalance each other.

This task has been brought to a conclusion during my residence in Belgium; and it has been highly

satisfactory to me to find, that many of the suggestions which I brought forward as theoretical ideas, while writing at the Antipodes, have been beneficially realized in the actual administration of the public affairs of this country.

WILLIAM S. O'BRIEN.

BRUXELLES, JULY, 1855.

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PRINCIPLES OF GOVERNMENT.

INTRODUCTORY REMARKS.

Assuming as indisputable truths, first, that government is necessary to the existence of human society, and secondly, that the happiness of nations depends much upon the nature of the government by which they are ruled, we may infer, without further argument, that it is desirable to investigate the principles and the means by which government can be most advantageously conducted.

In pursuing this inquiry, we should never forget that theoretical ideas must be modified according to circumstances, in their application; and that a form of government which is admirably adapted to the genius and requirements of one people, may be wholly unsuitable for another. Peculiarities of national character, traditional ideas, feelings, and habits, as well as local circumstances of various kinds, must be taken into account in moulding the political institutions of each country. A constitution which produces the happiest results amongst a community of Americans, would lead to nothing but confusion if conferred upon an Asiatic population accustomed to despotic rule. A charter — a paper constitution — however perfectly devised, never gave, nor ever can give, liberty to a people who are indisposed to exercise self-government. I do not say that nations long unaccustomed to political freedom are necessarily disqualified for the enjoyment of free institutions. The spirit of liberty may exist, although its manifestation be curbed by a constraining force. But if a nation voluntarily prefer servitude to freedom — in other words, if the individuals of whom it is composed shrink from the task of performing faithfully and honorably the functions and duties which are incidental to the exercise of self-govern-

ment — if they willingly intrust to a master the office of ruling them, and of managing their affairs, without imposing control, or exacting responsibility — it is idle to offer to such a people institutions which can be upheld only by the unceasing action of public spirit. For example: a legislature popularly elected may betray its constituents under the influence of corruption, apathy, or blind confidence, and enact laws which virtually surrender all power into the hands of the executive; judges and juries may wilfully set at nought the enactments of the legislature and the fundamental principles of jurisprudence, while exercising their functions as interpreters of the laws and administrators of justice; the executive may refuse to carry into effect statutes ordained by the legislature, or decisions of the courts of justice. Under such circumstances, what guarantee can a charter or a constitution provide for the preservation of public liberty, unless the people themselves be prepared to protect their institutions by resistance to those proceedings which tend to destroy them?

But though neither legislators nor writers on the theory of government can create public spirit in the minds of a people to whom this sentiment is unknown, yet they can effectively aid in developing it where it exists, and in giving to its operation a beneficial direction, as well as consistency and permanence. Experience has shown that certain forms and principles of polity have tended to produce certain inevitable results. That experience should be used to warn, encourage, and direct those who desire to enjoy and to bequeath as perfect a system of political institutions as is attainable under the imperfect constitution of man's nature.

CHAPTER I.

ON THE ORIGIN OF DIFFERENT KINDS OF GOVERNMENT.

If we trace to their origin the several forms of government which have existed amongst mankind, we shall find that they have in but few cases been founded upon theoretical principles. Those who expect to discover, in the history of nations, records of a regular compact between the people and their rulers, will,

for the most part, be disappointed in their search. It is of little importance to determine whether, in the most early stage of society, patriarchal rule (founded upon the analogy of the management of a family) or the simplest form of pure democracy has most frequently prevailed. Whatever may have been the earliest or the most natural form of government, history establishes the fact, that nations, when threatened by invading foes, or embarrassed by internal difficulties, have often called to supreme command the wisest, the strongest, or the most influential man in the community, and have armed him with extraordinary power, with a view to avert the menaced danger. Through the instrumentality of such power, generally increased by usurpation, he and his successors have acquired hereditary dominion, more or less arbitrary according to the disposition of the people governed. Thus, by a natural process, monarchies are erected.

Oligarchies have generally sprung from the ruins either of monarchy or of democracy. When supreme power falls into the hands of a weak sovereign, the great nobles encroach upon the prerogatives of the monarch. In democracies particular families or individuals acquire, by their talents, their wealth, or their virtues, an influence which loses its original character of responsibility, and becomes permanent and self-dependent.

When kings abuse their prerogatives to such an extent, that oppression becomes intolerable, nations sometimes depose the monarch, and establish a more popular form of government. Such was the case of Rome, at the time when the Tarquins were expelled; of Switzerland, during the middle ages; of Holland, during the sixteenth century; of the United States of America, and of France, in the eighteenth century; and of the republics of South America in our own days.

On the other hand, there have been some instances in which nations have voluntarily placed themselves under the despotic rule of a single sovereign, in order to escape the evils which result from the oppression of a tyrannical oligarchy, or from the turbulence of a democracy. Such was the case of Denmark in the year 1661 A. D. It is probably to the prevalence of this feeling more than to any other cause, that we may attribute the readiness of the Roman people to acquiesce in the assumption of arbitrary power by Augustus Cæsar and by his successors. It is better to be ruled by one tyrant than by many. When the tyranny of a majority over a minority of the citizens is established under the forms of a

democracy, or when an aristocracy forfeits the respect and affection of the people, the transition to absolute monarchy brings with it a mitigation rather than an aggravation of the evils of misrule. The most recent example which illustrates the case here suggested is that of Louis Napoleon, whose usurpation of autocratic power has been sanctioned by a large majority of the population of France. I do not quote this instance as one in which the conduct either of the usurper or of the nation admits of excuse; but merely call it to mind as a fact which illustrates the tendency of governments to undergo changes in their constitution.

In the instances above cited, changes have been effected in the government of nations by the operation of internal causes. But there is even a larger class of cases, in which political institutions have been imposed by the will of a conqueror. The subjugation of the East, by Alexander the Great and his successors — the dominion of the Romans, which, by successful warfare, gradually extended itself over the greater part of the known world — the conquest of Mahomet and his followers — the acquisitions made by the Normans in France, England, Ireland, and other parts of Europe — the establishment of the Tartar dynasty in China — the subjugation of the aboriginal tribes of America by European invaders — the progressive usurpation of Hindostan by the British, afford illustrations tending to prove that it seldom happens that governments are adopted by the free will of the people governed. History is, indeed, little else than a record of the attempts which have been made, at various times, by individuals and nations, to extend their dominion through the means of encroachment and usurpation.

The tyranny of one nation over another is, perhaps, the most odious of all tyrannies; and the most galling of all servitudes is that of one nation oppressed by another. Sometimes the conquerors and the conquered become fused into one indiscriminate mass, and partake a common destiny; but when this amalgamation does not take place, an ascendency of race over race is established, which becomes an unceasing source of social misery. Such was the relation between the Egyptians and the Israelites, though in this case the subjugation was not effected by conquest — such was the relation between the Turks and the Greeks — between the Spaniards and the Indians of South America. Strange as it may appear, many of those nations which have been most jealous in the

maintenance of their own liberties have, at the same time, exercised a harsh and tyrannical sway over those dependent upon them. Domestic slavery still keeps in a state of the most abject bondage several millions of human beings in the United States of America, though no nation asserts the principles of liberty with so much vehemence, or more nearly realizes a perfect democracy in its institutions. In the free states of antiquity, no question appears to have been ever raised as to the propriety of maintaining domestic slavery, though occasionally, from motives of expediency, large numbers of slaves were emancipated. The government of the republican Romans, in the conquered provinces, was probably more oppressive than that of the native dynasties, however despotic. Even the smallest and most democratic cantons of Switzerland kept in subjection for centuries scraps of territory, the inhabitants of which were not only not admitted to the privileges of citizenship, but were ruled by a harsh and oppressive system of administration. England, in its treatment of Ireland during six centuries, refrained from placing the people of that kingdom upon an equality with Englishmen, and from admitting them to a full participation of that freedom of which Britons so loudly boast. In order to give effect to this policy, an internal ascendency — founded first upon distinctions of race, and afterwards upon difference of creed — was created, under the operation of which the majority of the Irish nation were treated as slaves and enemies by a dominant minority.

The instances are rare in which the will of a nation has been formally consulted in the establishment of its constitution. Some few such examples are, however, to be found. The most recent is that presented by France, in the revolution of 1848, when the French people were summoned to elect, by universal suffrage, deputies who should frame for France a constitution: and thus, as near an approximation to an expression of the national will, as appears to be possible, was thought to have been attained. Yet the sanction subsequently given to the usurpation of Louis Napoleon * shows how little

* As this is the first passage in which the present Emperor of the French is mentioned, and as the term "usurper" is frequently applied to him by the author hereafter, I must put in a protest against the only inference which could be drawn from the employment of the term. The Emperor Napoleon III., from all the evidence which has reached us, was entirely justified in arresting the heads of factions and dispersing the disloyal National Assembly, in December, 1851. That Assembly, by its abolition of universal

reliance can be placed even on the most deliberate acts of nations. The political institutions recommended to the Athenian people by Solon, and to the Lacedæmonians by Lycurgus, were adopted by the citizens at large by express assent. In the United States of America, the federal constitution, which unites in Congress the representatives of the several states, was framed, after deliberation, in such a manner as to obtain the sanction of a majority of the American people: and several of the states of Europe have, during the present century, either remodelled their ancient form of government, or adopted new constitutions, framed upon principles derived from speculation and experience. The year 1848 was peculiarly prolific of such changes; but the sudden and violent revolutions, effected during that season of popular commotion, have been followed by a reaction destructive to the constitutional liberties of the nations by whom such changes were adopted.

CHAPTER II.

ON CENTRALIZED AND LOCAL ADMINISTRATION.

History supplies us with examples of almost every possible modification of government.* It also proves to us that no form of polity is exempt from imperfections; and however

suffrage, — the very condition of its own being, — its monarchical coalitions, and its all but successful attempt to place the army of Paris under the control of its own president, had forfeited all right to be considered the National Assembly of France. The *coup d'état* was a necessary and a justifiable measure, if the Assembly was, as we have all read, so false, so traitorous to France. And Mr. O'Brien has admitted, farther on, that the Prince President had no authority whatever to prorogue or dissolve them, under the constitution: he was thus left no alternative but another revolution, or a *coup d'état*. He chose the latter; the whole French people sustained him in his course; and we therefore protest against the term "usurper" being at this day applied to his name. — M.

* I have not thought it necessary to delineate in detail the different forms of government which have existed at various periods in different countries of the world. The reader, who is desirous to make himself acquainted with such details, will find in "Brougham's Political Philosophy" a comprehensive view of the various forms of political organization which have been established by mankind in different ages, and in different parts of the world. Though, personally, I have little reason to speak in complimentary terms respecting Lord Brougham, I have great pleasure in acknowledging the merit of this publication as a compilation of facts useful to every student of political science.

much one constitution may in theory appear preferable to another, there is some ground for justifying the unsound doctrine of the poet, that

"Whate'er is best administered is best."

Mankind are seldom jealous of power when it is directed by beneficence. When power is divided between several coordinate authorities, the best designs are often thwarted by contrarieties of will. The beneficent despot can accomplish without contravention the good which he desires to achieve for his people. An absolute monarch, if well disposed, rules with a view to the interest of the whole people. In a representative or constitutional government the rulers often care only to satisfy the dominant majority. Hence, arbitrary power is often more acceptable to the multitude than more complex forms of government. If a nation have learned to revere and love a succession of benevolent sovereigns, it is in vain that the theorist proclaims to such a people the superior advantages of republican government. He might as well attempt to convince a loving child that the homage, and attachment, and obedience, which he renders to a fond parent, is but a debasing servitude. In such cases as these "the subordination of the heart keeps alive the spirit of an exalted freedom."

Of the operation of this sentiment the *clanship* of Ireland and Scotland furnishes an interesting illustration. The feudal relation of lord and vassal is one which suggests painful memories throughout the greatest part of Europe. It was the relation of the conqueror to the conquered, — of the despot to the slave. But the quasi-feudal connection which subsisted between the Gaelic clans and their chiefs is still associated with feelings of reciprocal confidence and attachment. The chief was regarded as the father of his tribe. The Gaelic word *clan* means "the children." He shared with them common dangers, common enjoyments, and a common home. He was their leader in war, their companion, their friend, their protector in time of peace. The clansmen saw in him the representative of a long line of heroes or sages who had won for them renown by bravery or wisdom. The sentiment which impels a Frenchman to adore the name of Napoleon, — which compels even the sternest republican of America to venerate the memory of Washington, — this ineradicable tendency to

hero worship was concentrated upon the character and person of the chief; and even to this hour, when every sentiment of feudal dependence is considered derogatory to the dignity of a freeborn man, the members of an ancient clan dwell with affectionate recollection on traditions illustrative of the relationship between the clan and its chief.

It too often happens that in what are called "free" states the interests and feelings of the poorest class are more disregarded by the government than they are under absolute monarchies. It is not surprising, therefore, that the masses should view with jealousy the selfish arrogance of privileged classes, "who call it freedom when themselves are free;" nor that they should seek in absolutism for protection from the domineering usurpations of an oligarchy. In the United States of America perfect equality in regard of political rights exists amongst all the free citizens. It is, therefore, natural that every freeborn American should prize the republican institutions of his country; but what matters it to the negro slave whether a despot or a congress give laws to the United States? What matters it to him whether the Gaul or the Saxon rules in Louisiana? It is also to be observed that even the most absolute monarchs are amenable to the opinion of the people whom they govern. A nation which has patiently acquiesced in what is called servitude, while governed by a beneficent despot, will sometimes suddenly rise in its might and depose a tyrant, substituting in his place another dynasty equally invested with unlimited power. Indeed, experience shows that it is more difficult to break down the oppressive privileges of an oligarchy than to dethrone a tyrant, or to displace a dynasty.

Influenced by these considerations, the inquirer might be disposed to infer, that if rulers were endowed with wisdom and goodness, absolute monarchy would be the form of government most conducive to the happiness of mankind. But inasmuch as experience proves that there is more reason to fear that rulers will misuse the power intrusted to them, than to hope that they will exercise it with wisdom and justice, it is necessary to seek guarantees against the abuse of power in institutions more complex than that of a simple monarchy. These guarantees are found most effective among nations by whom the principle of self-government is cherished; in other words, amongst whom each individual is called upon to take a part in performing those public duties by which social order is pre-

served. Every person is not qualified to become a minister of state, but there are few, however humble may be their station, or however limited may be their acquirements, who are not capable of executing some function or other connected with the objects of government. In a well-constituted state every individual ought to be made to feel that he owes duties not only to his family and to himself, but also to society; and the performance of such duties as he is qualified to undertake ought to be assigned to him. One of the noblest characteristics of the political institutions of Great Britain has been this allotment of several of the functions of civil administration, — such as those of magistrate, grand juror, mayor, and town councillor, juryman, guardian of the poor, churchwarden, harbor commissioner, member of parliament, privy councillor, &c., to the unpaid service of independent citizens. Although it may be argued that these services would have been more effectually performed by paid officials dependent upon the central government, yet, even if this point were conceded, the advantage would be dearly purchased by a sacrifice of that manly and self-relying spirit which is generated by the exercise of social duties of a public nature, and which is the best guarantee for the preservation of a nation's liberty.

Arbitrary monarchs and ambitious ministers love to centralize power as much as possible. They desire to place in direct subordination to the central government every public functionary, because they are thus enabled to command the whole patronage of official administration, and to wield according to their own will all the powers of the state. In vigorous hands centralization of power undoubtedly secures a greater degree of unity of action than can be obtained when coördinate authorities act independently of each other. Great military operations, in particular, can seldom be executed effectively when the coöperating forces are not subject to the control of one directing will. In confederations, such as that of Switzerland and of Germany, in which each canton or state has been bound to provide a certain contingent of troops to support the general interests of the confederation, it seldom happens that all the constituent authorities of the league take the same view of the expediency of a military undertaking, or of the means by which it ought to be executed. The military contingents of the states which formed the Germanic confederation amounted, after the peace of 1815, to above 300,000 men. There can be no doubt that a force of this amount

would be a much more formidable instrument of offence, though, perhaps, not of defence, if placed at the disposal of a single commander, such as Napoleon, Marlborough, or Wellington, than if subject to many different controlling authorities. But it does not, therefore, follow as a necessary consequence, that it is desirable that the population of Germany should be placed under the government of one centralized and consolidated monarchy. In human affairs it generally happens that one class of advantages can be secured only by the sacrifice of another class, and true wisdom consists not in perpetually seeking changes for the purpose of obviating some inconvenience, but in endeavoring to establish such institutions as shall, upon the whole, secure the greatest amount of good. As long as a centralized government is subject to rigorous responsibility, it will generally be conducted with efficiency; but when such responsibility is relaxed or annulled, it becomes just as ill-regulated as the worst description of local administration; and is, at the same time, capable of being converted by a bad minister into an engine of corruption or oppression, the operation of which extends to every portion of the kingdom. A people desirous to preserve their freedom cannot be too jealous in watching the encroachments of a centralizing spirit. At the same time it must be admitted, that there are some departments of government which cannot be conducted effectively except under a centralized administration. For example, the duty of negotiating with foreign powers ought clearly to be reserved to the general government. As an example of the class of operations which, on the other hand, naturally belong to a local administration, we may mention the construction of public works of a local nature. It will be more convenient, however, that we should reserve, until a future occasion, a specification of the different functions which ought to be appropriated to central and to local agencies respectively. In every country the necessity of separating general from local administration has been more or less recognized, but such separation appears in many cases to have arisen from accident rather than from design, and in very few countries is the organization required for the due performance of each class of functions as systematic and perfect as it ought to be.

CHAPTER III.

ON LEGISLATIVE INSTITUTIONS.

THE aim and end for which government is constituted ought to be to secure the prosperity and happiness of the whole people. The modern phrase which describes "the greatest happiness of the greatest number" as the object of all good government, is liable to objection, inasmuch as it seems to imply that the interests and wishes of the minority ought to be sacrificed to the interests and wishes of the majority — a proposition which cannot be admitted without modification and reserve. A parent is bound to promote the happiness not of the majority of his children, but of all his children.

Political institutions should be framed so as to protect life and property, secure the enactment of good laws, carry into effect such laws in the most advantageous manner, guarantee the maintenance of public liberty, maintain friendly relations with foreign powers, encourage production, and secure to industry the fruits of its labor, dispense impartial justice, develop the intelligence of the people, and teach them their duties, provide for the destitute, minister to the health and recreation of the community.

Amongst the means by which these objects may be promoted, the first and most important is, the establishment of a legislature by which good laws may be enacted.

It is unnecessary to adduce arguments to prove that laws, written or oral, are essential to the existence of society, whether savage or civilized; nor is it necessary to adduce arguments to prove that the character of a nation, its prosperity, and its happiness, depend very much upon the laws by which it is regulated. These are *postulates* which all reasonable men will at once admit. We may therefore proceed without delay to consider what description of legislature is best qualified to secure the enactment of good laws.*

History presents to us examples of almost every possible form of legislature. In a rude state of society — especially

* Perhaps it may not be superfluous, in a work on the *Principles of Government*, if we cite the familiar proposition, that man being born for society, and society being impossible without government, every man has, therefore, a native natural right to be governed. — M.

if the communities be not very large — laws are sometimes enacted by assemblies consisting of the whole male population. Such appears to have been the practice of the ancient Germans. Even in our own days such a mode of enacting laws has prevailed in the three forest cantons of Switzerland, Schwytz, Uri, and Unterwalden. In some of the ancient republics, whose territories were governed by metropolitan cities, the citizens of those cities were convened in general assembly, to give their sanction to the laws proposed. More frequently, however, the duties of legislation have been performed by bodies which have either assumed that function by virtue of the tacit acquiescence of the rest of the community, or which have been expressly nominated to perform it by delegation.

In arbitrary monarchies, the king, aided by such ministers as he may select, imposes laws by way of edict. In oligarchies, self-elected councils (more or less numerous, as chance may direct) assume the right of enacting laws. In constitutional or limited monarchies, the power of making laws is conjointly shared by the sovereign, the nobles, and the representatives of the people. In pure republics, the delegates of the people alone constitute the legislature.

Different portions of the same realm are sometimes governed by different laws, though under the same legislature. Of this case Great Britain furnishes an example. The laws of Scotland, though enacted or modified by the imperial legislature, are in many respects totally different from those of England and Ireland.

In other instances, not only are the laws different in different states, which compose the empire at large, but there are also separate legislatures. Thus, before the union of 1800, there was a separate legislature in Ireland, though subject to the general sovereignty of the crown of Great Britain and Ireland. Such, too, has been the case in Norway and Sweden, in Hungary and Austria. In each of the colonies of Great Britain local legislatures exist; but whilst these legislatures enact laws relative to their local concerns, they are subject to the paramount legislation of the Imperial Parliament.

Independent states have sometimes formed confederations with other states, and have delegated to their representatives, united in *Diet* or *Congress*, the power of legislating or acting for specified purposes which affect the common interest of all

the states, whilst each state has reserved to itself the power of making its own laws and of exercising all the rights of sovereignty not expressly delegated to the general authorities of the confederation. Of such confederations Germany and Switzerland present examples.

Though a system of legislation founded upon the coöperation of powers equal and coördinate is necessarily very complex and unwieldy, as well as liable to internal collisions, it may be doubted whether, upon the whole, such a system is not calculated to secure to the constituent portion of an empire the greatest attainable amount of civic happiness. Thus, in the case of Ireland, there is every reason to believe that it would at this moment be much more prosperous and happy than it now is, if it had preserved its independent legislature, instead of allowing it to be merged in that of Great Britain. Would the interests of Norway be advanced by the union of its legislature with that of Sweden? Would the inhabitants of the smaller states of Germany, such as Saxony, Bavaria, Wirtemburg, Baden, &c., have reason to congratulate themselves if these states were to be absorbed in the greater empires of Prussia or Austria? Has Portugal suffered from having been disconnected from Spain? Would Belgium be happier than she now is, if she were a province of France?

These and similar questions well deserve the consideration of every student of history. If he weigh them carefully, he will probably arrive at the conclusion that the seeming advantages promised to arise from a consolidation of independent states into great empires are very dearly purchased by a surrender of their legislative independence. When legislative power is centralized, the interests of the extremities are generally sacrificed to those of the central seat of government. Thus Paris rules France, whilst a mob, or a clique, or a despot, rules Paris. What has become of the local fame of Burgundy, of Lorraine, of Brittany, of Provence, of Toulouse, and of other Gallic states, celebrated during the middle ages for the skill and industry of their inhabitants, or for the heroism of their warriors and princes? If five independent states agree to be ruled by a common authority, it is manifest that the will of each of them must become subordinate to the will of the majority. If contending interests or strong prejudices (which often create more dissension than even contending interests) should induce the majority to oppress the minority, it is manifest that the states which form

the minority have lost much of their liberty by entering into such combination. However specious, therefore, may be the advantages which are promised to result from the creation of a central legislature, the inhabitants of an independent state ought to be very reluctant to surrender any of the prerogatives with which that independence is endowed, more particularly if differences in race, differences in religion, and differences in local interests should tend to excite jealousies between the several members of such a united legislature.

On the other hand, a federal coalition which does not encroach upon the legislative privileges of the constituent states confers advantages which cannot be enjoyed by small communities isolated from each other. Take, for instance, the case of the United States of America. If there had been no central legislature, or central executive, it is probable that they would eventually have been reconquered by Great Britain. Without some central organization it would have been extremely difficult to have maintained concert between them, and individually they would have been too weak to contend with the power of the mother country. It is certain that in all transactions with foreign powers the states would, if acting separately, command much less influence than is now enjoyed by the great federal republic of the west. It is also probable that intestine war would have arisen. It is certain that the aggregate of military force maintained by the several states, through jealousy or apprehension of each other, would have been much greater than that which has been found sufficient under a federal union. It is probable that there would have been in the different states different rates of commercial duties, framed with a view to the exclusive advantage of each state, but tending, on the whole, to check production and trade. In order to avoid these and other inconveniences, a central authority was created by the formation of a general legislature called "Congress," composed of representatives of the several states which constitute the Union. With these, other states have been, from time to time, associated. To this Congress was assigned the duty of making laws relative to the following social requirements, viz.: military and naval force, treaties with foreign powers, peace and war, letters of marque and reprisal, taxes for general purposes, management of the national debt, commerce, post office, coinage, naturalization, bankruptcy, copyright, piracy.

In the mean time, the separate states have enjoyed the

right to manage their own internal concerns. Each state possesses both legislative and executive authority extending to all objects not specially reserved for the action of Congress.

In reference to the constitution of a legislature, the same remark may be applied which has already been made with regard to political institutions in general, namely: that in constructing a legislature, the peculiar circumstances of the country for which it is to be framed ought to be taken into account, and that the application of abstract principles should be modified by a due regard to such circumstances.

When a monarchy has long subsisted in any country, there naturally exists, in the minds of a large portion of the population, a strong prejudice in favor of that form of government. Not only does individual interest generate this sentiment, but, under the operation of a variety of influences, which it is not necessary to specify, it even becomes connected in the mind with the obligations of religious duty. Attachment to particular dynasties becomes a passion, under the impulse of which men will cheerfully sacrifice their lives and the interests of all whom they most love. That primary duty which every man owes to his country — the noble sentiment of patriotism — in many minds takes the form of devotion to royalty. In some instances, as in that of the Stuarts, this devotion is not founded upon respect for the individual monarch, but upon attachment to the dynasty and to the principle of legitimacy, the sovereign being considered as "the Lord's anointed," entitled to reign by virtue of divine appointment. Such being the natural tendency of the human mind, it seldom happens that kings lose their crowns until they have forfeited them by a long course of misgovernment, nor until they have completely alienated the affections of those over whom they rule. Happily for mankind, there are limits to the endurance of wrong; and, from time to time, cases occur in which misused power is wrested from the hands which wield only to misemploy it. But even in those cases in which it has become necessary to change the dynasty, the sentiment in favor of royalty has not always been extinguished. After the execution of Charles I. of England the attempt to found a republic in Great Britain utterly failed. A sovereignty of a more arbitrary character was established, under another name; and after the death of Cromwell, the British people appeared almost unanimously to rejoice in the restoration to the throne of a family which had but very slender

title to their regard, in the person of a prince whose public and private character was alike undeserving of respect. In France, also, the attempt to establish a republic upon the ruins of the Bourbon dynasty most signally failed. After undergoing, during several years, a series of convulsive shocks, such as the world never before witnessed, the French quietly submitted to the arbitrary government of an illustrious commander. In the recent French revolution — that of 1848 — a republic was proclaimed, and was accepted by the nation, not so much from inclination as from the difficulty of discovering a monarch and a dynasty whose elevation to the throne would have given universal satisfaction; but there is every reason to believe that the number of those who were in principle republican was small, when compared with that portion of the French nation who were attached to monarchical institutions. Hence the readiness with which the French people have acquiesced in the usurpation of empire by Louis Napoleon.

Taking into consideration, therefore, the strong prepossessions which are generated in favor of monarchy, in those countries which have long been subject to monarchical sway, it may be stated as a general proposition, to which even those who, in the abstract, prefer republican institutions, may assent — that it is not expedient to attempt to overthrow a monarchy which, upon the whole, governs in a manner satisfactory to the nation; and even if it should become necessary to change the dynasty, it will, in such countries, be generally found more safe to replace it by another dynasty than to substitute for it a republic. At the time of the revolution of 1688, when the English nation was compelled, for the sake of self-protection, to deprive James II. of his crown, the leaders of that revolution wisely resolved to transfer the forfeited crown to a prince who was, for many reasons, acceptable to the English nation, rather than to attempt to found a republic. Had they proclaimed a republic, civil war would certainly have been the immediate consequence; and probably the eventual result would have been the restoration of him whom history now calls "the Pretender." In the revolution which took place in Belgium in 1830, by which the House of Nassau was most justly expelled from the Southern Netherlands, the leaders of that revolution, in selecting a new form of government, wisely preferred to establish a constitutional monarchy, rather than a republic, because the tendencies and

antecedent prepossessions of the Belgian people were in favor of monarchical institutions.* They were so fortunate as to be able to find a prince (Leopold of Coburg) distinguished for his public and private virtues, whose nomination gave general satisfaction to the Belgian people. The stability evinced by this monarchy, at the time when almost every throne in Europe was more or less shaken by the revolutions of 1848, proves the wisdom of their determination. Had they proclaimed a republic, they would probably have embroiled Belgium in contention with some of the great powers of Europe; and, even if mutual jealousies had prevented these powers from attempting to destroy Belgic liberty, there is every reason to believe that a counter-revolution would have taken place in favor of the Prince of Orange, which, aided by the military power of the Dutch, would have replaced the dynasty of Nassau on the throne of Belgium.

CHAPTER IV.

ON THE LEGISLATIVE PRIVILEGES OF AN ARISTOCRACY.

In a country where an aristocracy has long existed, whose names have been associated with the great achievements of its history, it is in vain to attempt to eradicate the disposition which will naturally exist to accord to them a degree of respect that is withheld from those who possess no such hereditary title to public homage. This feeling is not only natural to man, but, when disconnected from servility and adulation, is highly commendable. The hope that such homage will be secured throughout all ages has been one of the most powerful — and not the least honorable — incentives that have impelled great men to noble undertakings; and if such sentiments be justifiable, in its application to the descendants of illustrious men, how much more natural and legitimate is it when displayed towards distinguished characters whilst still alive! The most confirmed democrat feels no jealousy, when

* In this, as in many other passages, Mr. O'Brien shows that he has no part with the school of propagandist democrats, now happily very much thinned and decayed, on both sides of the Atlantic. — M.

he sees such men as Lord Chatham, the Duke of Wellington, Lord Gough, Lord Denman, Lord Brougham, Lord Lyndhurst, or Lord Campbell in the legislature of his country. That place is theirs by virtue not of popular favor or of royal caprice — it is theirs by right. As long as great abilities and great labors, devoted to the service of the public, shall command the esteem of mankind, so long men of this class cannot be excluded from the legislature, whatever may be the form of government that prevails in the country to which they belong. It is to be regretted, indeed, that hitherto, in the British dominions, public opinion, which forces the sovereign, or rather the minister, to acknowledge this right, and to confer titles of honor, or hereditary dignity, upon distinguished men, has not extended to a wider range. Hitherto, titles won by public service have been accorded almost solely to those who have rendered themselves eminent at the bar, in the senate, or by their military achievements. But supereminent attainments in science, in art, in literary composition, constitute claims to titular rank which have hitherto been overlooked in the United Kingdom. If an aristocracy is to be maintained, it is desirable that it should be placed upon the widest possible foundation in the esteem and affection of the people. This can only be done by making titles of honor the reward of great public services of every kind, not mere ornaments to deck the minions of ministers or kings.

In every society, even the most democratical, there exists an aristocracy — an aristocracy either of rank, of birth, of wealth, of talent, or of virtue; and the aristocracy of wealth, or of talent, is generally found to be at least as overbearing as the aristocracy of rank, or of birth; but the word is ordinarily applied to a titled nobility possessed of landed property.

On theoretical principles, it is not easy to adduce sufficient reasons for assigning to an aristocracy hereditary functions of legislation. It may be said that it is desirable that considerable weight in the councils of the state should be given to men of large fortune, who naturally are averse to violent changes, who by their circumstances are equally independent of the monarch and of the people, and who, having a great permanent interest in the general welfare of the community, may be supposed to be desirous to promote and to uphold a good system of government. But if this argument be valid, the privilege in question ought not to be limited to a few individuals, but should be shared through the medium of representation

by all the wealthiest members of the community. Speculative principles, however, cannot always be carried into effect with advantage; and as long as an institution is found to promote the general welfare of the community, and to deserve the respect of mankind, it is not wise, in seeking after theoretical symmetry, which can never be perfectly attained, to overthrow that which has subsisted for ages. If, therefore, an aristocratical chamber, or hereditary peerage, has existed as a branch of the legislature for a considerable time, it is not desirable to deprive it altogether of legislative functions, unless it become utterly degraded, or irremediably opposed to the general interests of the people.

Some years ago, when the idea of a Reform in the House of Lords was much agitated in popular assemblies, a proposal was put forward which seems well worthy of consideration. It was suggested that the existing peerage of England, Ireland, and Scotland should be preserved, and that the sovereign should still enjoy the prerogative of creating Peers without limitation as to numbers, but that none should enjoy a seat in the House of Lords, in its legislative capacity, except those who might be selected for that purpose by the people. This proposal seems to obviate many of those objections which may be urged against either an hereditary peerage or a peerage created for life. It would have the effect of inducing the peers to study as much as possible to deserve public favor, and thus establish a much greater degree of confidence than at present exists between the aristocracy and the people at large. Such an arrangement would also have the effect of removing the invidious distinction which at present subsists between the peerage of England and those of Ireland and of Scotland — English peers now taking their seats in the House of Lords as a right belonging to each individual, whereas Irish and Scotch peers are excluded from the legislature, except they happen to be selected as representative peers.

We may here observe that the selection of a definite number of representative peers (to be invested for life, or for a limited period, with legislative functions) by the choice of their brother patricians, is peculiarly liable to objection, unless arrangements be made for subdividing the whole order into electoral sections. Amongst every body of men party spirit will exist, and every such body will be divided into factions. Now, if the whole patrician order be called upon in mass to elect one or more representative peers, such elected peers will

always belong to the party of the majority. Thus, if the majority of the Irish or Scotch peers be Tories, it cannot be expected that they will elect Whig peers as representatives. The minority of the peerage is, therefore, left wholly unrepresented. A system of rotation, or of nomination by lot, though in itself objectionable, would be preferable to such an exclusive mode of selection; but the election of peers by the freeholders of counties would obviate all these objections, as in one county a Tory peer would be chosen to sit in the House of Lords, whilst a Whig peer might be chosen in another.

If objections may be urged against the maintenance of an hereditary peerage as a branch of the legislature, still greater objections are applicable to a peerage created for life by the will of the monarch or of his ministers. It is natural to suppose that one who is raised to such a position will, generally speaking, lend himself to the designs of the power by which he has been elevated. The privilege of nominating peers for life becomes, also, a means of extensive influence, generating subserviency to the Court, not only on the part of the peers so created, but also on the part of all that class from which peers are usually chosen. It is also natural to suppose that peers named for life will unceasingly strive, by intrigue or adulation, to obtain an hereditary tenure of their dignities. Such has been in all ages the disposition of man when elevated to temporary authority, — whether to the sovereignty itself, or to functions dependent upon the sovereignty. The feudal nobility, who acquired such enormous power during the middle ages, were for the most part the descendants of men who had originally obtained their dignities on the conditions of personal service, and even held their estates on life tenure. The counts (*comites*) and dukes (*duces*) were originally "companions" of the monarch, or "leaders" of his armies. During the reign of Charlemagne, a "count" was superseded in his delegated function with as little ceremony as is now shown in the removal of a governor from one of the colonies of the British Empire.

There is one description of title to a seat for life in the House of Peers, which appears to be free from objection. In whatever manner a second legislative chamber may be constituted, all members of the House of Representatives, who have enjoyed the confidence of the people as elected representatives during a considerable period, say for twenty years, ought to be entitled to take their place in such second cham-

ber. We shall have occasion hereafter, in treating of the construction of legislature, to show that it is also desirable that retired judges should be admitted into one branch of the legislature by virtue of the qualification derived from their past services.

If a Chamber of Peers be adopted as a branch of the legislature, it does not seem reasonable to limit their functions by unnecessary restrictions. An assembly such as the House of Lords — which generally contains a considerable number of retired lawyers, chancellors, and judges, as well as others who have distinguished themselves in a political career in the House of Commons — may be supposed to possess men peculiarly well qualified for the task of legislation. There is indeed one privilege which has been wisely reserved to the representatives of the people — that of originating money bills. Popular assemblies seldom show much unwillingness to tax themselves for objects which they approve; but, on the other hand, the people have always been disposed to resist with vehemence the imposition of taxes to which they have not themselves consented. In the British legislature, the jealousy with which the House of Commons has viewed any interference on the part of the Lords, in regard of money bills, has been carried to an absurd extent; it has not only been considered a breach of privilege if the Lords attempt to alter the provisions of any bill relating to the disposal of public money, but efforts have been made to extend this claim of privilege to bills which impose pecuniary penalties for offences. By the Constitution of the United States, it is provided that all bills which impose taxes must originate in the House of Representatives, but the Senate may amend and alter them — subject of course to the subsequent approval of such amendments by the House of Representatives. It is quite reasonable that money bills should originate with the body which peculiarly represents the people at large; but if objectionable clauses be introduced into such bills, it is equally reasonable that the coördinate branch of the legislature should be empowered to suggest amendments in their enactments.

The Peers of Parliament possess, in the right of voting by *proxy*, a privilege which ought not to be conceded to the members of a legislative assembly. In an association, the objects of which are simple and definite, or in which pecuniary interests alone are at stake, vote by proxy may sometimes be permitted with advantage. In cases of this kind, it may

fairly be supposed that the principal can give such instructions to the agent who possesses his confidence as will protect his interest or promote the object which he has in view; but when legislative functions are confided to an individual, a public trust is reposed in him, which is to be exercised for the good of the whole community according to his own judgment, not according to the judgment of another. In regard of the varied discussions which present themselves for the consideration of a legislative assembly, it is impossible for an absent member to foretell the modification of opinion which such discussions might generate in his own mind. He therefore practically abdicates the exercise of his own reason, when he confides his proxy to another person. The absurdity of the practice is fully established by the exception to its exercise which is enforced in the House of Lords. Proxies are received on the second or third reading of a bill — but not in committee. The only plea that can be adduced in justification of proxy is the argument, that a member who distrusts his own judgment acts beneficially for the public when he places his vote at the disposal of some man whom he deems to be wiser than himself. But if this argument be valid in regard of the discussions which take place upon one stage of a bill, it is surely valid in regard of all other stages. If the practice be justifiable in the House of Lords, why is it not equally applicable in the House of Commons? In both cases common sense declares, that a member who is absent from a discussion ought not to be allowed to vote, because his judgment cannot be affected by what is said in the discussion.

We may here notice another privilege possessed by Peers of Parliament — I mean that of formally recording their dissent by way of *Protest*. In the discussion of public questions, every possible encouragement should be given to the exposition of adverse opinion. If objections be frivolous, they will be overruled by the good sense of the community; if they be well founded, they will be strengthened by reflection, and the exposition of them will hasten a correction of the errors of preceding legislation. Many instances might be adduced to prove, that the opinions of a majority have been erroneous, whilst the recorded protest of the minority, when based upon sound reason, has served as a continual memento, suggesting a reversal of the proceedings in which truth and reason were at first overborne by mere number. The right of protest, advantageously possessed by one branch of the legislature,

ought also to be enjoyed by the other. In the House of Commons, objections may indeed be recorded by way of amendment; but this proceeding is not so satisfactory a means of setting forth the reasons against a measure as a protest, because it is not usual to set forth in an amendment the grounds upon which the opposition is founded, whilst in a protest the main arguments against the objectionable enactment are succinctly recorded.*

CHAPTER V.

ON THE REPRESENTATION OF THE PEOPLE.

I HAVE endeavored to prove that in those countries, in which there exists a strong predilection in favor of monarchical or aristocratical institutions, it is not expedient, in a fanatical research after imaginary and unattainable perfection, to over-

* It is to be observed this chapter is rather a critique on the British House of Lords than a general disquisition on the functions and privileges of an aristocracy; on the general subject, we cannot do better than hear the illustrious Burke's opinion of "a natural aristocracy:" —

"A true natural aristocracy is not a separate interest in the state, or separable from it. It is an essential integrant part of any large body rightly constituted. It is formed out of a class of legitimate presumptions, which, taken as generalities, must be admitted for actual truths. To be bred in a place of estimation; to see nothing low and sordid from one's infancy; to be taught to respect one's self; to be habituated to the censorial inspection of the public eye; to look early to public opinion; to stand upon such elevated ground as to be enabled to take a large view of the wide-spread and infinitely-diversified combinations of men and affairs in a large society; to have leisure to read, to reflect, to converse; to be enabled to draw the consent and attention of the wise and learned wherever they are to be found; to be habituated in armies to command and to obey; to be taught to despise danger in the pursuit of honor and duty; to be formed to the greatest degree of vigilance, foresight, and circumspection, in a state of things in which no fault is committed with impunity, and the slightest mistakes draw on the most ruinous consequences; to be led to a guarded and regulated conduct, from a sense that you are considered as an instructor of your fellow-citizens in their highest concerns, and that you act as a reconciler between God and man; to be employed as an administrator of law and justice, and to be thereby amongst the first benefactors to mankind; to be a professor of high science, or of liberal and ingenious art; to be amongst rich traders, who from their success are presumed to have sharp and vigorous understandings, and to possess the virtues of diligence, order, constancy, and regularity, and to have cultivated an habitual regard to commutative justice; — these are the circumstances of men, that form what I should call a *natural* aristocracy, without which there is no nation."

throw altogether those institutions ; but that efforts should be made so to combine, restrain, and apply the powers which belong severally to monarchy and aristocracy, as that they shall be made instrumental to the welfare of the community. This reasoning is, however, founded upon an assumption that such powers are to be exercised in concurrence with, if not in subordination to, those which properly belong to the people at large. All governments ought to be constituted with a view to the benefit, not of the few, but of the many, — not of the rulers, but of the ruled, — not of the monarch, nor of the aristocracy, but of the whole community. This is a fundamental principle which none will now venture to contest; and since experience shows that those who possess power are generally disposed to misuse it, unless curbed by counteracting influences, it is essential to the welfare of a nation that the democracy should exercise a direct influence over the legislature.

As personal participation in legislative proceedings cannot, except in very small communities, be enjoyed by every individual in the state, it becomes necessary to resort to representation, as a means of giving effect to the opinions and wishes of the people. This is accomplished by dividing the country into electoral districts, and by giving to the inhabitants of each district the right to elect one or more persons to represent them in the legislature. The employment of this system of representation is the principal feature which distinguishes the constitutional or popular governments of modern days, not only from arbitrary governments, but even from the free republics of ancient times. The democracy of Rome exercised many of the privileges which belong to free citizens; but only a mere fraction of the inhabitants of the Roman Empire participated in these privileges. Social self-government, indeed, under municipal institutions, existed in many parts of the Roman Empire; but from participation in the general government of the Commonwealth, the inhabitants of the greater part of the territories subject to Rome were rigorously excluded. In modern times, on the contrary, it is at least a professed object of the policy of free states, — as, for instance, of the United States of America, of the United Kingdom, of France, Belgium, &c., — to give to the inhabitants of the provinces rights equal and similar to those enjoyed by the citizens of the metropolis.

I propose now to consider what are the conditions essential to a well-devised system of representation. As the conclu-

sions at which we shall arrive in this inquiry are equally applicable under a constitutional monarchy as under a republic, it will not be necessary to submit to the reader such alternative modifications, in regard to a representative assembly, as are required in regard to the other branches of the legislature, which, necessarily, vary according as its constituent elements may be derived from periodical election, or from hereditary succession.

Questions connected with the representation of the people have of late given rise to more controversy than any other subject of political contention. What portion of the population ought to enjoy the suffrage? In what manner votes should be given; whether openly, or secretly? Whether representatives should be allotted to districts in proportion to population, to extent and value of territory, or to taxation? What qualification should be required on the part of the representative, in regard of age, sex, religion, or property? Whether representatives ought to receive any remuneration for their services? For what period representatives should be elected? These are among the most prominent questions which have occasioned debate.

It would require a volume to discuss at length all the arguments which have been urged in support of opinions more or less favorable to democratic power, in connection with these questions. We must, therefore, content ourselves with considering, in a summary manner, the principal points at issue.

1. *What portion of the population ought to enjoy the privilege of choosing Representatives?*

It may be conceded as a general principle that it is desirable that every man in the community should participate in all civil rights, capacities, and privileges enjoyed by his fellow-citizens; but if the circumstances of a population be such, that the establishment of universal suffrage would have the effect either of causing revolution, or of placing undue power in the hands of an individual, or of enabling an oligarchy to overrule the independent intelligence of the country, a statesman should pause before he yields to the suggestion of an abstract principle in favor of what appears to be a realization of democratic power, but which may, in truth, become the means of introducing arbitrary government. There have been but few countries in which the laboring population have possessed sufficient knowledge of political science to enable them to form correct and independent opinions respect-

ing public affairs. They have, therefore, naturally placed their confidence in those who have appeared to them best entitled to their favor; and thus the votes of thousands have often expressed only the opinions of a single individual. In such a state of society it is manifest that the reasoning intelligence of the country would be more fully represented if the franchise were limited to those who are qualified by education to form enlightened opinions respecting political questions, than if it were granted to every adult of the population. The usurpation by Louis Napoleon of autocratic power in France, and the ratification of that usurpation by the French people voting under universal suffrage, screened by the ballot, affords an illustration which shows that institutions the most democratic in form are not always those which are most imbued with the true spirit of liberty. In this case we have seen a very large majority of the electors (above six millions out of seven millions) voluntarily surrendering their national liberties to the will of a single man. It may be doubted whether such would have been the result of an appeal to the intelligent and independent middle classes of the French nation. History supplies many other examples which show that the lowest class of the population have often been prompted to abdicate their political rights, and have invested a favorite leader with arbitrary power.

On the other hand, it may be said that the instincts of every class, however devoid of education, enable them to know who are their real friends, and what measures are most conducive to their welfare; that the interests of the poor require, even more than those of the rich, to be protected by representatives in whom they confide, inasmuch as wealth will always command influence; that the exercise of political rights gradually trains men to the proper use of them; that, in the present day, when every mechanic and every peasant possesses the means of acquiring political information, through the medium of the newspapers, the laboring population are as well qualified to form correct opinions upon public affairs as the half educated squires of former times; and that the selection of a representative is one of those civic duties which require honesty of purpose, rather than exalted capacity, or great intellectual attainment.

Nothing is more certain than that the mass of the people almost always desire what is right, and are generally animated by noble impulses. A crafty politician may mislead

them, and make them the dupes and instruments of his own individual interest or ambition; but this can only be done by misrepresenting facts, or by suggesting to them false pretexts. In order to move them he must disguise his unworthy purposes, and appeal to the high and generous sentiments of man's nature — to their patriotism — to their love of glory — to their sense of justice — or to their zeal for religion.

A general review of these counterbalancing arguments, as well as of various considerations which the nature and limits of this work do not allow us to develop at length, may induce us to assent to the proposition, that as near an approximation to universal suffrage should be made as the intelligence and peculiar circumstances of the population of each country will permit; and that with this view such an extension of the franchise should, from time to time, take place, as shall proportion as much as possible the political influence of each class to its capacity for self-government.

Hitherto the possession of property, as evinced either by the occupation of tenements of a certain value, or by the payment of taxes, has, in almost all countries, been made the test of electoral qualification. The professional man, the artist, the man of letters — nay, even the capitalist, if he dwell in a lodging, has been excluded, however highly educated he may be, from participating in the franchise enjoyed by the pettiest shopkeeper whose premises are of the required value. It would be desirable, if it were possible, to base the franchise upon some standard which would measure the character and capacity of the elector, rather than his wealth; but no such standard has hitherto been devised; nor, indeed, does it seem possible to suggest a basis for the franchise which shall fulfil this requirement. But, at least, all persons whose educational qualifications have been established by an adequate test ought, by virtue of such qualification, to be entitled to vote wherever they reside.*

* The educational test seems not better suited than others to protect the right of suffrage from abuse. For example, the majority of our rogues read and write, while many an honest man, even in this land of "common" schools, does neither. Is the peaceable, laborious, unambitious member of society, who pays all his honest debts and violates no law, to be disfranchised only because he is illiterate? Or is his mother wit not as safe a guide to the ballot box as the superficial smartness of his neighbor, one step above him in acquired information? Within the past two years a test of this description has been established in Connecticut, and attempted in other eastern states, chiefly with a view to disfranchise citizens of foreign birth naturalized according to law. If generally adopted, it would in some states, Vermont

It would, perhaps, be desirable, that, in addition to the general representation of the community at large, each class should have its own special representatives; thus, for instance, that the clerical, the medical, and the legal professions should elect delegates to represent their special interests; that, in like manner, the mercantile and other bodies should be specially represented, and also that the working classes should be able to command the advocacy of a certain number of delegates, appointed exclusively by themselves. Under the system of representation which has hitherto prevailed in the United Kingdom, various classes of the community have been left without champions in the legislature, whilst an undue preponderance has been virtually given to other classes. Thus the medical profession has supplied but a very small number of members to Parliament, whilst the legal profession has given at least its fair proportion of law makers; yet medical men are peculiarly well qualified to take part in many important branches of legislation. In like manner, the working class, though the most numerous class in the state, have frequently been left without a single representative who could be said to derive his election exclusively from them, and to be entirely identified with them in interest and feeling. The aristocracy and the middle class have practically usurped all control over the legislation of the United Kingdom. An extension of the suffrage does not afford a perfect remedy to injustice of this kind. It only tends to transfer the ascendency from the class which has hitherto enjoyed it to another which has been hitherto excluded from its due weight in the council of the empire, and thus to generate a new injustice. Universal suffrage, if employed by the working class with a view to their own exclusive interests, would give to that class a monopoly of the representation; because in every country the working class constitutes a majority of the population. It is probable, indeed, that they would never systematically combine to exclude from the legislature the higher ranks of society; for experience shows that in every country the lowest class are disposed to give an undue preference to persons and families who have long occupied an exalted station. But still a political organization must be regarded as imperfect, if it fail to secure an adequate representation to all the several

and Virginia for example, disqualify, it is said, at least one tenth of the whole native constituency. — M.

sections which constitute the whole community. It might, perhaps, be difficult to frame a legislative enactment which would give to each class its just and appropriate representation; but these difficulties are not insuperable. In all cases in which the members of a profession are incorporated in recognized associations, (such, for instance, as those of the learned professions.) it would be easy to provide for their representation in the legislature. A precedent for such special delegation is to be found in the case of the universities; and if ever universal suffrage be conceded to the democracy, it would be only just and reasonable to provide some counterpoise to the undue ascendency of the laboring population, by securing to all other classes adequate representation by means of special delegation.

The propriety of securing a due representation of different orders in the deliberative assemblies of a nation was recognized in several countries of Europe at a time when what is now called constitutional government can scarcely be said to have been fully organized in any part of the world. Thus, in the States General of France, the nobles, the clergy, and the *tiers-état* were convened in separate chambers for the consideration of questions submitted to them by the sovereign. The States of Piedmont and of Sicily consisted, during the middle ages, of three orders — the clergy, the nobility, and the towns. The Cortes of Arragon consisted of four estates — the ecclesiastics, the nobles, the hidalgos or gentry, and the corporations of towns. The States of Sweden were composed of four orders — the nobles, the clergy, the burgesses, and the peasants.

In the systems of popular election hitherto adopted, the wishes of a majority of the electors determine the choice of the representatives. No provision has been made for securing to the minority a representation in the legislature. This appears to be a serious defect; and it is a question well deserving of consideration whether some improvement might not be devised which would render representation more perfect. Suppose any given number of electoral divisions to contain in the aggregate 250,000 electors, of whom 150,000 entertain one class of opinions and 100,000 adopt different views of public policy, — is it reasonable that this minority should be left wholly unrepresented in the councils of the state? yet, under the system of election at present in force, such is often the case.

With a view to secure to the minority representation in the

legislature, it has been proposed "to divide the representation into groups of three members, and to entitle each constituent to give either one vote for each of the three members, or three votes for one of them; by which means the minority (when they are over one fourth of the community) would be sure of one representative. For example, in a constituency where the Tories numbered 300, and the Liberals 105, or very little over a fourth, the latter, by each of the 105 giving his three votes for the same candidate, would make his number on the poll 315, or 15 votes more than the 300 electors could possibly give to their third man." This suggestion (subject, perhaps, to such modification as shall more exactly proportion the number of members representing each party to the number of constituents belonging to such parties respectively) well deserves the favorable consideration of reforming statesmen.*

Where open voting prevails, persons who hold office, from which they are removable at the will of ministers of state, ought not to be allowed to vote at elections. If votes be given secretly, by way of ballot, it may not be improper to allow such individuals to exercise a right which naturally belongs to every member of the community; but inasmuch as the votes of officials, if given openly, would not express their real sentiments, but would in almost all cases be in accordance with the directions of their superiors, the concession of this privilege to them would be simply an undue addition to the influence of the executive. Men of independent minds would prefer to be disfranchised rather than compelled to vote in obedience to a superior authority. It is cruel to place any person in a position in which his conscientious performance of duty may be at variance with his personal interest.

2. *Whether votes should be given openly or secretly.*

In determining the question, whether the choice of the electors should be recorded by way of open or of secret vote, we have to balance the advantages and disadvantages which belong to each of these modes of election; and it is not easy to decide on which side the weight of reasoning and experience preponderates. For my own part I confess, that, ex-

* Since the above section was written, a Reform Bill has been introduced into the British House of Commons, which has been framed with a view to obviate several of the defects in the representative system which have been noticed in the text. If the remedies suggested be found to operate advantageously, they will naturally be adopted hereafter, not only in the British colonies, but also in those foreign states which possess representative assemblies.

cept under the influence of imperious necessity, I could not advocate a system which would shroud under secrecy the vote of the elector. The choice of a representative is not only one of the highest privileges of the citizen of a free state, but it is also one of his highest duties; and it is in the very nature of a public duty that it should be discharged under a sense of responsibility.

If the elector vote in accordance with his avowed opinion, he does not require the protection of the ballot; if, under the screen of the ballot, he vote in a manner inconsistent with his proclaimed opinion, he is guilty of base hypocrisy — an hypocrisy which is engendered by the practice of secret voting. The only case, therefore, in which the protection of the ballot can be of use to an honest elector, is that in which such elector exercises perfect reserve with respect to his opinions. Ought such reserve to be encouraged in a free state?

Wherever elections are taken by ballot, reciprocity of individual sentiment can exist only in a very imperfect degree between the electors and the elected. Whatever may be the professions of the voter, the representative can never know, for a certainty, by whom he has been supported; and that feeling of mutual confidence which subsists, under a system of open voting, between the representative and his supporters must be greatly impaired, if not totally annihilated. If the conduct of a representative be at variance with the declaration and promises which he made whilst he was a candidate, he may fairly be questioned, cautioned, or rebuked by those who have assisted to elect him. But no such responsibility can be exacted by any individual elector, if the votes have been given secretly, for no certain assurance exists that the party who questions the conduct of the representative was one of his supporters, and a representative will seldom admit the right of those who have not appointed him as their trustee, to call him to account for the manner in which he has executed his trust.

On the other hand, the social circumstances of a community may be such as to render necessary the protection which the ballot affords. Publicity of voting exposes the elector both to temptations and to dangers, from which the ballot exempts him.*

* In Massachusetts the ballot is enclosed in a sealed envelope; this usage, though it speaks not well for any party in the state, is found to be a protection to the working class of citizens in the manufacturing communities. — M.

Secret voting tends to check that mercenary traffic which often takes place between the candidate and the elector. It is possible, indeed, that wholesale bribery would, in small constituencies, be facilitated and screened by the ballot; but such corruption could not be conducted by way of separate negotiation between individual electors and the candidate. The bribery must be managed by agents, who would contract for the return of the candidate, and make arrangements with the electors, so as to secure his return; giving to each elector a proportion of the gross amount received from the candidate or from his friends, in consideration of such return. In large constituencies it would be difficult to organize such a machinery as would be required to give effect to this plan of wholesale corruption.

Political venality has become so systematic in England, that it could scarcely be carried to a greater extreme, if it were sanctioned by the express permission of law, instead of being hypocritically denounced in all legislative proceedings, as it now is, even by those who practise it without scruple. The law rightly treats the franchise as a trust, which ought to be exercised with a view to the benefit of the whole community; not as a property, which may be bought and sold for the advantage of individuals; but few elections take place, in which this principle is purely and rigidly carried into practical operation. The borough elections of England have hitherto been disgraced by venality in its most disgusting forms. Candidates have been recommended to constituencies, not by their virtues or their talents, but by their liberality in administering bribes to the avaricious, and intoxicating liquors to the multitude — in such case well called "the swinish" multitude. Nor does this corrupt traffic cease with the occasions which called it forth, or limit its operations to the lowest class of electors. In its more refined form, it establishes a compact between the representative and his supporters, by which he is held bound to obtain for those who have placed him in the legislature as large a share as possible of official patronage. It thus degrades the representative from the station of a legislator into that of an agent for the acquisition of places, and almost compels him to barter his vote to the minister, in exchange for the official situations required to satisfy the hungry expectations of his constituents.

There have been found some who have contended that the acceptance of a bribe in consideration for a vote is not a vio-

lation of morality, and, therefore, ought not to be punished by law as an offence. This position does not appear to be tenable. If the suffrage were given to individuals as a *property*, it might reasonably be sold. A shareholder in a mercantile company may, under some circumstances, be justified in voting under the influence of pecuniary considerations; but the political franchise is given to the elector as a *trust*, which is to be exercised for the good of the whole community. It is, therefore, an offence, morally speaking, as discreditable on the part of an elector to sell his vote for a corrupt consideration as it is for a judge to accept a bribe, or for a minister of state to sell the patronage of official situations placed at his disposal. In all these cases society should impose a heavy punishment upon the delinquent.

It does not, however, seem to be necessary or expedient to delay the poll at an election by requiring the voter to take an oath against bribery. Generally speaking, the exaction of an oath has no other effect than that of adding the sin of perjury to the original offence against which the oath is intended as a security. But, be this as it may, it is obviously reasonable that if an oath against bribery be imposed upon the elector, it ought also to be exacted from the candidate. The sin of him who tempts is at least as great as that of him who yields to the temptation. The British House of Commons, which hypocritically affects a virtuous indignation against corruption at elections, and requires the elector to take an oath against bribery, has more than once refused to exact a similar oath from political candidates. This inconsistency can scarcely excite surprise, when it is remembered that a large proportion of the members of that assembly have habitually relied upon corruption as a means of obtaining a seat in the legislature.

Considering the extent to which venality in one form or other has prevailed in the management of the House of Commons since the Revolution of 1688, it is truly wonderful that English liberty should have survived through such an era of political corruption. Fortunately, none of the ministers of state have, during that period, been animated with the disposition of a Strafford, nor have any of the sovereigns of Great Britain been stimulated by the ambition of a Cæsar or of a Napoleon. Ministers have employed, without scruple, all the influence which the command of patronage gives, but they have sought not so much to augment thereby the prerogative

of the sovereign as to secure their own personal aggrandizement, and the power of the aristocracy. Had an able and ambitious statesman supported the designs of a usurping sovereign, the boasted liberties of Englishmen would long since have been sold by the representatives to whom they have confided the guardianship of their political interests. Perhaps the increased power of public opinion, — perhaps the enormous amount of wealth, which is now independent of ministerial influence, may guarantee the present generation from such dangers; but it is the duty of patriotic statesmen to guard as much as possible against contingent peril, and if the use of the ballot at elections tend to protect the people from the evils of political corruption, such a tendency becomes a powerful argument in favor of its adoption.

In the United Kingdom the elector has also been habitually subjected to coercion on the part of landlords or employers, and to intimidation on the part of mobs. It cannot be denied that in many elections the real wishes of the voters are thwarted by the operation of this undue influence upon their minds. This indisputable fact constitutes a powerful if not unanswerable argument in favor of the ballot. In vain we contend that every elector ought to be perfectly free to vote for the individual whom his unbiased preference would select as his representative. In vain we argue that a landlord or an employer is not more entitled to expect that the elector who is dependent upon him should forego his own convictions in the choice of a representative, than he is entitled to exact conformity to his wishes in the performance of any other duty by such elector. No one ever hears of any interference on the part of a landlord with the conscience of his tenant, when the tenant is called upon to act as a juryman. No landlord, however tyrannical, would dare to justify such an interference. Why should not a similar state of feeling exist with regard to the election of a representative? The duty of an elector is not less solemn than that of a juryman. Why should not his right to the free and conscientious exercise of his own choice be held equally sacred and inviolable? If a proper state of opinion existed with respect to the rights and duties of electors, open voting would be preferable to vote by ballot. In any country in which public virtue exists secret voting ought to be avoided. But if public feeling be irremediably corrupt, a system of secret voting must be adopted, not because the practice is in itself commendable, but because it affords a refuge from greater evils.

Whilst we reluctantly arrive at this conclusion, we may observe, that before secrecy, which is in itself objectionable, shall be substituted for open voting, it would be desirable to try whether an extension of the suffrage, and an enlargement of the constituencies, would not obviate the evils of bribery and intimidation, for which the ballot is proposed as a remedy. A large constituency cannot easily be acted upon by these influences, more especially if the votes be taken in such a manner as renders it difficult to bias the choice of the electors by extraneous combination.

3. *Whether representatives should be allotted to districts in proportion to taxation — to extent and value of territory — or to population?*

This likewise is a question which has given rise to much debate, and respecting which arguments are nicely balanced.

It is alleged that as there ought to be no taxation without representation, so the representative influence assigned, either to individual electors, or to electoral districts, ought to be graduated according to the amount of taxation paid by such electors, or such districts. This principle has often been acted upon in constructing the organization required for the administration of local taxes, as, for instance, in the scale of plural voting, which prevails in the election of guardians under the English Poor Law. But although, in some particular classes of operations, there may be special reasons for adopting taxation as the basis for an allotment of representative influence, it cannot be safely so employed in the construction of a representative system which shall embrace the wants, interests, and government of the whole community. In the complicated arrangements of modern finance, it would be almost impossible to frame a just scale of representation upon this basis. Under a system of indirect taxation the customs, or excise duty, which is levied in one district, is ultimately paid by a consumer who lives in another district, and it would be most unfair to give to that district, in which the tax is levied, a disproportionate influence in the legislature, merely because it apparently yields a greater amount of revenue than another. But even if all the difficulties which render it almost impossible to allot representatives in just proportion on the basis of taxation could be obviated, there would still remain to be overcome the objection, which is an unanswerable argument against plural voting in the case of individual electors — that the poor have as much interest as the rich in the good gov-

ernment of the state, and that they require, even still more than the rich, to be protected by representation in the legislature.

This objection applies also to the principle which would assign representation to electoral districts in numbers proportionate to the value of such districts. There is much plausibility in the reasoning which contends, that a rich mercantile town, containing a given amount of population, ought to possess more influence in the legislature than an impoverished rural population, consisting of the same number of individuals; but the poorer a district may be the more is it probable that its interests will be neglected; and it is not impossible that the acquisition of influence in the legislature might, in many cases, produce results calculated to redeem it from poverty.

Different nations have acted on different principles in framing their representative systems. In the United Kingdom no one specific basis has been recognized in the allotment of representatives to various sections of the community. In England population was to a certain extent taken into account in the reform of the representative system in 1831–32, but it cannot be said to have been the basis upon which representation was founded. On the other hand, in legislating for Ireland and Scotland, Parliament refused altogether to take into account the number of the population in relation to the claims of these countries to proportionate representation. In the United States of America population is the sole standard which governs the allotment of political influence in the delegation of members to the House of Representatives; but the Senate is constituted without regard to the population of the States which it represents in Congress.

After a full consideration of all that may be said in favor of the several modes of adjusting representative influence that have been suggested or adopted in different countries, I am inclined to think that the general welfare of a nation is best secured by taking population as the basis of representation. The application of this principle, as well as of all other general principles, must, however, be modified by circumstances. Few theoretical dogmas can be universally applied with advantage. Thus, for instance, in the case of the Australian colonies, we find that an inordinate proportion of the whole population has been tempted to crowd into cities and towns, in consequence of the difficulty of procuring small allotments of land in the country that has hitherto prevailed. The province

of Victoria, a colony covering an area of above 60,000,000 acres, contains at present a population which is estimated at about 300,000, of whom not less than 60,000 are supposed to reside at Melbourne. Now, if representation were to be allotted in proportion to population alone, Melbourne would send to the legislature not less than one fifth of the whole number of representatives, and thus acquire an overwhelming influence, when compared with that possessed by the other portions of this great territory. Such a result could scarcely be considered compatible with a due regard to all the interests, actual and prospective, of a rising colony.

4. *Whether any qualification should be required on the part of the representative?*

The attainments to be desired in a representative are, competent ability and strict integrity. Now, as no formal test can be applied which will guarantee the possession of these attributes, it will be found expedient, in the selection of representatives, to rely upon the judgment of the electors unfettered by restrictions, rather than upon any artificial requirements.

It will naturally be asked, whether this latitude of selection ought to extend to the female sex, and whether women should be capacitated by law for the exercise of political functions. If this question were to be treated as a mere *theorem*, to be determined by argument, it would be easy to demonstrate that women are in all respects, except physical strength, equal, if not superior, to men; that their feelings are more pure and unselfish, their perception more acute, their judgment equally sound. For every office, therefore, which requires the exercise, not of physical strength, but of virtue and intelligence, woman is as well qualified by nature as man. In regard of educational attainments, too, it may with truth be urged, that in modern society the intellectual acquirements of women, on the average, surpass those of men. The principle of the Salic law, which, in some countries, limits to males succession to the crown, has been repudiated with advantage by England and other states. At this moment * queens occupy three of the thrones of Europe; and the experience of present as well as of former times tends to prove that the functions of sovereignty are performed by women with an efficacy equal, if not superior, to that which belongs to the rule of man. If, then, women are found to be qualified to exercise the highest of all

* Written in 1853.

political functions, it is difficult to discover any reason for supposing that they would be incapable of performing those which belong to the office of a member of the legislature, or to any of the professions or occupations of life, in which great corporeal strength is not required.

From these considerations we may infer that realms would have been at least as well governed as they have hitherto been, if women had participated in all legislative and administrative duties, and in all political rights; but it is not equally manifest that the happiness of either sex, or of society at large, would have been thereby augmented. Women occupy a sphere different from that of men, not because they are inferior in mental endowments, but because nature indicates that the gentler sex should voluntarily withdraw from the strife of public exertion, and wholly surrender themselves to the affections and duties of domestic life. In that sphere, woman is the equal, the companion, the friend of man; her influence — not to say her rule — is almost absolute; by her virtues and endearments she commands his willing homage, and wins his affectionate gratitude as the guardian of his hearth, the mother of his children, the wife of his bosom. But if the aspirations of matrons and of maids were directed to the acquirement of political fame rather than of the affections of their husbands and lovers, if their energies were employed in the struggles of political faction rather than in the peaceful pursuits of a happy home, the relations at present subsisting between the sexes would be wholly disturbed. In the rivalry of competition, that tenderness which sheds its soothing charm over the asperities of life would be lost, the duties of the domestic circle would be neglected or confided to menials, and the happiness of both sexes would be sacrificed to the pursuit of an illusory advantage. Hence, although it be undeniable that many women are much better qualified to discharge legislative functions than the men who now exclude them, yet it is doubtful whether, upon the whole, the well-being of society would be promoted by the concession of political rights to the female sex. Perhaps, however, the principle of exclusion which has hitherto prevailed has been carried too rigidly into operation. Women are allowed to drudge in factories, where they are often surrounded by demoralizing and debilitating influences, but they are excluded from nobler vocations, which they are peculiarly qualified to discharge with advantage to themselves and to others. The medical art, for instance, is an occupation

peculiarly adapted for female practitioners. That women, when suffering from disease, should be under the necessity of consulting men, is a practice obviously repugnant to every natural sentiment of delicacy. Women, therefore, instead of being excluded from the medical profession, ought rather to be encouraged to qualify themselves for its exercise, and to practise it under a diploma, with the same sanction that is accorded to medical graduates of the male sex. Perhaps it will be thought that preponderating arguments have been urged in favor of a like admissibility of women to the duties of legislation; but as the female sex, in general, acquiesce with entire satisfaction in their exclusion from political franchises, it is not desirable to encourage an agitation in favor of "the rights of women," until it can be clearly demonstrated that society suffers a practical injury from the laws which now incapacitate them for the performance of public duties.

Whether ministers of religion should be debarred from the exercise of legislative functions, is a question which admits of much doubt and controversy. If a clergyman possess in a high degree the qualifications which fit him for the performance of legislative duties, and which entitle him to public confidence, it seems unreasonable that the public should be deprived of his services; nor is it desirable that the clergy should be left wholly without representation in the great council of the nation. On the other hand, it is found that the intrusion of ecclesiastics into secular affairs almost invariably tends to lower public respect for their sacred functions: it is imagined that their thoughts ought to be directed to the higher concerns of a future world, rather than to the petty business and miserable strife of this transitory life. It is believed that if a clergyman be earnestly engaged in the cure of souls, his time will be abundantly occupied with his spiritual duties. It is thought that the incidents of a popular election — the canvass and the poll — are of such a nature that a clergyman cannot take part in them without lowering the dignity of his person and office. Upon these grounds the clergy have, in England and America, been rendered incapable of being elected as representatives of the people. In England the clergy of the Anglican Church possess, as an order in the state, no inconsiderable political influence, by the presence of the bishops in the House of Peers. In other countries, the clergy have generally been invested with extensive privileges of a political kind; — in some, an undue ascendency has been

given to this order. In the German Empire, for instance, not less than three of the electors of the emperor were ecclesiastics, — the Archbishops of Treves, of Cologne, and of Mayence, — at a time when the whole number of electors was not more than seven.

In reference to this difficult question, I incline to think that the clergy ought, in some way or other, to find admission into at least one branch of the legislature.* A variety of topics are, from time to time, brought under consideration, with which the clergy are more conversant than any other members of society, — such, for instance, as those connected with education, — and their participation in these debates would be attended with advantage. What would be the best mode of introducing this element into legislative deliberations, is a question which must be differently solved in each country, according to the character of its institutions, and according to the tendencies with regard to religious opinion which happen to prevail in it.

In the United Kingdom a clergyman is disqualified from sitting in Parliament, even though he have abandoned the exercise of clerical functions. Attendance upon the sittings of a legislative assembly may be incompatible with the due discharge of parochial duties ; and, on this ground, the exclusion of officiating clergymen may be justifiable ; but when an ecclesiastic retires from the exercise of his profession, the reasons for such disqualification cease to exist.† By a singular inconsistency, the English law debars a retired clergyman from Parliament, but allows an officiating minister to exercise magisterial duties. Now, the functions of a magistrate tend frequently to bring a clerical justice of the peace into collision with his parishioners, and to make him an object of aversion rather than of affection to them. The objections which may

* The apparent anomaly of clerical representation in any council for secular affairs, might, perhaps, be obviated by this distinction: in countries where the establishment of the church preceded the state, it would seem essential to the latter that it should have the visible aid and sanction of the church; where the state, as in Cæsar's time, preceded the church, or, as in Muscovy before its conversion, or in this country at the revolution, it is wholly optional with the institution in possession of power to share its cares and honors with churchmen, or to refuse to do so. By the church, in this relation I mean any united body of religious teachers, sufficiently numerous to have a national character and influence. — M.

† In the United States, clergymen, as such, are not incapacitated from election to the state or federal legislatures. The Massachusetts House of Representatives, in 1854, contained fifty-five clerical members, including the speaker.

be urged against the admissibility of clergymen into the legislature are not so strong as those which apply to his investiture with magisterial functions. Perhaps clergymen, while actually administering parochial duties, ought to be excluded from both legislative and magisterial functions, but such disqualification ought not to be continued in the persons of those who retire from the active engagements of the clerical profession.

In many countries it has been thought expedient to prevent very young men from entering the legislature, and it has been provided that no one should be elected as a representative of the people until he shall have attained the age of twenty-five or thirty years. Such a restriction seems wholly unnecessary. If the disposition of a young man lead him into public life, and if he be able, by his character and capacity, to win the confidence of a constituency, the sooner he enters upon his career — after he has attained the age of manhood — the sooner will he become prepared to be useful to his country. In the management of the affairs of a great empire, such as that of the United Kingdom, France, or America, many years of study and preparation are required to form an able statesman; and this apprenticeship can be served in no school with so much advantage as in the Imperial legislature. An assembly composed wholly of very young men would, perhaps, be too much disposed to act upon hasty impulse; but since the majority of all legislative assemblies is composed, in the natural course of public affairs, of persons advanced in life, no such danger is likely to arise from the presence of a few young men; whilst, on the other hand, the introduction of a considerable amount of youthful feeling into a mixed assembly tends to infuse a spirit of vigor, promptitude, and generous emotion, which might perhaps be wanting in a body composed exclusively of men who have been rendered slow and cautious and selfish by the disappointments which mature age has generally experienced.

The imposition of a religious test is forbidden by those principles of religious toleration which are essential to the good government and happiness of every community. We must, therefore, repudiate altogether the idea of exacting conformity to any peculiar system of religious belief, as a qualification requisite in a representative. All citizens are entitled to equal justice, and to equal enjoyment of civil privileges. All are compelled to undertake the burdens which belong to civilized society. All ought, therefore, to share the advantages

which belong to social institutions. In the history of mankind it is impossible to point out a single instance, in which the violation of this principle of toleration has not been attended with consequences injurious to the state which has infringed it; and in many cases such violations have been the immediate cause of the downfall of nations. Amongst the circumstances which produced the decline and fall of the Roman Empire, religious persecution occupies a prominent place. Religious bigotry has reduced Spain, once the leading power of Europe, to a condition in which she no longer even claims a voice in the councils of the European Commonwealth.* Religious persecution deprived Belgium and France, in the sixteenth and seventeenth centuries, of several hundred thousands of their most industrious citizens.† Religious persecution has rendered Ireland a cause of weakness as well as a theme of reproach to the British Empire. A thousand other instances might be cited in which religious bigotry has been injurious to nations. We may, therefore, affirm, without hesitation, that neither on the part of the electors nor of their representatives should any disqualification be allowed on account of their religious opinions.

Some who have reasoned on political subjects have main-

* The instance of Spain is not cited here with the author's usually sound information. An inquiry into the history of the collapse of that great power will bring to light a variety of influences coöperating to produce the deplorable result. The wise and courageous Balmes has expounded this question with his customary vigor, while showing that "the empire of the Catholic religion coincided, in Spain, with the final preponderance of absolute monarchy." He clearly explains that that absolutism was the result of five several causes: 1. The premature and immoderately extensive development of the old local institutions; 2. The formation of the Spanish nation out of a successive reunion of very heterogeneous parts, all possessing institutions extremely popular; 3. The establishment of the centre of power where the crown was strongest; 4. The extreme abundance of wealth, "which lulled [the Spaniards] to sleep in the arms of prosperity;" 5. The great military means in the possession of the sovereign, at the critical moment of the centralization of institutions. To all who desire to possess the corrective to Mr O'Brien's view of the cause of Spain's decay, I strongly recommend that entire chapter of Balmes, (lxvi.) — M.

† The "persecution" of the Huguenots here alluded to partook more of the character of a political proscription than of a religious exclusion. The Huguenots were, says a late French historian, "a republic in the heart of a monarchy" — a state within the state — with ports, cities, castles, forces of their own: it was impossible that they and France could long coexist; finally, France ejected them. I am not apologizing for one cruel or false action of the rulers of France at that time; but let the question stand, where the facts will support it, between the state as such, and an armed, fortified sect within and upon its borders. That Belgium and France so soon recovered their removal, shows that they could hardly have been a vital part of the nation at the time of their excision. — M.

tained that holders of office under the executive ought to be excluded from the House of Representatives; again, in some countries — as for instance in France — ministers have been allowed to sit and speak in the legislature, but have been prohibited from voting. Much inconvenience would arise from the total absence of the officers of the executive from the deliberations of the legislature, and if they be declared ineligible to sit as elected representatives, they ought, at least, to be permitted to speak for the purpose of giving explanation respecting their policy. A wise precaution has been provided by the British constitution in requiring that the member of Parliament who accepts office under the Crown should thereby vacate his seat, and that he should be reëlected before he can again sit in the House of Commons. Subject to this precaution, administrative officers, whose functions are not incompatible with attendance in the legislature, ought to be eligible to be deputed as representatives of the people. Ministerial responsibility is greatly promoted by the presence in the legislature of those who practically administer public affairs. Undoubtedly, it is not to be desired that a large proportion of the members of either branch of the legislature should consist of persons holding offices or pensions under the executive — more especially if such office holders be liable to be deprived of their emoluments, at the will of the sovereign or of ministers; but the head of every public department ought to be allowed to sit in the legislature, and to take part in its discussions. If he be elected as a representative of the people, he ought to be permitted to vote, but if he appear in the assembly only as an organ of the executive, it seems preferable that he should not be allowed to vote.

Whether judges should be eligible to be chosen as representatives of the people, is a question which has given rise to much debate. Upon one hand it is contended, that the office of judge, more than any other, ought to be kept free from the bias of political partisanship, and further, that its duties are generally so onerous as fully to occupy the energies of the most vigorous intellect, so that whatever time is devoted by a judge to political avocations, is abstracted from the cares of his own appropriate functions. On the other hand it is argued, that there is no class of legislators so well qualified for the task of law-making as those who are daily engaged in the practical administration of the laws; that the leisure hours of the judges cannot be better employed than in attending the

sittings of the legislature; that it is impossible to eliminate altogether from the mind of a judge those political leanings, which, in a free state, naturally affect the mind of every citizen; and that, in point of fact, it generally happens that lawyers are raised to the bench, in consideration not solely of their acquirements, but also of some political service which they have rendered to the party to which they have been attached; that it is not found that such party attachment disables a judge from acting impartially in the adjudication of cases brought before him; and that, therefore, the public ought not, upon grounds which are merely speculative, to be deprived of the advantage which would arise from the presence of these functionaries in the legislature.

It seems to me that the arguments in favor of their eligibility preponderate over those which may be urged in support of their exclusion; but a provision, such as has been suggested, for enabling all judges who have retired after a certain period of judicial service to take their seats in one chamber of the legislature, would go far to secure the advantages which may be expected from the introduction of judges in legislative proceedings, and would render an adverse determination of the question at issue less detrimental than it might otherwise be.

Amongst the supporters of aristocratical institutions, there is a strong leaning in favor of a property qualification, without which it is contended that none should be allowed to become representatives of the people. It is urged that adventurers, who do not possess a pecuniary independence, are more reckless with respect to the consequences of their acts than those who have something to lose; that they are more liable to be seduced by corrupting influences, and to lend themselves to the designs of ambitious or usurping rulers.

Now, though we may concede that this apprehension is not unfounded, we have to set against these apprehensions the injury which is sustained by the community from being deprived of the services of many wise and upright citizens, who do not possess large pecuniary resources. Every restriction which tends to confine the choice of electors to men of wealth limits, to a proportionate extent, their power of selecting able and virtuous men. There is reason to believe that, in the United Kingdom, many of those who have been best qualified for the task of legislation have been excluded from the House of Commons by the law which requires that members of Par-

liament should possess a certain amount of property; whilst it has been found that adventurers have experienced little difficulty in evading this law. Akin to a property qualification are the enactments which render it impossible for a candidate to engage in a contested election, or to defend his return, without incurring a very considerable, nay, often a ruinous outlay. The laws relating to elections ought to be so framed that the successful candidate should not be involved in any expense. If he accept a seat in the legislature, with a view to the public advantage, not with a view to his own private interest, there is no reason why he should be subjected to any cost. If, on the contrary, he be swayed by less worthy motives, the expenditure which he is compelled to incur in obtaining a seat affords him a pretext for using the influence given him by that position for his own private ends, and tends to exempt him from responsibility. One who has purchased his seat naturally thinks that he is justified in employing the influence which it gives him for his own, rather than for the public, advantage.

We may here also observe, that if the arrangements for registering votes, for taking the poll, and for trying controverted elections, be such as involve the candidate in great expense, these charges tend to exclude from the legislature all who are not possessed of superfluous wealth, and thereby to prevent the choice of the electors from being determined by consideration of the abilities and character of the candidates. Under the system for registering voters which has prevailed in the United Kingdom of late years, many members or candidates, who have been anxious to sit in Parliament, have been compelled to retain professional agents for the purpose of watching the registry, as well as to incur other expenses connected with registration, which altogether form a large amount of charge. By the laws relative to polling at elections, the candidates have been compelled to defray the official expense of taking the poll; and by the arrangements incidental to those laws, candidates or their friends have been subjected to much cost in bringing electors to the poll. Then, again, after the elected candidate has taken his seat, he is liable to the expenses incidental to a petition against his return — amounting frequently to several thousands of pounds sterling. When all these liabilities are taken into consideration, it will be evident, that the honor of holding a seat in Parliament has become, in the case of a great majority of the

constituencies of the United Kingdom, a privilege to which none but the wealthy can aspire.

The obvious remedy for this evil is to simplify all the proceedings relative to elections, so much that no questions can arise which require legal discussion, or entail expense upon the candidate. In England, for instance, there are a great variety of different qualifications of voters, whereas the number might be reduced to two or three, of so simple a nature that no discussion relative to them could arise on their registration. The official expenses of the poll ought to be paid by the public. The interests of the constituency, not those of the candidate, are at stake in every legitimate election; and therefore honest candidates ought not to be mulcted on account of their desire to serve their country, nor should dishonest candidates be allowed to purchase the opportunity of serving themselves by the acquisition of a seat in Parliament.

In order to prevent vain and frivolous contests, it may, perhaps, be expedient that candidates should be required to give security for the payment, in the event of their defeat, of a small specified contribution towards defraying the expenses of the poll. It may also, perhaps, be advisable to require that no one shall be considered a candidate, unless he shall have been put forward upon a requisition signed by a specified number of voters. Provisions to this effect have been introduced into the constitutional ordinance recently enacted for the Cape of Good Hope.

The polling places ought to be appointed, so that each elector should be able to walk from his own home to the place of election, and return on the same day. By such an arrangement, all expenses connected with the conveyance of electors to the poll might be obviated.

The adjustment of controverted elections is a question of greater difficulty. It is impossible to avoid expense, if election petitions be tried at the central seat of government, because it often becomes unavoidably necessary to bring up great numbers of witnesses, whose expenses cannot be borne by themselves. Legal assistance must also be obtained by the petitioning candidate and by the sitting member; and the fees exacted in this department of professional labor are most extravagant. The costs of the petitioner, or of the sitting member, cannot be thrown upon the constituency, in the case of controverted elections, without unduly encouraging litigation. I am inclined to think that the trial of a controverted election

would be best adjudicated on the spot where the election was held, by a commission of judges, three in number, appointed by the representative chamber of the legislature. As I shall hereafter take occasion to describe this proposed tribunal, I defer for the present the observations which suggest themselves in connection with this subject.

5. *Allowances to Representatives.*

In consistency with the foregoing views, we can scarcely refuse to admit that the representative ought to be relieved from the necessity of incurring expense whilst attending to the duties of his function. An allowance may therefore be provided to defray his indispensable expenditure; but care should be taken that it shall not be so ample as to induce candidates to seek a seat in the legislature as a means of obtaining an income. The position and the duties of a legislator are of such a nature that they will always attract the aspirations of public-spirited and philanthropic men. It is therefore unnecessary to employ pecuniary remuneration as an inducement to tempt such persons to undertake this office; but if large emoluments were attached to the office of representative, many persons very ill qualified for the duties of legislation would be induced to use every sort of exertion — probably the most unworthy artifices — to obtain this position, which they would value not as a means of conferring benefits upon mankind, but simply as a situation which bestows wealth as well as distinction.

In former times it was customary in England to provide an allowance for the member whilst he was attending Parliament; and in the United States of America each member of the legislature receives a daily allowance of eight dollars, to indemnify him for the expenditure which he is compelled to incur while attending the sittings of the legislature.

6. *For what term ought the Representative to be chosen?* or — to use the phraseology of British politicians — *what ought to be the duration of Parliament?*

In answering this question, I say, without hesitation, that *seven* years is too long a period, and that *one* year is too short a term for the duration of the representative trust. By those who are favorable to septennial Parliaments it is frequently argued, that, in point of fact, the average duration of Parliaments has not exceeded *four* years, and that in no recent case has it exceeded six years. But even if the truth of this assertion be admitted, it does not prove that a representative

assembly ought to be elected for so long a period as six or seven years. Men generally speculate upon the contingency which is most in accordance with their wishes; and a representative who seeks a seat in the legislature for his own personal aggrandizement, not for the public good, will feel himself much more free to pursue his selfish aims if he be elected for a period of seven years, than if he were under the necessity of being subjected to the ordeal of popular election after the lapse of three or four years. Opportunities as well as temptations of corruption more frequently present themselves during the longer than during the shorter period. And even assuming that the representative is not disposed to deviate from political honesty, yet, if elected for seven years, he is rendered too independent of the control of public opinion.

On the other hand, though in the affairs of a parish or of a corporation annual elections may be preferable to elections for a longer term, yet, in the complicated affairs of an empire, such frequent changes in the composition of a legislature do not seem to be expedient. It is impossible for any individual, however gifted he may be, to become thoroughly versed in the legislative proceedings of a great empire within a period of one, or even of two years. It is necessary that he should acquire a knowledge of the forms of the assembly to which he has been introduced, of the conventionalities of debate, of the opinions and character of his fellow-representatives, as well as that he should be master of the various branches of political science which may elsewhere be acquired by study, or by intercourse with mankind. Nor is one year a term sufficiently long to enable constituents to judge of the capacity, character, and tendencies of their representative. An honest representative frequently finds himself under the necessity of giving a vote which may not be acceptable to his constituents. If he have to solicit their suffrages immediately after the occurrence of such a contingency, he may naturally expect to lose his seat, unless he have previously had an opportunity of showing that his motives are honest, and his principles sound.

Upon the foregoing grounds we may safely conclude, that in the election of representatives the duration of the legislative trust ought not to exceed four years, nor be less than three years.

CHAPTER VI.

ON THE ORGANIZATION OF A GOVERNMENT.

THE foregoing observations have been penned upon the supposition that what is called a "limited or constitutional monarchy" is the form of government under consideration. But many contingencies have occurred, and many will hereafter occur, in which a people find themselves compelled to reconstruct the whole of their political organization. Let us now consider the case in which no existing prejudices or influences make it desirable to maintain the monarchical form of government. Let us imagine the case of a country in which there is no hereditary aristocracy, and no existing prejudice in favor of aristocratic rule, but in which an enlightened people are desirous to establish for themselves such a form of government as will best conduce to their social welfare and happiness. The problem to be solved is, What form of government ought they to choose?

Ought the legislature to consist of two coördinate branches acting in concert with the chief magistrate, or ought there to be only one legislative chamber? If there be a second chamber, how ought it to be constituted? Ought it to consist of hereditary members, or to be composed of members nominated for life, or of members elected for a limited term? Whence should its authority be derived? — from the head of the state, or from the people at large, or from a section of the people?

Ought the chief magistrate, the head of the executive, to hold his office by virtue of hereditary descent, or of election? If by election, ought he to be appointed for life, or for a limited term of years? Ought he to take part in legislative proceedings, or ought his functions to be limited exclusively to executive duties? What ought to be the prerogatives, attributes, and duties of the executive?

What classes of public affairs ought to be placed under the control and administration of municipal bodies? How ought municipal bodies to be constituted?

In what manner ought the judicial tribunals of a country to be organized? What general principles ought to govern their operations?

Let us proceed to consider these questions in a summary manner, avoiding as much as possible elaborate details.

CHAPTER VII.

ON THE CONSTRUCTION OF A LEGISLATURE.

Reason and experience seem to suggest a preference for that form of constitution which vests the legislative power in two coördinate chambers. There is a tendency in all assemblies — more especially in those which emanate immediately from the people at large — to be swayed by temporary gusts of passion or prejudice. Even in the exercise of calm opinion upon abstract questions, prevailing theories frequently so take possession of the public mind, as to blind it to the force of all antagonistic reasoning. If the legislative authority reside in a single assembly, elected by the will of the people, and of short duration, legislation will naturally follow all the caprices of public opinion, and irreparable mischief may be inflicted before the period of reaction shall arrive. Any complication of the structure of the legislature which tends to prevent the hasty adoption of ill-considered measures, without impeding the march of well-regulated progress, becomes useful on such occasions. If the legislature consist of a single chamber, such a check may partially be established by providing that only one third, or some other proportion, of the whole body, shall be elected at a given period, so that not more than one third could be simultaneously and immediately subject to the impulses incident to a popular election. This is the principle in accordance with which the municipal councils of the United Kingdom are now constituted: and it has been found to operate advantageously as well as to give satisfaction. But if it be possible to form two legislative chambers, which deserve and possess the confidence of the community, a legislature so divided appears to be preferable to a single council, even though that council should be constituted in the best possible manner.

It will be admitted that hasty legislation is checked by such a division; but some will apprehend an evil of an opposite kind, and imagine that two legislative bodies, instead of acting in harmony, will perpetually strive to thwart each other. If these bodies represent different interests, it may be expected that such will be the result; but if they are both dependent upon the people at large, there seems to be no ground for this apprehension. Occasions will arise in which they may take

different views of the public interest, and, in such cases, legislative action upon the question at issue will be suspended for a season. But no evil can result from such suspension. In the case of private affairs, the maxim, "When you are in doubt, don't act," is an invaluable rule for the guidance of individual conduct; nor is it less wise when applied to the proceedings of public assemblies. Time extinguishes doubts, and it is better that action should be deferred until conviction is established, than that ill-advised and precipitate measures should be adopted upon problematical speculation.

Assuming, then, that it is desirable that the legislature should consist of two chambers, we have now to inquire — in what manner ought these chambers to be constituted?

Having discussed, at considerable length, the principles upon which, in constitutional monarchies, the "House of Representatives" should be formed, I have only to refer the reader to that discussion, with a view to the formation of opinions respecting the constitution of this branch of the legislature.

With regard to the construction of a Senate, or second branch of the legislature, it is difficult to say which of many proposals is to be preferred; but this inquiry will be facilitated by laying down the following negative propositions, which do not appear to admit of dispute.

1. *The Senate ought not to be self-elected.*

In many republican, or quasi-republican states the Senate has exercised the privilege of self-election; that is, it has assumed to itself the right of filling vacancies in its own body, or of adding to its numbers. Such a form of election establishes an oligarchy which perpetually strives to usurp to itself the whole power of the state. It absorbs the prerogatives of the executive, and robs the people of their rights. The interests of such a body may, indeed, be identified with the general prosperity and glory of the state, but in regard of all questions of internal policy, a Senate so constituted will primarily consider how it can advance the aggrandizement of its own order, not that of the people at large.

From the existence of such an institution naturally results the division of the population into Patrician and Plebeian families — a result which tends to undermine all social happiness. It is impossible to read the history of Rome without perceiving that the heart-burnings, generated by this distinction, must have gone far to neutralize the pleasure and pride

which the Roman people derived from the triumph of their arms, and from the title of a citizen of the Roman Republic. The ascendency of one class of citizens over another is more galling than the tyranny of a single despot, unless that ascendency be derived from superior virtues or superior abilities. In the United Kingdom aristocratic privileges lose something of their obnoxious character by being limited to a very small number of individuals, almost all of whom have either themselves rendered great services to the state, or inherit titles derived from such services. Patrician families enjoy no distinctive privileges, and the younger branches of the aristocracy soon become merged in the great body of the population. In some countries of Europe, on the contrary, noble families have been for centuries a privileged class, and this artificial distinction, not being connected with the possession of any real superiority, not even with that of wealth, has produced many social evils. It necessarily generates vapid pride in the privileged classes, with jealousy and discontent amongst the unprivileged. Fortunately the French Revolution of 1789 has swept away this pestilential nuisance from the surface of a great part of Europe, but even to a very late date its traces have remained. It has been computed that in Hungary the class of nobles who, before the late revolutionary struggle, were possessed of exclusive privileges, amounted to not less than six hundred thousand persons. By some writers they have been estimated at fifteen hundred thousand.

A ridiculous attempt has been lately made to introduce these patrician distinctions into a quarter of the globe in which they might least have been expected. A committee of the legislature of New South Wales recently recommended that an order of nobility should be established in that colony, and that one of the branches of the legislature should be composed of persons delegated by the patrician order. Fortunately this proposal to establish "a Botany Bay peerage," composed of the descendants of convicts, or of the keepers of convicts, has been encountered by a universal shout of scorn and ridicule; so it is not necessary seriously to point out the mischiefs which would have resulted from the adoption of this proposal.

2. *The Senate ought not to be named by the Executive.*

If the Senate were to be composed of members appointed by the executive, for a definite term of years, it is certain that it would consist almost exclusively of persons who would conform their conduct to the will of the chief of the state.

It is not probable that he would nominate persons who, from their previous habits of thought and action, might be expected to thwart, or even to keep in check, his proceedings. Such a mode of nomination would, therefore, give an undue influence to the chief magistrate, and tempt him to form designs for enlarging or perpetuating his power. In a well-constituted government the head of the state ought to be the servant, not the master, of the people. Authority is delegated to him, not in order that it may be exercised for his own aggrandizement, but in order that the will of the nation may be executed through his instrumentality. The nation is supposed to utter that will through the voice of its legislature. We have seen that the object, with a view to which a second chamber is to be constituted, is, that the will of the nation may be expressed with the utmost possible deliberation. Now, this object would be altogether defeated if one of these chambers were to represent the wishes of the executive, not the wishes of the nation.

If the members of the Senate were to be nominated for life by the chief magistrate, his influence over their conduct would not be so commanding as if they were appointed only for a term of years. They would be to a slight extent more independent, but still they would be representatives of the executive, not representatives of the nation. The qualities which would recommend them for selection to an ambitious and imperious ruler, are precisely those which least fit them for acting as legislators on behalf of a free people. It is for the interest of the nation that the wisest, the most virtuous, and the most independent citizens should be called upon to undertake the duties of legislation. On the contrary, the chief recommendation of a senator to the preference of the executive would be subserviency of character, combined with a disposition to uphold authority and to sanction abuses. It is obvious, therefore, that such a mode of nomination does not fulfil the object sought for in the erection of a second legislative chamber. It is also liable to all the objections which have been urged against the creation of a peerage for life.

If the members of the Senate were to be originally nominated by the executive with hereditary privileges of legislation, conferred in reversion upon their descendants, a greater amount of independence would be secured in this branch of the legislature than if they were to be appointed only for a term of years or for life. Objections founded upon an appre-

hension of undue subserviency to the head of the state are thereby diminished, but another class of evils scarcely less formidable is engendered by this proposal. An oligarchy is created under circumstances which render the introduction of such an excrescence alike injurious and hateful to the people at large. In theoretical reasoning there is little to be said in favor of hereditary privileges of legislation, even where there has long existed a great feudal nobility. But mankind in general are willing to tolerate institutions which have endured throughout ages, though they may be theoretically imperfect, more especially if they practically produce little inconvenience. The time-honored names of an ancient nobility awaken none of those emotions of jealousy which are felt when a *parvenu* is invested with oligarchical privileges, on account of his having cringed to the ruling authority of the day. Whatever objections may be urged against a form of constitution which by hereditary title gives to individuals, who may possess no one qualification for statesmanship, a permanent seat in either branch of the legislature, will be held applicable by the common sentiment of the whole community to the elevation of a spurious oligarchy, in a country where antecedent circumstances do not suggest or justify the creation of such a body.

For these, and other reasons, which will be incidentally noticed elsewhere, we must reject each of the foregoing proposals, and conclude that the Senate, as well as the House of Representatives, ought to derive its origin from delegation by the people at large.

It is not easy to determine what is the most advantageous mode of carrying into effect this delegation; whether, for example, the Senate should be chosen by the same constituency which elects the House of Representatives, or whether it should be nominated by intermediate bodies acting on behalf of the people?

In the United States of America, both these modes of constituting a Senate coëxist. In the separate states, the senators are chosen by the same electors who choose the members of the House of Representatives, whilst the Senate of the Union at large, which forms one of the legislative chambers of Congress, is composed of members delegated by the legislatures of the several states.

It is generally acknowledged, that this latter mode of election has given to the Senate of the United States the ablest statesmen that are to be found in the Republic; and, on theo

retical principles, it appears to be desirable that the Senate should not be chosen by the same constituency which elects the House of Representatives. Inasmuch as the object with which two legislative chambers are preferred to one, is to impose a bridle upon the impulses of public feeling, without subjecting the legislature to autocratic or oligarchical ascendency, it seems expedient that the same passions which operate in the election of the House of Representatives should be as much as possible eliminated from the election of the Senate. With this view, it has been proposed that the electoral qualification of the constituencies which choose the members of the Senate should be higher than that of the constituencies which choose the members of the House of Representatives. Such a distinction would give to the Senate a more aristocratic character than that of its coördinate branch of the legislature; but in assuming this complexion, it would become proportionally an object of jealousy, and its moral influence would thereby be weakened. It seems expedient, therefore, that the Senate should derive its authority from at least as large a portion of the nation as elects the House of Representatives,* but that the process of election should take place through an intermediate body, who may be expected to exercise a calmer and more discriminating judgment than is usually to be found in the multitude.

In the United States of America, the legislatures of the several states which choose the Senate of the Federal Union exercise the functions of such an intermediate body, or electoral college, and experience proves that this branch of Congress could not be more advantageously constituted.

There is no reason why this system of election should not hereafter be adopted in any country which finds itself compelled to frame anew its legislative institutions. In considering what form of municipal organization is most suitable for the management of the local concerns of each country, I shall hereafter advocate the formation of "district councils," elected by popular suffrage. The councils thus formed in the several districts, whether rural or urban, would, it is to be presumed, consist of the ablest and most energetic men, who in each

* The constitutional theory in the United States is, that the Senate is a representation of territory, and the House of numbers; or, in other words, each sovereign state, large or small, meets every other state as an equal in the Senate, while in the House population is the basis of representation. — M.

locality could be found willing to devote themselves to the management of public affairs. To the members composing such "district councils" might, therefore, be assigned the duty of electing the senators of the several districts, respectively.

It may here be observed, that in the case of these elections there would be no reason whatever for giving a preference to secret over open voting, because the district municipal councillor, in voting for a senator, ought to be held responsible to his constituency for the discharge of this important trust.

The same reasons which have induced us to prefer two legislative chambers to one, and intermediate to direct election, in the case of the Senate, lead us also to conclude that it is expedient that the senators should be chosen for a period different to that assigned for the House of Representatives. If the representatives be chosen for a term of three years, the senators might be chosen for six years; and in order that this body may not undergo a total change at any particular moment, it might be arranged that half the number should retire at the end of three years, or a third at the end of two years. In the Senate of the United States, the senators are chosen for a term of six years, and a third retire at the end of every two years.

In order to secure to this body as much stability as is consistent with responsibility to the people, it is expedient that the Senate should not be liable to dissolution at the will of the executive.

Retired judges, and persons who have sat in the House of Representatives for a long period, say for twenty years, ought to be allowed a place in the Senate for the remainder of their lives, without being subjected to a popular election. The experience of such veteran servants of the public would add weight and authority to the deliberations of the assembly, and it is to be presumed that those who have so long enjoyed public confidence will not in their old age prove themselves to be unworthy of it. It may be said, indeed, that if they continue to retain such confidence, they will naturally be selected by the people, as representatives in one or other of the legislative assemblies, but it is often found that persons of advanced age are unwilling to undergo the turmoils of a popular election. And the temperament which best qualifies for the exercise of judicial functions, is precisely that which least fits its possessor for the strife of an election contest. A person elected as member both of the Senate and of the House of Representatives,

ought to be allowed to determine in which of these chambers he will take his seat, but the same person ought not to be permitted to sit, by virtue of such election, in both houses of the legislature.

CHAPTER VIII.

ON THE PRIVILEGES AND FUNCTIONS OF THE LEGISLATURE.

THE functions of a legislature ought not to be limited to the mere enactment of laws. To the legislature, whether it be called by the name of Parliament, Congress, or by any other denomination, naturally belongs the duty of investigating every subject and circumstance that can affect the well-being of the people. It is the "grand inquest" of the nation. Inquiry naturally precedes and guides legislation. Unless a disease be thoroughly probed and ascertained, it is impossible to prescribe a suitable remedy. No evil can result from efforts, even superfluous, to throw light upon the management of the affairs of a nation. The legislature is bound to exercise control over all the departments of administration, to correct abuses, and to redress wrongs. All the powers, therefore, which are necessary for the due performance of these functions ought to be possessed by the legislature.

Hence arise the claims of "privilege," naturally appertaining to each house of the legislature, in its aggregate capacity, or to its members as individuals. In the British Parliament these privileges are undefined, and have sometimes been stretched to a tyrannical extent. It is impossible to foresee every contingency that may justify extraordinary proceedings, in difficult times, but in the ordinary course of public affairs, it is very desirable that the privileges of legislative bodies should be strictly defined. The jealousy of a free nation is justly awakened, if its executive or judicial authorities assume to themselves any new prerogative without the sanction of the law; and similar encroachments, on the part of the legislature, ought to be equally discountenanced. All power which is exercised, not according to known rules, but according to discretion, is arbitrary power; and "arbitrary power" has become a synonyme for tyranny. Whilst, therefore, it is es-

sential to the public interest that each branch of the legislature should possess the privileges which are necessary for the efficient exercise of its duties, it is also expedient that such privileges should be defined and limited by law.

Among the privileges which may properly be claimed by a legislative body, we may notice in particular the following: —

Perfect Freedom of Speech.

In private life it is necessary to restrain language that can give offence to individuals, and the law of libel imposes strict limitations upon the use, or rather upon the abuse, of speech; but in a deliberative assembly, which is intrusted with the duty of investigating and of correcting abuses of every kind, it is necessary that the members should be allowed to designate actions by their real names. Good taste and good feeling will prescribe to a well-constituted assembly decorum and forbearance in language, but the utility of such a body would be very much impaired, if its members were liable to be called to account, in a civil or criminal proceeding, for expressions used by them in discussing public questions, or in animadverting upon the conduct of individuals.

Freedom from Arrest.

This is a privilege enjoyed by members of the British Parliament, respecting the expediency of which grave doubts have been entertained; but it seems to me to have been wisely claimed and conceded. If members of Parliament had been liable to arrest for debt, there is little doubt that this liability would have been used for the purpose of intimidating them, and also, on critical occasions, for the purpose of abstracting them altogether from the sphere of their duties. In the case of criminal offences, which do not admit of bail, a member of Parliament may be taken into custody; and considering that in cases of civil action the property of the debtor, not his person, ought to be the effectual security relied upon by the creditor, no great inconvenience can arise from the existence of this privilege, whilst great public injury might result from the practice of kidnapping members previously to a parliamentary division. As there are very few persons, who, whatever may be the extent of their resources, are wholly free from debt, creditors might sometimes use the power of arrest with

coercive effect, if members were not protected by this privilege.

Power to send for Persons, Papers, and Records.

This is a privilege which is absolutely essential to the efficiency of a legislative body, when acting in its capacity of "Grand Inquest" of the nation. Without such powers it might be checked in the very first stage of an investigation, and its attempts to bring to light the misdeeds of wicked ministers might be rendered wholly nugatory. An occurrence which recently took place in the legislature of Van Diemen's Land may serve as an illustration to show how necessary it is that this privilege should be possessed by legislative bodies. A committee appointed to inquire into the grievances of the colony, being desirous to examine into abuses alleged to exist in the convict department, summoned before them the principal officer of that department, but he refused to answer the questions put to him; and the council not possessing by law any power to coerce the production of evidence, the object of the investigation was completely frustrated. Had the council been animated by a resolute spirit, they would immediately have sent up for the sanction of the executive a bill authorizing them to compel witnesses to give evidence before them, and would have declined to enter upon any public business until such a power had been conceded to them: they preferred to acquiesce in a proceeding which has tended to deprive them of the prestige and prerogative which ought to be inherent in a legislative assembly.

Power to publish such Documents as may be deemed necessary for the Information of its own Members and of the Public.

This is a privilege which, like that of "freedom of speech," may sometimes be liable to abuse; but, nevertheless, it is advantageous to the public that it should be possessed by each branch of the legislature. In the case of "Stockdale *v.* Hansard," an action was brought against the officers of the House of Commons for publishing, under direction of the House, matter which was held to be libellous. Upon that occasion, it was maintained by several eminent statesmen, that this power of publication is necessarily inherent as a privilege in every legislative body; but the judges having taken a different view of the prerogatives of Parliament, the question was at length

set at rest by the enactment of a law which authorizes both branches of the legislature to circulate whatever documents they may think it expedient to publish for the information of the public.

A discretionary power of publishing appears to involve the possession of a discretionary power of withholding from publication such documents and proceedings as are required for the use of the legislature alone. By the standing orders of Parliament a single member may call for the exclusion of strangers from the debates. The habitual exercise of this power would be in the highest degree objectionable, yet occasions may arise when secrecy is desirable in the proceedings both of the legislature and of its committees. It is right, therefore, that the privilege of withholding their proceedings from the public should be possessed by legislative bodies, even though the frequent exercise of this privilege is much to be deprecated. It may be laid down, however, as a general principle, that the public ought to be made acquainted with all the proceedings of the legislature. Therefore, the debates and the resolutions of each House, as also the votes given by individual members, ought to be officially recorded and made known to the public. The exceptional cases in which secrecy is desirable are extremely rare, and secrecy should never be imposed at the mere will of an individual member, but by the deliberate act of the whole House.

Power to maintain Order.

It is scarcely necessary to observe, that power to maintain order in debate is a privilege which ought to be possessed by all legislative bodies. This power should be given not only with a view to control interruptions arising from the conduct of members of the assembly itself, but also interruptions arising from any other quarter. By some legislative assemblies, casual spectators have been allowed to testify applause or dissatisfaction, according as sentiments pleasing or distasteful to them have been uttered by the several speakers in debate. This is a practice which ought on no account to be permitted in a duly organized assembly, which represents the people at large. It is astonishing how much indirect influence over the debates of an assembly may thus be acquired by a handful of individuals brought together by a skilful manager of mob-intervention. The speaker is insensibly led to conclude that the voice of

these casual spectators represents the opinion of the public, whilst in truth they may be nothing else than the hired *condottieri* of a faction. It is fitting that a member should pay due respect to public opinion; but public opinion is not to be gathered from such interruptions; and if demonstrations of this kind do not really indicate the public sentiment, but, on the contrary, may often be artfully used by a faction for the purpose of overawing the timid, or of influencing susceptible minds, it is surely expedient that they should be wholly suppressed. The use of mob-influence is the most dangerous mode of invading public freedom that a designing minister can adopt, because it overthrows liberty in the name of liberty itself. Let us suppose, for instance, that a wicked king or minister were desirous to extinguish the legislative freedom now enjoyed by the British nation. He would probably fail in his design if he were to resort to what the French call a *coup d'état*, and attempt to suppress by force the meeting of Parliament. He would command a much greater chance of success if he were to propose ultra-democratic measures which the legislature would certainly reject, and thus bring to his support the intimidation of a mob. A legislature divested of the support both of the executive and of the people is nothing more than a small assembly of individuals, in themselves wholly powerless. The British Parliament has frequently lost for a time the confidence of the public, but it has on such occasions been sustained by the physical power which is placed under the command of the executive. Were that support withdrawn, mob-intimidation might wholly paralyze its proceedings. Calm deliberation is at an end, when it is interrupted by the roars of a multitude. The proceedings of the different legislative assemblies which were convened in France, during the progress of the French Revolution of 1789, sufficiently testify the results which must ensue if mobs be allowed to interrupt the deliberations of a legislature. It is not easy to say what course of proceeding ought to be adopted by a legislative assembly when the executive refuses to aid in preserving order throughout its deliberations. Perhaps the most prudent course, and that which will best conduce to the preservation of public liberty, is to refuse altogether to proceed to business until perfect tranquillity shall be restored. In order to be able to meet every contingency that may arise, a legislative body ought to possess the right to adjourn from time to time, according to its own discretion. The exercise of this

power may indeed be counteracted for a season by a prorogation, or by a dissolution, but the political institutions and laws of every country should be framed in such a manner that the executive should be under the necessity of calling together the legislature within a reasonable time after a prorogation or a dissolution, in which case the right to govern its own proceedings by the privilege of adjournment becomes again restored to it.

Power to compel the Attendance of Members.

This is a privilege which appears to be essential to the due conduct of legislation. It may indeed be argued that a member is responsible to his constituents, not to his colleagues, and that if, with the consent of his constituency, he thinks it advisable to abstain from taking part in the proceedings of the legislature, no external force should be applied to compel his attendance. Questions often arise respecting which a conscientious member entertains doubts. Is it reasonable that he should be compelled to vote either for or against a proposal respecting which his judgment is not fully satisfied? Difficult also, if not impossible, is it to enforce the performance of legislative duties against the will of a reluctant member, or section of members, who possess firmness enough to brave the penalties imposed upon those who refuse to act.

These are plausible objections, and occasions may arise in which it would be inexpedient as well as tyrannical to enforce the attendance of members who are unwilling to take part in legislative proceedings which are distasteful to them. Still it is a power which cannot be dispensed with by a legislature.

It is not consistent with sound constitutional doctrine to maintain that a member acts solely on behalf of his own constituents. He is placed in the legislature for the purpose of superintending the affairs of the whole empire. When a question of great public importance is about to be discussed, "a call of the House" brings up a number of absentees whom indolence, not conscientious scruples, kept away from the labors of the session. There are also certain classes of business, which are so little attractive, that without compulsion few members would be induced to attend to them. Is it unreasonable that each member of the legislature should be compelled to contribute his share towards the performance of its necessary duties? A juryman is fined if he refuse to attend the court to which he is summoned; and, though cases of

hardship occasionally arise in the enforcement of this obligation, it is universally admitted that power to compel the attendance of jurymen is a prerogative essential to the due administration of justice. An officer is not compelled to enter the army, but after he has voluntarily sought a commission he is bound to comply with the rules of the service. So a member of Parliament is not compelled to accept a seat in the legislature, but after he has accepted it, he is bound to perform the duties which belong to this function.

It may seem strange that the writer of these pages should maintain this opinion, when it is recollected that he incurred the censure of the House of Commons, and submitted to imprisonment, rather than serve upon a private committee. But upon that occasion he did not deny that it might be expedient that the House should possess the power of compelling the attendance of its members. He simply maintained, that according to former precedent a discretion was enjoyed by members, as to whether they would or would not take part in the proceedings of private committees, and, in the exercise of that discretion, he judged that his time would be more beneficially devoted to the public affairs of Ireland than to the private business of England. Had the House of Commons possessed an undoubted right to compel attendance, derived either from precedent or from statutory enactment, he would have obeyed the order, instead of resisting it. In the case of election committees such right is given by statute, and, in all cases, power of this kind should be defined by law. Otherwise a member might be called upon by the legislature to perform acts directly at variance, not only with his own inclinations, but with the interests of his constituency, and with the duties of citizenship.

Perhaps this is as convenient an opportunity as any that will present itself for noticing a practice that prevails in the House of Commons, which appears to me to militate against every principle of judicial equity. When a charge is brought against a member of the House of Commons, he is called upon to state whether he has any observations to make in reply to it, and is then compelled to withdraw; so that he is absent from a debate in which statements most injurious to his character may be made, without his being afforded any opportunity of answering them, either personally or through his friends. In every description of trial, in the other courts of England, the accused is compelled to be present throughout the whole of

the proceedings, and can take exception to any statements which are made that tend to disparage his character; but in the House of Commons, the issue of the debate may be influenced by assertions utterly at variance with truth, made in the absence of the person whose interests are at stake. This is a practice, which, though sanctioned by custom, is in itself so unreasonable, that it ought to be abandoned in the British legislature, and avoided in all others. It may be proper that a member, when accused, should leave his place and take his seat at the bar, but he should at least have an opportunity of hearing and of replying to all that can be said against him.

In my own case, relying upon the advocacy and support of the party with whom I acted, I forbore to state fully the grounds upon which I refused to serve on an English railway committee, but when I found that those grounds were misrepresented by both friends and foes, I solicited an opportunity of addressing the House on my own behalf. That request was refused, so that the resolution under which I was imprisoned for twenty-five days, and subjected to a fine, was founded upon a series of misrepresentations which I was not allowed to refute.

It may be doubted, whether a legislative body ought to possess the right to expel any of its members. It has been seen in the British House of Commons (as in the case of Wilkes) and upon many other occasions in history, that even assemblies, which have professed to represent the democracy, have often been led, by passion or partisanship, to use the power of expulsion in an unjustifiable manner. On these occasions a wrong is inflicted, not only upon the member himself, but also upon his constituents. There are some contingencies, which ought to involve the forfeiture of a member's seat, but those cases should be defined by law; and expulsion should not depend upon the arbitrary discretion of the body itself. In the case of protracted absence without adequate cause, and without leave, in the case of lunacy, or when a member has become bankrupt, or has been convicted of treason, or felony, or bribery, or has been condemned after impeachment, his expulsion ought to take place as a matter of course.

In trivial cases, when a breach of privilege is committed, the punishment should be imprisonment, in the nature of "an attachment for contempt of court;" and such imprisonment should not extend beyond the duration of the session. When

a crime, such as bribery, has been committed, the guilty party ought to be prosecuted according to law, before the ordinary tribunals of justice.

It is scarcely necessary to observe, that every member of a legislative assembly ought to be allowed to resign his seat. In the British House of Commons, this resignation can only be effected by soliciting a place of emolument under the crown — such as "the Stewardship of the Chiltern Hundreds" — acceptance of which vacates the seat of the member who holds it, though its value is only nominal. This form of resignation is a very clumsy mode of effecting an object which is in itself legitimate. It is painful to many men even to appear to solicit a favor from an administration in which they place no confidence; and, if I recollect rightly, cases have occurred in which this opportunity of resignation has been refused by the minister of the day.

Power to appoint their own Officers, &c.

It is obviously essential to the independence of a legislative body, that it should possess the power of nominating its own officers. Perpetual collision might be expected to arise between the legislature and its officials, if such officials were named by the executive. They ought to be the agents, not to say the servants, of the assembly to which they are attached; but if they were to be appointed and removable by an external authority, they would upon all occasions consult the wishes of that authority, rather than obey the assembly for which they profess to act. The Speaker of the British House of Commons is now the organ of that House. He has neither eyes to see, nor ears to hear, nor voice to speak, except as it directs. If he were named by the sovereign, he would become the servant of the Crown, not the organ of the House of Commons. In losing that confidence which results from the free choice of his fellow-members, he would lose all moral control over them. He would become an object of jealousy, rather than of attachment and pride, to those on whose behalf he speaks and acts. Under the British constitution, it is provided, that the election of Speaker shall be subject to confirmation by the sovereign: but it is very questionable whether even a *veto* upon this appointment should be accorded to the executive. The exercise of such a *veto* would occasion more evil than could result from the selection of a Speaker who might not be acceptable to the sovereign.

These observations apply to all the subordinate officers of a legislative assembly; such as the clerks, sergeant at arms, librarian, short-hand writers, &c. It is, perhaps, better that the appointment of these officers should be left to the Speaker, than that they should be elected by the House itself; but, in being named by the Speaker, they indirectly derive their situations from the legislative body, and are amenable to its authority, not to that of the executive government.

The most important of all the derivative functions which are connected with the official administration of the affairs of a legislative body, is that of the tribunal which is constituted for the trial of controverted elections. It is absolutely essential to the independence of a legislative assembly, that this tribunal should derive its origin and power from the legislative body for which it acts — not from the executive government. It is obvious that whatever authority possesses the right to nominate the tribunal for the trial of controverted elections, will practically obtain a commanding influence over the assembly for which such tribunal is constituted. It is always easy to get up a petition against the return of a member of the legislature; and, if the judicature which tries such petitions be corrupted by partisanship or by subserviency to the executive, the composition of the legislature will be vitiated accordingly. In the British House of Commons, every sort of abuse has prevailed in connection with the trial of controverted elections. At one time election petitions were tried by the whole House. The divisions on points raised by these petitions were then openly and avowedly made a struggle of party strength; the claims of justice being deemed altogether subordinate to the triumphs of faction. A change was subsequently introduced by the Grenville Act, which transferred to committees, chosen by lot, the jurisdiction over controverted elections; but it was found that the same disregard of principle, honor, equity, and truth, which had previously disgraced the House collectively, prevailed to an equal extent in these committees. Another change was consequently made, at the suggestion of the late Sir Robert Peel, which has hitherto been attended with less flagrant violations of decency and justice, than formerly characterized the trial of controverted elections; but the organization which was adopted at his instance is capable of being perverted by an unscrupulous minister, or by an unscrupulous faction, to wicked purposes, with even more certainty of effect than that by which it was preceded. As the subject is

attended with much difficulty, I offer with diffidence my own views as to the best mode of trying election petitions. It seems to me that this duty should be delegated by each legislative assembly to some competent tribunal, not consisting of its own members, yet deriving its authority from the legislative body for which it acts, and altogether independent of the executive. With this view the Speaker should nominate, subject to the concurrence of three fourths of the House, three barristers, or more if required, to whom should be assigned the duty of trying all cases of controverted elections. Hitherto committees have erred, sometimes from incompetency, and sometimes from corruption or partisanship. Hence has arisen a total want of uniformity in the decisions of election committees. Barristers would be competent to deal with those legal questions, which now confuse unsophisticated country gentlemen; and it is to be expected that their decisions would be governed by some uniform principles, which would give to election law at least as much certainty as belongs to any other branch of jurisprudence. Corrupt partisanship would be eliminated from this tribunal, by the check which provides, that the barristers named by the Speaker must possess the confidence of at least three fourths of the assembly for which they act. As selection for such an office would be one of the highest honors incidental to the legal profession, and as the tribunal itself would be liable to reconstruction after every dissolution, these judges would naturally be desirous to maintain a character for strict impartiality, and would have more to lose by departure from the paths of integrity than they could gain by lending themselves to the machinations of power, or to the passions of faction.

Upon constitutional principles, similar to those which apply to the nomination of officials connected with a legislative assembly, it would seem to be inconsistent with the independence of the legislature that the executive should have a voice in the nomination of those officials whose duty it is to register the names of electors, and to revise the registered lists. If the electoral franchise be simple and well defined, the duties of a registering officer are of such a nature that there is little opportunity for the exercise of undue influence on the part of the executive; but in case the franchise be ill defined or complicated, the electoral privilege will be accorded or withheld, in great measure, according to the discretion of the registering officers. If the executive Government appoint these

officers, they will be tempted to use their discretion so as to give an undue advantage to the party which supports the Government. Such influences act unconsciously upon the minds of even honorable men; and, though actual corruption may not govern the decisions of an official so appointed, yet a corrupt bias will be imputed, whenever his decisions appear to favor the party which supports the Government. Upon these grounds, it seems expedient that the legislature should nominate the registering and revising officers; or, at all events, that it should exercise a *veto* upon their appointment, (if they be nominated by the Government,) in case there be reason to distrust their integrity. This is one of those occasions upon which something more than a simple majority of the members of the legislature should be required to sanction an appointment. No such officer should be appointed, unless his nomination be satisfactory to at least three fourths of the legislative assembly, so that the minority may be protected against the usurpations of the majority. In Ireland the revising barristers have frequently been accused of partiality in the exercise of their functions, because they are dependent upon the executive Government. In England the judges have appointed the revising barristers; and as the judges are supposed to be neutral in politics, imputations of partiality have not prevailed to the same extent in regard of their nominations; but it seems to be more consistent with constitutional principle, that the body whose composition depends upon the due attainment and exercise of the franchise by those who are qualified to be electors, should, directly or indirectly, control the appointment of these officials, rather than they should be nominated by any extrinsic authority.

This is, perhaps, the most convenient opportunity for remarking that a revision of the electoral lists should take place annually, so that none but qualified electors may present themselves to vote at elections. If the lists be not annually revised, they will exhibit the names of many electors who have died or lost their qualification; and thus an opportunity for fraudulent voting will arise at the poll, which can only be corrected by the expensive inquiries of a tribunal for the trial of controverted elections.

Power of Impeachment.

There is a class of offences against the state, the consideration of which can scarcely be assigned to a juridical tribunal, without giving to such a tribunal a political authority, which ought not to be conceded to officials nominated by the executive, and dependent upon it for promotion. If, for instance, in the negotiation of a treaty, a privy councillor advises and assists the sovereign in proceedings which are disgraceful to the royal authority, and disparaging to the interests of the realm, as occurred more than once during the reign of Charles II.; if a high public functionary neglects to execute the duties intrusted to him, or performs acts not warranted by the law or the constitution, as in the case of Strafford in England, and Polignac in France; if a governor oppresses the inhabitants of a dependency, as in the case of Warren Hastings; if a judge, or other public officer, accept bribes; — for crimes of this class it is proper that there should be some punishment; and since they do not naturally fall within the jurisdiction of the ordinary tribunals, it becomes necessary to constitute a special judicature for the trial of such offences. This form of trial is called impeachment. Under the British constitution, the House of Commons brings forward the impeachment, and the House of Lords adjudicates upon it. Under the Constitution of the United States of America, the House of Representatives brings forward the impeachment, and the Senate adjudicates upon it. Though it cannot be denied that political bodies are generally liable to be swayed by strong party feelings, yet it does not seem easy to devise a more eligible form of trial than that which has been adopted in both these countries. Under this arrangement, the concurrent opinion of both the bodies which conjointly represent the nation must pronounce that the accused is guilty, before he can be punished as a criminal. Whilst, if the trial of high crimes and misdemeanors against the state were assigned to a tribunal composed of the ordinary judges, there would be reason to apprehend that a desire to please the head of the government would sometimes induce the members of such a tribunal to convict the innocent, or to shield the guilty. In trials for ordinary offences, the judges are comparatively uninfluenced by prepossessions for or against the accused; but in the case of political trials, as for high treason, sedition, &c., judges

generally lean to the side of authority, and lend themselves to whatever result will be most acceptable to the executive powers of the state.

Power to sanction a Declaration of War, and to ratify Treaties.

To the legislature ought to be reserved a right to declare war, and to give an ultimate sanction to treaties with foreign powers. Under the British constitution, an unrestricted right to declare war, and to make treaties, is delegated to the sovereign, and much evil has arisen from this prerogative. The Minister for Foreign Affairs pledges the nation to operations which are often founded upon his own personal views of policy, and sometimes upon his mere whims, rather than upon the considerate verdict of public opinion. Negotiations, while in progress, are veiled in mystery; and it is not until the nation has been committed to some unjust or impolitic engagement, that the expression of its opinion is elicited. In recent times, several instances have occurred in which a minister has thus acted upon his own responsibility. I shall only mention the case of the war in Syria, upon which, though Parliament was sitting when it was commenced, the opinion of the legislature was not taken. The war being concluded before Parliament reassembled, the British nation had no opportunity of expressing an opinion as to the expediency of that expedition until after it was accomplished. As the British arms, and the policy of the minister, were in this instance crowned with success, it was not to be expected that the legislature should, by an unavailing resolution, condemn a proceeding which had terminated in triumph; but these proceedings might have involved not only the British isles, but all Europe, in a protracted war, without the exercise of any previous deliberation on the part of the British people. When a nation is once engaged in hostilities, it is difficult for it to retire from the contest; and whether its issue be fortunate or disastrous, war brings with it such a train of calamities that every possible precaution should be taken to prevent the occasion of a quarrel. Treaties are the public law of nations, and therefore naturally fall within the sphere of legislative functions. It is quite proper that the conduct of negotiations with foreign powers should be confided to the Minister for Foreign Affairs, but he should not be at liberty to conclude any final engage-

ment, much less to plunge his country into a war, without the sanction of the legislature. An emergency may unexpectedly arise when the national honor will call for immediate action, or for demonstrations of a hostile kind; but in such case the legislature ought to be specially convened for the purpose of taking into consideration the circumstances of the crisis.

By the fundamental constitution of the United States of America, the right of declaring war, and of granting letters of marque and reprisal, is given to Congress, not to the President; and it is provided that no treaties can be made by the President except with the consent and sanction of two thirds of the Senate. Hitherto, at least, no inconvenience appears to have resulted from these restrictions, as the foreign policy of the United States has been eminently successful. It seems to me, however, that the right to sanction treaties should not be reserved exclusively to one only of the deliberative councils, which together constitute the legislature. A treaty being a solemn act of legislation, intended to bind two or more nations by an international agreement, it is only reasonable that the whole legislature of each country that is to be bound by it should deliberate upon its terms. The general adoption of this principle by all constitutional governments would indeed get rid of much of the mystery in which negotiations are now shrouded. So much the better! Honest designs seldom require to be enveloped in darkness and secrecy, whilst, by the enforcement of publicity, many a noxious project would be prevented from germinating to maturity. Delay might also occasionally arise from the protracted deliberations of popular assemblies. But have we not seen that preposterous and mischievous delays have arisen in the negotiations of diplomatists, not unfrequently from the most trivial causes? A treaty is either advantageous or it is disadvantageous. If it be advantageous, the legislature will naturally hasten to sanction it. In case of doubt, it cannot be too long postponed. If it be disadvantageous, any intervention which tends to defeat it is usefully applied. That the House of Representatives, as well as the Senate, should possess a right to deliberate upon the terms of a treaty seems the more reasonable, when we remember that all the expenditure required to carry into effect the provisions of a treaty must be voted as a grant originating in that assembly.

Power to grant Supplies.

Although it may be said that taxation is but a branch of legislation, and that therefore it ought to be considered according to the general principles which guide legislation, yet, in a free state, the right to determine what financial burdens shall be imposed upon the community is justly regarded as one of the peculiar privileges which belong to the immediate representatives of the people. Chiefly through the possession of this privilege of stopping the supplies is control over the operations of government secured to the democracy. It is necessary for the well-being of society that much power should be concentrated in the hands of the executive; and this power might soon be rendered independent of democratic influence, if the purse strings of the nation were not held by the representatives of the people. The experience of other nations of Europe, as well as that of England, shows that, when sovereigns possess hereditary revenues sufficient to enable them to abstain from making appeals to the liberality of their subjects, they naturally refrain from calling together the representatives of the people. Hence, the fundamental principle of the British constitution, which requires that all the ordinary supplies necessary for the management of public affairs shall be granted annually by the House of Commons, is deserving of universal imitation. The practice which restricts the House of Lords from considering in detail the provisions of money bills appears, on the other hand, to be unnecessarily stringent. The enforcement of such a restriction upon a coördinate branch of a legislature derived from popular election would be wholly irrational. In Great Britain, this limitation originated in jealousy of oligarchical encroachment; but in those countries (as, for instance, in the United States of America) in which the Senate, as well as the House of Representatives, is ultimately, though indirectly, derived from the choice of the people at large, there can be no foundation for such jealousy.

Some doubt may exist as to the question, whether it is desirable to adopt the principle established in the British Parliament, that no money shall be voted by the Commons except upon the recommendation of the executive. According to the forms of the House of Commons, if any proposal be made relative to a grant of public money, not recommended by the

ministers of state, it must be made by way of address to the Crown, not by way of direct vote; and upon more than one recent occasion — as in the case of "the Danish claims" — ministers have refused to accede to the wishes of a majority of the House of Commons. This appears to be a very strange restriction upon the legitimate rights of the representatives of the people; but it has been found necessary, in order to prevent irresponsible members of Parliament from availing themselves of the apathy or good nature of their brother representatives, to draw money from the public treasury for private "jobs," or for local objects. In ordinary times, the practice is undoubtedly attended with convenient results; but if ever a revolutionary struggle should arise between the executive and the representatives of the people, it would necessarily be set aside or suspended for the occasion.

Not only ought the legislature to possess the privilege of appropriating, annually, out of the public revenues, such supplies as it may deem necessary for the management of public affairs, but it ought also to be provided that a portion, if not the whole, of the revenue should be raised under the authorization of temporary, rather than of permanent enactments. If the taxes be collected into the public treasury by virtue of permanent Acts, the representatives of the people lose half that power which belongs to the privilege of stopping the supplies. Though they might refuse to grant any supplies, the taxes would still be levied in conformity to law, and a daring minister might assume to himself the responsibility of appropriating, without the consent of the legislature, the money so collected. But if the taxes be levied by virtue of an annual or periodical enactment, then, in the event of a collision between the executive and the legislature, the legislature, by refraining from reënacting the Revenue Laws, would render illegal the collection of taxes, and every citizen would be justified in resisting payment of them. Formerly it was the practice of the British Parliament to pass annual Acts authorizing the levy of a large proportion of the revenue. Until a very late period, the sugar duties were thus levied by virtue of an annual Act; but the House of Commons, relying upon its assurance that it will always enjoy the same influence which it now possesses, has very unwisely abandoned this essential guarantee of popular liberty. Almost all the taxes are now levied under the authority of permanent rather than of temporary Acts.

It is also to be remarked, that a periodical renewal of the Revenue Laws affords frequent opportunities of revising their enactments, and of suggesting alterations in such as are found to be productive of injustice or of inconvenience. Every one versed in the practical details of legislation knows how difficult it is to procure the repeal of an existing law, or the correction of an existing abuse. The minister of the day generally finds some excellent reason for not changing that which is already established; but when a measure is of necessity brought under consideration, with a view to its renewal, he will generally accede to any reasonable suggestion, rather than provoke an unfriendly discussion.

Taxes imposed for the special purpose of securing the interest of the public debt ought, however, to be levied under the authority of permanent rather than of temporary enactments. It is of paramount importance that faith should be kept with the public creditor. A momentary advantage may sometimes be gained by violating plighted engagements; but in the case of nations, as of individuals, "honesty is the best policy," and no temptation or opportunity ought to be afforded to those who would sacrifice the national honor and the lasting interests of their country for the sake of a temporary advantage gained by repudiating pecuniary liabilities lawfully contracted.

Having considered the privileges which a legislature ought to possess, our time might, perhaps, be not unprofitably employed in inquiring what are the powers and functions which legislative assemblies ought carefully to abstain from exercising. But this negative research would lead us into details inconsistent with the object of this work. Let it suffice, therefore, to observe, that the legislature ought to refrain from assuming to itself duties which properly belong to executive, judicial, or municipal administration. Thus, for instance, it is expedient that the legislature should, directly or indirectly, possess the power of removing ministers of state and all other functionaries; but it is not desirable that it should appoint these officials by direct nomination. The power of removal constitutes a useful check upon maladministration. The power of appointment would afford a temptation to jobbing and intrigue. Were the legislature invested with such a prerogative, the acquisition and exercise of patronage would become the main object of the exertions of its members. The enactment of good laws would only be an object of secondary

concern. Already the indirect influence obtained over the distribution of patronage by the parliamentary supporters of an administration, tends much to degrade the character of the British legislature, by rendering the representative an agent for the acquisition of situations; whilst, at the same time, it demoralizes the public sentiment, by introducing into popular elections an element of mercenary consideration, which ought not to be connected with the office of legislator. This evil would be greatly augmented if official situations were directly bestowed by the immediate act of either branch of the legislature.

In like manner, though it be desirable that the legislature should reserve to itself the power of removing bad judges, it is by no means expedient that it should interfere with the ordinary course of judicial administration. The experience of the ancient republics tends to prove how ill qualified are popular assemblies for the exercise of judicial functions. In the British Parliament also, whenever individual interests or individual rights are involved in the questions under discussion, it is found that the vote of the House is determined by influences very foreign to the calmness and impartiality of a well-constituted judicature.

So, in regard of the actual management of public affairs, whilst it is desirable that the strictest responsibility should be exacted from the officials who administer public affairs, it is not expedient that the legislature should take upon itself the task of managing the details of administration, whether imperial or municipal.

There is a natural tendency in the human mind to grasp at the exercise of power, in the most trivial, as well as in the most important concerns of life. This tendency prevails in assemblies of men as strongly as in individuals. Hence, it is seen that in the British Parliament, whose functions naturally involve a legislative superintendence over the highest interests of an empire containing one hundred and fifty millions of human beings, there is often displayed more eagerness to intermeddle with the local politics of a parish, than to adjust the most vital questions that can affect the destinies of a considerable section of this empire. A well-constituted legislature, instead of thus grasping to itself the management of petty details, ought rather to reserve its energies for its higher and nobler duties. It ought to construct administrative bodies of a subordinate kind, in such a manner that they shall be

competent to manage all local concerns, without requiring the constant interposition of the supreme legislative authority. By this means nearly the whole mass of that legislation, which is called "Private Acts," could be eliminated from the statute book. If a turnpike trust, or a company, is to be incorporated, if a common is to be enclosed, it has been thought necessary to call into action the legislative machinery of the empire, while almost all the objects for which these special enactments are designed might be much better accomplished under the operation of general laws, which would embrâce not only the individual case, but also all other cases of the same class. The supreme legislature would thus be released from the exercise of duties, which, though trivial, are onerous, and parties who require the aid of an organization for the accomplishment of their designs, would at the same time be relieved from the expensive waste of money, and harassing waste of time, which are consequent upon the process of this kind of special legislation.

CHAPTER IX.

ON THE MODE OF CONDUCTING LEGISLATION.

It is scarcely necessary to remark, that the functions which we have hitherto recapitulated, however important in themselves, are to be considered merely as the accessory duties of a legislature. Its main business is legislation — the enactment of laws. It is important, therefore, to consider in what manner, and upon what principles, legislation can be conducted with the greatest advantage to the community.

Each of the legislative assemblies of the British Parliament has very wisely endeavored to avoid precipitation, by securing frequent opportunities of deliberation and debate, with respect to every measure propounded for enactment. Every bill* must be submitted for discussion upon several different occa-

* A "Bill" is the draught of a law under consideration of Parliament. After it has received the royal sanction it is no longer with propriety called a "Bill." It is an Act of Parliament, or a Statute.

sions. Thus, in the House of Commons, there arise, during the progress of a bill, opportunities of debate and division upon the motion for leave to bring in the bill — upon the first reading — upon the second reading — upon the motion for its committal — upon the several clauses of the bill, while it is under consideration in committee of the whole House — upon the report — upon the third reading — and upon the motion "that the bill do pass."

A power of suspending the standing orders is reserved to each House, by which, on critical occasions, the progress of a measure is accelerated, but, in ordinary cases, an interval of at least one day is allowed to interpose between each of the principal stages of a bill, so that even if a measure be unopposed, full opportunity is given for its consideration. If the bill be opposed, a variety of additional motions can be made consistently with the rules of the House, with a view to retard its progress, and to afford still more ample opportunity for discussion respecting its provisions.

Yet every one who has watched the progress of law making in the British Parliament must have frequently had occasion to observe how imperfect it is. Measures which excite party debates are scrutinized with much vigilance, but a very large majority of the bills which pass through both Houses of Parliament receive no attention, except, perhaps, from a few members who may happen to feel a special interest in the subjects to which they relate. The public in general knows little of such measures until after their final enactment. When a bill does not awaken party vigilance, it is easy to introduce into it amendments (as it were, furtively) which materially alter its original provisions. Even when such changes are not made, bills are frequently defective, not only in regard of the policy upon which they are founded, but also in regard of the technical form in which they are drawn. Through the incapacity of the persons who prepare them, their provisions are often obscure and contradictory, or inconsistent with the enactments of unrepealed statutes. The members of a popular legislature may be well qualified to form an opinion respecting the policy of measures, but it is not to be expected that they should be competent to understand all the subtilties of the technical jargon with which lawyers obscure the simplest proposals. Inasmuch as it appears to be a hopeless undertaking on the part of laymen to

rescue common sense from legal perplexity, it is necessary to employ legal skill for this purpose. It is desirable, therefore, that every bill, before it is considered in committee of the whole House, should not only be referred to a select committee of members, but also that such committee should be assisted by an eminent lawyer, appointed by the legislature to revise bills in progress. This barrister should be called upon to certify in writing his opinion respecting the legal bearing of its provisions; and if amendments should be subsequently introduced, the bill should be again submitted to him, before it finally passes, so that he may have an opportunity of calling the attention of the House to any ill-advised changes which it may have undergone.

There ought also to be a staff of barristers, whose duty it should be to clothe in legal language the resolutions of the House, with a view to their final enactment as laws. The Government of a country can always command competent professional assistance; but a private member of the legislature, who may be qualified to submit useful proposals, may yet be unable to give to those proposals a technical form, or to obtain professional aid for such a purpose. In these cases the opinion of the legislative body ought to be taken by way of resolution upon the proposals so submitted — say upon "the heads of a bill," and the responsibility of the legal verbiage should rest upon the officer of the House, not upon the member who brings forward the proposal. The legislator ought to be required to deal only with the substance of an enactment. He is not expected to engross upon parchment the bill which he brings forward. Neither ought he to be called upon to give to his suggestions the form of legal technicality. Were these aids to legislation supplied by the legislature, it might be expected that all enactments would bear a symmetrical character: and as the highest skill would naturally be sought for, under such arrangement it might be expected also that much of that confusion and perplexity which arise in the interpretation of statutes from ambiguity of expression, would be avoided.

Quorum of Legislative Assemblies.

In the conduct of business by deliberative bodies, it is found necessary to determine what shall be the *quorum* of the body

— that is, what is the minimum number of members whose presence shall be required, in order to give validity to the proceedings. It is not essential that the *quorum* should bear a fixed proportion to the whole number of members. When a deliberative council consists of a large number of members, a smaller proportionate quorum will be found sufficient for the conduct of business, than ought to be required when the council is less numerous. Thus, for instance, if the whole number of members do not exceed fifteen, the quorum ought to be not less than one third of the council, because a lesser number would not be sufficient to give authority to the deliberations of the body; but if the council consist of six hundred members, it is not necessary to require that a third, or two hundred members, shall be present at all the proceedings. It is found, practically, that the ordinary routine of business will be better managed by a small number of attentive members, than by a crowd of careless observers, or even of assiduous disputants — eager to take part in every discussion. It is impossible, therefore, to say what ought to be the quorum of a legislative assembly, unless we are first told what is the total number of members of which the assembly consists. In the House of Commons the quorum is not more than forty — less than one sixteenth of the whole number of members of that assembly. Yet it frequently happens, that public business is arrested by "counting the House," when, if forty members are not present, the House is adjourned until the next day. This process of "counting the House" is frequently used by the Government as a mode of getting rid of inconvenient motions. Even during great party debates, it often happens that about the usual hour of dinner the number of members present dwindles below forty; but, unless called upon to count the House, the Speaker, after he has once taken the chair, is not bound to notice the deficiency. In the collision of great parties, this mode of suspending a debate is seldom resorted to by a ministry, because it would produce exasperation; but when an independent member, acting with a view, not to the triumph of a party, but to the welfare of neglected classes of mankind, brings forward a useful proposal, he must expect to be encountered by this petty and contemptible expedient for evading discussion. The subordinates and hangers-on of the ministry, who on other occasions "whip in" their adherents to attend a division, now invite them to leave the House; and

when the number of members has been reduced below forty, some underling rises and moves that the House be counted. In order to check this discreditable practice, it is desirable that in case a motion be made for counting the House, a short interval (say five minutes) should be allowed to elapse, which would enable those who are within the precincts of the building, though not actually present in the House, to assemble and reconstitute the quorum required for the transaction of public business. It frequently happens, that even those who are most solicitous about the progress and issue of a debate are compelled to leave the House for a short time. By adopting the arrangement here proposed, all such members would have an opportunity of reassembling; and some of the most useful discussions that are brought forward in Parliament would be protected from interruption.

The House ought also to adjourn for an hour at dinner time, so as to allow members an opportunity of satisfying the requirements of nature, without neglecting the business under discussion. Some members of the British Parliament have perseveringly endeavored to induce the House of Commons to adopt the practice of sitting during the day, rather than in the evening and at night; but this proposal has been uniformly resisted by the majority, upon the ground that those who have duties to perform in public offices, those who have mercantile or legal business which requires their attention, those whose services are employed on Committees, would be unable to attend the sittings of the House, if it were to meet early in the day. Perhaps it would be an improvement upon the present practice if the House were to meet at two or three o'clock, instead of at four, and to adjourn for an hour at seven o'clock in the evening — the usual dinner hour of members of Parliament; but no arrangement can be suggested which will be wholly free from inconvenience.

CHAPTER X.

ON THE INTERVENTION OF THE EXECUTIVE IN LEGISLATIVE PROCEEDINGS.

The Veto.

It is generally assumed that in constitutional monarchies the sovereign ought to be a constituent branch of the legislature. A cavil might be raised against this *dictum*, on the ground that practically the sovereign in some countries takes no part in the process of law making, except that of withholding or granting his assent to enactments framed by the deliberative councils of the legislature. Under the British constitution the monarch is not at liberty to suggest alterations in the enactments submitted to him for approval. He simply accepts them or rejects them. By some writers this restriction upon his legislative prerogatives is considered a valuable security against undue influence. Possessing the prerogative of a *Veto*, he can annul the legislative proceedings of both Houses of Parliament by refusing assent to their enactments; but in modern days he never exercises this *Veto*, so that practically he takes no ostensible part in legislation.

We have now to ask ourselves whether the head of the executive ought to possess this prerogative — whether a single individual ought to enjoy the power of annulling the will of the nation, as declared by its legitimate representatives in the legislature.

It is difficult to defend this prerogative in argument; but in the United Kingdom no practical inconvenience is found to result from it, because the machinery of government is so conducted as to render its exercise unnecessary. It has become absolutely essential to the harmonious coöperation of the three branches of the British legislature that the ministers of the sovereign should be able to command a majority in at least one of the Houses of Parliament, so that if they be desirous to prevent a bill from becoming law, they take care that it shall be defeated, not by the instrumentality of the royal prerogative, but by the vote of a majority in one of the Houses of Parliament. If a ministry were to continue to hold office for a considerable time after they had lost the confidence of Parliament, the whole government would be thrown into con-

fusion, which would probably generate a revolution. The House of Commons would withhold supplies, or grant them for not more than a few months, and every means of clogging the machinery of government which could be used without injuring the essential interests of the nation would be adopted. In 1783, Mr. Pitt, indeed, boldly ventured to carry on the government as minister in opposition to an adverse and factious majority of the House of Commons; but in that case the House of Commons, not the minister, had lost the confidence of the nation, and he was enabled to defeat the machinations of his political adversaries by a dissolution of Parliament. It is now an established maxim that the ministry ought to retire as soon as it shall appear, after a dissolution of Parliament, that they have lost the confidence of the country. But as it may happen that a measure might pass through both Houses of Parliament against the will of the executive, without any withdrawal of confidence from the administration, it would seem that the executive ought to possess the power of arresting for a limited time the enactment of such measures. It would be easy to enumerate a multitude of instances in which not only the popular branch of the legislature, but also the community at large, have surrendered themselves to some delusive idea, or to some unreasoning passion, under the influence of which proposals have been adopted which have given occasion to much suffering, and have subsequently been denounced as follies, with unavailing regret. To provide that those who are peculiarly responsible for the prudent guidance of public affairs shall be able, upon such occasions, to interpose a check upon precipitate legislation, is as reasonable as it is unreasonable that they should have the power of thwarting the well-considered wishes of the nation by protracted opposition. By the Constitution of the United States a suspensive veto has been given to the President. He may send back a bill to the Senate and House of Representatives for reconsideration; but if, after such reconsideration, it be approved by two thirds of the members of both Houses, it becomes law, without the assent of the President. Some such arrangement as this appears advisable, with a view to obviate the inconveniences which may arise, on the one hand, from precipitate and ill-considered legislation, or, on the other, from an injudicious resistance to the public will on the part of the executive. When this sort of suspensive veto is granted to the head of the executive, it is proper that he should be

at liberty to state fully the grounds upon which he returns a bill for reconsideration. He thus becomes an active participator in legislation; and it may with propriety be said that in such case the legislature consists of three coördinate branches.

Power to convene, prorogue, and dissolve the Legislature.

It will probably be admitted without hesitation that the chief of the executive ought to possess the power of convening the legislature whenever the circumstances of the country appear to him to require its intervention. In every constitutional state the legislature ought to meet at least once in every year. By the Constitution of the United States a stated day in each year is appointed for the assemblage of Congress. The British Parliament imposes upon the sovereign the necessity of convening the legislature annually, by granting supplies for the public service for the space of only a single year, and by passing an annual "Mutiny Act," the expiry of which without renewal would necessarily cause the army to be disbanded. A special provision ought to be inserted in every constitutional Act, requiring that the legislature should be assembled in session at least once in every year, so that neither the executive nor the legislature may be permitted to evade this indispensable obligation.

Power to prorogue the legislature is a prerogative which, under a constitution such as we have contemplated, cannot be abused by the executive. On the other hand, if it were possessed by either or both branches of the legislature, it is very possible that it might be misapplied. Thus, for instance, the legislature might be kept in permanent session — an arrangement which might be productive of much evil. A large proportion of the members would be compelled by the requirements of their private affairs to return to their homes, and during their absence measures might be surreptitiously passed by those members whose personal inclinations or interests might induce them to occupy themselves without interruption in superfluous or mischievous legislation, rather than in the pursuit of business or the relaxations of pleasure. More danger is to be apprehended from too much law making than from too little. Less evil arises from the postponement of a crude proposal than from its hasty adoption. If it be really useful, it will be fortified and improved by discussion and

delay; if it be of doubtful expediency, its enactment will be advantageously deferred until doubt shall be converted into a certainty, which will dictate either its adoption or its rejection. For this reason, if for no other, we may conclude that it is safer to confide the power of proroguing the legislature to the executive than to either branch of the legislature.

Nor can we hesitate to admit that the power of dissolving at least one chamber of the legislature ought to be confided to the executive. The sovereign of the British Empire is authorized by the constitution to dissolve the House of Commons without assigning any motive for such dissolution, and this prerogative is found to be equally advantageous to royalty and to the community at large. It sometimes happens (as might naturally be expected under a system of septennial election) that parliamentary combinations are formed, which have in view the advancement, not of the interests of the public, but of the interests of a party. By this prerogative the sovereign is enabled to test the opinion of the country as to the policy and relative merits of the contending parliamentary parties. A dissolution of Parliament under such circumstances is, in fact, an appeal to the people. If the result of that appeal be adverse to the ministry, and if in the new Parliament so elected they cannot obtain a majority, prudence demands that there should be a change of administration. In assuming here and elsewhere that a ministry cannot continue to hold office without disadvantage to the country, after they have lost the support of a majority in the popular branch of the legislature, I do not contend that a ministry ought to resign whenever any of their measures happen to be defeated by an adverse vote; such a principle would greatly tend to fetter the deliberations of the legislature. Votes would be given, not according to the merits of the question at issue, but with a view to the ulterior consequences of an adverse vote in relation to the existence of the administration. Such considerations already exercise too much influence in the British legislature. It not unfrequently happens that a member votes against his convictions, for the purpose of upholding a ministry to which he is attached. When we say that an administration ought not to hold office after it has lost the support of a majority in Parliament, we mean, that after it ceases to *possess the confidence* of the majority a change becomes desirable. The sovereign of the United Kingdom ought always to be disposed to listen to the

advice of Parliament with respect to the continuance in office of his ministers; and when he finds that those whom he has chosen have forfeited the confidence of the country, as expressed by Parliament after a dissolution, he is bound to appoint others, who will be more acceptable to the people and to their representatives. If the executive implicitly obeys the will of the majority of the legislature, no collision will arise between these powers; but, on the other hand, if an irreconcilable difference arises between them, a dissolution of the legislature, that is, an appeal to the sense of the nation, appears to be the safest and most rational mode of putting an end to the controversy.

The Long Parliament, in taking from Charles I. the power of dissolving the House of Commons, then sitting, suppressed not so much a prerogative of the Crown, as a privilege which belonged to the people, and by this act, more than by any tyrannical proceeding on the part of the king, the constitution of England was invaded. Had Charles continued to possess the power of appealing to the people at large by a dissolution of Parliament, it is probable that he would never have lost his head. The voice of the nation, uttered through newly-chosen representatives, would have authoritatively repressed those collisions, which were generated by the struggle to acquire and the struggle to retain power, made respectively by the Parliament and the sovereign. In like manner, it is extremely probable that the recent usurpation of power by Louis Napoleon would not have occurred if, as President of the French Republic, he could have dissolved the legislative assembly, and could have invited the electors at large to decide, by a new election, whether he ought to be supported or opposed in the measures proposed by him, which were rejected by the assembly. If the nation had decided in his favor, he would naturally have preferred to possess constitutional rather than unconstitutional power. Had it decided against him, he would scarcely have ventured to contravene by usurpation the will of the people so recently expressed. Unfortunately, by the constitution of 1848–49, the President was not invested with the power of thus appealing to the sense of the nation by a dissolution, and the assembly continued to subsist after it had withdrawn its support from the President, while, at the same time, it had itself forfeited the confidence of the people of France. It therefore became an

easy task to suppress it by military force, and by its overthrow to extinguish the constitutional liberties of France.*

By the Constitution of the United States of America, the President is not permitted to dissolve Congress at pleasure; but as the House of Representatives is chosen for a period of only two years, public opinion has an opportunity of expressing itself in a new election before a quarrel between the legislature and the executive can have become very inveterate. It seems to me, however, that the Constitution of the United States would be improved by giving to the President the power of dissolving the House of Representatives, with a view to enable an immediate appeal to be made to the sense of the nation, in the event of a collision between the President and Congress.

It is doubtful whether the Senate should be exempted from the operation of this prerogative; but I incline to think that, as a second chamber is constituted chiefly with a view to give stability to the deliberations of the legislature, it is not desirable that the Senate should be liable to dissolution by the *fiat* of the executive.

CHAPTER XI.

FUNDAMENTAL PRINCIPLES OF LEGISLATION.

Before I conclude that portion of this work which relates to the constitution of the legislature, I think it desirable to set forth some fundamental principles which ought to be observed in the legislation of every free country. It must not be supposed that this special notice of a few fundamental principles implies that others, not enumerated, deserve to be overlooked as of little importance. It is obviously impossible, in a work of this kind, to include all the topics which become subjects for legislation; but there are some of paramount importance, respecting which the writer is not at liberty to remain wholly silent. The adoption of a constitution, framed to meet the requirements of a community which has

* This confirms what I took occasion to observe at page 15, on the subject of the *coup d'état* of the present Emperor of France. — M.

not previously enjoyed the full measure of freedom, ought to be accompanied by an express recognition of these fundamental principles — constituting, as it were, a charter of public liberty, similar to the Magna Charta and the Bill of Rights of the British constitution.

Let us first say a few words respecting the structure of laws.

1. Laws should be clearly defined, and consistent with each other.

2. Laws should be impartial and uniform in their operation. If a law be made or set aside in a particular case, in order to promote the interests of an individual, or to deprive him of advantages enjoyed by the rest of the community, such partial legislation almost always operates as an act of injustice.

3. *Ex post facto* laws, inflicting pains and penalties, should rarely, if ever, be enacted. By the original Constitution of the United States such enactments are expressly prohibited.

4. Laws should be promulgated in such a manner as that they may be generally known by those who are called upon to obey them.

Whether the laws of a country ought to be digested into a code of moderate dimensions, and subsequently enacted by legislative authority, or whether they should be left to depend mainly upon precedents, as in the case of the common law of England, are questions upon which those conversant with forensic practice have been much divided in opinion. Common sense appears to suggest that a knowledge of the laws which regulate the transactions between man and man, and which govern his conduct by sanctions or penalties, should be rendered as accessible as possible to the whole community. It is true that in a very artificial and complicated state of society the laws must necessarily be artificial and complicated; but this unavoidable evil, instead of reconciling us to hopeless ignorance of the laws which we are bound to obey, ought rather to stimulate enlightened statesmen to undertake the task of simplifying, as much as possible, that which is of necessity too abstruse, and of reducing, as much as possible, that which is of necessity too cumbrous.

With regard to the common law, there may be some difficulty in giving a codified form to precedents which determine the application of general principles to particular cases; but there is no difficulty in digesting the statute law. In many

branches of political regulation, the inquirer has hitherto found it necessary to search through a long series of Acts, often conflicting with each other, before he has been able to satisfy himself as to the actual state of the law in its relation to points which are in their own nature perfectly simple. In all such cases as these, the want of a consolidating digest can arise from nothing but negligence — may we not say from wilful negligence? — on the part of those public functionaries whose duty it is to superintend the enactment and enforcement of the laws of the land.

Among the fundamental principles which ought to govern legislation, we may specially notice the following: —

Natural Rights should be invaded or circumscribed only to such an extent as the welfare of society imperatively requires.

Natural liberty is the right which each man possesses to say and do what he pleases.

Social or civil liberty is the right to say and do every thing that is not injurious to others. Every restriction which unnecessarily interferes with this right is an infringement of social liberty.

It will be found by the inquirer, that in almost all systems of legislation this principle is too much overlooked. Law makers prefer complex and artificial machinery to the simplicity of nature. Often, in order to obtain a trifling advantage, they inflict great injuries, or impose vexatious inconveniences. Take, as an instance, the passport system of the continental nations of Europe. There is no natural right which is more unquestionable, nor any less liable to abuse, than the right which each person possesses to go wheresoever he may please. There are few natural rights, interference with which is productive of greater vexation and inconvenience. The experience of England and America, and of other nations in which the passport system does not prevail, proves that it is unnecessary.* Yet, under the pretext that it is de-

* The experience of England and America is hardly applicable to the state of the European continent. England is protected by the sea from the visits of nearly all except those who seek her shores on business. If the Strait of Dover were spanned by a bridge, or a score of them, or if her frontier towards France was a mere imaginary line, her exigencies and her experience might be quite different. In these States, the federal law obviates all necessity of passports; yet if the present Union were dissolved, especially in a conflict of interests and institutions concerning negro slavery, few

sirable to exercise a control over the movements of bad men, the whole community is in several countries of Europe subjected to the annoyances of passport regulations; and in order to carry these regulations into effect, a tribe of officials are maintained at a great expense, which must be defrayed by onerous taxation imposed upon the community at large.

Another instance is to be found in revenue regulations, by which the growth, manufacture, and sale of various articles are placed under restrictions and prohibition. Thus, the growth of tobacco is prohibited in the United Kingdom. The manufacture of spirits is prohibited, unless it be carried on in large distilleries. The sale and manufacture of many other articles, in many other countries, are subjected to penal restrictions of a very vexatious nature. It may be said, in defence of these infringements of natural liberty, that they are incidental to the necessity of collecting a revenue; but they are often carried far beyond the necessity of the case; and, by a different system of taxation, many of them might be wholly avoided.

Another class of restrictions upon social liberty is to be found in laws which interfere with the liberty of the Press. Under pretence that a government ought to prevent those who speak and write from promulgating opinions or statements injurious to the community or to individuals, the natural right of man to give free utterance to his thoughts has been in many countries systematically infringed. To this class belongs the censorship of the press. It is quite consistent with natural equity that a man should be held responsible for the sentiments which he utters, as well as for the actions which he commits; but as a vague apprehension that an act of violence may be committed is no sufficient reason for tying up the hands of the whole community, or for depriving them of instruments by which death may be inflicted, so, in the case of writings, to subject the human mind to the restrictions of a censorship * is an infringement of natural

northern travellers, we suspect, would be allowed to visit a slave state without passports. The European system is susceptible of improvement, but on a populous continent, so cut up between rival powers, it is difficult to understand how it could be altogether abolished. We should avoid as much as possible confounding dissimilar conditions of society — what Mr. Everett calls "reasoning too much in the gross" in politics. — M.

* This is hardly the place to discuss the censorship of the press; but until that profession, where free, is restricted by the diploma and *etiquette* of a profession, just grounds of complaint will not be wanting against those who deal in opinions without apprenticeship or license. Medicine and law are

liberty, which tends, more than any thing else, to destroy the intellectual energy of a people.

Right to bear Arms.

The right of self-defence is a natural right, which legislation should aid, rather than supersede. By some it is thought that in a well-regulated community individuals should be altogether debarred from what is called "taking the law into their own hands," and that they should, in every case, look to the public authorities for protection from injury. It is said that social order is best maintained by the enforcement of such a principle. A standing army is upheld, in order to protect the community from foreign aggression; a police force is maintained, in order to protect individuals from private wrong; and it is argued that the agency of these forces supersedes the necessity of individual effort.

Undoubtedly, the maintenance of social order is an object of paramount importance; but social order itself may be purchased at too dear a rate, if it can only be upheld by extinguishing manly virtues in a population. During the middle ages, scenes of violence were of much more frequent occurrence than in modern days, and great evil arose from those breaches of social order; but it cannot be denied that the energies of individual character were by these very disorders developed, in a manner almost unknown to the present generation.

The right to bear arms is one of those fundamental rights upon which the liberties of a free people rests. In a well-ordered community, the occasions may be rare in which an individual has occasion to protect his person from violence; but such cases may occur, and when they occur, the tardy interference of the authorities often comes too late to repel the menaced wrong. For personal protection, therefore, every man should be allowed to possess arms. If he make an improper use of these arms, let him be severely punished; but the apprehension of an occasional outrage is no sufficient reason for disarming a whole community.

professions — why not the press? If it will not make laws for itself, should not the state make laws for it? Have not all of us a domestic index? Are there not many books and papers none of us will permit to be read in our houses, or by persons under our influence? Why, then, this outcry against the general principle of limiting the press? — M.

The use of arms by the population at large is the best security that a nation can possess against subjugation by a foreign foe. When a people rely exclusively upon a standing army for protection, then if that army be vanquished in a battle, or in a succession of defeats, no alternative remains except submission; but a people accustomed to the use of arms, and courageous in spirit, may rally after a hundred defeats, and recover its freedom.

Nor is it alone against foreign foes that a nation ought to be prepared to defend its liberty. The minister or sovereign who desires to enslave a people naturally wishes to deprive them of the means of resistance. Insurrection is an alternative to which a nation should be slow to resort; but the fear of such a contingency ought to be ever present to the minds of those who design to enslave a country. A patriotic legislator, therefore, will encourage rather than repress a disposition on the part of the people to possess arms, and to learn their use. The liberties of England are due to the maintenance of this right, which is secured, as a part of the constitutional system of England, by the Bill of Rights. The liberties of America were acquired by the use of the rifle, handled by brave men. The liberties of Switzerland were acquired, and have been maintained, by the possession of arms, and by a manly determination to use them in the hour of need. Such popular rights as are to be found among the nations of the Continent are secured by the practice of training to the use of arms, as a national guard or militia, a large proportion of the population. On the other hand, England strives to deprive the Irish of the use of arms, because she desires to keep that nation in a state of subjection, and because she remembers that when Ireland possessed, in the Volunteers of 1782, a military organization, of a national character, the interests of Ireland ceased to be sacrificed to those of England.

Among the fundamental rights of a nation, the right of resistance to illegal acts ought to be distinctly recognized by the law. In the case of misdoings by inferior functionaries, this right is admitted by the common law of England. If a constable arrest a person without proper authority, or beyond the limits of his jurisdiction, he may be resisted; and though the law is not explicit in establishing a right to resist kings and parliaments, when they invade the fundamental liberties of the people, yet, the history of the English nation proves that the

practical exercise of this right has been in no slight degree instrumental in animating the spirit, and in moulding the form, of the British constitution. Not to seek examples in the era during which Magna Charta and other charters were wrested from weak and wicked sovereigns, we may observe, that the general concurrence of thinking men now applauds the resistance of the Parliament to the illegal and tyrannical proceedings of Charles I., and sanctions the deposition of James II., at the Revolution of 1688, for infringing the laws, and invading the liberties, of the British people. A similar concurrence of opinion applauds the successful resistance of the American colonists to the misguided legislation of the British Parliament. Even upon the Continent of Europe, where, upon the whole, usurpation by oppressors has been more successful than resistance by the oppressed, we find instances in which this right has been vindicated, and its exercise approved by the general verdict of mankind. No one now hesitates to admit that the Low Countries were justified in resisting the bigoted tyranny of Spain, or that Switzerland was justified in liberating itself from the Austrian yoke. Few will be found to deny that Charles X. was justly deposed by the French people in 1830, on account of his violation of the charter and suppression of the liberty of the Press. It is unnecessary to multiply examples drawn from ancient or modern times. When successful, revolt and rebellion are almost always commended; but our judgment respecting the lawfulness of resistance ought not to depend upon the test of success. I shall not attempt to argue this question upon religious grounds. The advocates of passive obedience and of active resistance have equally drawn from the Sacred Scriptures passages which appear to support and sanction their respective views and proceedings. The common sense of mankind, the implanted instinct of man's nature is, in reference to this question, a surer guide than fanatical interpretations of doubtful precedents or dogmas extracted by forced constructions from either the Old or the New Testament. When a ruler attempts to violate the rights which belong to a nation, he ought to be firmly resisted by the conscientious citizen, even as the multitude ought to be resisted when they invade the province which has been assigned to the ruler, by the deliberate will of the nation.

If, then, kings or parliaments violate the law or the constitution, these high functionaries ought to be resisted with as much promptitude as would be exhibited in opposition to the

meanest bailiff, if he were to act without due authority. Resistance upon such occasions is a duty. Its exercise may be restrained by force, and then prudential considerations may in some measure excuse neglect of duty; but the moral complexion of the act of resistance in no degree depends upon the chances of success. When Louis Napoleon, by the *coup d'état* of December, 1851, superseded all the constitutional authorities of the state, and invested himself, by the aid of military power, with a dictatorship, it was the duty of every French citizen to have opposed force to force; and those who fell in the performance of this duty deserve to be honored as martyrs to the cause of constitutional freedom.* When the union between England and Ireland was effected by a corrupt traffic between the wicked ministers of England and an equally wicked majority of the Irish Parliament, it was the duty of the Irish nation to have resisted, by force, this surrender of their constitutional right of self-government. The Legislative Union between England and Ireland was perpetrated, in violation of the most solemn international compact; and this violation was not sanctioned by an appeal to the nation. It was simply effected by purchasing the votes of a majority in both Houses of the Irish Parliament — by the corruption of men, who under a defective constitution were invested with the function of making laws for the Irish people, but not with a right to extinguish their legislature. If the British Parliament were to abdicate their functions, and deliver over to the sovereign all authority, legislative, judicial, and executive, it would become the duty of every British citizen to resist by force such a treacherous surrender of their constitutional rights. In all such cases resistance is an obvious duty — the highest of social obligations. Illegal usurpation, aided by military power and immoral corruption, often triumphs over right, and in such cases those who fail must expect to suffer the penalties which frequently attend the performance of virtuous deeds, just as a soldier must expect to lose his life in fighting the battles of his country; but in the case of both the citizen and the soldier, the merit or demerit of his conduct does not depend upon success. In the regulation of human affairs, Providence does not always award retribution to crime or reward to virtue. Yet crime is not the less crime, because it remains unpunished; nor is virtue the less virtue, because it is unrewarded.

* See notes at pp. 15 and 96.

I may here quote, in support of these opinions, the authority of Locke, who says, "In all states and conditions the true remedy of *force without authority* is to oppose force to it. The use of force without authority always puts him that uses it into a state of war as the aggressor, and renders him liable to be treated accordingly." But not only is the citizen justified in resisting acts which are clearly at variance with the law and the constitution of the country in which he lives, he may also be warranted in resisting misgovernment, even though it be not contrary to law. Were not such resistance justifiable, abuses and tyranny, once established, would be forever perpetuated. I will not avail myself of this opportunity for endeavoring to prove that the Irish nation would have been justified in rebelling against British misgovernment in the year 1848, or that the inhabitants of Hungary and Northern Italy deserve to be commended for having endeavored to shake off the yoke of Austria. I will not go back to the times of the Sicilian tyrants, or of the Imperial Cæsars, but will content myself with adducing the most recent instance that has fallen under my observation, in which resistance to misgovernment would have been justifiable, even though that misgovernment were not at variance with law. Only a few months have elapsed since the Australian colonies of Great Britain were engaged in a controversy with the mother country on account of the continued transportation of criminals to these colonies. A tissue of fallacies had been woven, and used even till they became threadbare, by successive Colonial Secretaries, in defence of this persevering violation of the wishes and interests of the inhabitants of Australia. Now, if these adolescent communities had resisted by force the importation of the concentrated crime of the empire into their bosom, all mankind would have pronounced that a resort to arms upon such a quarrel would have done honor to those who bore them, even though it should have led to an open revolt from the dominion of the mother country. This contingency was averted by a tardy concession to the opinion of Australia, but the concession was made rather through consideration for the interests of England, and through apprehension of the result of a struggle, than from a just appreciation of the claims and wishes of the inhabitants of Australia. In all such cases, however, considerations of expediency should control the emotions and acts that may be prompted by justifiable disaffection. We have seen that when a functionary violates the law, resistance

becomes an imperative duty; but when a ruler misgoverns a country, without absolutely contravening any existing law, those who desire to effect, by force of arms, a change in the political institutions, with a view to prevent the continuance of such misgovernment, ought carefully to weigh the chances of success. It is obvious that in such case failure will strengthen the hands of the oppressor, and tend to extinguish the hope of future amelioration. A civil war, indeed, is not the worst of evils, for patient acquiescence in servitude debases the spirit of a people and injures their character, if not their material interest, more than the most destructive civil war; but still internal warfare is, undoubtedly, one of the greatest calamities that can afflict a nation. No one, therefore, ought to take upon himself the responsibility of exciting or of aiding such a conflict, until he is fully convinced that the misgovernment which his country endures is productive of more evil than can reasonably be expected to arise from a revolutionary struggle — nor unless there appears to be a probable chance of success.

It is scarcely necessary to discuss the question, whether individuals are at liberty to get rid of tyrants by means of assassination, because the common feeling of mankind revolts at such a mode of destroying a public enemy. As a matter of casuistry, indeed, it may be debated whether Charlotte Corday, in assassinating Marat, committed an act which ought to be condemned, or rather which was not deserving of applause.* We know that Cicero, no mean authority in regard of moral philosophy, commended the assassination of Julius Cæsar. The memory of Harmodius and Aristogiton was cherished by the Athenians, for having delivered their country from servitude by the murder of a tyrant. It may be argued that an oppressor is like a wild beast, which may be lawfully killed by every brave man who has the hardihood to encounter it. Undoubtedly it will be found that not only many kings, but also many ministers, and even many private individuals, have been permitted to live, whose early destruction, by any means, fair or foul, would have saved the lives and abridged the sufferings of multitudes of human beings. But although we may admit that the extinction of such monsters would have been attended with benefit to mankind, we cannot but feel that

* This passage is vague and unsatisfactory. The Catholic doctrine is, it is *never* lawful to do evil, "that good may come of it." — M.

it would be in the highest degree dangerous to encourage individuals to become the executioners of those whom they may choose to regard as public enemies. It is obvious that sentiments of private revenge, or of fanaticism, or the suggestions of self-interest, would often be masked under pretensions of public duty; and the life of such a king as Henry IV. of France would be as often exposed to the dagger of the assassin as that of a Dionysius or a Nero. The punishment of a tyrant is a solemn act of national justice. It cannot always be effected by means of a regular juridical trial, but it ought always to be sanctioned by the verdict of the nation, and to be executed by the ministers of the national will. Hence, the legislator must denounce, and the law must punish, an individual assassin, even though his victim may be a monster, whose removal from earth is a blessing and a deliverance to mankind.

Right of Individuals to enjoy Personal Liberty.

The right of personal freedom obviously occupies the first place among those natural rights which legislation is bound to respect.

The right to personal liberty can be forfeited only by crime. If an individual commit an offence against society, the interests of society require that he should be punished, with a view to deter others from the commission of similar offences. In the infliction of this punishment the person of the offender is necessarily subjected to restraint.

Slavery in every form is inconsistent with this right; and, though domestic slavery has existed in various countries, at every period of history, it is not defensible upon any principle of justice or policy.

Conquest has been held to give a title to the conqueror over the persons of the conquered. In ancient times the doom which always awaited the captive was slavery; and the most enlightened men of ancient Greece and Rome appear to have acquiesced in the practice of consigning the captive to servitude, as a custom, the propriety of which could not be contested. Undoubtedly, in time of war, it becomes necessary to subject to restraint the person of the prisoner, but such restraint ought not to be continued beyond the conclusion of the war. To take a part in the defence of one's country is a virtue, not a crime. Personal freedom may be lost in such a struggle, and the untutored savage may feel disposed to retain

in servitude the captive whose life he has spared; but reasonable and generous men will exercise towards such prisoners no restraint beyond what is necessary for their own protection. It is not unreasonable that a ransom should be exacted for the liberation of a captive, because such a ransom is only a demand for indemnification of the expenses incurred in the war. Until the stipulated ransom be paid, detention of the captive is justifiable; but all such arrangements should be adjusted in the terms of a treaty of peace.

For slavery such as has been upheld by European nations, in modern times, there is no justification whatever. It is purely a mercenary traffic. Man is regarded as an instrument of gain, which may be purchased and sold like a bullock or a horse. Every noble instinct of human nature, every principle of natural and revealed religion, is violated by those who uphold slavery, such as recently existed in the colonies of Great Britain, and such as still exists in the United States of America, in the Spanish colonies, and in the Brazils. Piracy, or any other crime, may be justified by such arguments as are urged in defence of slavery of this description. It is maintained, simply, upon the principle, that the strong may do what they please with the weak; a principle which sanctions every sort of usurpation. It is a circumstance not a little disgraceful to modern society, which boasts so much its superior civilization and piety, that this foul blot should be allowed still to stain the social institutions of civilized communities. More especially is it a disgrace to that republic, which claims, in other respects deservedly, the merit of presenting the most perfect organization that the world has ever yet witnessed for the maintenance of social liberty. I admit that the English Government, not the American people, are responsible for the original introduction of African slaves into North America. I admit that to extricate the United States from the evils which are connected with this fatal disease in their social system is a task of extreme difficulty. I concur with those who reprobate a reckless disregard of the existing circumstances of the slave population on the part of those who vindicate their natural rights. But, on the other hand, I contend that it ought to be the aim of the statesmen of America to secure the eventual emancipation of the slaves, and, in the mean time, to mitigate the sufferings incidental to their condition. Instead of finding in the legislation of the States evidences of such a humane and noble design, the friends and admirers of the great republic

of the West are compelled to admit, with shame and sorrow, that the tendency of recent enactments leads rather to a restriction upon the rights of the negroes, than to their eventual liberation.*

It is a question more difficult to determine, whether, in any case, individuals should be allowed voluntarily to barter their own personal liberty for gain. In some countries personal freedom has been held to be a sort of property, of which the possessor might dispose in exchange for a consideration which he might deem to be an equivalent. In ancient Rome the debtor became the slave of the creditor. The public policy of modern nations, for the most part, repudiates such engagements. An individual cannot, according to the law of England, sell himself as a slave, but still it cannot be said that such a traffic is wholly prohibited. Every contract for personal service involves, to a modified extent, a restraint upon personal freedom. Nor is it easy to say what ought to be the limits within which such contracts should be confined. In the case of the Coolies of India, who have been deported from their native country to the West Indies, to serve as indented laborers for a specified number of years, the difference between such engagements and domestic slavery is scarcely perceptible. Engagements of this kind can be enforced only by a species of coercion very similar to that which prevails where domestic servitude exists. In the case of apprenticeship a father barters the personal liberty of his child, during a specified period, in consideration of advantages to be obtained either by himself or by his child; and apprenticeship partakes much of the nature of domestic slavery. It appears by some of the recent disclosures which have taken place with regard to the

* Our author's views on this point will probably give rise to conflicting opinions in this country. It is certain that negro slavery in the United States is not only a consequence of *our* antecedents, but of the negro's also. What was he, when the African slave dealer drove him down to the coast, naked, branded, barbarous? A savage, a thorough savage. The buyer bought a man in appearance, a savage in reality. He was transported — illegally, I know (and if his captor were caught, he ought to be hanged) — to a civilized state of society. Was civilization to go back, or was the negro to come forward? If forward, then it was his part to serve and to obey. Every just man will desire with our author the ultimate freedom of the African slave; but it is not for the savage to claim freedom of the civilized, not certainly for the civilized to grant it to the savage. He must be civilized before he is free. Unquestionably the obligation to act the civilizer's part rests upon the master class; and if they perversely refuse to perform that part, then the majority in the state, or even a foreign power, may have a right, in the interests of humanity, to compel them to abandon their claims of ownership, or to discharge the duties those claims envelop. — M.

treatment of children in mines, that the condition of the young slaves of the United States has been infinitely preferable to that of the children, female as well as male, of many freemen of England. Ought such contracts to be permitted by law? For my own part, I am inclined to think that no individual should be allowed to make a contract for personal service, for a period longer than twelve months. To forego the unfettered exercise of the will, perhaps to endure insolence and annoyance of all kinds, during a period of twelve months, is to make a sacrifice which pecuniary advantages can rarely compensate; but on the other hand, there are some kinds of work which cannot be carried on with profit, either to the employer or to the employed, without the intervention of a contract for personal service. In such cases the contract must be enforced by penalties which infringe personal liberty, but contracts of this nature should never exceed in duration the length of time necessarily required by the exigency of the service, and there are few cases in which this exigency extends beyond the period of twelve months.

The case of the soldier and of the sailor must be dealt with upon exceptional, rather than upon general principles. Military discipline necessarily involves an entire surrender of personal freedom. Obedience — the submission of one man's will to that of another — is the first requisite necessary to form a soldier in modern days. He is to all intents and purposes a slave. He is bound to go where his superior officer directs him to go. He is bound to do what his superior officer directs him to do, however much his own judgment or inclination may revolt against such directions. This being the essential nature of military service, we can only require, in behalf of the soldier, guarantees against the abuses of power; and with this view it is desirable that no one should be compelled to enter the service, except with his own free consent; that before an individual enters it, he should be fully apprised of all the privations and responsibilities which belong to it; that engagements for military service should be of moderate duration; and that facilities should be afforded to the soldier for purchasing his discharge, whenever he becomes desirous to quit it. It may be said, indeed, that every citizen owes to his country an obligation to hold himself in readiness to share in its defence; and that the selfish or cowardly man should not be allowed to shrink from an obligation which the brave and generous cheerfully undertake. This observation, however,

applies only to defensive war. It is perfectly right that every citizen should be called upon, in case of necessity, to bear arms in defence of his country; and every individual ought to be held liable to serve in a national guard, or, in default of personal service, to procure a substitute by pecuniary sacrifices. But such a service is very different from that of the modern soldier of a standing army. In the former case, the citizen is seldom required to move far from his own home. His service is only occasional, and is seldom incompatible with the other duties of life: whereas, the soldier who enlists in a standing army is liable to be sent out of his native country; he is liable to be kept away from his home for a considerable number of years; he is liable to be sent upon expeditions of offensive warfare against enemies, who have never done or menaced wrong to his country; he is deprived of all opportunity of pursuing any of the other occupations of life. It is doubtful whether, in point of morality, such an engagement is in its nature justifiable, but, without raising a futile controversy upon this question, we may safely lay down for the protection of the soldier the conditions above set forth, as conditions which ought to be sanctioned by legislation, in modifying that infringement of personal liberty, which is inseparable from military service.

It is almost unnecessary to observe, that the foregoing remarks apply equally to the case of the sailor as of the soldier. With the principles which we have here enunciated, the practice of impressment (which to a very recent period prevailed in the British navy) is wholly incompatible. It is difficult to conceive any description of violence more brutal and unjustifiable than that of impressment. A sailor returning home to his family, after a long separation, was frequently torn from his domestic circle — carried away as a prisoner, and placed in the condition of a slave aboard a man-of-war, destined to be sent to some unhealthy climate; and was kept for an indefinite number of years in this state of servitude. What description of slavery, ancient or modern, presents features more hideous than those which belong to this detestable practice? No considerations of state policy can justify such violation of the natural right of personal freedom. Nor would it be difficult to show, that even if the practice of impressment were justifiable, it is at least as impolitic in its results as it is detestable in its operation.

Imprisonment for debt is an infringement of personal lib-

erty which is very questionable in its principle, although it has been the practice of almost all civilized nations.

The non-payment of a debt is, in some cases, a criminal act, and ought to be punished as such. In other cases it results from unforeseen and unavoidable circumstances, and ought not to receive the punishment due only to crime.

He who incurs a debt, under promise to discharge it, whilst he has no reasonable hope of being able to pay it, is a swindler. He who incurs a debt with a deliberate intention not to pay it, is a thief. He who, having means to pay a just debt, withholds payment, is guilty of fraud. In these cases, imprisonment for debt is but an equitable retribution, and ought to be inflicted upon the offender, as a punishment is inflicted for any other offence against society.

On the other hand, there are numberless cases, in which the non-payment of debt arises from unforeseen accidents or misfortunes, and in which the debtor is willing, but unable, to discharge obligations which he has incurred. In such cases it is cruel, unjust, and impolitic to imprison the person of the debtor. No crime has been committed. He therefore does not deserve punishment. Imprisonment deprives him of the opportunity of regaining by his own exertions the means of livelihood, and of ultimately discharging the obligations which he has incurred. The creditor gains nothing by his imprisonment, whilst society loses the benefit of his labor, and incurs the expense of his maintenance.

It is not easy to discriminate between the cases, in which a debtor fails to discharge a debt through fraudulent intention, and those in which non-payment of debt arises from innocent misfortune. On all ordinary occasions, the property, not the person, of the debtor should be placed at the disposal of the creditor; and imprisonment for debt should be reserved only for those cases in which the intention to defraud can be clearly proved. The law already provides for the punishment of those who are guilty of embezzlement and of swindling; so that it recognizes the possibility of discovering fraudulent intention. The non-payment of debt, under circumstances in which the intention to defraud is manifest, should be placed under this class of crimes, and punished accordingly.

The right of personal freedom cannot be forfeited by nonconformity of opinion to any prevailing dogmas of either religion or politics. Among natural rights, the most unquestionable is freedom of thought. Civil disabilities consequent

upon non-conformity, and all tests framed with a view to ascertain conformity or non-conformity, are unjustifiable violations of natural liberty. If, then, it be an act of tyranny to withhold civil privileges, how much more unjustifiable must it be to inflict punishment on account of non-conformity of opinion! For instance, it is not necessary to inquire whether an elector entertain infidel or republican opinions, even in a country of which the established institutions are Christian and monarchical. Whatever opinions he may entertain upon these points, he is entitled, as a citizen, to be represented. Much less is it justifiable to extort from an individual a confession of faith, with a view to punish him by personal suffering for his involuntary deviation from orthodoxy.

It is very questionable whether oaths of any kind ought to be imposed on any occasion, either upon private citizens or upon public functionaries. "Swear not at all," is an explicit command, obedience to which can scarcely be otherwise than acceptable to the Divine Lawgiver, as well as useful to the state. Oaths make hypocrites, but afford no protection to society against the misdoings of dishonest men. The penalty attached to the infraction of an oath, not the oath itself, restrains unscrupulous men, and those who are conscientious do not require, or ought not to be harassed by, the imposition of such a test. A French functionary, who has held office during the last forty years, has been compelled to swear allegiance to not less than five different dynasties, whose rights are incompatible with each other; viz. — to the Emperor Napoleon I. — to Louis XVIII. and Charles X. — to Louis Philippe — to the Republic of 1848 — to Napoleon III. What security has this oath afforded to any of these dynasties in their hour of danger?

In connection with this question of conscientious obligation, we may inquire whether a citizen ought or ought not to be permitted to divest himself of the allegiance which he naturally owes to the land of his birth, and to the authorities which rule over it. As long as an individual claims and enjoys the privileges which are attached to citizenship in the land of his nativity — as long as he acquiesces in the conditions of that citizenship — he owes subjection to the laws and allegiance to the authorities of his native country. But it seems to be a violation of natural liberty to deny to any one the right of selecting for himself a home different from that assigned to him by the accidental circumstances of his birth or origin. All persons

ought, therefore, to be permitted to transfer their allegiance from the country of their birth to that of their adoption. But naturalization in a foreign country ought to be considered as an act of the most solemn kind, and ought to involve a forfeiture of the original right of citizenship. No one can reasonably expect to enjoy simultaneously the political privileges which are accorded to nations in two different countries whose interests are at variance with each other, and which are liable, at any moment, to be brought into armed collision with each other. It would surely be absurd to permit an Englishman or a Frenchman to become President of the United States, unless he had previously disclaimed allegiance to the rulers of the land of his birth.

Violations of personal liberty founded upon imputation of crime ought to be watched with the utmost jealousy, and to be circumscribed within the most distinct limits, by every nation which desires to retain its freedom. Tyranny seldom attempts to accomplish its ends without inventing some pretext to justify its violence. The victim which it wishes to strike is therefore generally denounced as a malefactor. The executive power, in every state, is necessarily invested with authority to seize offenders; and, if it be left to the discretion of executive officers to determine what shall be considered an offence against society, it will be found that every act inconvenient or displeasing to them — every act which tends to expose or to correct abuses — every act which tends to prevent usurpation — will be interpreted by the administrators of executive authority as an offence against the state.

It becomes necessary, therefore, to provide guarantees for the protection of the citizen from an abuse of official power, as well as from the violence of the lawless miscreant. Under the British constitution, one of such guarantees is to be found in the "Habeas Corpus" Act. This Act enables the friends of a prisoner, who has been confined by any person or authority, upon any pretext whatever, to appeal to one of the higher courts of judicature, with a view to ascertain whether such imprisonment has been conformable to law. If it appear that the grounds alleged in the return to the writ of "Habeas Corpus" are not sufficient to justify such imprisonment, the prisoner is forthwith discharged from custody. This Act serves most effectually to protect the personal liberty of the citizen, because it precludes the executive authorities from confining any person upon vague charges not recognized by law as

offences. It is to be observed, however, that in order to give full efficiency to such a law, it is necessary that offences should be strictly defined. If an executive officer were authorized to seize an accused person upon suspicion, or upon vague charges of misconduct, the proceeding by writ of "Habeas Corpus" would become futile, because the return would set forth some such vague charge as a sufficient ground for the imprisonment.

With a view, therefore, to protection to the citizen from illegal imprisonment, it ought to be provided: —

That the friends of the person confined shall, by some process, (such as that of the writ of "Habeas Corpus,") enjoy the utmost facility for bringing the case under the cognizance of a legal tribunal, in order to ascertain whether the imprisonment is conformable to law; and, if it be not sanctioned by law, of procuring the immediate discharge of the prisoner.

That no person shall be held liable to imprisonment except for the commission of some offence distinctly defined by law.

That the allegation of mere intention, unaccompanied by overt acts, shall in no case be considered to form a sufficient ground for imprisonment.

That, except in certain cases, specially reserved and defined, no person shall be imprisoned, unless regular information be laid against him by some person prepared to allege the commission of an offence cognizable by law.

That redress and amends shall be secured, by an easy and inexpensive process, to persons imprisoned without the sanction of law.

Neither ought precautions for protecting the personal liberty of the citizen to be omitted, even in the case of those who are legally committed to custody, upon charge of having been guilty of an offence distinctly known and defined by law. Every man ought to be presumed to be capable of proving his innocence until he is actually found upon trial to be guilty. It is true that an information, sworn upon the oath of a credible witness, and supported by concurrent circumstances, raises, *prima facie*, a presumption of guilt against the person accused, so that in the case of very heinous crimes it would not be safe to leave the person accused at large. The man who has committed one murder will seldom scruple to commit a second. So also with those who commit burglary, forgery, and similar crimes. It is therefore necessary, for the protection of society, to put restraint upon the persons of those who are

charged with such offences; but there is a large class of cases in which bail may, with propriety, be taken for the appearance of the accused; that is, the person charged with an offence should be left at liberty until the day of trial, upon his finding sureties that he will then appear to abide the judgment of the court. Even in the case of the gravest offences, if the evidence is inadequate to raise a strong presumption of guilt, the person accused should be admitted to bail. It is an act of unjustifiable cruelty to subject an innocent man to confinement; and it is not possible to provide reparation for such an imprisonment, after his innocence has been established on trial. Hence we may add, that if the person accused be not admitted to bail, he ought to be brought to trial with as little delay as possible.

We may here also observe, that it is a violation of natural justice to condemn any person without hearing his defence. Except under very peculiar and exceptional circumstances, the accused ought not to be condemned in his absence. Were he present, it is possible that he would have it in his power to give explanations which would establish his innocence, even though the clearest evidence might, in his absence, seem to prove his guilt. He ought also to be entitled to a copy of the information laid against him, and of the names of the witnesses who are to be produced against him, so that he may be enabled to expose unfounded accusations, by bringing forward evidence calculated to rebut the charge. Many an innocent man has been convicted only because these opportunities of counteracting false evidence have not been afforded to him. A person accused ought always to be brought face to face with his accuser, and all trials should take place in the presence of indifferent bystanders. Secrecy in trials, and inquisitorial methods of procedure, necessarily tend to vitiate the administration of justice, by removing the restraints which publicity naturally imposes upon injustice, and by withholding the guarantees which afford protection to innocence.

To extract a confession of guilt by torture of any kind, whether it be by imprisonment or by the excruciating torments of the rack, is a proceeding obviously at variance with the first principles of justice, because it presumes guilt, and punishes equally the innocent as well as the guilty. Yet this practice has prevailed at various periods of the world's history, among nations who have called themselves civilized, and has been sanctioned by philosophers and divines. The common

law of England, contradistinguished from that which was administered by churchmen in the Courts of High Commission and Star Chamber, wisely presumes that the accused is innocent until he is proved to be guilty, and humanely provides that no one, either as a principal or as a witness, shall be called upon to criminate himself.

An excellent regulation of law provides in England that no one shall be tried twice for the same offence. If the jury disagree, the accused may be again put upon trial, but after they have given their verdict he is exempt from further prosecution for the same offence. Though the substantial claims of justice are sometimes defeated by this practice, yet it affords a valuable security to the citizen against vindictive and harassing persecution on the part of authorities, to whom he may have become obnoxious.

In all legal proceedings the statement of the defendant should be considered as equivalent to the uncorroborated assertion of the accuser or plaintiff. The law of evidence, which has heretofore prevailed in the administration of English jurisprudence, has been, in many respects, most objectionable. It appears to have been framed by crafty lawyers for the express purpose of rendering the development of truth as difficult as possible. Those who were best qualified to set forth the exact facts of the case were excluded from the witness box, on the plea that being interested parties they could not be expected to make a true statement of facts. Of late, some modifications of the law of evidence have taken place, which diminish the absurdity and injustice of the previous practice.

I reserve, until we arrive at that part of this work which relates to courts of judicature, more detailed observations upon judicial proceedings.

Right of Association.

Among personal rights, we may specify the right of association, as one which is essential to the enjoyment of social liberty. An individual is comparatively powerless and insignificant, especially if he belong to the middle or inferior classes of society; but power and importance are secured to classes by the aggregation of individuals. The right to associate for all justifiable purposes is a privilege of inestimable value to the democracy. It ought, therefore, to be proclaimed as a fundamental and indefeasible inheritance in every charter of public

liberty. Despots being conscious that this power, like that of a free press, tends to check the misdoings of arbitrary government, have at all times sought to restrain it. In some countries, all assemblages of more than a small number of individuals have been rendered illegal, and subjected to penal restraint, unless held under permission of the constituted authorities. In free states, the right to congregate for the peaceful promotion of all legitimate aims is wholly unrestrained. In the former case, public discontent resorts for redress to secret conspiracy; in the latter, to noisy but harmless declamation. The sentiments of the people find expression at public meetings, in petitions and speeches. If they are found, upon discussion, to be erroneous, or to be entertained by only a minority of the nation, they are overruled by the *vis inertiæ*, or by the active opposition of an adverse majority. If, on the contrary, they are directed to useful objects, which are sanctioned by the general sense of the community, they eventually coerce the Government and the legislature, by moral agency, to act in conformity with them.

Whether armed associations should be permitted to debate social and political questions, or whether political clubs should be allowed to arm themselves, and to act in organized array, for the purpose of giving additional weight to their efforts to procure changes in the laws and institutions of a country, is a question which admits of controversy. As an Irishman, I cannot but feel pride in calling to mind the noble array of the Volunteers of 1782, when 40,000 men took up arms, on the one hand, to defend their country from foreign aggression, and on the other, to vindicate its constitutional rights. It seems to me that this is one of those questions, the solution of which must depend upon the peculiar circumstances of each country in which it is raised, and which cannot be settled by any predetermined rules. In general, it may be laid down as a principle, that armed associations ought not to be formed for the promotion of internal changes of a political kind. The possession of armed force often tempts men to exercise it, and if its intervention be used in civil affairs, resistance brings about civil war. On the other hand, a patriotic Government, which is thoroughly identified with the people, will encourage them not only to learn the use of arms, but also to organize themselves into armed associations, with a view to the defence of their country against foreign foes, and with a view to the protection of social order. In the United States of America,

no evil is found to arise from the formation of armed associations; and such associations are encouraged rather than forbidden by the constituted authorities. To instance a case founded upon recent observation. I am convinced that if the gold diggers at the gold fields of Australia had been encouraged by the Government to form themselves into armed associations of a voluntary kind, much of the crime and disorder, which have rendered necessary the creation and maintenance of an extensive police force, would have been obviated or suppressed without difficulty.

Right of Property.

Though a natural sense of justice would not suggest that the right of property should be carried to such an extent, or be protected by such securities, as those by which, upon principles of expediency, it is fenced under the institutions of modern society, yet we are bound to place the *right of property* amongst the natural rights of man.

I have not used any arguments to establish the position that men possess natural rights, because I conceive that the notion of such rights is implanted in the mind by an instinctive sense, independent of reasoning. We do not require argument to convince us that a part is less than the whole. Neither do we require the aid of reasoning to convince us that, even in a state of nature, he who seizes the food which another has gathered by means of his labor, whether in hunting, fishing, or in tilling the earth, is guilty of a wrong. In like manner, it is felt that, if one man builds a hut for his residence, another cannot justly take forcible possession of it. According to the principles of natural right, every one is entitled to enjoy unmolested the produce of his own labor, provided that he has not infringed the rights of others in the application of that labor. Such natural right, however, does not justify him in monopolizing any article which is limited in quantity. In this case the community has its rights as well as the individual, and its rights deserve at least equal consideration.

The right of property is one of the few natural rights of man which have been rather confirmed and enlarged than infringed by the legislation of modern society. When a conquest takes place, this right is indeed generally violated by the conqueror. At the time of the Norman conquest, for

instance, nearly all the Anglo-Saxon possessors of the soil of England were forcibly deprived of their possessions. Confiscation and proscription generally result from tyranny, whatever may be its form. In revolutions, the rights of property are often invaded; but, upon the whole, it is wonderful how much disposed mankind have been, in all ages, to maintain the inviolability of private property. Such a disposition is founded upon a sense not so much of justice as of expediency. It is obvious that unless security be afforded to property, there can be no advance in civilization. Men will not sow, unless they expect to reap. No one will accumulate wealth, unless he hope to be able to keep or dispose of it according to his own wishes. Commerce will not be carried on, unless the merchant who purchases commodities, for the purpose of selling them, be assured that they will not be ravished from him. To maintain the security of property is, therefore, one of the fundamental objects of legislation and government.

It is, indeed, easy to prove that, in many instances, property has been acquired by means which ill deserve the protection claimed for its possession and transmission; and it may be contended that wealth acquired by spoliation is not entitled to protection. But such cases are rare, when compared with the immense mass of transactions which are connected with the possession of property; and society would be involved in perpetual confusion, if general principles were to be violated in a vain attempt to secure retributive justice against those who have acquired property by a title originally defective.

It may be said, that a share of the earth and of its fruits are among the indefeasible claims of every child of man, and that, therefore, laws which allocate or secure to individual proprietors large possessions, whilst others are altogether excluded from a share in that which nature has given to all, are in their essence unjust. There is much force in this reasoning, and nothing but the mandate of an inexorable expediency can justify such exclusion. In many cases, no such expediency can be alleged to defend the usurpation. In the establishment, for instance, of some colonies recently founded by Great Britain, thousands of acres have been appropriated to individuals by the governing power, whilst impediments have been designedly created in order to prevent poor men from acquiring possession of small lots of land.

It should be the object of the legislator to provide compensation for the loss of natural rights, whenever they are invaded, so that it may be manifest that it is for the interest, even of the most destitute, to be born in a civilized rather than in an uncivilized state of society.

It is to be lamented that, in general, there has existed a stronger disposition to secure the property of the rich than that of the poor — of the landlord than that of the tenant — of the capitalist than that of the laborer. The property of the working man is his industry; and every facility should be afforded to him of applying it to the best advantage. Legal enactments, far from enabling him to dispose of this property and its fruits in the manner most beneficial to himself, have frequently been framed with a view to promote the interests of the employer at the expense of the laborer. The working classes have themselves often infringed the rights of industry by regulations which prevent individuals from applying themselves to trades into which they have not been introduced by a customary process of initiation. Every infringement of the natural rights of property, whether arising from law or from custom, is to be guarded against, as involving a violation of natural justice.

The right of property, however, must always be held subordinate to the public good. Thus, the imposition of a tax, equitably levied and usefully applied, is not considered an invasion of the right of property, although the tax may confiscate no inconsiderable portion of the property liable to it. Nor is it considered unreasonable to take away private property from individuals for public uses, provided adequate compensation be afforded to the possessor for its loss.

When discussing questions connected with the development of trade, commerce, and agriculture, we shall have occasion to consider, in detail, some of the principles which ought to regulate the acquisition, exchange, and transmission of property; we may therefore now resume our review of the organization of constitutional governments.

CHAPTER XII.

ON THE EXECUTIVE.

HAVING, in the foregoing pages, traced an outline of the structure and functions of the legislature, we have now to treat of the executive department of government.

The executive is appointed, as the name indicates, to execute and administer the laws framed by the legislature, and is furnished with the powers and prerogatives necessary to carry into effect this duty.

Among the functions which naturally belong to the executive, we may enumerate the following as the most prominent: —

Protection of life and property, and maintenance of social order.

Enforcement of the laws of the land, as enacted by the legislature, and interpreted by the tribunals of justice.

Superintendence of establishments supported by the state for the administration of justice — for the restraint and punishment of offenders — for the promotion of religion and education — for the improvement of the arts and sciences — for the preservation of the health of the community — for the advancement of agriculture, manufactures, and commerce — for the construction and maintenance of public works.

Dispensation of mercy.

Grant of honors and dignities.

Command of the military and naval forces of the state.

Negotiation with foreign powers.

Administration of colonial affairs.

Collection and application of the public revenue.

Coinage of money.

It is not necessary to tell the reader of history that the organization of executive power has, in different states, assumed great variety of form. The political constitutions of the Jewish nation, of the ancient Egyptians, of the Persians, of the Republics of Greece, of the Roman Republic, of the German Empire, of the kingdom of Poland, of the Swiss Confederation, of the Italian Republics, of the kingdoms of France, of Spain, and of England, of the United Provinces, of the United States of America, of the Empire of Russia, of the various kingdoms of Asia, not only exhibit varieties

of construction which differ greatly from each other, but even in each state there have been, from time to time, fundamental changes in the system of executive government.

It is no easy problem to determine which, among the many forms of executive administration that have existed, is the most conducive to good government. By some reasoners this problem cannot be fairly discussed, because they fancy that the only form of government sanctioned by heaven is monarchy, and that kings rule by divine right. To me this theory appears so absurd as not to require refutation. I shall therefore assume that nations are at perfect liberty to choose that system of rule which is most acceptable to them, and most conducive to their interests; and that, if they prefer a monarchy, the king so chosen rules as the first magistrate of the people by virtue of their will — not by any self-inherent or sacred right — so that a consul, equally with a king, is invested with that sacredness which belongs to authority confided to one man for the benefit of a community.

Hereditary monarchy, more or less absolute, is that form of executive government which has found the most general acceptance amongst mankind. Elective monarchy, which perhaps is the most natural of all forms of government, has been proved by experience to be attended with many inconveniences. A sovereign who enjoys during a lifetime supreme power is generally desirous to transmit to his posterity the inheritance of such power, and must be destitute of capacity if he fail to acquire at least a considerable party in the state prepared to uphold his design. Thus, according to the inherent tendencies of human nature, a foundation is laid, in elective sovereignties, for a struggle upon the death of each monarch. If there be no member of the immediate family of the late sovereign desirous to contend for the crown, the claims of other powerful competitors give rise to contentions, to intrigues, and to corruption, which are fraught with the most disastrous consequences. In the case of the Roman Empire, how often was the peace of the world disturbed by contentions for the supreme authority, which might have been avoided by the recognition of some established principle of succession! Upon the death of the prophet Mahomet, a similar contention was engendered amongst his followers; and even to the present hour, the claims of the house of Ali to the caliphate, in preference to those of the rivals by whom his dynasty was excluded, forms a subject of controversy

which divides the Mahometan world. In the case of the German states, the election of an emperor was found to be attended with so much inconvenience that the dignity of emperor was at last rendered hereditary in the house of Austria. There is every reason to believe that Poland would now be an independent and integral kingdom, instead of being a subjugated province, if the succession to the crown had been hereditary, not elective

The true interests of an hereditary monarch are always identical with the permanent interests of the people whom he governs. His power, and that of his family, will necessarily increase in proportion as the prosperity of his people increases. His influence and his happiness depend greatly upon their attachment to him. An elected monarch, on the contrary, can feel but a temporary interest in the concerns of the realm which he governs. Unless he entertain an expectation that his family will be called to succeed him, he will naturally endeavor to use the power intrusted to him, not so much for advancing the good of the people, as for securing to his own family some permanent advantage. An hereditary monarch, holding an authority which is not liable to question, needs not the support of coercive laws or of mercenary armaments. An elected monarch, on the contrary, if he desire to perpetuate his dynasty, will constantly be tempted to effectuate this object, either by corruption or by force.

From these considerations we conclude, that although it seems most rational, upon the decease of a monarch, to choose as his successor the ablest, wisest, and best man that can be found, yet experience of the dangers which attend such elections compels us to prefer hereditary monarchy.

To invest with supreme authority, without regard to personal qualities, the person who may bear a certain defined relationship to the preceding sovereign is, undoubtedly, a course of proceeding which appears to be indefensible in theory, and which, in practice, has been found, not unfrequently, to place upon the throne individuals wholly unfitted for the exercise of regal authority. Yet such is the imperfection of every other system of government as yet devised, that it is doubtful whether any form of government has been more conducive to the happiness of nations than hereditary monarchy. If the sovereign really exercised, in person, all the prerogatives with which he is nominally invested, there could, indeed, be no hope of enjoying a continuance of good

government under hereditary monarchy. An excellent prince might be succeeded by a fool or a tyrant. This is a contingency to which nations subjected to despotic rule are always liable, and the probability of its occurrence is a sufficient reason, if no other existed, for refusing to confide arbitrary power to any dynasty. In the hands of a wise and good prince, absolute power is sometimes employed in a manner advantageous, if not acceptable, to the community. Perhaps at no period were the Roman people so happy as under the autocratic rule of Trajan and the Antonines; but the danger which arises from confiding unlimited power to individuals was amply illustrated during the reigns of many both of the predecessors and of the successors to these emperors. To guard against the abuse of power wielded by bad men is, unfortunately, a task which requires much more skill than to make arrangements for the advantageous exercise of power by those who are well disposed. In the construction of a political constitution, we have to consider not only how the greatest possible amount of good can be developed, but, still more, how contingent evil may be prevented. When we say, therefore, that hereditary monarchy is a form of government which is compatible with the happiness of the community, we do not advocate the maintenance of despotic rule, but of a monarchy limited by such restrictions as shall guarantee the liberties of the citizen.

Practically, there have existed very few monarchies of which the government has been solely regulated by the personal will of the sovereign. The sum of affairs brought under the personal observation of a single individual must necessarily be extremely limited. With regard to the great mass of administrative details, the most absolute ruler must rely upon the agency of others, rather than upon his own inspection, to give effect to his wishes. He is thus liable to be thwarted by those in whom he confides. Sometimes his good intentions are defeated by the persons who are intrusted with the task of carrying them into effect; but sometimes also his mischievous designs are counteracted by the agents appointed to execute them. Even the most absolute despot is subject to the influence of public opinion, and is often coerced by the passive resistance of those who surround him; so that the evils which in absolute monarchies might be expected to result from the succession to the throne of a fool or a tyrant are mitigated by a variety of counteracting circumstances.

In all monarchies the sovereign is aided by a council, whose advice cannot be wholly overlooked. In some states the name and intervention of the sovereign are used only to give authority and dignity to the determinations of his council. In England, for instance, royalty is little else than a mere pageant. Ever since the Revolution of 1688, the Parliament has been the governing power of Great Britain. No ministry has been able to hold office, except when supported by a majority in Parliament; so that virtually the ministers of the Crown have been chosen by the Parliament. The sovereign has, in many cases, been prevented from appointing to office those who would have been most acceptable to him; and in the administration of public affairs the ministry so chosen virtually dictate to the sovereign, whilst nominally they receive his commands. Even the language held by the king, in addressing his people from the throne, is not his own. It is an accepted principle that the speeches and acts of the sovereign are the speeches and acts of his ministry. Until the period of the Reform Bill of 1831–32, the influence prevailing in Parliament was that of the aristocracy. Even still it may be said that the influence of the aristocracy prevails more in the government of England than that of either the democracy or of the Crown. It is almost a misuse of words to call such a constitution a monarchy. It has been an aristocratical republic, of which the nominal head has been called a king; but that king has possessed less personal influence than has been enjoyed by the President of the United States, or by the chief magistrates of many other republics.

At Sparta, two kings possessed, by inheritance, the title of royalty, but they exercised few of its prerogatives. Their power was so limited, that Sparta must be considered as a republic, in which the prevailing influence was aristocratic in its nature. Venice was called a republic, but there was less of popular liberty in Venice than has existed in many monarchies. It was an oligarchy.

From these observations we conclude that when we compare limited monarchy with a republican form of government, we ought not to be misled by mere names. In the organization of the executive department of a state, prudence suggests that the structure of the constitution should be adapted, not to a speculative theory, but to the circumstances of the people for whom it is created. We have already observed that the leaders of the last Belgian revolution acted wisely in

establishing a monarchy rather than a republic; and there is every reason to believe that a vast majority of the French people would have preferred a popular monarchy to such a republic as that which they were compelled by circumstances to adopt after the downfall of Louis Philippe. In England, a limited monarchy is unquestionably more acceptable to the nation at large than the simplicity of republican institutions. It is in the nature of mankind to love pomp and pageantry, and to worship idols. They, therefore, willingly proffer homage to the person or object which they invest with a factitious grandeur. A democratic republic cannot be permanently maintained in any country, unless there prevail amongst the people much public spirit and intelligence; and even if it be maintained, civic virtues of the highest kind are required to prevent the existence of evils incidental to the abuse of power. In the republics of ancient Greece, oppression was practised by the dominant majority of the multitude, with as much recklessness as has ever been exhibited by the caprice of imperial tyranny. The republic of Rome was never free from faction. The struggles between plebeian and patrician power — between usurping dictators and the vindicators of popular freedom — not only called into action vehement passions of mutual antipathy, but also gave occasion to proscriptions and bloody conflicts; so that it is not surprising that the Romans should have willingly sought refuge from civil contentions under the mild rule of such an emperor as Augustus. The history of the Italian republics during the middle ages presents a continual series of internal dissension and of external conflict. Even the Swiss Confederation does not offer to those who closely examine the constitution of the several states, and the conduct of its internal affairs, much to justify a belief that popular liberty is always found in republican institutions.

These observations are made, not for the purpose of reconciling the reader to the maintenance of tyranny in any form; not for the purpose of deterring him from seeking the greatest possible perfectibility in political institutions; but in order to prevent him from being misled by mere names, and in order to convince him that much of evil must be expected under ever the most perfect form of government that can be devised.

In the British constitution, as it has existed since the Revolution of 1688, there has been much imperfection, arising

chiefly from corruption in the legislature and from corruptibility in the people, as also from the selfishness of the aristocracy and of the middle classes, who have generally neglected too much the interests of the laboring population; but it is difficult to discover in history any country which has enjoyed during so long a period (nearly 180 years) so large a measure of popular liberty, exempt from tyranny on the part of the prince on the one hand, and from the tyranny of the multitude on the other. It has realized, to a great extent, the idea of a mixed form of government put forward as the most desirable in Cicero's treatise "De Republica:" "*Placet esse quiddam in republica præstans et regale: esse aliud auctoritate principum partum ac tributum; esse quasdam res servatas judicio voluntatique multitudinis,*" &c. It is not surprising, therefore, that the British constitution should have become a model, to which the nations of modern times have sought to conform their own institutions.

When I speak of the comparative excellence of the British constitution, I speak solely of its operation in England. In Ireland, as well as in the colonial dependencies of Great Britain, the English government has almost always sought to rule by means injurious to the people subject to British sway; but in such cases misgovernment has existed because the leading principles of the British constitution have been violated in these dependencies, not because they have been enforced. Such misgovernment has produced, in some cases, abortive rebellion; but in the United States of America it had the beneficial effect of calling into existence the most perfect form of republican government that the world has yet seen. Under the circumstances of America, at the time of the declaration of independence, in 1776, it would have been difficult, if not impossible, to constitute a monarchy which would have been acceptable to the people, and calculated to secure at once both popular freedom and good government. The revolted Americans, therefore, very wisely resolved to found a republic. They fortunately enjoyed the unspeakable advantage of being directed, whilst organizing their government, by some very able and very virtuous men. As the government of the United States still forms the most perfect model of republican institutions, I shall not hesitate to refer to its organization whenever we have to seek a precedent in the course of this inquiry. Indeed, in the hemisphere in which I now write, a familiar acquaintance with the institutions of the

United States is, perhaps, more necessary than acquaintance with the constitution of Great Britain, because when the era of Australian independence shall arrive, the statesmen of the Southern Hemisphere will naturally look to the experience of America for guidance, rather than to the monarchies of Europe.

From what has been already said, the reader will perceive that I am not prepared to advocate the adoption, in every country, of one and the same specified form of executive government, to the exclusion of all others. I conceive that an hereditary monarchy, restricted in its prerogatives by constitutional limitations, is a form of government compatible with the maintenance of popular freedom, and that, therefore, we ought not to undermine or overthrow such a government, except under the coercion of an inevitable necessity.

On the other hand, cases will sometimes arise, in which none of the elements necessary for the creation of a monarchy exist at the time when circumstances compel a nation to organize a new form of government. In contemplation of such cases, it is desirable to consider beforehand what form of republican government is best calculated to develop with advantage the newly-acquired independence of these states.

As I propose to discuss, in considerable detail, the expediency of a federative constitution, in connection with the questions which will arise respecting the government of colonies, I shall defer, for the present, the remarks which I have to offer upon this important subject. I may, however, here observe, that if the circumstances of a country be such as clearly indicate that unity is desirable, a federal organization would rather impede than promote good government and social progress. Thus, a federal constitution appears to be wholly unsuited to the circumstances of France. Thus, also, if Ireland should ever become independent of Great Britain, an attempt to sectionize its nationality by erecting the provinces into separate states, connected together by a federative constitution, would be so obviously at variance with the general interests of the whole island, that, at least under present circumstances, no rational statesman would propuse to make such an attempt. On the other hand, if the British provinces of North America should hereafter revolt from Great Britain, the most natural mode of providing for their internal government and external security would be to establish one, or perhaps two, great republican confederations. The state

of New Brunswick, for instance, is so naturally connected with Nova Scotia, that entire separation from it would involve a disruption of natural ties; yet, these colonies having been accustomed to the exercise of self-government, through the agency of separate legislatures, would be very reluctant to consent to an incorporate unity of administration. In such cases, an endeavor should be made to combine the advantages of local self-government with those arising from consolidated power, by means of federative institutions.

In like manner, in the event of a revolt of the Australasian colonies against Great Britain, the natural circumstances of their geographical position, as well as the antecedent arrangements of their governmental administration, indicate that the interests of all would be best promoted, not by an attempt to force them into an incorporate union, through a centralized system of government, but rather by an organization which should secure to each settlement its own local self-government, and, at the same time, by a federal combination, provide for the common security and advancement of all. Upon a future occasion I shall endeavor to point out, in detail, what sort of organization is best calculated to attain these ends.

One of the principal features which characterize a republic and distinguish it from monarchy is, that the chief magistrates are periodically elected by the people, or by their representatives. That the wisest and the best men should be selected for the guidance of public affairs is a course of proceeding obviously more consistent with natural reason than that supreme power should be delegated to individuals who are recommended merely by lineage, and who may possess no qualities fitting them for the government of men. Yet this process of election is attended with many inconveniences. We have already observed, that in the case of elective monarchies the appointment of a successor to the throne is an occasion full of danger to the internal peace of the state, and that those dangers are so great as to induce us to prefer hereditary to elective monarchy. In republics, the chief magistrate, being usually chosen for a short period, does not obtain the same opportunity of consolidating his power, with a view to the establishment of his dynasty, that is enjoyed by a sovereign chosen for life; but even recently we have had occasion to perceive that Louis Napoleon, when elected President of the French Republic for a period of three years, employed

all the resources which his position enabled him to command, not so much for the benefit of France, as with a view to his own reëlection, and to the perpetuation of his own power. Nevertheless, this is a hazard which must be encountered boldly by every nation which desires republican institutions; and no people deserves to enjoy such a form of government, unless they be able and disposed to keep in check the ambition of the officers whom they may place at the head of affairs. Experience shows us that when public spirit prevails, the ambition of individuals may be so restrained within the bounds of patriotic duty. In ancient Rome, from the time of the expulsion of the Tarquins to the dictatorship of Sylla, a period of several hundred years, the Roman Consuls, elected annually, took up and laid down the insignia of sovereignty, in an almost unbroken succession, without endeavoring to perpetuate their own power. In Venice the Doge was elected annually, during many centuries, without interruption. In the various cantons of Switzerland, some of which have been very oligarchical in constitution, magistrates have been selected in succession, without the occurrence of an attempt, on the part of any of them, to grasp the exercise of an independent sovereignty. In the United States of America, a series of illustrious men have been elevated to the highest office in the state, without even an imputation having been raised against any one of them, to the effect that they have been desirous to create a sovereign dynasty in their own persons and in that of their families. In the present temper of the American people the idea of such a project would be treated with ridicule rather than with apprehension.

There is an inconvenience incidental to a system of election, from which it is impossible to escape. This is the frequent recurrence of the ferment and agitation which attend a contest; and the frequent changes of policy which are occasioned by a change of executive officers may also be regarded as a disadvantage. That some inconveniences arise from these distractions cannot be denied, but, perhaps, they are productive of more good than evil. That climate is not the most healthy in which the air is most tranquil. The storm that sweeps the sky carries away all noxious vapors, and gives new freshness to the animal and vegetable creation. So the spirit of liberty is fanned and kept alive by the movements which disturb the political atmosphere. The preliminaries and incidents of an election — the selection of a candidate —

the canvass — the newspaper controversies respecting his opinions and his qualifications — the speeches at the hustings, and the celebration of his triumph, tend to direct the thoughts of the community to a consideration of their political interests, and to generate that vigilance and that discrimination with respect to public men and public measures, which are essential to the maintenance of popular freedom.

In answer to the objection, that frequent elections involve frequent changes of policy, we may observe, that changes of policy can take place in republican and in constitutional governments, only when a change takes place in the current of public opinion; because these governments are supposed to embody and give effect to public opinion. Now, if we have to choose between permanency of policy, maintained in antagonism to public opinion, and mutability of policy, varying according to the changes of public opinion, we shall not hesitate to prefer the latter evil, if it be an evil, to the former.

How often such elections should take place, is a question to which it is not easy to give a dogmatic answer. When the duties to be performed are of a simple nature, no evil can arise from frequent change of officers. No one objects to the annual election of a churchwarden; but in proportion as the duties of a station are complex and arduous, a longer time is required to develop the capacity of those who are appointed to perform them. If the President of the United States were chosen for a period of only one year, his individual influence would probably be much less than it now is; whilst that of the Senate and that of the House of Representatives would be proportionately increased. If he were chosen for a period of seven years, he would, if he were an able man, become so skilled in the management of parties, that it might become difficult to displace him. Upon the whole, I am inclined to think, that the period for which the chief officer of a republic should be chosen ought not to be less than two years, nor more than four. In the United States of America, the President is chosen for a period of four years, and he may be reëlected; but it is now considered to be an established point, that he ought not to be reëlected more than once. This appears to be an unnecessary restriction upon the nation's liberty of choice. If a public officer have shown preëminent ability in the service of his country, it is a wrong inflicted upon his country, rather than upon the individual, to limit the period of such service to a *maximum* term of eight years.

Ought the supreme executive authority to be confided to one individual, or to two or more?

In Lacedæmon there were two kings; but the experience of Lacedæmon would rather lead us to decide against, than in favor of such a division of the executive power; because, the kings were in the habit of thwarting each other, and of sacrificing the interests of the state to their jealousies towards each other. In Rome, the chief executive authority was delegated to two Consuls; and this division of power was productive of less inconvenience than might have been expected. In the French Republic, a directory of five was at one time tried, but its short-lived existence tends to prove that it was a form of executive government ill adapted for the administration of public affairs. When supreme power is divided among several individuals, it must inevitably happen that collisions will arise between them. Conscientious differences of opinion — conflict of personal interests — perhaps even the mere caprices of self-will, generate such collisions. When they develop themselves, each chief endeavors to strengthen his position, by collecting around him a faction of followers; and thus dissensions are carried into the vitals, and into the extremities of the republic. Now, this is an evil not necessarily inherent in the nature of human institutions. It, therefore, ought not to be factitiously introduced by an injudicious construction of the constitutional arrangements of a state. To illustrate our reasoning by a practical instance, we may ask whether it is probable that the functions of the executive, in the United States of America, would have been as well performed by a directory of five, as by a succession of individual Presidents, who are assisted by the advice of a cabinet, but who are not liable to be thwarted by the opposition of an authority equal to their own. It seems, therefore, that both theory and experience lead us to conclude, that greater efficiency and responsibility in the exercise of executive functions is to be attained through the appointment of one chief magistrate, rather than of several.

In the United States of America, a Vice-president is elected simultaneously with the President, but he possesses few independent functions; and his appointment seems to have been suggested, rather by a desire to provide for the contingency of a vacancy occurring in the office of President, than by a feeling that his services are substantially necessary for the proper management of public affairs.

By whom ought the chief magistrate of a republic to be chosen?

The framers of the last constitution of France — that of 1848 — answered this question by referring the election of President to the people at large. Louis Napoleon was chosen President by the exercise of universal suffrage. In the United States, the people at large, or rather those who enjoy the ordinary franchise, which entitles them to elect members of Congress, nominate in each state deputies, to whom is intrusted the task of electing the President. Practically, there is little difference between these two modes of election, because, under the arrangements provided in the United States, the deputies merely utter the voice of those whom they represent. The choice is virtually made by the people at large.

There is another mode of choosing the chief magistrate, which deserves consideration. He might be chosen by the general Congress, or Parliament. If we could feel assured that, in all cases, the Congress would represent the will of the nation, there could perhaps be no simpler or more satisfactory mode of electing the President of a republic, than that he should be named by the members of the legislature; but unfortunately we have been taught by experience, that majorities in representative assemblies can err as well as monarchs. It is therefore desirable, that the different authorities in a state should hold each other in check, so far at least as is necessary to prevent misgovernment. A President, elected by Congress, would be a mere creature or instrument of the majority which might happen to prevail in Congress at the time of his election. If that majority should, from corrupt motives, feel disposed to overthrow the constitution, the officers elected by them would naturally lend themselves to such a design. It may be said, that this is a contingency so improbable, that it is unnecessary to guard against it; but since it is possible, and since the dangers which it involves may be provided against by a different system of election, it is better that a direct appeal should be made to the people at large, in the nomination of the chief magistrate of the republic.

In some countries, as, for instance, in ancient Rome, it has been customary, upon great emergencies, to supersede the ordinary authorities of the state, and to assign despotic power for a time to a *dictator*. Such a practice is greatly to be deprecated, and under a well-constituted government can never be absolutely necessary. It may indeed sometimes happen

that inconveniences are avoided, such as delays in civil or military procedure, by having recourse to the simple *fiat* of despotism. The necessity of having recourse to such an expedient is itself an evidence that the executive authority is not properly constituted. Friends of popular liberty are naturally unwilling to concede too much power to the executive, because they have been taught by the experience of all history, that the concession of power to an individual generally tempts him to make encroachments upon the rights of others. But it is very unwise to abridge too much the prerogatives of an officer appointed to give effect to the laws, and to protect the state. If the executive authority be found too feeble to meet emergencies, it becomes necessary, on the occurrence of such emergencies, to provide, by a dictatorship of one kind or other, a substitute for the regular authorities of the state: and such a substitution is more dangerous to public liberty than a permanent authority, possessed of defined prerogatives, and checked by constitutional guarantees. A people once accustomed to the exercise of dictatorial power, lose much of that vigilance which is necessary to protect public liberty. If the temporary dictator be a popular man, and employ his power in a manner agreeable to the people, they will insensibly learn to prefer a simple despotism, which they find to be productive of satisfaction, to the more complex rule of constitutional government. If, therefore, a dictatorship be established at all, it is desirable that its pressure should be severely felt by the people, rather than that its rule should be mild and acceptable. If it be distasteful, every effort will be made to shorten its duration; if acceptable, its permanency will be desired.

When a revolution occurs in a country, it generally becomes necessary to establish, for a brief period, a provisional government armed with dictatorial powers. It becomes necessary to remodel many of the institutions of the state; and during the interval of transition anarchy would prevail, if plenary authority were not confided to some chiefs, as representatives of the national will. On such occasions, it is safer to commit dictatorial powers to a select body of eminent men, rather than to a single individual. The members of a Decemvirate will naturally be jealous of each other's authority, and will seldom concur in a united effort to extinguish public liberty by usurpation; but a single individual rarely obtains unlimited authority, without some secret longing for an opportunity of appropriating it to himself and his family, as a perpetual inheritance.

This is, perhaps, a suitable occasion for observing, that in the establishment of a constitutional monarchy some defined arrangement should be provided, respecting the temporary delegation of supreme power to a regency, upon the occurrence of any of those contingencies which incapacitate the hereditary sovereign from exercising the functions of royalty. The lunacy of the reigning monarch, or the minority of a successor to the crown, furnish instances of such contingencies. No opening should be left for the intervention of intrigue or violence on the occurrence of these contingencies. Unless provision be made beforehand, for the appointment of a Regent, there will arise a risk of incurring all the evils which have been experienced in elective monarchies, upon the death of the reigning sovereign. In the United Kingdom such provision is generally made by a special enactment, framed according to the circumstances of the reigning family; but we have seen that, in the case of the lunacy of George III., much painful discussion was excited, and much factious spirit evoked, by the want of some settled rule with respect to the appointment of a Regent, and with respect to the prerogatives which ought to belong to the regency. I incline to think that the temporary possession of the royal authority, upon the occurrence of a regency, should be regulated, according to a settled order of succession, on the same principle of hereditary devolution as is applied in regard to the succession of the crown. Thus, for instance, upon the occurrence of the lunacy of George III., the Prince of Wales ought to have become Regent of the United Kingdom, by right of defined succession, not by the appointment of the British Parliament, made specially for the occasion. In like manner, in the event of a minority, the surviving parent, or the nearest of kin to the minor, ought, *de jure*, to become Regent; but, in order to avoid, as much as possible, temptation to criminal ambition, the Regent ought not to be the guardian of the minor, except, perhaps, in the case in which the surviving parent is invested with the regency.

There appears to be no rational ground for depriving the Regent of any of the prerogatives that are possessed by the sovereign. Those prerogatives are confided to the monarch, not for his own individual pleasure or profit, but for the benefit of the nation, and the exercise of them may be needed just as much under a regency, as under the rule of the hereditary successor to the throne. Yet, upon this point the statesmen

of England were divided when the lunacy of George III. rendered necessary the appointment of a Regent, and Mr. Pitt, then the Tory Minister, advocated a limitation of the royal prerogatives, whilst exercised by a Regent. It seems to me to be an inevitable conclusion from this precedent, that whatever prerogative can be dispensed with during a regency, ought to be abrogated altogether, as unnecessary to the due exercise of executive authority.

CHAPTER XIII.

ON THE PREROGATIVES OF THE EXECUTIVE.

We now proceed to consider what are the prerogatives and functions which naturally and reasonably ought to be confided to the chief magistrate of a state, whether he be called a sovereign or a president.

The functions of executive government being nearly the same in every country, there are certain prerogatives which must in every country be possessed by those who are appointed to administer these functions. Those with which the chief magistrate of a republic must be invested differ little from those which, in a limited monarchy, naturally belong to a constitutional king.

From the chief magistrate of a republic greater personal responsibility is exacted. The policy of the Government of the United States is the policy of the President, who may be considered the official exponent of the will of the nation. The policy of the sovereign of England is the policy of the ministers of the Crown, who are, themselves, agents for carrying into effect the wishes of Parliament. Hence, the President of the United States, individually, possesses much more personal influence, in the management of public affairs, than the sovereign of Great Britain and Ireland.

The constitutional maxim, that "the king can do no wrong," in his official capacity, is founded upon an assumption that he acts under the advice of his ministers. Every public act of the sovereign of the United Kingdom is countersigned by some minister of state; and, if it be contrary to law, the minister

who sanctions it, not the sovereign, is held responsible for it. Taken in any other sense, the maxim that "the king can do no wrong" is a falsehood and an absurdity. English history abounds with examples, which tend to prove, not only that the king can do wrong, but also that he is punishable for such wrong. It is not probable that any occupant of the throne of England will be induced by this maxim to forget that one Stuart lost his head, and that another lost his crown, because they violated the rights and liberties of the British people. In a limited monarchy, the sovereign ought not to be held primarily responsible for the public acts of administration carried on in his name. Kings can do no wrong, unless they find agents who will give effect to their mischievous designs, and it is easier, as well as safer, to punish an agent than to overthrow a dynasty. This maxim, however, is not applicable to the chief magistrate of a republic, chosen for a limited period. The founders of the Constitution of America, therefore, wisely decreed, that the President, as well as all other magistrates of the Republic, may be deprived of their offices for crime, or even for misconduct. In a constitutional monarchy, a nation will find means of protecting or of avenging itself for the misconduct of the king, whenever it has reason to believe that misgovernment may be traced to the sovereign rather than to his ministers. The deposition of Charles X., and of Louis Philippe, as well as the great French revolution of 1789, and the Belgic revolution of 1830, prove that the nations of the Continent of Europe, as well as the English people, know how to get rid of a dynasty, which by its misconduct forfeits the allegiance of its subjects.

Prerogative of conferring Titles of Honor and Offices of Emolument.

We have already discussed the propriety of conceding certain prerogatives to the chief executive officer of the state, in regard to the exercise of legislative authority.

Thus we have assigned to him a suspensive *veto* upon the enactments of the two houses of the legislature.

We have accorded to him the right to convene and to prorogue the legislature, and also to dissolve the House of Representatives.

We have suggested that his power of declaring peace and war, and of making treaties, should be subject to confirmation

by both houses of the legislature — a restriction upon the prerogative which would be found as useful in a constitutional monarchy as in a republic.

We have now to consider the prerogatives which he ought to enjoy, in regard to the exercise of executive authority. First, we shall treat of the prerogative which entitles the chief of the executive to confer titles of honor and offices of emolument.

In a country in which aristocratic distinctions prevail, it is natural, if it be ruled by a monarch, that the sovereign should be, what he has been called in England, "the fountain of honor" — that is, that all honorary titles should be conferred by him. An aristocracy is generally considered to form a rampart round the throne, and to be essential to its protection from the impulses of democratic force. Perhaps this theory is somewhat fanciful, for we have seen that, during the middle ages, the feudal nobility often domineered over the kings of Europe, in a spirit as factious as could be evinced by the most turbulent democracy.* Royalty was compelled to seek alliance with the commonalty, in order to protect itself from the aristocracy. It is, therefore, not so much with a view to strengthen the monarch against democratic power, as to establish an harmonious relationship between the nobility and the sovereign, that the sovereign should be regarded as the fountain of honor, and that all honorary titles should emanate from him. If the aristocracy were to possess the right of conferring titles of nobility, and if such titles were to carry with them substantial power in the state, they would soon establish an oligarchy equally inimical to the interests of the sovereign, and of the people at large. If the reader will refer back to what has been said respecting the peerage, he will find that I am of opinion that peers should derive their legislative power from the people; but under a constitutional monarchy the right to confer honorary titles may, perhaps, be safely confided to the sovereign.

* The feudal nobility were hardly an aristocracy (as we now use the term) in their relations to the monarchs of the middle ages. They were the descendants of the chiefs of a common conquest; their honors were gathered on the battle field, and many of them were of older date and more renown in the land than the sovereign they consented, under certain conditions, to obey. "The right of insurrection," as claimed by the Spanish hidalgos, is an illustration of the independent position of the medieval aristocracy. They made or unmade the king, as often as the king made or unmade them; yet we cannot conceive, either then or now, of Lafayette's theory put in practice — "a monarchy with republican institutions." — M.

In every country honorary distinction operates as a powerful incentive to action. This sentiment is not less influential in republics than in monarchies. To be fed at the public expense in the *Prytaneum* was an honor probably as much coveted by the Athenian patriot as the blue ribbon of the Garter is now coveted by the lordly parasite of Britain's court. Whoever possesses the power of awarding titles of honor naturally acquires thereby an amount of influence which is ridiculously disproportionate to the intrinsic value of the favor conferred. Lasting distinction, indeed, is earned, not granted: it is awarded by the voluntary — sometimes by the involuntary — homage of mankind to those who have performed memorable deeds; and a mind that is truly great can despise the mere gauds that captivate the frivolous and the vain. But such minds are rarely to be found, and the external symbol — the ribbon and the cross — will ever be prized, when awarded as marks of favor by those who hold supreme authority. In the United States of America an attempt was made, after the revolutionary war, to establish an order called "The Cincinnati," but republican jealousy was, very properly, directed against it, and it was ultimately suppressed, because its establishment was considered to be a covert mode of introducing aristocratic distinctions amongst a people whose political constitution proclaims the perfect equality of all citizens. In a constitutional monarchy, the sovereign is, perhaps, the organ through whom honorary distinctions may, with propriety, be conferred. Practically he will be but the organ. The nomination will originate with his ministers, just as every other act of executive government is directed by their will, and as those ministers are responsible to the legislature — in other words, to the nation, through its representatives — it is to be presumed that the application of this prerogative will generally be conformable to the public sentiment. In a republic, honorary marks of distinction, if conferred at all, should be conferred by the chief magistrate only, at the instance of those bodies which represent the nation. This principle is already recognized, to a certain extent, in the practice of representative assemblies. Thus, the highest honor that can be awarded in Great Britain to a successful commander is, that he should receive the thanks of Parliament; and the grant of a pension, or other mark of honor, may be accorded with safety to those distinguished men whom the representatives of the nation, as well as the chief of the executive, unite to consider as public benefactors.

By the Constitution of the United States, it was provided that the President shall nominate, with the assent of the Senate, all the officers of the general Government. It is manifest that he could not be held responsible for the executive administration of public affairs, carried on in his name, unless he were invested with power to appoint and to remove the officers employed in such administration. The chief magistrate of every state, whether it be a monarchy or a republic, ought to be intrusted with this power. In England the ministers of the Crown, acting in the name of the sovereign, exercise the right of nominating almost all the subordinate officers engaged in executive administration, but their power of removal is restrained, in many cases, by custom and public opinion, if not by law. The number of offices which are usually vacated upon a change of ministry, bears but a very inconsiderable proportion to the whole number of those which are held at the will of the Crown; and many patent offices, being held *during good conduct*, can be vacated only by the misconduct of the holders of them. This unwillingness to change public servants is a feature of administration which is not only highly honorable to the English people, but which also tends much to promote the interest of the public service. It gives to the departments of government the advantages which belong to experience, and to the holders of office an inducement to conduct themselves with propriety. An officer who is liable to be dismissed upon every change of Government, naturally feels little interest in performing faithfully the duties of his situation. His thoughts are rather directed to the necessity of making provision for the contingency of a change. If he be corrupt in principle, he is subjected to a temptation which is almost irresistible. Take, for instance, the case of an officer of excise. The nature of his duties is such, that upon his honesty the payment or non-payment of large sums to the exchequer may depend; and he is brought into communication with capitalists, who possess the means of rewarding handsomely his connivance at frauds upon the revenue. If such an officer feel that he holds but a short tenure of his situation, he will be tempted to accept the proffered bribe, whereas, on the contrary, if he knows that, by such a dereliction of duty, he may forfeit the employment, upon which he might otherwise have reckoned as a provision for himself and his family during life, he will be acted upon by a strong motive tending to stimulate him to rectitude of conduct.

The Government of India presents an exception to the practice which prevails in the British empire, that all officers of executive administration should be nominated by the sovereign, or rather by the ministers of the Crown. A few of the most important offices in India are filled by persons appointed by the confidential advisers of the sovereign, but the Directors of the East India Company have possessed the privilege of nominating almost all the functionaries engaged in the administration of the Indian empire of Great Britain. Such a system of government is perfectly anomalous. It has grown up as a sort of excrescence to the British constitution, nurtured by a series of unforeseen circumstances, and it has been maintained, because more danger would arise from attempting to symmetrize it with the general configuration of the imperial government, than from allowing it to expand to its natural dimensions. There has been much in the past proceedings of the Anglo-Indian government that is utterly indefensible. The natives of India have been systematically plundered, both as nations and as individuals, upon every imaginable pretext. The policy of India has been based upon a desire to promote the interests of England and of Englishmen, not the interests of the inhabitants of the Indian empire. This policy has too often been carried actively into effect by means of fraud, perfidy, violence, and extortion; and passively, by neglecting all those appliances, by means of which the prosperity of the country might have been advanced. Thus, whilst state after state has been absorbed in the Indian empire of Great Britain — whilst dynasty after dynasty has been deposed, and their treasures confiscated — whilst the natives have been excluded from all high situations of honor or emolument — whilst the cultivators of the soil have individually been subjected to oppressive exactions, by augmentation of the land tax and other extortions — little, comparatively speaking, has been done to develop the prodigious resources of this fertile territory. Public works have been neglected. Large districts have been left without a road or a bridge; and, not only have the Indian Governments omitted, in many districts, to construct new works, but even the old works, most essential to the culture of the soil, such, for instance, as tanks and reservoirs, required for irrigation, have been allowed to fall into decay. The education of the natives has been almost to an equal extent neglected by the Government, although there is no people on the face of the earth who are more capable

of intellectual culture than the natives of India. But, for several of the most unjustifiable portions of this policy, the ministers of the crown, rather than the directors of the India Company, have been blamable. Upon the whole, it may be doubted whether British India would have been so well governed as it has been, if the East India Company had, at an early period, been deprived of the administration of political affairs. It is certain that the appointments to important situations, made by this company of merchants, will bear advantageous comparison with those made by any regular government of modern times. The concurrent testimony of all writers and observers who have studied the affairs of British India bears witness, that an unusual amount of ability has been displayed by the functionaries nominated by the East India Company, and employed in the administration of Indian affairs. Though it would be unsafe to erect any new government elsewhere upon the model of that which has governed British India, it would, on the other hand, be extremely unwise to overthrow that system, until some other, much more advantageous to the people of India, can be substituted for it. Improvement in the political institutions of India is to be sought, not by transferring to the ministers of the Crown the power and prerogatives now exercised by the East India Company, but rather, by striving to develop in India itself the principle of self-government.

A transfer to the ministers of the Crown of the right of nominating to the vast number of lucrative offices, now at the disposal of the East India Company, would so greatly increase their patronage, that much danger might result to the liberties of the empire from investing unscrupulous men with such exuberant means of corruption as this increase of patronage would place at their command. Already, the influence obtained over majorities in Parliament, by means of patronage, is so great, that the minister relies less upon the merits of his measures than upon the secret influences which procure support to his administration. How greatly would this tendency be increased, if he were furnished, in the patronage of the Indian empire, with an almost inexhaustible repository of the instruments of corruption!

It is hopeless to expect that the spirit of aggrandizement, which has led to the gradual enlargement of the Indian empire of Great Britain, will ever be checked by any impulse, except that of successful resistance on the part of the Easterns

themselves. Ambition is a passion which is common to all nations, and to all governments, whether they be autocratical like that of Russia, constitutional like that of the United Kingdom, or republican like that of the United States of America. The Indian empire will, therefore, probably be increased, until it shall arrive at such a magnitude, that it will fall to pieces by its own want of cohesion. Perhaps it has already attained this point. Be this as it may, I leave to the cynic the task of reproaching with hypocrisy the government of Great Britain, which affects moderation in Europe, and declaims against the lust of conquest evinced by other nations, whilst it quietly and gradually takes possession of enormous tracts of territory in the East. But, assuming that it is the destiny of the population of Hindostan to remain subject to British rule, it is surely a question worthy of consideration by British statesmen, whether the improvement of British India is not an object in which Great Britain is interested as well as the natives of India. In a material point of view it is obvious that the greater the wealth of these territories, the greater will be their capacity for ministering to the avarice of British administrators, and of British commerce. Even the most selfish, therefore, of rulers ought to desire that such a system of land tenure should be established, as would stimulate the cultivators of the soil to an energetic exercise of industrial exertion — an exertion, which will never be made by those who are subject to overwhelming exaction. Even the most selfish of rulers ought to encourage the formation of roads, bridges, canals, railways, reservoirs for irrigation, &c., which are essentially required for the production or conveyance to market of the commodities which this country is capable of yielding, in incalculable abundance. Even the most selfish of rulers must feel, that a system of government, which is upheld solely by the bayonet, can never be permanently safe. If, in the event of a Russian invasion, for instance, the Sepoys of the Indian army were to waver in their fidelity for a moment, the Indian empire of Great Britain might be lost more rapidly than it was acquired. They ought, therefore, to perceive, that the only effectual way of securing the permanency of British sway in India is to make the natives of all classes feel that it is their interest to uphold it. This can only be done by identifying their aspirations with the progress of European civilization, through the instrumentality of education, and by admitting them to a full participation in the government of their native country.

It is the opinion of the best informed politicians in India, that improvement of every kind has been retarded by excessive centralization. Thus, for instance, in the administration of the Madras Presidency there is a large class of operations which cannot be undertaken by the local government, without the sanction of the governor general and council at Calcutta. It may be quite right that the governor general should possess a *veto* with regard to affairs, which, though apparently local, may affect the general policy of the other presidencies; but it is obviously absurd to refer questions connected with the internal improvement of the country to a functionary, who can know little or nothing about the matter at issue. It often happens, that the efforts of zealous men to effect improvement in their districts are checked, if not wholly paralyzed, by these vexatious and dilatory references to a distant authority. I should be led into too much detail, if I were to illustrate the operation of this system of administration, but I have said enough to justify the opinion of those who think that the local governments of India should be allowed, upon their own responsibility, to undertake all manner of operations, connected with the internal improvement of the territories over which they preside — subject to the ultimate sanction of the directors at home. I would, however, go farther, and contend that endeavors should be made to prepare the natives of India for self-government, by organizing, throughout the whole of these territories, local municipalities for the administration of local affairs. Should this sort of administration be successful, we may infer that the natives of India are capable of taking part in a system of government, similar to that which prevails in the British colonies; and the principle of legislative representation may, within the course of a few years, be brought into operation in British India.

It would seem unnecessary to observe, that the sale of public offices is a practice wholly indefensible, if it were not a matter of fact that, in various countries, situations, involving most important functions, have been, at various periods, habitually sold. In France, for instance, this system of appointment appears to have been sanctioned for a long time as a recognized principle of administrative policy, and even to have extended to judicial offices. It is obvious, that when offices are sold there can be no sufficient guarantee for the due qualification of public functionaries. The possession of a certain amount of wealth, not the possession of intellectual,

physical, or moral preëminence, becomes the primary test of qualification. Nor can any adequate responsibility be exacted from those who have purchased public offices, because it will be felt that, except in case of the gravest delinquencies, to deprive an individual of an appointment, for nomination to which he has paid a large sum of money, would be to commit an injustice towards him. It may also be surmised, that one who has purchased any situation will deem himself at liberty to obtain from it, by peculation or corruption, as large a return as can safely be acquired. In England, as well as in France, titles of honor have occasionally been sold by the sovereign, and if men are sufficiently vain to pay large sums for mere titles, it may be argued that little injury results to the public from such transactions. But they tend to degrade the order into which the individual is introduced by wealth alone. The sale of advowsons of benefices in the church, and the sale of commissions in the army, is open to these and many other objections — objections which can only be neutralized by imposing a rigorous test of qualification upon all candidates for purchase, and by defining within the strictest limits the privileges to be obtained as an equivalent for such an outlay of money. The system of disposing of public offices by sale has, however, the advantage of limiting the influence of the executive; and this incidental consequence affords some compensation for the other evils which result from it.

The appointment of public functionaries by lot is a practice which seems to be inconsistent with the first principles of reason and expediency. Who would venture to recommend that, upon the breaking out of a war, the command of a fleet should be assigned to the admiral whose name should be first drawn from a list committed to the chance of a ballot-box; or that, upon the occasion of a vacancy, a chief justice should be nominated in a similar manner? Yet the practice of selecting public functionaries by lot has prevailed in several states, as, for instance, at Athens, and at Florence, during the most brilliant eras in the existence of these republics. Indeed the practice has not been wholly unknown in England. Not many years have elapsed since the members appointed by the House of Commons to try election petitions — a department of jurisprudence which often involved legal questions of great perplexity — were selected by lot. These instances tend to prove, that even the wisest men will resort to proceedings which cannot be justified in theory, in the hope of escaping

from evils which appear to be otherwise inevitable. Selection by lot is indefensible, but it is preferable to a system of appointment founded upon mere favoritism or corruption. In contemplation of these alternatives, it has been thought that official incapacity results as much from favoritism as from appointment by lot; and, therefore, in some countries a preference has been given to that system which is the least liable to corruption. In regard of those functions which require for their discharge nothing more than the exercise of common sense, selection by lot is preferable to any mode of appointment which admits the possibility of undue influence. Thus, in the composition of juries, it is much safer to trust to the chances of selection by lot (subject to challenge for cause) than to leave their nomination to administrative officers, who may be influenced by motives founded upon prejudice, partiality, or corruption; but, in the general administration of public affairs, we cannot advocate nomination by lot as a desirable mode of selecting public functionaries.

We may take this opportunity of observing, that, in a constitutional monarchy, officers connected with the royal household, and personally attendant on the sovereign, — such as lords and ladies in waiting, &c., — ought not to be allowed to interfere in political affairs, in virtue of the offices which they hold. Their responsibility to the public extends no farther than that they may be expected duly to administer that portion of the civil list expenditure which is disbursed by them. As they are immediate attendants upon the person of the sovereign, the sovereign ought to be allowed the choice of such attendants, unrestricted by political or party considerations. When Sir Robert Peel, in 1838, refused to hold office under Queen Victoria, unless he were allowed to nominate her ladies of the bedchamber, he intrenched upon a prerogative which ought to be held exempt from ministerial influence. The monarch would, indeed, be the most unhappy person in his empire, if he were to be debarred from the selection of his immediate associates. This is a privilege which the meanest individual enjoys, and which, therefore, ought not to be withheld from those who are placed in an exalted station for the general good of the community.

CHAPTER XIV.

ON THE ADMINISTRATION OF PUBLIC AFFAIRS.

A LARGE popular assembly is utterly incompetent to carry on, in detail, the administration of public affairs. It can determine principles, it can suggest or sanction measures, but it is incapable of elaborating all the details which are connected with the execution of such measures. Imagine the confusion which would arise if the House of Commons were to undertake to appoint all the subordinate officers of administration. The time which ought to be devoted to legislation and to a general superintendence over the affairs of the empire would be wasted in petty squabbles about the distribution of patronage. Imagine the confusion which would arise if it were to undertake to determine in what localities each regiment should be stationed, or what particular ships should be sent on each service. Imagine the confusion which would arise if it were to undertake to conduct the requisite correspondence with foreign powers and with the subordinate officers of the various public departments. It is not necessary to proceed with additional illustrations of the difficulties involved in such a scheme for the conduct of public affairs, because it will at once be seen that, in a great empire, it is physically impossible that a deliberative assembly could carry on all the duties of executive government. Delegation, therefore, becomes indispensable. Whatever be the organization of the government — whether it be republican or monarchical — executive officers must be appointed for the administration of public affairs.

The following are the departments under which the affairs of a great empire naturally classify themselves. Over each of these departments one or more ministers preside: —

Department of the Interior.
Department of Finance.
Department of Military Affairs.
Department of Foreign Affairs.
Department of Commerce and Trade.
Department of Colonial Affairs.

These departments admit of subdivisions, which shall be noticed hereafter. The chief magistrate of the state, whether he be a monarch or the president of a republic, is naturally the supreme head of all these departments. According to

the principles already developed, he nominates the principal officers of state. These, through the agency of subordinates, carry on the details of public business. The assemblies which represent the nation at large do not interfere with the ordinary management of public affairs, but all the officers of the executive are responsible to these assemblies. If any misconduct take place on the part of officials, it is the privilege and the duty of the representatives of the nation to bring to account those who so misconduct themselves, and to adopt measures calculated to remedy the evil; but it has been found by experience that confusion and disasters always arise when representative assemblies attempt to encroach upon the legitimate prerogatives of the executive.

Councils of State.

The functions of executive government are almost always carried on under the advice of a council. In those states in which the sovereign takes a part in the direction of affairs, he naturally seeks the advice of able and experienced councillors, and is present at their discussions. Such was the practice in England in early days, when the Privy Council was in reality an executive council, which assisted the deliberations of the sovereign. But in modern times the Privy Council has lost almost entirely the character of a consultative body, and is now a sort of high court, for which is reserved the consideration of certain classes of judicial questions, the administration of particular kinds of public duties, and the authorization of acts which have been taken out of the sphere of parliamentary operation. Since the Revolution of 1688, the public policy of the state has been directed, not by the Crown or the Privy Council, but by a *Cabinet Council.* Sir James Mackintosh, in his history of the Revolution of 1688, thus describes this innovation: —

"It was a little before this time (the accession of James II.) that the meetings of such ministers began to be generally known by the modern name of the 'Cabinet Council.' The Privy Council had been originally a selection of a similar nature; but when seats in that body began to be given or left to those who did not enjoy the king's confidence, and it became too numerous for secrecy or despatch, a committee of its number, which is now called the Cabinet Council, were intrusted with the direction of confidential affairs, leaving to

the body at large business of a judicial or formal nature — to the greater part of its members an honorable distinction, instead of an office of trust. The members of the Cabinet were then, as they still are, chosen from the Privy Council by the king, without any legal nomination, and generally consisted of the ministers at the head of the principal departments of public affairs."

Thus the Cabinet is composed of the principal ministers of state, and its members are called *the confidential advisers* of the Crown. In point of fact, however, they can scarcely, with propriety, be called advisers of the sovereign, as he is seldom present at their deliberations. Practically, he is compelled either to adopt the measures suggested by them, or to dismiss them, and to procure in their places a new set of ministers, who in their turn dictate rather than advise the measures which are to be executed in his name.

Some have thought that the duties of executive government would be better conducted under the advice of a body such as the Privy Council, than under that of a small junta or cabal of ministers called the Cabinet. With this opinion I cannot concur. If the sovereign were really the governing power of the state, it would be desirable that he should be assisted by the formal discussions of a Council of State. But with a constitution such as that of the United Kingdom, under which substantial power resides in the Parliament, and under which the ministers of state, not the sovereign, are responsible, the intermeddling of the monarch with the deliberations of ministers would probably embarrass, rather than advance, the conduct of public affairs. Under a republican constitution, the chief magistrate being personally responsible, it is quite proper that he should take part in, or rather that he should direct, the consultations of his ministers. They are subordinate agents carrying into effect the policy for which he is responsible. It is therefore necessary that, on the one hand, they should perfectly understand his views, and on the other, that they should supply him with information derived from their official experience, and suggest to him whatever measures may seem to them necessary for the welfare of the state.

If the chief magistrate of a republic were to be compelled to consult an executive council of state, nominated directly or indirectly by the people, that council would gradually absorb to itself the virtual exercise of all executive functions; and even the authority of the legislature would be endangered by

the encroachments of its influence. It is not necessary to refer to the history of Venice, or of other states, in support of this opinion. Reason, independently of experience, suggests that a functionary who is compelled to consult others before he acts becomes to a great extent the organ of their will — more especially if he hold office for a term shorter than that for which the councillors whom he consults are chosen. Deriving its authority from the people, such a council would naturally consider itself at least as much an exponent of the national will as any other individual or body in the state; and if it were to consist of only a few persons, it would enjoy the advantages which arise from concentration of power and unity of action, combined with those which result from the consultative deliberations of able and experienced men.

Whatever may be the form of government, a council composed of the confidential advisers of the chief officer of the executive is absolutely indispensable for the conduct of public affairs. The composition of this council may vary according to the peculiar circumstances of each constitution, but it is obvious that it ought to include the heads of the several departments; and with a view to the maintenance of confidence and harmony amongst its members, it is desirable that the number of its members should be very limited.

CHAPTER XV.

ON THE MINISTRY OF THE INTERIOR.

It is not necessary to discuss the question whether one department ought to have precedence over the rest, or to consider which of the public departments ought to obtain such precedency. We shall therefore commence our review of the several branches of executive administration by considering what in England is called "the Home Department," and in France "the Ministry of the Interior."

To this department naturally belongs every thing that concerns the internal welfare of the kingdom. The duties allotted to this department not being the same in all coun-

tries, we shall consider rather what branches of public affairs naturally belong to it, than attempt to present a view of the organization which exists in any particular country. In England, the organization of the public departments has been very informal, and is totally deficient in symmetry. It has not been cast in any regular mould, but its several parts have been framed to meet each temporary exigency that has required an addition to the machinery already existing. In some branches of administration this machinery is excessively cumbrous and complex; in others it is scanty and defective in the extreme. It therefore cannot be safely taken as a model.

Every thing that relates to the administration of justice — to the preservation of internal order, by means of police regulations and by means of municipal government — to the education of the people — to the construction of public works — to the relief of the poor — to the health and recreation of the community — naturally falls under the supervision of the Minister of the Interior. In a large empire the circle of these duties is so wide that it is generally found expedient to subdivide the functions of the Minister of the Interior, and to place at the head of each of these sub-departments a responsible minister of state. Thus, in France, there is a Minister of Justice, a Minister of Instruction, and a Minister of Public Works.

CHAPTER XVI.

ON THE ADMINISTRATION OF JUSTICE.

We ought, perhaps, to treat the judicature of a country as a branch of its political institutions which is, or ought to be, quite independent of the executive. As it is the duty of the legislature to make the laws, so it is the duty of the judicature to interpret them, and of the executive to put them in force. The judicature, therefore, is not, in its own nature, dependent upon the executive; but since political writers, for the most part, agree in thinking that it is expedient that the judges should be appointed by the executive, rather than elected by the people, we shall be justified in comprehending the judicial establishments of a country among those

institutions over which the executive, and especially the Minister of the Interior, ought to exercise a qualified superintendence.

I assume that the judges ought not to be elected by the people, for the following reasons: —

The people at large are not competent to form a correct opinion of the qualifications of the several candidates who would be competitors for their votes, in case judges were appointed by popular election. In regard of the appointment of judicial functionaries of the lowest class, such, for instance, as justices of the peace, the local electors might possibly make a wise selection; but the very qualities which best fit a lawyer for the highest class of judicial office are precisely those which would least recommend him to a popular constituency. A man accustomed to profound meditation and laborious research, calm and imperturbable in demeanor, firm and undeviating in his sense of rectitude, would have but a slender chance of obtaining preference, when brought into competition with a noisy declaimer or an active intriguer.*

If a judge be appointed by popular election, he must, in the case of a contest, rely upon the support of a party, and, insensibly, his mind will become swayed by the reciprocal influences of partisanship; whereas, on the contrary, a judge ought to be wholly removed from the operation of such influences.

Nevertheless, it is very desirable that a person appointed to administer justice should possess the confidence of the people as well as of the executive. It would, therefore, seem expedient that the representatives of the people should, in the appointment of judges, possess a *veto* upon the nominations made by the executive. When a vacancy occurs in one of the judicial seats of the highest class, the executive ought to be permitted to nominate a successor; but his final appointment ought to be subject to confirmation by one or both houses of the legislature. In regard to the lowest class of judicial officers, the municipal representatives of the people ought either to originate the nomination, subject to a *veto* on the

* The experience of those of the United States where the elective judgeship has been tried certainly confirms Mr. O'Brien's view. Third and fourth rate lawyers have generally been elected judges, through party influences, while the men of solid reputation in the profession remain at the bar, pleading before their own subalterns. — M.

part of the executive, or the nomination made by the executive ought to be subject to a *veto* on the part of the municipal representatives. When a *veto* of this kind is interposed to check an abuse of patronage, the party who nominates is compelled to select persons who are acceptable to the community at large.

This principle of conjoint action between the executive and bodies representing the people has been adopted in Belgium in the nomination of judges, even of the highest class.

The following are the terms in which this matter has been regulated by the constitution of Belgium, A. D. 1831.

"Les conseillers des cours d'appel et les presidents et vice presidents des tribunaux de premiere instance de leur ressort sont nommés par le roi, sur deux listes doubles, presentées, l'une par ces cours, l'autre par les *conseils provinciaux*.

"Les conseillers de la cour de cassation sont nommés par le roi sur deux listes doubles, presentées l'une par le *senat*, l'autre par la cour de cassation.

"Les cours choisissent dans leur sein leurs presidents et vice presidents."

The commercial judges are chosen by the principal merchants of the chief towns.

The administration of impartial justice between man and man is the most important of all the functions of government. Vain is the wisest legislation, unless the laws enacted by the legislator be efficiently and impartially administered. Vain is the protection afforded by military force against the foreign conqueror, or against the domestic marauder, if corruption and injustice preside in the courts of judicature. A foe more dangerous than the foreign conqueror — than the domestic marauder — holds possession of the citadel of the nation's strength and virtue. A people must be happy, though governed by a despot — a people may be happy, though subject to continual alarms, and compelled to maintain perpetually an attitude of defence; but a people must necessarily be unhappy and discontented, if those who are appointed to arbitrate the differences which arise between man and man, inflict that intolerable oppression which a sense of violated justice carries into the bosom of every family in the community. To secure purity, uprightness, and capacity in the tribunals of judicature is, therefore, an object of paramount importance in the construction of the social system. This is an object which cannot be attained by mere constitutional regulations. Justice will not

be administered impartially, unless a high sense of rectitude and public principle prevail throughout the community. If this be wanting, judge and jurymen become the abettors, if not the perpetrators, of wrong.

Quid leges sine moribus
Vanæ proficient.

Dangerous tendencies may, however, be in some measure checked by wise institutions. Thus, for instance, in all contentions between the Crown and the subject, between the citizen and the executive, the judge will naturally be acted upon by a strong motive tending to bias his decision, if he have been appointed by the executive, and be liable to removal in case his judgments displease those in authority. Experience shows that when judges hold office merely during the pleasure of those by whom they are appointed, they become subservient creatures of power, rather than upright ministers of equity. Hence, in order to obtain an impartial administration of justice, it becomes necessary to secure the independence of the judges. They should be removable from office — but removable only for misconduct. In this respect the precedent adopted by Great Britain shortly after the accession of George III., when the judges were rendered independent of the Crown, deserves universal imitation. Among the fundamental articles of every constitution, there ought to be a provision securing the independence of the judges.

In regard to judicial establishments, the practice, if not the theory, of the British constitution has undergone much change. In early times, the king was accustomed personally to administer justice in his own hall — *Aula Regis* — or wherever else he might be in England; hence the title of "the King's Bench." But during the last two centuries, an interference on the part of the sovereign with the discretion of the judges would have been justly considered as an invasion of the dearest rights of the subject. The connection of the sovereign with legal proceedings has become one of those fictions, which mankind delight to uphold on account of their reverence for ancient forms. So long as the doctrine, that "the king is the fountain of justice," is unproductive of any officious intermeddling with the administration of the judicial tribunals, the *dictum* is harmless; but if it were interpreted to mean, that the sovereign is entitled to tamper with the independence of the judges, it would become the duty of the legislature to resist with its

utmost power, as an unjustifiable encroachment, this return to the ancient practice of the British executive.

The sovereign of the United Kingdom is "the fountain of mercy," as well as of justice; and the exercise of the prerogative of mercy may be more advantageously confided to the chief of the executive than to any other authority in the state. As cases constantly arise from day to day, in which some mitigation of the original sentence under which an offender has been punished is suggested by reason or expediency, the power of dispensing mercy must be confided to some public functionary. To whom can it be more advantageously delegated than to the chief of the executive? Not to the legislature — for if it were confided to them, discussions would be perpetually raised respecting the propriety of dispensing it to all manner of criminals. Not to the judicature — for the judge has already assigned the amount of punishment which his discretion suggests as applicable to the circumstances of the case. There is but one case in which the executive can be distrusted in regard to the exercise of this prerogative — that is, the case in which an offender has been convicted upon impeachment of having, by crimes and misdemeanors, abetted the pernicious designs of the executive itself. It seems unreasonable that, in such a case as that of Strafford, the king should be placed in a position in which he is compelled to choose between the alternative of sacrificing a servant who has ministered to his designs, or of exercising, by prerogative, an intervention in his favor which may cost him the loss of his own crown. When a sentence has been pronounced after impeachment, it seems reasonable that the executive should exercise the prerogative of mercy only upon the joint address of both those Houses which, acting on behalf of the nation at large, have concurred in procuring the condemnation of the criminal.

It appears impossible to protect the community from that sort of partiality which arises from strong passions or prejudices in the minds of those who are appointed to administer justice. The best corrective of tendencies of this kind is to be found in public opinion, as expressed by a Free Press. The most prejudiced judge will be more or less affected by the opinion of others, and will hesitate before he expose himself to the animadversions which a display of partiality will evoke. Against partiality arising from corruption the laws may provide some protection by the terror of severe penalties; but

the best security is to be sought in adequate remuneration of judicial service. It is generally observed that, in those countries in which judges are inadequately paid for their services, they endeavor to indemnify themselves by indirect extortion for the parsimonious treatment which they receive from the state.

To secure capacity of the highest order, it is also necessary to provide adequate remuneration for the judge. If the labor of the advocate be better rewarded than that of the judge, the ablest lawyers will abstain from accepting judicial appointments. A judicial tribunal must necessarily be brought into contempt, if the advocates who plead causes before it display more ability than is shown by the judges who preside.

However able and upright a judge may be, he is liable to be rendered inefficient by the advance of old age, or by physical infirmity. For incapacity arising from confirmed disease, or from old age, a remedy is to be found in a liberal system of superannuation. If superannuations be not allowed to officials, they will cling to office as long as life will permit; and if they be irremovable, the public interest must suffer from the decay of their faculties, and public feeling will be shocked by a display of their decrepitude. Every functionary, therefore, whose services are of a permanent nature, and especially judges, ought to be entitled to a retiring allowance, graduated on a scale of remuneration proportionate to the length of his service.

Procedure in Courts of Justice.

Not only integrity and capacity in the judge, but also simplicity, economy, and despatch in the form of the procedure, are requisite to constitute excellence in judicature. If the process by which rights are vindicated be expensive, those who are unable to defray the costs of litigation are debarred from the prosecution of their just claims. To them, justice is in effect altogether denied. It has been thought by some, that a costly form of legal procedure is advantageous to the community, because it checks litigation: but, if it be reasonable to compel the poor to acquiesce in wrongs, it would be equally reasonable to deny to the rich the legal prosecution of their rights. There can be no reason for rendering justice the exclusive privilege of the wealthy. On the contrary, the ideal perfection of a system of judicature would seem to be

an arrangement of such a nature, that, whenever a controversy arose between man and man, there should be a third party at hand to arbitrate between them. Such an arrangement cannot, indeed, be fully realized, but a near approach may be made to it by providing tribunals, which shall be equally accessible to the poor as to the rich. To those who are acquainted with the manner in which legal proceedings have been conducted in England, it is needless to remark that the power of seeking a remedy for wrong in a court of justice has hitherto been, to a great extent, a privilege enjoyed only by the rich. The expenses of legal proceedings have been so heavy, that the poor have been almost entirely excluded from courts of justice. Even amongst those who possess a competency, it has been an accepted maxim, that it is generally more prudent to forego a right, or to acquiesce in a wrong, than to encounter the anxieties and costs of litigation.

Justice is frustrated, not only when legal proceedings are expensive, but also when they are dilatory. Delay necessarily involves expense; but even if it imposed no additional cost, it often would be equivalent to a denial of justice. What prudent man would engage in a Chancery suit, when he has reason to believe that it may be protracted throughout half his life? Far better is it to waive a just claim, than to be harassed by the anxieties and expense attendant upon protracted litigation.

To the suitor whose property is filched away by lawyers, while it is under controversy in a court of justice, it matters little whether such spoliation take place under pretexts suggested by legal chicanery, or by the more glaring iniquity of corrupt extortion on the part of the judge. To the unhappy victim the result is the same in both cases. The English jurist declaims against the peculation which is alleged to prevail in the administration of justice in several states of Europe, whilst he extols the purity and impartiality of the judicial tribunals of the United Kingdom. But to the suitor, the direct extortion of a corrupt judge, or even the blind chance of adjudication by a throw of the dice, would be preferable to the lingering anxieties, the authorized pillage, and the capricious uncertainty which have often attended the progress and result of suits in the British courts of justice.

These observations apply with nearly equal force to criminal, as to civil judicature. A large proportion of those who are tried for alleged crimes are ultimately acquitted. Some

offenders undoubtedly escape from want of evidence, but many also are acquitted, because they are innocent. What can be more cruel than to detain innocent persons in prison, or even to leave them, though at large, under the imputation of crime? The lapse of a few weeks may be necessary for the collection of evidence in favor of or against the prisoner, but the interval preliminary to trial ought to be reduced to the shortest duration that is consistent with a due investigation of the case.

To relieve suitors from expense, it is desirable, not only that fees should be reduced to a very low scale, but also that courts of justice should hold their sittings in all parts of the country, so that parties and witnesses and jurors shall not have occasion to travel more than a moderate distance to attend trials. It is impossible to define what this distance ought to be, because it must depend in some measure upon the population and other circumstances of each district; but in countries which are densely peopled, it may be laid down as a general principle, that the ordinary courts of justice ought to be brought within the reach of a day's journey to every individual in the community.

Upon these grounds we may conclude, that in framing a system of judicature, the assizes, or circuits, instead of being held only twice in each year, should be held quarterly. Thus the legal administration of the courts of quarter sessions and of assizes might be consolidated. The tendency of recent legislation has been to extend the jurisdiction of the courts of quarter sessions, and there seems to be no reason why all the same classes of cases which are tried at assizes twice in the year should not be tried quarterly. To the public at large, attendance on juries, and the other duties connected with the administration of justice, would be less burdensome, under the proposed arrangement, than they are at present, and delay would be avoided.

There are particular classes of legal proceedings which must, in every country, from their own nature, claim for themselves a special system of investigation. Such, in England, are the laws relating to the conveyance of real property, the execution of wills, trusts, &c., which have been assigned to the jurisdiction of the Court of Chancery. All questions which can be best determined by the intervention of juries, ought to be tried at the circuit courts of quarter sessions. All legal questions, which can be decided only by those who are versed in the principles and technicalities of law, ought to be reserved

for the consideration of courts sitting in permanent session in the metropolis, or in some principal provincial city. Under a wise system of judicature, this class of cases should be as much restricted as possible. The simple good sense of the jury, when aided by the instruction of the judge, will generally be sufficient to determine questions of equity, which are not in their own nature very complicated: but, upon the other hand, it cannot be contended that a jury is capable of determining all the abstruse questions which arise in the process of legal investigation.

It is also necessary that a tribunal should be erected for the trial of appeals. If the primary courts be well constituted, appeals ought to be discouraged. An appeal is often little else than a rehearing, which involves great expense and delay. It is a resource which gives to the rich a great advantage over the poor, in litigation. With a view to prevent vexatious and frivolous appeals, the appellant ought to be compelled to make a deposit in court sufficient to guarantee to the respondent immediate payment of the costs incurred by him on the appeal, in case the decision of the court of appeal shall be adverse to the appellant.

In cases in which the opinion of a higher court is desired, upon questions which have arisen during the trial of the cause in an inferior court, the parties ought to be allowed to prepare, in writing, a statement of the points at issue, and to submit the ultimate decision of such questions to a court of appeal.

Though this work has not been written as a commentary upon the principles and practice of the British constitution, it may not be amiss here to remark, that the construction of the highest appellate tribunal of the United Kingdom is not such as can be justified by theoretical reasoning; and that, therefore, it ought not to serve as a model in the abstract design of a well-constituted judicature. The House of Lords is a body composed of individuals, the great majority of whom are, from want of forensic education, utterly incapable of forming an opinion upon the legal questions which are brought before that tribunal, by way of appeal. Fortunately, in practice, the decision of all legal questions is left to those peers who have filled high judicial situations; but this forbearance, on the part of the lay lords, is due rather to their good sense than to constitutional restriction. The highest appellate tribunal of every country ought, obviously, to consist of a few lawyers, distinguished not only for their professional attainments, but also for their impartiality and integrity.

Trial by Jury.

It will have been perceived that, in the arrangements above suggested, we contemplate the continued maintenance of trial by jury. Much has been said in favor of this institution; much, too, may be said against it; but, upon the whole, the arguments in its favor greatly preponderate over those adverse to it, and experience, the best of all arguments, ratifies this decision.

The theoretical reasoner may, indeed, be forgiven for deriding the idea that twelve uneducated men, or even men possessed of the highest intelligence and instruction, should concur, *unanimously*, in any decision. It would seem probable, *a priori*, that such agreement would scarcely ever take place among twelve men, respecting even a matter of fact — still less respecting matter of opinion; but in practice it is found that the instances in which juries disagree and cannot find a conscientious verdict are, comparatively, rare. It might, also, be assumed that juries would be swayed by local prejudices and partialities, but in practice it is found that though such partialities may occasionally exist, yet upon the whole the adjudications of juries are as free from bias as those pronounced by judges who have been appointed by executive authority. Nor ought it to be forgotten that, in trial by jury, the citizen finds his most sure protection from the oppressions and usurpations of administrative authority. It may be argued, indeed, that as long as a country possesses a legislature subject to popular control, the rights and liberties of the citizen cannot be endangered: but the efficacy of laws depends not so much upon those who make them as upon those who administer them. Judges, appointed by the executive, are always liable to be biased in favor of the authority by which they have been appointed; and in contentions between the citizen and the executive, naturally lean to the side of power. The jury, on the contrary, if fairly chosen, represents the people, and its intervention checks the natural tendency which induces those who are invested with authority to seek an extension of their own power, as well as to endeavor to exercise that power in an arbitrary manner.

Whilst, however, we ought to uphold with strenuous zeal the institution of jury trial, we are not bound to contend that the unanimity required from juries is essential to the beneficial operation of this system of judicature. In Scotland, unanimity is not required, and I am not aware that any incon-

venience results from this modification of trial by jury. It is, however, safer to adhere to that form of this institution which has been found, during so many centuries, to have been the safeguard of personal liberty in Great Britain. In all cases of doubt, the benefit of the doubt ought to be given to the prisoner. Therefore, no man ought to be convicted, unless his guilt be so palpable as to be manifest to all. In like manner, when a right to property is disputed, there naturally arises a presumption in favor of the title of him who is in actual possession; and he ought not to be deprived of that possession, unless the case made out by his adversary be so clear as to bring conviction to all impartial minds. It is to be remembered that the disagreement of a jury does not frustrate altogether the punishment of crime or the distribution of justice. A new trial may take place in the event of such disagreement, and if the case be made more clear on a second trial, a second jury will find a unanimous verdict.

It is true, that juries, if selected indiscriminately from the people at large, may often contain a certain number of individuals who are more disposed to thwart than to forward the due administration of justice. In some countries, as for instance in Ireland, an attempt has been made to obviate the possible occurrence of this inconvenience, by intrusting to a public official the duty of selecting from the general jurors' list persons specially qualified to act as jurors; but an arrangement of this kind produces an evil greater than that which it seeks to obviate. It has given rise to the practice of *packing juries*, by which the executive authorities can generally secure such a verdict as they desire, and has thus weakened the confidence which the public ought to feel in the administration of justice. In other countries, as for instance in certain portions of the United States, the inefficient administration of justice by popular tribunals has given rise to an extra-judicial system of retribution in the enforcement of what is called "Lynch Law," and in the operations of "Vigilance Committees." Though substantial justice is often administered by this irregular process, and though crime is prevented by the terrorism thus created, yet the necessity of resorting to a system of operations so liable to abuse is itself a sufficient evidence that there is something imperfect in the constitution or procedure of the ordinary tribunals of justice. It deserves to be considered whether this imperfection is to be found in the practice of requiring unanimity in the verdicts of juries.

It has been suggested that the preliminary investigation which takes place before grand juries, in the case of criminal trials, is superfluous and might be abrogated. The question is not one of great importance, but it appears advisable to retain in this instance the custom handed down from the time of our forefathers. The inquiry which takes place before the grand jury does not occasion any material inconvenience, delay, or expense, because the parties and witnesses are all in attendance awaiting trial in the court which is ultimately to determine the guilt or innocence of the accused. The intervention of the grand jury is a shield to innocence. If there be not sufficient evidence against the prisoner to justify a conviction, in the absence of all defence and of all favorable testimony, there is no reason why he should be subjected to the pain which results from exposure in the dock, and from the animadversions of counsel or from the perjuries of witnesses. On the other hand, if the grand jury commit a mistake, and *ignore* a bill of indictment brought forward against a person who is really guilty, the due administration of justice is not defeated, because a new indictment can be laid against the delinquent, and the case against him can be made clear by more satisfactory evidence.

This, perhaps, is a proper occasion for observing, that under a well-constituted system of police and judicature, the expenses attendant upon the trial of offenders should be borne by the public, not by the party injured. An individual who is robbed renders a service to the public in prosecuting the thief; he ought, therefore, to be rewarded, rather than discouraged, for bringing the offender to conviction. If, as was formerly the case in England, he be subjected to a heavy expense in prosecuting the culprit, he will naturally be tempted to refrain from incurring expenses and trouble which enhance the anxieties occasioned by his first loss. The gratification of the passion of revenge becomes almost the sole inducement which will, under such a system, lead to the prosecution of offenders; since experience shows that the number of those who will voluntarily make sacrifices of time and money for the public good is very limited. Now, the operation of the passion of revenge ought, if possible, to be altogether eliminated from the sphere of jurisprudence.

Under a corrupt government, it may happen that the official authorities, whose duty it is to originate legal proceedings against offenders, will sometimes from sinister motives

screen the criminal. In such cases, the party injured should be allowed to prosecute on his own behalf. If he fail to establish his case, he should be compelled to bear not only his own expenses, but also those of the party criminated; whilst, on the contrary, if the person whom he accused be convicted, the expenses of the prosecution should be borne by the public. In every case in which the law officers of the executive enter what is called, in England, a *nolo prosequi*, — that is, refuse to sanction a prosecution, they ought to be called upon to state in open court, the grounds upon which they take this course, and the concurrence of the presiding judge should be required to stay the prosecution.

In order to check groundless litigation, it is desirable that costs, sufficient to indemnify the party groundlessly assailed, should be paid by the plaintiff when he fails to substantiate his case; and on the other hand, the defendant who resists a just claim should be compelled to indemnify the plaintiff for the costs incurred in the prosecution of such claim. This is a principle of natural equity which is applicable to all kinds of legal procedure, but it must be applied with discrimination; because the mere issue of a trial is not a sufficient evidence that the action or the defence was groundless. A just claim may sometimes be defeated, and a just defence may sometimes fail, through contingencies for which the losing party ought not to be held responsible.

It may be asked, whether a suitor ought to be compelled to pay any fees towards the maintenance of the court and of its officials, by whom his action is tried. Much may be said on both sides of this question. On the one hand, it cannot be denied that the courts of justice are institutions, in the maintenance of which even those who are not engaged in litigation are interested, and therefore they ought to be supported mainly by the public. On the other hand, it seems reasonable that those who avail themselves of the active operation of these institutions should contribute more largely to their support than those who do not require their immediate intervention. The practice of exacting fees appears, therefore, to be defensible, but it is in the highest degree inexpedient that these fees should be excessive. Nor is it desirable that the salaries of officials engaged in the administration of justice should depend upon the amount of fees which they receive; for wherever such is the system of payment, the officials will feel that it is for their interest to promote litigation. The fees of

court ought to be carried to a fund which should be applied in aid of the general expenses of the tribunal.

We have already seen that, in addition to the quarterly sessions of the circuit courts, it is desirable that there should be metropolitan or provincial courts sitting in permanent session. The number, constitution, and functions of these courts will, necessarily, depend upon the local circumstances of each country — upon the amount of its population — upon the character of the employments in which the people are engaged — upon the laws and customs which prevail amongst them. In regard to the courts of judicature, we cannot propose the institutions of England as a model to states hereafter to be constituted. The whole legal and judicial system of England is far too complex and cumbrous. Courts of equity, courts of law, ecclesiastical courts, county courts, courts of request, seneschals' courts, courts of bankruptcy and insolvency, courts of admiralty, and other courts of special judicature, administer systems of law differing from each other in essential principles, and conduct their procedure through forms discordant with each other. In the construction of a system of judicature, simplicity in constitution, simplicity in principles, simplicity in procedure should be sought after as an essential requirement. The principles of justice are uniform and universal. That which is unjust in the Court of Queen's Bench cannot be just in the Court of Chancery. Neither can a form of procedure which is found advantageous in one court be inconvenient when applied to a similar class of cases in an adjoining court.

I forbear to specify the details of construction to which these principles lead, because they must vary according to the local circumstances of each country; but, I may observe that I contemplate the maintenance, not only of superior courts, but also of at least one class of tribunals inferior in jurisdiction to the circuit court of quarter sessions.

The inferior tribunal to which I now refer is the court of petty sessions, held once a week or once a fortnight, in each subdivision of a district, and attended by paid or unpaid justices of the peace. The justice of the peace is an official who unites in his person a twofold function. When he sits upon the bench he acts as a judge, and exercises a summary jurisdiction; when he places himself at the head of the police or military, to suppress a riot or to arrest an offender, he acts as a police officer. It is desirable that the justice of the peace

should act as seldom as possible in the latter capacity, for it is almost impossible that the same person whose energies, perhaps I should say whose passions, have been excited in pursuit of a criminal, can bring to the juridical bench that calmness which is necessary to the due consideration of all that may be said in behalf of, as well as against, the accused. Justices of the peace ought not to be regarded as partisans even in the prosecution of crime.

It has been proposed by theoretical writers who love centralization, to dispense altogether with the services of unpaid magistrates, and to intrust the local administration of justice entirely to legal functionaries, appointed by the executive. But we ought to hesitate before we adopt such a proposal. Even if it were certain that the laws would be better administered by legal functionaries than by country gentlemen, yet, upon constitutional grounds, it would be highly objectionable to give to the executive so large an increase of patronage as would be derived from the nomination of the numerous officials who would be required to perform the duties now discharged by unpaid magistrates. We may add, that the legal attainments requisite for the adjudication of those questions which are brought before petty sessions, are not of a very high order. They may be easily acquired by any well-educated man, and, as a matter of public policy, it is of great importance that amongst the class of society from which magistrates are usually selected, there should be cherished a familiarity with the elementary principles of justice, as also a disposition to perform, without hire, the various duties of a public nature which are incidental to a well-regulated state of society.

On the other hand, it is desirable that there should be, in each district, at least one magistrate thoroughly versed in the principles and practice of jurisprudence. The administration of justice in the courts of petty sessions would, therefore, be improved by providing that a barrister, of at least five years' standing, should act as stipendiary justice in each district, and that it should be his duty to attend the several petty sessions held within the district for which he shall have been appointed. A stipendiary justice might very well attend three, four, five, and, in some cases, even six courts of petty sessions in a district, as it would not be necessary that the sessions should be held more often than once a fortnight. Under an organization of this kind, a large proportion of the cases which are now

tried at quarter sessions might be tried at petty sessions. Thus, delay and expense might be avoided, whilst, at the same time, the business of the circuit courts of quarter sessions would be prevented from accumulating to an inconvenient amount. It might even be found expedient that not only matters in regard of which the magistrates now ordinarily exercise summary jurisdiction, should be brought before the courts of petty sessions, so constituted, but also that cases of minor importance, in which the intervention of a jury is required, should be subjected to jury trial at such sessions.

In order to overcome the constitutional objection which may be urged against increasing the patronage of the executive by giving to it the nomination of these functionaries, it would be desirable that the stipendiary justices, as well as all other justices of the peace, should be nominated by the municipal council of the district, subject to confirmation by the Minister of the Interior. I shall hereafter have occasion to develop fully the principle and details of municipal government. I therefore defer for the present an explanation of the constitution and functions of the district council.

It is in principle as necessary that the judge who administers justice in the pettiest court should be independent, as that the independence of the judges of the supreme courts should be secured. Magistrates subjected to the undue pressure of popular influences are nearly as liable to be biased in their decisions as those who act under apprehension of incurring the displeasure of the executive. Whilst, therefore, it is necessary to provide for the removability of those justices in case of incapacity or misconduct, it is at the same time expedient to protect them from the capricious dictation of popular passion or prejudice. For this reason it is desirable that the stipendiary justices and other justices of the peace should be removable from office only upon allegation of misconduct, established by investigation; but that in case of such misconduct, they should be removable by the district council, with the concurrence of the Minister of the Interior. It seems to me that such a mode of appointing magistrates will best secure the attainment of the qualifications which these functionaries ought to possess. As the district council will represent the population of the district for which the magistrate acts, it is to be presumed that it will select none but persons who possess the confidence of the people. On the other hand, if perchance a selection be made to which grounds of just objection

may be raised, the executive Government will possess the prerogative of disallowing such election. The magistrate, when appointed, will be equally independent both of the people and of the executive, as he will be removable only in case of misconduct; and if there be a disposition on the part of the people to get rid of him through popular caprice, that caprice will be checked by the negative of the executive.

Under a republican form of government, the magistrates are generally chosen either directly or indirectly by the people, and for a limited period, so that if they forfeit the confidence of the public, they are practically dismissed, by exclusion from future reëlection. Magistrates chosen by the people will undoubtedly sympathize, or affect to sympathize, more with the humbler classes than those appointed by the executive. Sometimes they will be too much swayed by popular passions, even as justices chosen from amongst the aristocratic classes are naturally biased in favor of the possessors of property; but, perhaps, upon the whole, magistrates chosen by the people are found to administer justice with as much impartiality as is shown by those who are nominated by the executive. The mayors of the corporations of the United Kingdom, for instance, are at least as impartial and efficient as any other class of justices.

In England the office of coroner is one which has been filled by direct popular election; and its duties have probably been as well performed by officials so chosen, as they would have been by coroners appointed by the executive. As, however, inconvenience frequently arises from the direct intervention of the multitude in regard to the appointment of judicial officers, it may be advisable that the coroner, as well as the recorder, or stipendiary justice, should be nominated by the district council, rather than by direct popular election.

Since there may be some countries in which the municipal councils would not possess sufficient enlightenment or integrity to entitle us to expect that they would select persons duly qualified for these judicial offices, we may contemplate the alternative of confiding the nomination of such officials to the executive Government. In such case the municipal representatives of the people should possess a *veto* upon the nomination made by the Government. Under this arrangement the executive would be compelled to select functionaries who would be acceptable to the community.

It is, perhaps, unnecessary to provide for the possible case

in which the authority that possesses the *veto* may continue to obstruct an appointment, by repeated interposition of the *veto* — thus depriving the district of the services of a useful functionary. Every public institution is liable to be brought into difficulties, if there be, on the part of those who administer it, a reckless or corrupt disregard of all prudential considerations; and therefore it is usual to assume that the powers delegated to coördinate authorities will be exercised in a spirit of mutual forbearance: but even if mutual resistance were to be apprehended, it would not be necessary to abandon altogether the principle which requires the concurrence of the executive and the municipality, in regard to the appointment of these local functionaries. It might be arranged, for instance, that in case this concurrence were not obtained, within a specified period, the judges of the supreme court of justice, or some other neutral authority, should appoint persons to act, *ad interim*, until the required concurrence should be obtained.

Whilst discussing the construction of courts of justice, we may observe that ecclesiastical courts should not be allowed to interfere with matters which naturally belong to the jurisdiction of courts of law. During the middle ages the ecclesiastical power made continual encroachment upon the domain which properly belongs to lay authority. There is no reason, for instance, why all questions which are connected with testamentary dispositions should not be determined in the courts of law. If ecclesiastical courts be maintained at all, their jurisdiction should be strictly limited to questions of an ecclesiastical nature — such as controversies amongst the clergy, in regard of doctrine or discipline.*

* This general rule is somewhat vaguely laid down, and perhaps there was no need of making it plainer. The nineteenth century being all-sufficient for its own government, ecclesiastical courts may be considered, for the present age, as obsolete. Yet it is reasonable enough to hold that questions of divorce, for example, ought to be decided by a tribunal partly or wholly spiritual, as in the English House of Lords; and that laws relating to education should be administered by a similarly mixed body, as is the case in the Irish Board of National Education, where Catholic and Protestant bishops and the Presbyterian moderator sit in council with the lay commissioners. To confine ecclesiastical jurisdiction strictly to questions arising in the church is simply to tolerate the exercise of the church's inherent power and authority; to extend its limits to subjects of a mixed secular and religious character seems to be but logical, in old Christian countries, where the Holy Scriptures are esteemed as the common law of the land, and the church is regarded as an estate of the realm. In the United States, which expressly rejects from its constitution all claims on the part of Christianity, or any other form of belief, the case is of course different, and the argument will not hold. — M.

It is almost unnecessary to remark, that, amongst the functionaries connected with the administration of justice, there ought in every country to be one or more law officers, whose duty it shall be to advise the executive in regard of legal proceedings, and to act on its behalf in the courts of justice. In England, these officers are called the attorney-general and the solicitor-general. Their opinion is taken by the executive upon all legal questions in which its intervention is required; and in the courts of justice they appear as prosecutors on behalf of the executive. As it is obvious that these functionaries cannot personally take part in all the legal proceedings which are carried on in the name of the executive, they ought to be assisted by deputies appointed for each provincial district, to perform the duties which belong to the office of public prosecutor and of local representative of the law officers of the executive.

It is obvious that the mere adjudication of controversies would be of little avail, unless the courts of law were armed with authority to enforce their decisions. The general sentiment of mankind, indeed, lends so much support of a moral kind to the arbitrament of courts of justice which exhibit purity and impartiality, that it is seldom necessary to have recourse to physical force in order to give effect to such arbitrament. Still, mere arbitration would in itself fail to command the obedience of discontented litigants or of convicted criminals. It is necessary, therefore, that an executive authority should be at hand to enforce the decrees of the tribunals of justice; and it is desirable that this authority should not be dependent upon the political government of the country. In the course of public affairs, occasions will arise when the views of the politicians who direct the government will be at variance with those of the administrators of justice. Cases may easily be imagined, and many such have occurred, in which the general Government would willingly thwart the adjudications of judges and juries — as, for instance, by detaining in prison an obnoxious antagonist whose liberation has been ordered by a court of law — or, on the other hand, by shielding a partisan who has been guilty of injustice or of crime. Now, if the officers appointed to execute the decrees of courts of justice be immediately and wholly dependent upon the executive, temptation is excited, and opportunity is afforded to an invasion of the prerogatives of the judicature, by a bold and unscrupulous minister. In order, therefore, to

obviate this risk, the executive officials of the courts of justice should be primarily bound to render obedience to the judicial authorities whom they serve, and the intervention of state officials should only be permitted when it is required to reënforce the deficient strength of the judicial administration.

In the United Kingdom, such an executive authority, intermediate between the courts of law and the officials of the general Government, is to be found in the office of sheriff — one of the most ancient functionaries of the realm. The sheriff is bound to execute the decrees of the courts of justice, even though he receive contrary directions from the minister of state. In our own days we have seen the sheriffs of London suffering an imprisonment, inflicted by the House of Commons, with the concurrence of the executive, because they preferred to obey the judges of the Court of Queen's Bench rather than the representatives of the people, supported and aided by the ministers of the Crown. Now, whatever may have been our opinion as to the merits of the controversy respecting the privileges of the House of Commons, then brought to issue, it is impossible not to admire the firmness that was displayed by the sheriffs, on this occasion.

By the constitution of England the sheriff is authorized to command the assistance of every citizen who lives within his jurisdiction, in support of the decrees of the courts of justice, or in furtherance of the functions which belong to his own office. This institution is one in regard of which those who love to extol the wisdom of Anglo-Saxon jurisprudence may legitimately find a subject for national pride. Those who encourage the encroachments of the central Government upon municipal functions and municipal privileges, desire to place the office of sheriff in direct subordination to the general Government, both in regard of appointment, remuneration, and obedience; a design which ought to be strenuously resisted by all the upholders of self-government and of municipal freedom.

For the reasons above stated, the sheriff ought not to be subject to the bidding of the executive Government. Not only this officer, but also all other officials immediately employed in giving effect to the decrees of the courts of justice, ought to be nominated either by the judges or by the municipal authorities.

CHAPTER XVII.

ON POLICE.

To the department of the Interior belongs the duty of preserving the public peace. Let us now consider what kind of organization is best calculated to preserve order, without endangering the liberties of the subject.

We have here to guard against two opposite evils. On the one hand, crime and violence are to be suppressed; on the other, we must be careful lest the organization, created for the purpose of suppressing crime and violence, be converted into an instrument of oppression more dangerous to the happiness of society than turbulence and disorder. Using as a pretext the necessity of restraining bad men from crime, tyrants in every age of the world have surrounded themselves with dependants, who have been ever ready to commit crimes in support of power, and have employed agencies which have demoralized society, by destroying all that confidence which ought to subsist between man and man.

Standing armies of soldiers have been always held to be dangerous to public liberty, and the lovers of constitutional freedom have taken pains to provide guarantees against the misdirection of this description of force; but standing armies of police are in a tenfold degree more dangerous; yet there has been, during the present century, a growing disposition to place blindfold reliance upon this description of force.

Proceedings, in their own nature disreputable, do not become sanctified by the object to which they are applied. Falsehood and treachery do not become less hateful or less criminal, when employed in the service of a nation, than when employed to forward the aims of an individual. Espionage may occasionally discover a plot, but it induces men to resort to secret conspiracies, and thus generates the very evil which it undertakes to avert. A detective police has become, even in England, one of the permanent institutions of the country. Now, what is a detective policeman but a spy, who assumes a false character, or rather a succession of false characters, and supports these characters by lies? that is, in plain speaking, the detective is a liar! What is an approver but an agent, who insinuates himself into the confidence of the weak or the wicked, and having encouraged, perhaps stimulated, the com-

mission of crime, ends by betraying the companion, by whom he has been trusted, and generally adds the guilt of perjury to the baseness of treachery? Such is the description of agency upon which bad governments rely; but ought they to be employed by a free and well-governed community? For my own part, I hesitate not to say, that the worst evils which arise from the want of an efficient police are preferable to the results generated by such a system.

The nature of men is not different from that of boys; and as no public school was ever managed with satisfaction to either the masters or the scholars, in which a system of espionage and tale-bearing was encouraged, so no country was ever governed in a spirit worthy of freemen, in which the rulers relied upon the agency of a secret police. There must, of course, be in every country preservers of the public peace, and far be it from me to say, that a police functionary is necessarily divested of the sentiments of a man of honor; but their conduct ought to be watched with the most jealous vigilance. It is to be remembered, that the personal interests of a force of this kind naturally lead them to encourage, rather than repress, crime. The more crime prevails, the more are their services required and rewarded. Measures adopted for extending police organizations have often been followed by an increase, rather than a diminution, of crime. In Ireland, for instance, the police force has become a regular standing army, exceeding 12,000 in number, and disciplined as a military force, and aided by all the subtle machinery of detective agency. Yet, in proportion to the population, crime has rather increased than diminished during the last half century, notwithstanding the adoption of these measures for its repression.

The first requisite for preserving the peace of any country is, that the laws should be wise, just, and conformable to the wants and dispositions of the people. The next, and perhaps the most essential, is that the laws should be impartially and efficiently administered. If laws be at variance with natural rights, and if justice be not fairly and impartially administered by the constituted tribunals of a country, the population will endeavor to revenge injustice by irregular modes of redress: and when once a people becomes alienated from the laws by which they are governed, indiscriminate opposition to all laws is engendered in the minds of the community. How many thousands of English peasants have, in past times, been insensibly led into the commission of heinous crimes by the impol-

itic structure and oppressive administration of the game laws! How many thousands of the peasantry of Ireland have been tempted to commit outrage by the nature and operation of the laws which relate to the tenure of land in that country! Had these same peasants been born in a country, in which it is no crime to shoot a partridge, and in which each man possesses an inheritance in the land that he tills, they would probably have been the most orderly of citizens — the most strenuous upholders of the rights of property.

When the police arrangements of a country are of a centralized character — that is, when the patronage, discipline, and movements of the police force are placed under the management of the general Government — there arises an almost irresistible temptation to apply this agency to objects connected rather with the political interests of the Government, and with the maintenance and extension of official power, than with the preservation of the public peace. This consideration should induce us to rely upon the local municipalities, rather than upon the central Government, in the establishment of a system of police. It will probably be said, and it may be admitted, that the machinery of such a system will not be so perfect as that of a central organization. It will certainly want the uniformity and the official symmetry which belongs to a central system; but it will be more safe, more consistent with the principle of self-government, and at least as efficient in preventing the commission of crime. We have seen that it is for the interest of police functionaries of every grade that crime should prevail, just as it is for the interest of the soldier that wars should frequently occur; but the interests of the inhabitants of each locality lead them to desire that crime should not exist. Is it not, therefore, more probable that the local communities will apply themselves with earnestness to the repression of crime, than that a stipendiary force will assiduously labor to attain a result which would tend, if not to supersede their services altogether, at least, to diminish their number, and to retard their promotion?

It is to be observed also, that, in a constitutional point of view, much danger arises from the exercise of the patronage which is placed at the disposal of the general Government by the establishment of a centralized system of police. In France, the number of public functionaries immediately dependent upon the Government forms no inconsiderable portion of the

whole population; and we have recently seen with what readiness they lend themselves to the designs of a bold and vigorous usurper. In the United Kingdom, the patronage of the minister has been gradually increasing to an extent which is dangerous to public liberty. Public principle is undermined by the subtle influences which the minister can use through the instrumentality of patronage. The integrity and public spirit of many a constituency are now corrupted by the desire of sharing in the nomination to situations placed at the disposal of the Government. If, as is the case in Ireland, all the police functionaries be nominated by the Government, it is manifest that the amount of patronage connected with this department alone places at the disposal of the Government an enormous command over the means of corruption.

Exceptional cases will sometimes arise which require a deviation from general principles. It seems not unreasonable that the police of a great capital, such as London or Paris, should be placed under the superintendence of officials immediately dependent upon the Minister of the Interior, because the maintenance of order at the seat of government is an object which concerns the whole nation, as well as the inhabitants of the municipality in which the Government is localized. So also at the gold diggings of Australia a special exception has arisen, that requires a deviation from the ordinary principles upon which a police force ought to be organized. The population is so fluctuating that there may be ten thousand persons in a particular locality to-day, and not a thousand next month. Under these circumstances, the means of creating a permanent municipal police do not exist. The police force must necessarily, therefore, be of a movable kind, and must be dependent upon the central Government. Much crime, however, would have been prevented, and much expense would have been saved, if the most orderly and energetic class of diggers had been, at an early period, encouraged to enroll and arm themselves as special constables, thus forming a volunteer association for the preservation of the peace, which would have held itself in readiness to support the regular police in the suppression of crime. The moral power thus brought to assist in the maintenance of order would have been so great, that a very small number of paid functionaries would have been sufficient to keep in check marauders, and to bring offenders to justice.

Even in the cases in which a governmental police is neces-

sary, it is not expedient to dispense altogether with the intervention of municipal coöperation. Moreover, it is essential that whenever it is found necessary to rely upon a central organization of police, guarantees should be provided against the misuse of this power. In the case of the army, the supplies for its maintenance are voted annually by the British Parliament, and further, the existence of the army is dependent upon a Mutiny Act, which is renewed from year to year; but no such precautions are taken in the case of the metropolitan police, or of the Irish police, both of which bodies are standing armies. The funds supplied by the legislature for the maintenance of the police ought to be voted annually upon estimate, subject to the same scrutiny which takes place in the case of the other estimates, so that there may be a constitutional opportunity presented annually of complaining of abuses, of demanding explanations, or of insisting upon reductions, according as the circumstances of the country and of the force may call for such parliamentary control.*

In the organization of police arrangements for a free community, the command and direction of the ordinary police ought to be given to the municipal authorities — that is, to the municipal councils of the towns or of the rural districts. An executive officer, who might be called by the ancient name of High Constable, or Chief Constable, should be nominated by each of these municipalities; and he should be placed in command of such a number of policemen of different ranks as the circumstances of the locality for which he acts may require. If this class of functionaries be efficient, the magistrates will but very seldom be required to take upon themselves the duty of peace-preservers, and their functions will be almost exclusively of a judicial kind. The bench, not the street, is the proper stage for the labors of a justice of the peace. The office of thief-taker should be separated as much as possible from that of a judge.

* Since the above paragraph was written, the expenses of these forces of police have been brought under consideration of Parliament by way of annual estimate.

CHAPTER XVIII.

ON THE TREATMENT OF PRISONERS.

A CONSIDERATION of the principles of prison discipline is naturally connected with a discussion upon the administration of justice and upon the operations of a police force. I therefore propose to consider here, what mode of treating prisoners is most advantageous to society.

It is obviously unjust to subject untried prisoners to any restraint or discipline more severe than is necessary for their safe custody. Innocence ought to be presumed until guilt is established. Hence arises a necessity for separating untried from tried prisoners. Under a well-constituted system of prison discipline, all the prisoners ought to be employed during a portion of their time in labor, even though such labor were to be assigned to them only for the sake of their health. A well-regulated jail ought to be so conducted, as that the work of the prisoners should provide, in part, if not entirely, for their own maintenance. Where this is the case, a monetary value ought to be placed upon the industrial efforts of each prisoner, and when a prisoner is acquitted on trial, the whole of his earnings ought to be placed in his hands, upon his leaving the jail. He has been prevented from earning the means of supporting himself and his family during the period of his confinement, and, if such confinement have taken place without sufficient cause, society ought to offer to him suitable indemnification.

In a country in which bail is freely taken for the appearance of accused persons, and in which the courts of justice hold frequent sessions for jail delivery, the number of untried prisoners will seldom be very considerable. The great majority of the prisoners will consist of criminals whose guilt has been established after trial. In the United Kingdom, those who have been sentenced to light punishments are generally placed under charge of the sheriff, in the local jail; whilst convicts sentenced to heavy punishments, such as transportation, are surrendered to the keeping of the central Government. Perhaps there is not, in theory, any sufficient ground for this distinction. The criminal is punished, not solely for the protection of the locality in which he lives, but also for the advantage of society at large; and, therefore, the charge of keeping him for

a period of six months ought to be borne upon the whole community, equally as if he had been sentenced for seven years, or for life. But in practice it is found to be more convenient to intrust to a local administration the keeping of criminals convicted for minor offences. As in all cases we have given a preference to municipal over centralized institutions, we shall not feel disposed to contend that the local jails should be placed under the control of officers named by the executive Government, but rather adhere to the practice which has prevailed in the United Kingdom, of intrusting to a local administration the superintendence and management of these places of confinement. It is only reasonable, however, that the expense of maintaining, in local jails, prisoners who have been sentenced to confinement for short periods, should be borne, in part at least, by the general Government.

It is desirable that all places of confinement should be subjected to rigorous inspection by officers appointed specially for this purpose by the executive Government; and that these officers should submit annually to the legislature their reports respecting the management of each prison. An inspector who has been accustomed to observe the arrangements of a well-managed institution sees at a glance defects which would not strike a casual visitor. He is also able to suggest improvements which have been tested elsewhere by beneficial experience. In general, he has only to point out the defect, or to suggest the improvement. The local managers, if well disposed, will always be ready to adopt any suggestions which tend to raise the character of the establishment over which they preside; but, should a different disposition prevail amongst them, unwillingness to find their inefficiency exposed in a report which is to become one of the public records of the realm, keeps in check, by a sense of shame, proceedings which might otherwise be allowed to pass without correction. Should these influences prove inadequate to remove abuses, the legislature finds itself called upon to provide a remedy by the recurring reports of the inspectors, which periodically bring to its notice the evil that requires correction.

Much difference of opinion exists as to the question, "What is the most advantageous mode of treating prisoners, with a view at once to their punishment and to their reformation?" Whilst all philanthropists agree in condemning the laxity of discipline, the want of classification, and the occasional cruelties which formerly prevailed in the jails of Europe, they

are not equally agreed in regard to the remedies which have been suggested.

With a view to the due punishment of crime, it has been thought necessary to impose labor of a painful and humiliating description, such as that of the treadwheel; and, with a view to the reform of prisoners, it has been thought expedient to cut them off from all communication with their fellow-prisoners. It is assumed that contamination must necessarily arise from such intercourse; and in order to diminish the chances of contamination, criminals have been subjected either to the restraint of absolute *silence* when in company with their fellow-prisoners, or to entire *separation* from them.

With regard to the labor of the treadwheel, it is probable that its monotonous and irksome character is much more distasteful to the prisoner than more varied employments would be; and it may be supposed that fear of the treadwheel operates, to a certain extent, more forcibly in deterring from crime than the fear of other less disagreeable modes of employment. But, on the other hand, it is a description of punishment which tends to harden the mind of the offender, rather than to improve his moral character. The labor to which he is subjected is as nearly as possible akin to that in which animals are employed, and he feels himself degraded by being treated as a brute. He learns nothing in performing the operation; his attention is directed to no object that can beneficially interest him; and even though an attempt be made to enforce silence upon prisoners whilst they are working together upon a treadwheel, they never fail to find means of communicating with each other.

Indeed, it has been found that wherever human beings are in the vicinity of each other, they will discover some means of intercommunication. It is scarcely necessary to observe that this sort of forbidden communication necessarily generates deceit and cunning, and encourages all the propensities which it is desirable to correct or to subdue. It is to be remembered, also, that the labor of the treadwheel is, comparatively speaking, unprofitable, whereas, on the contrary, the energies of the criminals ought to be directed to some useful purpose, which shall tend to indemnify the public for the expense of their maintenance.

If these views be well founded, we may deduce from them the conclusion, that prisoners ought to be employed in some task which shall be profitable to the public, and at the same

time advantageous in the way of instruction to the criminal. The terrors of a jail are not, to any considerable extent, derived from the nature of the work performed within it, but from that privation of liberty, and of all the enjoyments of life, which results from confinement. The prisoner should, therefore, be employed in such occupations as will interest his mind, and fit his hands for the engagements of honest industry, so that he may leave the jail with a consciousness that he has acquired the means, if he did not before possess them, of earning his own livelihood, and impressed by the softening influences of kindly treatment, rather than irritated into animosity against society by the brutalizing results of needless severity.

Whether prisoners ought or ought not to be separated from each other during the term of their punishment is a question which admits of controversy. Of late, the opinion of competent judges has been strongly pronounced in favor of such separation; but I am by no means convinced that the results of this system justify the expectations which theoretical reasoners have formed respecting it. A prisoner shut up in a solitary cell, and employed in useful work, is undoubtedly precluded, during the time of his confinement, from dangerous associations, and his mind is naturally directed inwards to a process of self-examination which sometimes leads to sincere penitence. But it is easy to be virtuous when there is no temptation. Solitude tends to weaken the intellectual and moral forces of man, rather than to strengthen them; and the individual who has made the most manifest, and perhaps the most sincere demonstrations of contrition, whilst confined in his solitary cell, is often the first to fall when he is restored to the ordinary intercourse of life. Man is essentially a gregarious animal, and any attempt to reform him by forcibly thwarting the instincts and impulses of his nature will, for the most part, prove unsuccessful. Absolute solitude is the most terrible of all punishments; it tends to extinguish the faculties of those who are naturally dull and reckless, whilst it produces maniacal diseases in those whose organization is very susceptible. For that sort of separation which is tantamount to solitary confinement, complete and permanent, no reasonable argument can be advanced; but it is to be assumed that, under a good system of separate treatment, the prisoner is frequently visited by the officers of the prison, whose duty it is to instruct the criminals in useful arts, or to exhort them

to moral and religious improvement. Now, even though all these circumstances and agencies be of a kind the most favorable to the reformation of the prisoner, it is still to be doubted whether a course of discipline more conformable to the contingencies of actual life would not tend more to the ultimate reform of the criminal. It seems to me better to give to the prisoner some liberty of action, some opportunities of exhibiting discretion and self-control, whilst we surround him with circumstances favorable to his improvement, than to take from him all exercise of the judgment, the will, and the other faculties bestowed upon him by nature. I shall not dwell upon the costliness of the arrangements required for carrying to perfection the separate treatment of prisoners, because I should be unwilling to urge the expensiveness of the system as an argument against it, if it were really found to be productive of advantage to society. But if there be reason to doubt whether social advantages are really secured by the immense outlay which this system requires, we may then take into account considerations of expense, in deliberating upon the propriety of adopting it.

Upon the whole, it seems to me that neither absolute silence nor entire separation should be enforced in the treatment of prisoners. Severe but not excessive toil in some useful employment, healthy exercise, with religious and literary instruction, should occupy the time and thoughts of the prisoner throughout the day. It is easy to prevent that sort of gossip which is supposed to be dangerous, without forbidding entirely all intercommunication between the prisoners. Each prisoner ought to have a separate cell for sleep, but, except at night, entire separation is superfluous, if not mischievous.

In all penal establishments, as indeed in all other departments of administration, embarrassment and failure arise, not so much from the difficulty of devising a good system, as from the difficulty of finding agents qualified to carry it into beneficial effect. If we could be assured that a body of prisoners were at every moment engaged in useful occupations, under the immediate supervision of judicious overseers, there would be little necessity for recurring to systems so alien to the nature of man as those which depend upon absolute silence or entire separation from each other.

The question which will next claim our attention is, What is the best description of secondary punishment?

Of late there has been, amongst political philosophers, a

general disposition to decry transportation as a means of punishment. This disposition has been strengthened, if not created, by a keen perception of the evils which result to an adolescent community from the continued introduction of criminals of the worst class into its bosom. These evils are so obvious, that nothing but the most reckless selfishness could have induced the government of Great Britain to continue to pour into the Australian colonies a stream of pollution, long after those colonies had ceased to bear the characteristics of merely penal settlements. The loyalty of the colonies was so severely tested, that probably open resistance would have ensued, if the cessation of transportation had not at length been proclaimed in time to soothe the increasing indignation of the people, and to undermine the organization to which that indignation had given rise.

But the merits or the demerits of transportation, as a system of secondary punishment, ought not to be tried upon such an issue as that which presented itself in Australia. Public opinion is becoming every day more and more averse to the penalty of death. A certain number of offenders are therefore to be kept under restraint for a protracted period, extending, in some cases, even to the whole duration of life. What is to be done with these criminals? They must be kept somewhere. Is it better that they should be kept in confinement at home than that they should be sent to a distant colony, and there placed under such discipline as shall fit them for return to the ordinary intercourse of society? In determining these questions, we ought to bear in mind the objects with a view to which punishment is inflicted upon criminals. These are, —

First. The prevention of crime. In a well-governed community, punishment is inflicted, not by way of revenge, but in order that it may deter others as well as the criminal himself from repeated perpetration of the offence for which punishment is inflicted.

Secondly. Removal of the criminal from the scene of his delinquencies.

Thirdly. The reformation of the prisoner.

Now, it will be found that all these three objects are more fully effectuated by transportation than by any other description of restraint. It is true, indeed, that transportation ceased to be regarded with apprehension when it conducted criminals to a country in which they could earn high wages, and obtain,

as prisoners, a greater command over the luxuries of life than is attainable at home by honest labor. Still less was it regarded with apprehension, when it placed the criminal in a position from which he might reasonably hope to be able to escape to a neighboring region abounding in gold, where opportunities of success presented themselves to adventurers of every kind. But transportation to a region in which no such extraordinary opportunities of success are thrown into the path of the offender is felt to be a very severe infliction. Ignominious removal to an unknown and distant land, attended, in most cases, by perpetual separation from friends and kindred, and from all those associations to which even the rudest and hardest minds become attached, — attended, also, by a certain assurance that many years must be spent there in severe toil, — presents to the idle and depraved offender terrors much more appalling than temporary incarceration, even for a protracted period, in a place of confinement at home could awaken. In some cases, apprehension of this infliction would probably deter from crime as effectually as the penalty of death itself. Transportation, therefore, when judiciously conducted, tends to fulfil the first of the objects which are to be accomplished by the punishment of crime.

The permanent removal of an offender from his old haunts is an advantage to society, the value of which cannot be too highly estimated; and to the criminal himself this removal offers the best chance of his recovering a character for good conduct. If, after incarceration, an offender be let loose in the country in which he was originally convicted, he naturally returns to his old associations and former habits; indeed, it seems scarcely possible for him to escape this destiny. His character having been destroyed, he is stigmatized as a felon wherever he goes, and finds every honest occupation closed against him; he is therefore compelled to betake himself to depredation as a means of acquiring a livelihood, and he naturally becomes an irreconcilable enemy to that society which repels him from its bosom. If, on the contrary, he be carried to a new country, a new career is opened to him. After having undergone penal infliction for a term sufficiently long to satisfy the requirements of penal policy, he finds himself in circumstances which enable him to procure a livelihood by honest exertion. If he remain in a penal colony, he feels that he is not more degraded than those who surround him, and may hope to obtain credit for good conduct even amongst

a community of felons. If, on the other hand, he receive what is called "a conditional pardon," that is, a pardon subject to the condition that he shall not return, previous to the expiry of his sentence, to the country in which he was originally convicted, he is enabled to emigrate to some quarter of the world in which his previous delinquencies are unknown, and in which he may, by industry, probity, and frugality, acquire a position in society such as never would have been attained by him in his own country.

Upon these grounds, I am of opinion that transportation is the most advantageous kind of secondary punishment, provided it be carried on without inflicting an injury upon communities, whose social welfare a paternal government is bound to protect.

The most proper site for a penal settlement appears to be an uninhabited district of a continent, or an uninhabited group of islands, such as the Falkland Islands, in which no contamination can be produced by the introduction of criminals. Under every system there must be a certain staff of officers in charge of the criminals. In so far as they and their families are concerned, the risks are the same in the mother country as at the antipodes. That risk must necessarily be encountered; but it is not desirable that a rising colony, or a country thickly peopled with aboriginal inhabitants, should be chosen as the site of a penal settlement. In a settlement created for penal purposes, in a wilderness, there will always be abundant opportunity for employment in every description of useful work. It would, therefore, be a sort of industrial school; and, if the location be well chosen, the produce of the labor of the convicts ought to go far towards supporting the whole establishment. In such a settlement there ought to be gradations of treatment, founded upon the conduct of criminals. It has been found in Van Diemen's Land that the hope of reward is much more influential than the fear of punishment, in producing good conduct on the part of the convicts. Formerly the lash was administered with reckless severity for the most trivial offences. Yet, at that time, bush ranging and other crimes were much more frequent than they have been of late years, under a milder system of discipline. The prisoner, when harassed and tortured, naturally learned to think that death itself was preferable to such a life; and he consequently preferred to encounter all the hazards incidental to an escape from prison rather than submit to daily torment. Latterly, a

different system has prevailed. Flogging has been altogether abandoned, except at Norfolk Island, where it has produced the most horrible results. The convict has been enabled by good conduct, and by diligent labor, to abridge greatly the allotted period of his penal suffering. If he avoid the commission of any offence for a specified period, he becomes entitled to what is called "a ticket of leave," which gives him liberty to work for his own benefit, and after the lapse of another interval he becomes entitled, by good conduct, to "a conditional pardon."

Now, though the circumstances of a new penal settlement may not, in all respects, resemble those of Van Diemen's Land, yet the principles which have been found productive of beneficial results in that colony are equally applicable in altered circumstances. Under a good system of classification, the convict, after undergoing, in strict confinement, a certain amount of what is called probationary discipline, ought to be rewarded for good behavior by transference to an establishment in which he should be allowed to live in his own domicile, and to work for himself. The government ought to be prepared to purchase, at a stated price, in money or goods, the produce so raised by the convict. As a further encouragement to good behavior, well-conducted prisoners should be allowed to bring out their wives and families, upon payment of a moderate proportion of the expense of emigration. Thus would gradually spring up a community which, after the lapse of twenty or thirty years, would lose the character of a penal colony. It would then become necessary to shift the scene, and to begin again the task of reclaiming a new wilderness of territorial waste and of moral delinquency.

By this process of penal colonization, new territories would be perpetually added to the profitable domain of the mother country. A naval or military position, occupation of which is conducive to the strength and security of the empire, would be established, at a comparatively trifling cost; or, as in the case of New South Wales and of Van Diemen's Land, the foundations of a flourishing colony would be laid by peopling the wilderness with a population whose descendants may become distinguished for social virtues, and redeem the character imposed upon the settlement by the crimes of their ancestry.

In the mean time, the practice of granting "conditional pardons" might be simultaneously continued with beneficial effect. We have assumed that opportunities of accumulating

money will have been afforded to the prisoners in the second, if not in the first, stage of their penal suffering. The funds so accumulated would furnish them with the means of emigrating to any country which they might choose as their eventual home: and thus would result that sort of dispersion which we have seen to be conducive to the interests of the country from which the convict has been expelled, as well as to the criminal himself.

In offering these suggestions — suggestions founded upon opportunities of observation which happily present themselves to but few political writers — I am quite aware that objections may be raised, and contingent evils pointed out as incidental to the system of secondary punishment, of which I have sketched an outline: but it is to be remembered that questions connected with penal discipline are of such a nature that they necessarily offer but a choice of evils. As long as those who are called "incorrigible offenders" are permitted to live on earth, so long mischiefs are to be apprehended under even the most perfect system of secondary punishment. Perhaps this reflection will lead some to conclude, that the best mode of escaping these difficulties would be, at once, to put to death all offenders convicted of heinous crimes. I shall not, here, recapitulate the arguments which have been urged for and against the abolition of the penalty of death, but I may be allowed to express my doubt whether any human being, not absolutely insane, can be said to be *incorrigible*. I may, also, express my conviction that the frequency, as well as the heinousness, of crime is aggravated rather than repressed by extreme severity of punishment. By the criminal himself death is often less dreaded, and is, in truth, a less painful infliction, than that sort of protracted torment which is sometimes called a mitigation of the sentence of death; but it seems to me, that no human being, however guilty or however degraded, should be irreparably deprived, by his fellow-man, of opportunities of retrieval and of redemption both in regard to the present life and in regard to that which is to come.

Much may be said in favor of simple *banishment* as a penalty for the commission of crime. If it be preceded by incarceration for a period, more or less considerable according to the nature of the offence, it will fulfil all the requisites which are necessary to constitute a good system of penal discipline: that is, it is sufficiently formidable, as a means of punishment, to deter from the commission of crime; it removes the offender

from the scene of his former delinquency; it opens to him a new field of existence, in which he may establish for himself a good character and become a worthy member of society. It seems to me, that banishment, after incarceration, is a form of secondary punishment which is much preferable to that recently adopted in the United Kingdom as a substitute for transportation; namely, the practice of allowing offenders to remain at large, as holders of "tickets of leave," in the country in which they were convicted.

CHAPTER XIX.

ON MUNICIPAL ADMINISTRATION.

HAVING endeavored, throughout this treatise, to prove that we ought to seek, in local self-government, protection from the dangers which belong to centralization, it is time that we should consider in what manner a municipal organization may be constructed which shall be instrumental in carrying on a good system of local self-government.

The English reader is so well acquainted with the nature and constitution of municipal corporations, as constructed under the Act for municipal reform, that it is not necessary to enter into minute details in describing such municipal bodies. A council, elected by the householders for a period not exceeding three years, one third going out of office annually, (but reëligible,) if the period for which they are elected be three years; or one half going out of office annually, if they be elected for two years; appears to be an organ as well qualified to administer the affairs of a locality as any that can be created. Under every system that can be devised occasional abuses will take place. History abundantly proves that councils elected by the people can do wrong as well as agents deputed by tyrants; but when a body which is subject to popular control commits errors, either of judgment or of intention, the people at large have a remedy in their own hands; and, as their interests can seldom, if ever, be identified with the perpetuation of abuses, they have it in their power, by a change in the persons delegated to manage their affairs, to correct at a subsequent elec-

tion the mistakes of selection made by them on preceding occasions. On the other hand, persons appointed to manage local affairs by the central Government, have no permanent interest in the welfare of the locality; and if such persons apply themselves to forward the views of the authorities by whom they have been appointed rather than the interests of the citizens at large, representations as to their inefficiency or misconduct will generally be found unavailing. There is on the part of all governments a tendency to uphold their agents, even where they do wrong, more especially if that wrong be committed through excess of zeal in the service of those by whom they have been employed. I have taken so much pains to point out the evils which result from centralization, that it is unnecessary for me here to repeat other arguments which should induce us to desire that local affairs may be managed by those who are locally interested in them, rather than by servants of the executive.

The abuses that existed previous to the municipal reform in those corporations of the United Kingdom which were managed by self-elected bodies, prove sufficiently that a system of self-election, that is, a system under which vacancies occurring in the governing body are filled by the body itself, not by popular election, naturally creates a petty oligarchy, which often lends itself to the views of some one influential individual, who thus acquires, by the nomination of his creatures to seats in the council, a permanent control over the affairs of the municipality. We are compelled, therefore, to reject the principle of "self-election," equally with that of nomination by the executive, in providing for the construction of municipal councils.

Upon general principles, it might be expected that a system of local self-government, founded upon popular election, would produce results both more advantageous and more satisfactory than could be attained under a different arrangement; and the management of the reformed corporations of the United Kingdom has, upon the whole, been such as to prove that experience justifies this favorable anticipation. In Australia, municipal administration has not been equally successful; but there are various reasons, connected with the local circumstances and with the constitutions of the Australian municipalities, which should induce us to forbear from founding upon their experience conclusions unfavorable to the principle of popular election in the construction of municipal bodies.

Upon the continent of Europe, municipal institutions have kept alive the spirit of self-government, even in countries in which that spirit has been apparently stifled by the arbitrary system of rule which has prevailed in the exercise of central authority.

In Belgium, the municipal bodies are little republics, and conduct the administration of local affairs, subject to a general superintendence on the part of the state, in a manner which appears to be, in a high degree, both advantageous and satisfactory to the inhabitants of that country.

To the municipal authorities, if well constituted, may be confided the management of almost every local concern that affects the interests of the population, for whose benefit these authorities have been called into existence. We may specially enumerate the following duties: —

The distribution of justice by one or more municipal judges, such as the recorder, &c.

The preservation of the public peace by municipal magistrates and by a municipal police.

The prosecution of offenders and the maintenance of prisons.

The construction and maintenance of public works; such as public edifices, roads, canals, cemeteries, reservoirs, and other works necessary for securing a supply of water, arrangements for drainage, for paving, for lighting towns, &c.

The care and control of the public markets, inspection of weights and measures, slaughter houses, &c.

Precaution against fires.

Licensing and supervision of vehicles which ply for hire.

Registration of births, deaths, and marriages.

Superintendence and aid of establishments formed for the relief of the poor, for the cure of the sick, &c.

Billeting of troops.

Maintenance of the burgher or national guard.

Superintendence and aid of establishments formed to promote the education of the people, such as collegiate institutions, schools, museums, public libraries, lectureships, &c.

Provision for the recreation of the people by means of public spectacles, public gardens, &c.

Levy of local rates for the purposes above enumerated.

This list might include every object of local concern, except such as ought, by their own nature, to be subject to the management of a central department. Of these exceptions the post office supplies an illustration. The arrangements connected

with the post office are, for obvious reasons, matters which belong rather to the central, than to local administration.

It is not essential that all these different duties should be performed by one and the same body, but they all belong to that class of public affairs which ought to be conducted by means of municipal administration. It will be seen hereafter that we contemplate an organization which will give to each locality an administrative body capable of managing the affairs which naturally fall within the sphere of its competency. Thus the affairs of the parish would be managed by the committee of the sub-district or ward; those of the district by a district council; those of the county by a county board; and the functions set forth as above ought to be assigned to each of these bodies respectively, according to the nature of the duty to be performed.

From the above enumeration it will be seen that the functions of municipal bodies are purely *administrative*. It may naturally be asked, whether they ought to enjoy any *legislative* authority? To this question we shall find reason to answer in the negative. There is at present, in the United Kingdom, a disposition to intrust to various bodies, such as the Privy Council, royal and parliamentary commissions, &c., the power of making by-laws, that is, of exercising legislative functions of a subordinate kind, in regard to specified departments of administration. The excessive complexity of the affairs of a great empire may render necessary, in Great Britain, the delegation by Parliament to some extrinsic authority of such subordinate powers of legislation, but it seems to me to be a practice which ought to be discouraged as much as possible, because it is, in fact, an abdication, by the representatives of the people, of those legislative functions which are intrusted to them. Though it would, perhaps, be safer to confide the power of making by-laws to municipal bodies, emanating directly from the people, than it is to intrust this power to bodies appointed by the executive, yet it is far better that a complete code should be enacted by the legislature, for the regulation of municipal administration, than that each municipal council should possess the right to frame a separate system of by-laws for itself. In any case the by-laws should have no validity, until confirmed by the supreme judges of the land, nor until suitable opportunity shall have been afforded to the public of calling in question the propriety of their enactments, before such confirmation is bestowed.

Another question which naturally presents itself for consideration, is the following. Ought municipal functionaries to receive pecuniary remuneration for their services?

To this question we may answer, that those officials who are expected to give up their whole time to the public, and to incur heavy responsibilities, ought clearly to be indemnified for their labor by adequate salaries. Thus, for instance, the municipal police of all grades ought to receive payment for their services. But it is not equally necessary that the members of the municipal council should be compensated for their attendance at the meetings of the council. The nature of their duties is, like those of a member of Parliament, honorary. The office of municipal councillor will be sufficiently coveted, though no remuneration be attached to it. Its duties do not absorb the whole time of those who have been elected to occupy it. Add to these considerations the obvious remark, that a municipal body would become a most costly agency, if all its members were to receive payment. Perhaps, indeed, it may be desirable that the mayor or head of the municipality should receive a salary, proportionate to the amount of labor and expense imposed upon him by the nature of his functions. His attendance ought to be constant in the performance of his duties; and in large municipalities, nearly the whole of his time will be occupied by these duties. He is also expected, as chief municipal officer, to take part in many proceedings which involve expense; and it is not reasonable that he should be called upon to give both time and money to the public, without compensation.

In the United Kingdom, the principle of municipal government, founded upon popular election, has been recognized and applied in regard to the management of the affairs of towns; but it has not yet been extended to rural districts. Englishmen have still to learn wisdom from their Anglo-Saxon ancestry. The organization of the townships, of the hundreds, and of the shires of Anglo-Saxon England, might still be imitated with advantage, since it was founded upon the principle of local self-government.

The same reasoning and the same experience, which lead us to believe that municipal self-government is advantageous in the case of towns, compels us to conclude that it might be adopted with advantage in rural districts. The ancient boundaries of parishes, hundreds or baronies, and counties are in many cases inconvenient. I shall, therefore, use the word

district (*arrondissement*) to represent such an area as the circumstances of the population point out to be most convenient for the formation of a district organization. In a country newly colonized, such as that in which I now write, the population being very thinly scattered over a large surface of country, the "districts" must necessarily be larger and less populous than they need be in densely peopled territories. In the United Kingdom, the area of a "district" ought not to exceed the space which would be contained within a circle, drawn with a radius of twelve or fifteen miles from some central spot: so that the place of meeting may be easily accessible to all who have business to transact there. The local affairs of this district ought to be managed by a municipal council, chosen, as in the case of towns, by the householders of the district. All the same powers and functions which we have assigned to the town council ought, in like manner, to be assigned to the district council.

Perhaps, in a monarchy it may be desirable, that a certain proportion, not exceeding one fourth of the council, should consist of magistrates, acting as *ex officio* members of the municipal council. This principle of intermixing functionaries who hold permanent office, and who to a certain extent represent the executive, with those who are immediately elected by the people, has been adopted by the British legislature, in the constitution of the board of guardians appointed for the administration of the poor laws, and perhaps, upon the whole, their intervention has been useful rather than pernicious. But the proportion of *ex officio* members ought never to be so great as to occasion a hope on the one part, or an apprehension on the other, that they will be able to overrule the wishes of the local community, as expressed by their legitimate representatives. The introduction of *ex officio* members into elected municipal bodies may be found useful in aiding administration, and sometimes even in checking abuses, but if an attempt be made to give an ascendency to nominee influence of any kind, that attempt will excite a disposition to intrigue on one side, and a spirit of jealousy on the other, which will frustrate the benefits sought by the introduction of a non-representative element into a representative council.

It is of importance to observe, that for the election of municipal representatives, (as indeed also for the election of all other representatives,) the municipality should be divided into wards or sub-districts, so that each sub-district may return

only one or two, or at most three representatives. If the whole number of councillors were to be elected collectively by the voice of the whole constituency at large, it would follow, almost as a necessary consequence, that the council would be exclusively composed of persons attached to the same class interests, or entertaining the same opinions. The minority would for the most part be wholly unrepresented. This anticipation is not only derived from reasoning, founded upon probability; it is sustained by actual experience. Wherever such a mode of election has prevailed, it has been found that the masses form themselves into parties, and that each party agrees to vote collectively for a certain specified list. That list is prepared by the leaders of the party, with a view to the advancement of the particular interests which they uphold, and all who dissent from those views are excluded. Now, it is a great social evil that the minority is not sufficiently represented, even under the best devised system of representation. A mode of election which renders almost inevitable their total exclusion is therefore greatly to be deprecated.

When the representatives are chosen in sub-districts or wards, each such sub-district sends to the general council a representative whose opinions harmonize, not with those of the general mass of the electors, but with those of the majority of the electors of that particular sub-district. Thus, while it is impossible, under such a system, that a minority of the electors at large should overrule the general majority, yet, in particular districts, opinions may prevail which are not in accordance with those of the general majority, and conflicting opinions will thus find expression in the council. In addition to this important consideration, it is to be remarked, that election by wards or sub-districts gives to every sub-district a representative of its local interests; whereas, on the contrary, if the election be made by the whole constituency collectively, the local interests of particular districts may be left wholly unrepresented.

When population is thinly scattered over a large surface of country, it is not desirable that there should exist too many separate organizations for the administration of local affairs. In a new colony, therefore, it is, perhaps, sufficient that there should be only one representative body in each district. This body we have designated as the municipal council of the district. But in densely peopled territories it may be found expedient to create a separate administration for each "ward"

or "sub-district," (parish, or township, or *commune ;*) also one for each "district" (*arrondissement ;*) also one for each county, (*departement,*) or for each province, as also for the kingdom at large. The following description of the organization of a township in New England, where the principle of local self-government has been carried to the highest perfection, will give the reader an idea how multifarious are the functions which a local council may advantageously perform in even the smallest sub-district. It is taken from De Tocqueville's work on the Constitution of the United States, a work which deserves the study of every statesman.

"The township of New England is a division which stands between the *commune* and the *canton* in France. Its average population is from two to three thousand.

"A large proportion of the administrative power is vested in 'the select men,' of whom *three* are appointed in the small townships, and *nine* in the large ones. They usually act upon their own responsibility; but if they wish to undertake any new enterprise, they convene a general meeting of the whole body of their electors to receive authority from them for the undertaking.

"There are *nineteen* principal officers in the township.

"The 'select men' are elected every year, in the month of April or of May. The town meeting chooses at the same time a number of municipal magistrates, who are intrusted with important administrative functions. The *assessors* rate the township. The *collectors* receive the rate. A *constable* is appointed to keep the peace, to watch the streets, and to forward the execution of the laws. The *town clerk* records all the town votes, orders, grants, births, deaths, and marriages. The *treasurer* keeps the funds. The *overseer of the poor* superintends the action of the poor laws. *Committee men* are appointed to attend the schools. *Road surveyors* take care of the thoroughfares.

"These are the principal functionaries; but they are still further subdivided, and among the municipal officers are to be found *parish commissioners*, who audit the expenses of public worship; different classes of inspectors, some of whom are to direct the citizens *in case of fire; tithingmen, listers, haywards, chimney viewers, fence viewers* to maintain the bounds of property; *timber measurers* and *sealers of weights and measures.*

"Every inhabitant is constrained, on pain of being fined, to

undertake these functions, which, however, are almost all paid. In general, the American system is not to grant a fixed salary to its functionaries. Every service has its price, and they are remunerated in proportion to what they have done."

In France and in Belgium, many of the *communes* are so small that they do not contain the material and moral resources which are requisite to secure the efficiency of a local administration. It is impossible to say what is the exact area that each "sub-district" ought to contain; and it is almost equally difficult to determine the amount of population that ought to be embraced within its limits. These elements must vary according to the peculiar circumstances of each country; but, in general terms, it may be stated that the *sub-districts* contemplated in this work would contain from 3000 to 5000 inhabitants. In populous towns, the ward or sub-district might contain, without inconvenience, even a larger number than 5000 persons.

The "county board" may be advantageously formed by delegation from the several "district councils" or "sub-district councils." Such delegation seems to me preferable to that of a direct and independent election by the inhabitants of the county at large; because the representatives sent by the district councils to the county board will be perfectly conversant with the affairs of the constituent districts which they represent; and, as the subjects brought under the consideration of the county board will necessarily affect, more or less, the interests of each district, it is desirable that as much harmony as possible should be secured between the action of the county board and of the several district councils. The county board will thus be a sort of confederation of the organs of the popular will of the county, directed to the advancement of the interests of the whole of this local community.

I have used the word "county board," because the division by counties is more familiar to British and Irish readers than any other division of a similar kind prevailing elsewhere; and also because, in many cases, the area and limits of counties would exactly comprise the area and limits of several constituent districts. But as there are some cases in which the division by counties would not be found convenient, it would, perhaps, be better that a new division of the United Kingdom should take place, with a view to the introduction of a complete system of political and municipal organization. Thus, whilst the present limits of many of the counties of England

and of Ireland might be found suitable for a municipal administration, those of the counties of Rutland, Carlow, and Louth would obviously be too confined. In laying out the poor law unions of Ireland, it was thought expedient to override the existing boundaries of counties; and as the nature of the administration assigned to the poor law guardians is akin to that required for other municipal purposes, the same expediency would suggest that, in the event of a more comprehensive organization, the existing limits of counties should not be invariably adopted. The Irish unions were not judiciously constituted when first that kingdom was divided into unions: otherwise the area of the poor law union might have been taken as that of the municipal district, and the county might have been formed by an aggregation of five or six poor law unions. In France, the ancient provincial boundaries were found inconvenient, and that country was divided into departments. In Belgium there are nine provinces, and the administrative councils of these provinces perform the sort of municipal functions which it is proposed to intrust to the district councils and "county boards" contemplated in this work.

I should be led into too much detail if I were to attempt to present to the reader a view of the municipal organizations which exist upon the continent of Europe, but the statesman who desires to frame, for his own country, a perfect system of municipal institutions, ought carefully to study these organizations.

In treating of the separate objects to which municipal administration is directed, such as "relief of the poor," "police," "public works," &c., I shall have had occasion to develop, in detail, the principles which ought to be applied in the construction of a municipal system. To elaborate a normal law, calculated to give effect to these principles, is a task which I do not undertake, because the special enactments, by which general principles are carried into effect, must vary according to the peculiar circumstances of each separate country.

For instance, the following important question arises in connection with the construction of a municipal system. Is it desirable that the executive Government should be allowed to nominate any of the officials who are concerned in municipal administration? Now this is a question to which an American statesman might very naturally give a different answer to that which would be given by a Frenchman. In France the

executive Government is represented in each department by a *Prefet*, and exercises the prerogative of nominating several of the principal functionaries of the different grades of municipal councils. Such is also the case in Belgium. In the United States, on the contrary, all the officials concerned in the administration of affairs purely local, are elected by the people. Now it might be as inexpedient in practice to adopt the American system in France, as it would be inexpedient to adopt the French system in America. The writer can, therefore, only set forward, as a general theorem, the principle that wherever the executive Government is called upon to assist the operations of a municipality, (as, for instance, by a contribution from the general revenue, in aid of the local funds allotted for a particular purpose,) there it is reasonable that the interests of the public at large should be protected by the intervention of officials nominated by the executive, on behalf of the nation. In all cases in which the interests concerned are purely local, the executive Government should interfere only to prevent abuses. Its intervention should be limited to the power of interposing a negative upon the proceedings of the municipal administration, in cases in which maladministration, imprudence, or something worse, may reasonably be apprehended. Thus, for instance, the municipal council of a district should not be permitted to contract debts or to alienate the fixed property of the municipality without the consent of some external authority: but in general it is not desirable that the money raised from local resources, for local purposes, should be expended by officials named by the executive.

In Belgium, where there is a municipal organization for each *commune*, and a municipal organization for each province, the communal councils are kept in check by the provincial councils. The sanction of the "Deputation Permanente" (that is, a sort of executive committee) of the Provincial Council, is required to authorize many of the proceedings of the communal councils. Some such check may be required in particular countries, but in general, it is better to leave as free an action as possible to the discretion of municipal bodies. If they fall into errors, the inconveniences which result to the community, from such errors, will generate greater vigilance for the future. Both constituencies and their delegates will learn wisdom from experience.

As the usefulness of a municipal body must depend much upon the pecuniary means at its command, it becomes a ques-

tion of primary importance to consider in what manner adequate funds can be provided for carrying into effect the objects which fall within the domain of municipal administration. To answer this question in a satisfactory manner, it would be necessary to review, in detail, all the various sources of income which, in different countries, have been brought in aid of local expenditure. Such a review would lead us into details which are too minute for the scope of this work; but I may be permitted to offer a few general observations upon the subject.

In a new colony it is desirable that portions of land should be reserved for public uses, such as parks, public gardens, squares, promenades, public buildings, hospitals, cemeteries, markets, &c., and the municipal council of the locality is, obviously, the body in whom such property ought to be vested. Allotments of land may also be conceded to the municipality, as an endowment. In proportion as the colony advances in prosperity, these allotments become a valuable property, held in trust for the citizens. Thus, in a populous town, a space reserved for a market will often acquire such a value that, from the lease of mere sittings in the market, a considerable revenue may be derived. No source of revenue more legitimate or less burdensome can be pointed out, than that which arises from a moderate charge for sittings in a market place, because a full equivalent is given to those from whom the income is derived.

Tolls upon the entry of goods into a town (called in France and Belgium the *octroi*) are very objectionable, because they impede the operations of commerce — because they embarrass the inhabitants and passengers with vexatious regulations — because they impose taxation which is frequently very unequal in its pressure upon different classes of society — because they leave both opportunity and temptation to corruption on the part of those who collect them — and, finally, because the expense of their collection is much greater than that of collecting many other kinds of taxation. On the other hand, tolls payable at a public scale for weighing goods are wholly unobjectionable, because in this case an equivalent is given to the person who pays the toll, and the convenience of both purchaser and seller is greatly promoted by the operation.

A tax upon dogs is much less objectionable than many other kinds of taxation; because it is not desirable that the habit of keeping a large number of dogs should be encouraged. For one dog that is kept for useful purposes, such as watch-dogs,

sheep-dogs, &c., it is probable that five are maintained for amusement; and it is reasonable that superfluities rather than necessaries should be subjected to taxation. This, therefore, is an item of municipal revenue to which there can be no serious objection.

Another item of municipal revenue, which is likewise free from objection, is that derived from police fines. If the judge who imposes the fine were himself the recipient of it, there would doubtless be reason to apprehend that he would often impose penalties for the sake of increasing his income; but this motive ceases to be appreciable when the fines are carried to the treasury of the municipality, and consolidated with its general funds.

Inasmuch as it has been found necessary in many towns to subject to regulation carriages let for hire, it is not unreasonable that those who let carriages for hire should be required to pay a contribution, with a view to indemnify the municipality for the expenses incurred in giving effect to these regulations; but the charge should be moderate, and the regulations should interfere as little as possible with the right of every citizen to carry on whatever business he may find to be most advantageous to him.

In new colonies a fixed proportion of the land revenue — that is, of the revenue derived from the sale and lease of the public lands — ought to be assigned for public purposes to the municipal council of the district from which such land revenue is derived. In treating of colonization, I shall have occasion to discuss this topic at some length, so it is not necessary to say more upon it at present.

In countries long settled it will generally be found necessary to provide resources for municipal purposes by means of local rates. We may, therefore, advantageously consider here what are the principles upon which such rates ought to be levied.

That tax is evidently the most equitable which imposes a burden commensurate with the property of those who are justly liable to taxation. If a tax be laid upon beer, the poor man, who obtains by his labor an income of £20 or £30 per annum, pays individually as much, and often more, than a person possessing £10,000 per annum, although the produce of the beer tax may be applied to objects in which the rich are more interested than the poor. No system of taxation can fully realize the requirements of strict justice; but a well-arranged property tax more nearly fulfils such requirements

than any other that can be devised. In providing a local rate, therefore, it is desirable that it should fall in equitable proportion upon all sorts of property.

The foundation of such an assessment must be a strict valuation of all the tenements liable to taxation within the district. A perfect *survey* of the whole country, and of its subdivisions, is an essential preliminary. Such a survey should be made in every country, whatever may be its stage of progress. In establishing a new colony, nothing is more essential to the well-being and harmony of the settlement than celerity, accuracy, and integrity in the management of the surveying department. In every country, access to perfect and minute surveys is found to be productive of much convenience in transactions between man and man, as well as between individuals and the public.

A perfect survey is a requirement which may be obtained without much difficulty, though not without expense. The subdivisions are, indeed, liable to constant change; but as the general features of a country undergo no change, a survey, when once complete, will require little modification. Not so with the *valuation*, which is the next element essential to the imposition of a local rate. The value of every tenement is liable to change from time to time, and a valuation which was perfectly correct ten years ago may be wholly incorrect to-day. Changes of value take place not only in the relation of one tenement to another, but also in the general scale of the assessment. If, for instance, there be a general fall of prices, a rental valued at £10,000 per annum may have fallen in actual receipt to £8000, or £6000, per annum, or even lower. Provision must, therefore, be made for amendment of the valuation, according as the circumstances of the property subject to valuation may change. These arrangements appear to be very complex and embarrassing; but in practice the difficulty, though great, is not found to be insuperable. For several hundred years, local rates have been levied in England; and though the system of assessment has been very rude and imperfect, it has not given occasion to as much discontent as might have been expected. In recent legislation enacting the establishment of a system of poor laws in Ireland, a certain proportion of the rate has been thrown upon the landlord, another portion being borne by the tenant. All rates for local purposes should be so arranged as that not only landlords and tenants, but also mortgagees, annuitants, and capitalists of

every kind, should contribute to the rate. The objects for which rates are levied are concerns in which the whole community has an interest, and it is fit that the burdens which they impose should be borne by all in proportion to their means. The system of local taxation which has long existed in England is liable to objection, because the payment of rates has been thrown exclusively upon the occupying tenant. It may, indeed, be argued that rates upon lands and houses eventually fall upon the landlord, though paid immediately by the tenant, because the tenant takes the average amount of such rates into calculation when he makes a bidding for the tenement which is liable to assessment. But this argument takes for granted that the amount of the rate will be nearly uniform throughout the term of the lease — a supposition which is generally at variance with the fact. If the rate be increased beyond the scale contemplated by the tenant when he entered into his contract, he obviously becomes burdened with the whole amount of the increase. Yet, even if it were otherwise, it would still be desirable that the landlord should be made to feel, by direct pressure, the burden of local taxation; because he will thus be induced to take a part in checking wasteful expenditure — a sort of vigilance which ought to be encouraged on the part of every member of the community.

It is very unreasonable that expenditure from which the public at large, as well as the local community, derives benefit, should be defrayed wholly by means of local funds. The support of various public establishments, such as jails, court houses, &c., the prosecution of offenders, the maintenance of a police force, the relief of the poor, the education of the people, the construction of main lines of road and of other public works of general utility, are objects in which the public at large are interested, though, perhaps, not quite to so great an extent as the inhabitants of the districts in which establishments for these purposes are maintained. On the other hand, it is not only just that a certain proportion of such expenditure should be borne by those who are locally interested in such objects, but it is absolutely necessary to the due administration of all funds, that those who manage them should also be contributors to the expense of maintaining them. If local boards were authorized to draw upon the public treasury of the nation for local expenditure, without being subject, at the same time, to a proportionate contribu-

tion on the part of the localities which they represent, each board would naturally endeavor to obtain as large a share as possible of the public revenue, for disbursement upon local objects; whereas, on the contrary, if it participate in the burden, it naturally feels desirous to practise economy in the expenditure of funds drawn from the purses of its members and of those whom they represent. Whenever establishments are maintained by means of local funds, they ought to be managed by local boards representing the rate payers. Whenever they are maintained at the expense of the nation, they ought to be administered by officers appointed by the general Government. In the case of a proportionate contribution on the part of the state, in aid of local funds, the administration may, in general, be safely left to the local board, subject to a vigilant system of inspection, or to a coördinate *veto* on the part of the executive authorities, with a view to prevent abuses. The contribution afforded by the state ought to be voted annually by the legislature, so that there may be frequent opportunities of considering the merits of the local administration, and of correcting any imperfections which may be discovered.

It may be asked, whether municipal councils ought to be permitted to contract debts? and if so permitted, under what limitations?

That the habit of borrowing money is a dangerous practice, and ought to be discouraged, is a proposition which is as true in the case of municipalities as it is in the case of individuals or of nations. All ordinary expenditure ought clearly to be defrayed out of the annual income of the municipality; but there are certain classes of great works which it is almost impossible to execute without the aid of loans. If these works be of permanent utility, it is not unreasonable that the expenses of constructing them should be distributed over a period more or less protracted, according to the nature and expense of the operations, instead of being borne upon the resources of a single year. Thus, for instance, the construction of an aqueduct, of a canal, of a reservoir, of a dock, of a railway, of a public asylum, of a college, and of other similar works, may fairly be defrayed by means of a loan, chargeable upon the general or special revenues of the municipality; but it would be very unwise to permit municipal bodies to contract debts for the purpose of effecting objects of a transitory and ephemeral nature, such, for instance, as public exhi-

bitions, festivities, &c. With a view to prevent an abuse of the power of contracting loans, it is desirable that municipal bodies should not be allowed to make such engagements without the sanction of the central government; and provision ought always to be made for liquidation of the debt by means of a sinking fund.

If it be conceded that for specific objects of a useful nature, municipal bodies may be permitted to borrow money, it becomes necessary to consider what description of loan is most beneficial to the community.

If the enterprise for which the loan is required be of such a nature that there is a difficulty in borrowing money from individuals for the execution of it, the general Government may properly advance a portion of the amount required, especially if the objects to be attained are of great public utility. Many enterprises have been undertaken, the success of which at first appeared doubtful, but which have eventually been most remunerative. Now, in such cases it is right that the general Government should give confidence to local efforts by participating in the chances of loss. This reasoning is particularly applicable in times of public calamity, when the laboring population find a difficulty in procuring employment. If, during the Irish famine, for instance, the Government had made liberal advances on loan for railways, embankments, harbors, and other public works to local bodies, many thousands of laboring families might have been saved from the demoralizing and pauperizing tendencies which subsequently resulted from a reckless, aimless, and unprofitable expenditure. The people would have been kept alive in a state of healthy independence; the spirit of the country would have been sustained, and the Government would eventually have lost but a small portion, if any, of the amount so advanced for reproductive employment. By neglecting to act in accordance with these simple dictates, I will not say of state policy, but of common sense, many millions were wasted, which might have been rendered instrumental not only in saving the people from starvation, but also in developing the resources of Ireland, under circumstances profitable alike to the imperial Government and to those interested in local improvements.

In the cases in which a municipal body requires money for objects which cannot be considered as speculative in their nature, and which are guaranteed by unquestionable security,

such, for instance, as works undertaken on the security of county rates, it is desirable that the advances required should be raised by way of debentures bearing interest. These debentures, if issued for small sums, say in bonds for £50 or £100 each, would afford to the thrifty members of the local community an opportunity of investing their savings in a manner equally advantageous to themselves and to the municipality to which they lend their money. If this mode of borrowing were adopted in the case of loans contracted by municipal bodies, the managers of savings' banks, friendly societies, and of similar institutions, ought to be allowed to purchase debentures. Thus a vast amount of capital which must otherwise seek investment in some distant quarter would be made to vivify the industry and to forward improvements in the locality in which it was originally created.

The loans which have been recently contracted in France, by means of subscriptions open to all classes, have shown what an immense amount of capital may be raised on loan amongst the population at large, provided subscriptions for small sums be received. A loan of £20,000,000 having been required, subscriptions amounting to more than four times that sum were offered within the lapse of a few weeks.

CHAPTER XX.

ON THE RELIEF OF THE POOR.

The relief of the poor is one of those duties which naturally form part of the functions of municipal administration, subject to the superintendence of the Minister of the Interior.

In every community there will be destitute persons. Some become destitute through their vices, but more through misfortune. What is to be done with those who, through helplessness or infirmity, are unable to support themselves? What is to be done with those who, though willing and able to work, are unable to obtain employment by which they may acquire the means of subsistence? Obviously they must either beg or be sustained by public contribution of an organized kind. Voluntary effort is generally found to be inadequate for this

purpose, and is always inequitable. The selfish and the hard-hearted escape altogether from voluntary contribution, however wealthy they may be, while the kindhearted and the charitable impose upon themselves a burden often wholly disproportionate to their means. Where no legal provision for the poor exists, a large proportion of the destitute are compelled to seek subsistence by mendicancy. Now, mendicancy is a great social evil, because, where it prevails, the idle vagrant and the impostor are confounded with persons really entitled to sympathy, and the least deserving are often the most successful in their appeals to public commiseration.

There are, indeed, many evils incidental to a state provision for the poor; more particularly when administered upon the heartless principles of modern political economy. But in the affairs of life, evils must be balanced against evils. Now, in this comparison, the advantages of a legal provision for the poor, if such provision be well arranged, greatly preponderate over its disadvantages.

Assuming, then, that the destitute ought not to be allowed to starve — a position which seems to be incontrovertible in every country in which the poor are forcibly deprived of those opportunities of obtaining subsistence which, in a state of nature, are common to all mankind — assuming, further, that if consigned to the casual support extended by the hand of charity, the poor will often be left wholly destitute of the necessaries of life, and that, if relieved, they will generally be relieved at the expense of those who are least able to provide for them, we have arrived at the conclusion that a legal provision ought to be established for the relief of the poor. We have now to consider what sort of organization is best adapted to secure aid to the deserving poor, and, at the same time, to check imposture and idleness.

We have, in the first place, to observe, that the destitute poor may be divided into four classes, for each of which classes a different mode of treatment is suggested by reason and humanity. These classes consist, —

1. Of the helpless and infirm, who, through physical disability, are unable to provide for themselves the means of subsistence; such as the orphan, the maimed, the blind, the lunatic, the aged. In this class may also be included widows with families, because the care of a young family is sufficient to occupy their whole time, and to prevent them from seeking profitable employment.

2. Of the able-bodied poor, who are willing and able to work, but who cannot procure employment.

3. Of the sick poor, who require medical aid.

4. Of idle vagrants who are able, but unwilling to work, and who prefer a precarious livelihood derived from imposture and mendicancy to regular employment.

It has been the fashion of late, in England, to treat poverty as a crime, and to visit it with penalties nearly as severe as those which are inflicted upon guilt. Now, it is manifest, that of the three classes here enumerated, the last alone are proper objects of penal coercion. It is said, indeed, that charitable institutions have a tendency to pauperize the whole population of a country, if they be administered in a kindly spirit; and that, therefore, whatever assistance is afforded to the destitute should be offered in a manner calculated to deter the poorer classes from seeking such assistance. It is argued that the poor should be taught to cultivate the prudential virtues, and to lay up a store out of their earnings for the days of infirmity or of old age. But experience shows that whether there be a legal provision for the poor, or there be none, the working classes in general want either the means or the disposition to act upon these thrifty principles. In a new colony, where every one can easily obtain possession of land, as in North America, it may fairly be urged that the laboring classes ought to make efforts to acquire an independence for themselves, by their industry and economy; but in Europe the arrangements of society are such as render it almost impossible for the laborer to emerge from the condition in which he was born. In England, the highest wages of the agricultural laborer have been, of late years, on an average throughout the year, not more than two shillings and sixpence per day. In Ireland, the average wages have not exceeded eight pence per day, in the rural districts of the south and west. In other parts of Europe, the wages of agricultural laborers lie between these extremes. Now, it is just possible that a young laborer who possesses the propensities of a miser, combined with much intelligence and enterprise, may be able, in the course of a few years, to save a small capital, upon which, if he be fortunate, he may build the gradual accumulation of an independence; but, in the great majority of cases, no such accumulation can fairly be expected. If the laborer marry, the idea of saving out of his earnings enough to make his family independent is vision-

ary. A single visitation of sickness would often exhaust the savings of even an unmarried laborer. How unreasonable, then, is it to suppose, that the working classes ought to forego all the affections and all the enjoyments of life, in order that they may guarantee themselves against that dependence which is, as it were, forced upon them by the artificial condition of society in which they live! But even if we were to admit that the father of a family is to blame for not having made an adequate provision for his children, it surely does not follow that those children ought to be treated as criminals on account of such his neglect. Perhaps his wife may have daily remonstrated with him for spending at the alehouse the pittance which would have formed the basis of such a provision. Does she deserve to be treated as a criminal at his death, because she is left destitute as a widow? No! the voice of nature and the teachings of Christianity alike repudiate this doctrine. Away, then, with the speculations of a false philosophy — away with the miserable selfishness of a false economy. The orphan is the child of the state. The aged laborer, worn out with the toil which his industry has given to society, must no longer be spurned as an intruder into the social system. If a state provision for the poor be established, let it be administered in the spirit of heaven-blest charity, not as a mere regulation of police.

The organization for the relief of the poor ought to be similar to, if not identical with, that which we have contemplated as best suited for performance of the duties of municipal administration. In the United Kingdom it has been the practice to create separate bodies for performance of each of the several functions which society requires. Much complication and additional expense are thus created. Each separate board requires its own special staff of officers, and its own special levy of funds. Bodies, thus acting separately, instead of cooperating, often come into collision with each other. Now, if a good municipal organization were created — an organization based upon popular election and overspreading the whole community, embracing rural as well as civic districts — to such an organization might be confided the administration of almost all the local institutions of society. We have already studied the outlines of such a municipal system, and I am disposed to think that where organization of this kind can be created, it would be better to confide to it the care of the poor than to frame a separate and additional machinery for this particular

object. In the United Kingdom, "boards of guardians" have been constituted exclusively for the management of the poor. Such boards are elected by the rate payers, who reside in districts which are called "unions," that is, unions of parishes or of electoral divisions. The organization existing in England and Ireland does not appear to me to be such as is best calculated to attain the object of a good system of poor laws; because, amongst other reasons for objection, the fundamental principle that taxation should be imposed only by the representatives of rate payers, is violated in the constitution of the boards of guardians. The board, collectively, determines the charges which shall be borne by particular parishes or electoral divisions; so that the guardians of divisions A, B, C often impose a tax upon division E or division F to which they do not themselves contribute. I conceive that a machinery for the relief of the poor, as well as for any other object, should be so framed that the representative body should be authorized to impose taxation only upon those whom they represent, and that such taxation should be uniform throughout the district represented.

Let us now apply the principles above enunciated to the several classes of the poor. Let us take, for instance, the class of lunatics. Every one feels that for the lunatic poor some provision should be made by law. Otherwise raving madmen and gibbering idiots would traverse the country, terrifying and disgusting all whom they might meet. The number of lunatics and idiots is small in proportion to the whole population — say one in a thousand. It would not be necessary, therefore, that there should be more than one lunatic asylum for each county. Such asylum should be placed under the superintendence of the county board, and should be supported, in part at least, by means of the county rates.

With regard to the relief of the helpless and infirm poor, I am of opinion that it may be most advantageously confided to bodies representing the smallest municipal divisions, because such bodies are best acquainted with the circumstances of each applicant. In the case of poor persons, utterly incapable of work, I think that, under ordinary circumstances, it is more consistent with humanity that such persons should obtain outdoor relief, by way of eleemosynary allowance, than that they should be shut up as prisoners in workhouses; and their immediate neighbors are much better able to determine what ought to be the amount of such allowance than a board of

guardians, acting for a large district, the greater portion of whom are wholly unacquainted with the circumstances or character of the applicant. In like manner, it seems advisable that power should be given to these bodies to place orphans under the care of respectable householders, rather than that they should be sent to a workhouse, where they are liable to be thrown into association with idle and hardened vagrants, and where they never have an opportunity of becoming familiarized with the domestic occupations of ordinary life. The training and education of orphans, even in an asylum, is seldom, if ever, as well calculated to fit them for the practical business of life, as the domestic associations and labors of a respectable family. The care of all such objects of compassion naturally belongs to their neighbors; and a body, acting for a small locality, would instinctively apply to the relief of their wants a kindlier spirit than is found amongst strangers. An option ought, indeed, to be given to the committee of the sub-district, of sending claimants for relief to the workhouse, instead of granting to them domiciliary aid in those cases in which there is reason to believe that the claimant could maintain himself without recourse to public charity. The workhouse would thus (to use a phrase which has been much misapplied) *test the destitution* of the applicant. A similar power should be given to the committee of the sub-district to send the sick poor to the hospital of the district. The expense of maintaining the persons so consigned to the workhouse or hospital of the district, should be borne by the sub-district from which they have been sent. An arrangement of this kind exists in Belgium, where the expense of maintaining a pauper in the *depot de mendicité* of the province is charged upon the *commune* from which he has been forwarded by the communal authorities.

With reference to the care of pauper children I may observe, that in case it be found impossible to provide for them advantageously by placing them in private families, it is desirable that they should be sent to a special establishment, founded exclusively for the reception of young persons, rather than to a workhouse. The "Ecoles de Reforme" of Ruysselede and Beernem, in Flanders, appear to me to realize completely all that is to be desired in regard to pauper children. In the former of these establishments about five hundred boys belonging to the lowest class of the people, the children of thieves and beggars, are received from the *communes*, in dif-

ferent parts of Belgium, and are taught every description of useful work that is connected with the ordinary occupations of life. There is a large farm attached to the establishment, consisting of several hundred acres, which is worked almost exclusively by the boys; and since the most approved methods of agriculture are practised there, it is, in fact, "a model farm." The boys are also taught various kinds of handicraft, such as that of the tailor, weaver, shoemaker, baker, carpenter, smith, &c. They are drilled to military exercises, and a portion are taught to manage a ship, so that they may be fitted to enter the commercial marine of Belgium, upon leaving school. In addition to their ordinary education, of a literary kind, they are instructed in singing, and a considerable number learn to play on musical instruments. The consequence of adopting a system of training such as this, has been, that there has been no difficulty in finding advantageous situations for these children, when advancing to adolescence; whereas, those who are brought up in workhouses are encountered by prejudices arising from the nature of the associations into which they have been thrown in these receptacles. In each county, an establishment, such as that which I have here described, ought to be formed for the reception of pauper children. It may, perhaps, be said, that if the children of beggars were thus to be better trained and better taught than the children of the independent classes, the motive to independent exertion would be thereby weakened; but this is a fanciful rather than a practical objection, and the objection ought to be answered by improving the education given at ordinary schools, not by deteriorating that given in charitable institutions.

At Beernem there is a girls' school, admirably conducted, on similar principles, under the superintendence of *sœurs de charité*.

The workhouse is the most fitting receptacle for idle and sturdy vagrants. It is right that persons of this class should be guaranteed against starvation; otherwise they will have a pretext for begging. Whilst the utmost tenderness should be shown towards that class of the poor who have been rendered destitute by misfortune, and who are unable to provide for their own maintenance, those who are able, but unwilling to work, deserve no such sympathy. Persons of this description should be subjected, if not to penal coercion, at least to a treatment which will discourage them from throwing themselves upon public charity for support, rather than upon their

own independent exertions. With a view, therefore, to provide a suitable receptacle for this class of the poor, there ought to be a workhouse in each "district," subject to the control of the "district council," or if the administration of the poor laws be conducted through a separate agency, then subject to the management of a board of guardians.

It would seem to be almost unnecessary to observe, that a workhouse ought to be rendered as much as possible what its name imports, "a house of industry," if we had not seen to arise in our day a generation of political economists who maintain that the workhouse should possess no attraction whatever for either the recipients or the dispensers of public charity. Their grand idea has been that all persons can avoid destitution if they so think fit; that therefore society ought to abstain from doing any thing which will encourage the poor to seek assistance; that with this view the workhouse should afford nothing beyond a refuge against absolute starvation; that relief should be administered in the manner which shall be most distasteful to the recipients; that the public also should be made to feel, as much as possible, the evil of encouraging pauperism by the maintenance of charitable establishments; that if the workhouse be costly and unprofitable, the rate payers will find that it is for their interest to employ the poor rather than to allow them to become paupers; whereas, on the contrary, if the workhouse be supported, at a trifling expense, by the industrial operations of its inmates, it will become an institution which will be regarded with favor both by the poor and by the public, and thus lose its character as *a test of destitution.*

To no portion of this reasoning can I subscribe assent. "The poor ye shall have always with ye," was a true saying in the time of Jesus Christ, is true now, and will ever be true. Let it be admitted that some become destitute from imprudence, or even from crime, yet expediency, founded upon considerations of police, if not of humanity, suggests that they must be sustained by society. Now, if we were to regard the workhouse as a penitentiary rather than as an asylum, still it would be desirable that its inmates should apply their energies to useful labor, healthy for both body and mind, rather than fritter them away in the unprofitable yet wearying tasks which are generally assigned to them in jails and workhouses. Every prisoner who enters a penitentiary ought to be so treated, while within its walls, as that he may be fitted, upon re-

turning to society, to undertake some useful occupation. How much more is it desirable that the pauper, who may, perhaps, be free from all imputation of crime, should be instructed in arts by which he may be enabled to obtain a livelihood as soon as circumstances encourage him to leave the workhouse. In agricultural districts a well-managed workhouse ought to be *a model farm*. There ought to be annexed to it such a quantity of land as would be sufficient to provide constant employment for its inmates in horticultural and agricultural operations. Their labor on this land would go far to provide necessaries for the establishment, thereby diminishing the burden of poor relief to the rate payers. For towns and manufacturing districts the nature of the employment must necessarily be different; but still the workhouse may be rendered even here *an industrial school*. Various descriptions of trade may be taught, various applications of machinery may be brought into action, from which not only the inmates but the community at large would eventually derive permanent advantages. If our space allowed us to enter into such details, it would be easy to cite particular cases in which operations of this kind have been eminently successful; and I venture to think that a system which has for its aim the improvement of the unfortunate would much more effectually check pauperism, than that system which begins by stigmatizing poverty as a crime, and ends by adopting measures which produce feelings of disgust and alienation amongst all classes of society.

The case of the industrious laborer, who is willing but unable to procure employment, is much more embarrassing than that of any of the other classes enumerated. It is obvious that in justice he ought not to be subjected to the same treatment as that which is applied in the case of the idle vagrant. Yet, on the other hand, domiciliary relief tends rapidly to pauperize the whole working population. Experience in England and in Ireland has made this evil so apparent that a disposition has been generated to look to workhouse confinement as the sole security against abuse in the application of funds devoted to the relief of the able-bodied poor.

To ascertain the best means of securing employment for the able-bodied population of a country is one of the most important concerns that can engage the attention of a statesman. It ought not to be treated as a mere question of poor relief. The able-bodied poor, indeed, must not be allowed to starve; neither should they be encouraged to look to the poor rate as

a permanent means of subsistence. What may be the best means of so developing the resources of a country as that the able-bodied laborer shall always be able to procure employment, is a question the answer to which must depend upon the special circumstances of each country. Public works, manufacturing and agricultural operations, fisheries, improvement of waste lands, colonization, &c., may all be made subsidiary, under judicious arrangements, to this great object. If it be asked, how are the means to be provided? we may answer, that the expense of maintaining a laboring man, whilst engaged in reproductive employment, is very little, if at all, greater than the expense of maintaining him and his family in idleness or unproductive employment in a workhouse; and that therefore it is obviously for the interest of society that such arrangements should be made as shall secure to the laborer independent employment of a reproductive kind, and shall protect him from the demoralization and humiliation which almost always result to the working classes from the habit of receiving public relief.

Medical relief to the sick poor is a branch of poor law administration which is less liable to abuse than any other. There is little risk that any one will feign to be ill for the sake of obtaining a dose of castor oil or of jalap, and imposture is easily detected. Here abuses are to be apprehended on the part of those who are appointed to administer relief, not on the part of those who receive it; hence it becomes necessary to seek guarantees against incapacity, neglect, or extortion, on the part of the medical officers who attend the poor.

It will be admitted as a general principle, that it is desirable that in every part of the country medical attendance should be easily accessible to all classes. With the relations between the wealthier classes and their medical attendants, the state need not interfere; they may be adjusted on the principles of mutual interest. Doctors are easily found by those who can afford to fee them. But it is manifest that all those classes whom we have considered as objects of public charity will, when afflicted with disease, be more than ever dependent upon the community at large for relief. All the considerations, therefore, which suggest or justify a legal provision for the relief of the destitute, apply with increased validity to the case of the sick poor.

In order to secure medical attendance for the sick poor, there ought to be a dispensary in each ward or sub-district.

Such dispensary ought to be maintained at the charge of the sub-district, and ought to be subject to the superintendence of the committee appointed to manage the affairs of the sub-district. The medical officer ought to be appointed by such committee (subject, perhaps, to the concurrence of the poor law commissioners, or of the "district council;" but no persons, except duly qualified practitioners, should be capable of holding these situations.

In every district there ought to be a hospital for the reception of such patients as require hospital attendance.

Though we have considered the workhouse as an establishment, which ought chiefly to be used as a receptacle for those whose claims upon public charity are doubtful, such as the idle and the vagrant, yet it may also bear the character of an asylum or almshouse for that class of the poor, whose claims to sympathy are unquestionable. In the majority of cases, the aged and infirm would prefer to receive domiciliary allowances by way of out-door relief, rather than to be placed in the infirm ward of a workhouse; but there are many, to whom the refuge afforded by a public asylum is more acceptable — especially those who require frequent medical superintendence, without being suitable objects for admission into a hospital. There ought, therefore, to be in the workhouse of each district wards especially appropriated for this class of the poor. The subjoined extract from a report, quoted by M. Duepetiaux, in his interesting "Memoire sur le Pauperisme dans les Flandres," will prove that our conception of what an asylum for the poor ought to be is not purely theoretical, but has been actually realized in Belgium.*

As the number of the deaf and dumb poor, and also of the blind, is but small in proportion to the whole population, it would not be necessary to provide a special institution for

* Dans ces quinze hospices nous avons entretenu 878 pauvres vieillards, et ils ont coute aux bureaus de bienfaisance par tête et par jour un prix moyen de 21 centimes, [about two pence.] Ce resultat est important, et je ne sache pas que jamais l'administration ait crée des institutions plus bienfaisantes avec moins d'argent.

La cause de cette economie est tres simple. Chaque hospice est une espèce de metairie: le travail agricole est fait par les vieillards eux-mêmes: presque partout la recolte fournit toutes les provisions: le service interieur de la ferme, de la basse cour, et de l'etable, est abandonne aux femmes: les vetemens sont en grande partie confectionnés dans la maison. En un mot, chaque hospice est en quelque sorte une petite colonie agricole exploitee par une association de vieillards et d'infirmes, s'aidant l'un l'autre, chacun dans la mesure de ses forces, sous la direction de quelques sœurs de charite.

these classes in each "district;" but there ought to be an establishment for their relief in every province, if not in every county.

In order to secure uniformity in the general administration of the poor laws, and to protect the community from the abuses which are incidental to every institution, however carefully it be framed, it is desirable that there should be a central board of superintendence, similar to that of the poor law commissioners in England and Ireland. Such a board ought to possess the amplest powers of inspection and investigation. It should be authorized to call for accounts, to offer suggestions, and to arbitrate differences; but care should be taken to prevent unnecessary or officious interference on its part with the bodies which are intrusted with the local management of the poor. Vexatious interference with the discretion of well-meaning and intelligent men disgusts and disheartens them in the exercise of their duties. It has frequently happened, in the United Kingdom, that the poor law administration has suffered much from the disposition of the poor law commissioners to thwart the views of the boards of guardians. In many local boards men are to be found who are at least as judicious as the poor law commissioners themselves; and if a greater latitude of discretion had been allowed to such guardians, many improvements would have been adopted, at an early period, to which the poor law commissioners have been eventually compelled to yield a reluctant assent.

For the case of actual abuse and of malversation, a remedy ought to be provided by law: but in general, a vigilant system of inspection will keep in check every tendency to maladministration. It should be part of the duty of the poor law commissioners to submit, periodically, to the legislature, reports regarding the operation of the poor laws. These reports furnish an opportunity of calling public attention to any errors or abuses which may be detected, and public opinion or legislation will soon provide a remedy after exposure of the imperfection.

One of the most difficult questions, which are connected with the enactment of a poor law, is that which requires us to determine whether the destitute ought to have a legal right to relief. Upon principles of natural equity, it may reasonably be contended that the first of all rights, which every human being possesses, is the right to live; and that if the arrangements of society be so framed as that he is prohibited from seeking the

means of subsistence by those efforts which he would be at liberty to make in a state of nature — if he be deprived of all share of the soil upon which he was born — if he be forbidden to cultivate it — if he be prevented, by its appropriation to others, from erecting a habitation upon it — nay, if he even be precluded from the chase of wild animals — society ought, at least, to guarantee to him a sufficiency of food, of clothing, and also a place of shelter. In the abstract this reasoning appears to be unanswerable; but when actual legislation is founded upon it, innumerable complications arise, which involve evils of a very serious nature.

If the right of the destitute to relief be recognized by law, the administrator of the poor law can exercise little discrimination in his dispensation of public charity. The sturdy pauper who might, by adequate exertion, obtain subsistence elsewhere, presents himself to the guardians of the poor and demands relief. It is difficult to controvert the statements which he makes with a view to prove his inability to find work, and the guardians, being unwilling to incur the responsibility of contravening the laws which recognize his right to relief, are compelled to provide for his wants — a proceeding which throws upon the industrious portion of the community the burden of maintaining, in comparative idleness, an individual who might have procured a livelihood by his own independent exertions. Hence arises the necessity of making the receipt of relief as distasteful as possible to the poor. The recognition of this right to relief would induce the greater part of the laboring population to seek eleemosynary assistance, if it were given on very acceptable terms. If, on the contrary, the right to relief be not recognized by law, the guardians of the poor can refuse to give assistance to those who are able to sustain themselves by their own independent efforts and industry.

Again, if the right to relief be established by law, it becomes necessary to determine what is the locality in which this right should be rendered available. It would be manifestly unjust that the parish or union in which a pauper has lived but for a single day should be burdened with his maintenance for an indefinite period, whilst the parish or union which has profited by his labor, in the time of his strength and efficiency, is left exempt from participation in the burden. Hence arises the necessity of what is called a *law of settlement*, that is, a law that shall determine the circumstances

under which a pauper shall be chargeable on one locality rather than upon another. Now, every one who has studied the poor law administration of England, in which country the right of the destitute to relief has been fully admitted by law, must be sensible of the enormous evils which have arisen from the law of settlement. It has obstructed the free circulation of labor. It has interfered with the most natural and most beneficial engagements between man and man. It has tended to pauperize a large portion of the population. It has given rise to vexatious and expensive litigation between the bodies which have managed the administration of the poor laws in different localities.

These evils have, indeed, been somewhat diminished under the changes which have been made in the poor law of England during the present generation; but a remarkable illustration of the cruelty which may be engendered by defective legislation is still afforded by the operation of the law of settlement in regard to the removal of the poor from districts in which they have become chargeable.

Natives of Ireland, who have spent the greater part of their lives in England, sometimes fall into destitution, often of a temporary nature, and are compelled to apply for relief to the guardians of the English union in which they have resided. As soon as they thus become chargeable, they are forcibly deported from the places with which they have formed, by long residence, an intimate connection, and are cast upon the shores of a country their relationship with which has become almost entirely obliterated. Thousands of persons are thus annually deported to Ireland from what has been called its *sister* kingdom. Many of them are widows, who, after having been married for twenty, thirty, forty years, are flung, penniless, upon the coast of a country in which they have no longer a single friend. If a ruthless barbarian were so to treat any portion of the family of man, we should justly denounce him as an inhuman monster; but, under the influences that prevail in this age, which calls itself enlightened and civilized, and in a country which claims preëminence for morality, this outrage against humanity daily takes place without evoking the slightest consciousness of wrong on the part of those who perpetrate, or of those who sanction it. Year after year, the Irish people have protested, without effect, against this law of removal. The Parliament of what is called the *United* Kingdom have ignored the remonstrance, because redress

would impose a trifling charge upon the rate payers of England.

Taking into consideration all the pernicious consequences which result from a law of settlement, I hesitate to recommend the legal recognition of a right to relief in the destitute. I am disposed to think that their equitable claim will be admitted freely, in every country in which an organization shall have been formed for administering relief to the poor. The committee of the "sub-district" would seldom refuse to grant relief, either by way of domiciliary allowance, or in the workhouse, to those who are really objects of charity. But in case they refuse to grant assistance, where it may be legitimately expected, a power might be given to the municipal council of the "district," or to the guardians of "the union," to admit the applicant into the workhouse, without formally conceding a legal right to relief to such applicants. In applotting the charge of maintaining the pauper in the workhouse, regard should be had to the antecedent circumstances of the individual. Birth and residence are the two elements of consideration upon which the applotment of this charge most naturally depends. A poor person may be said to have acquired an equitable title to relief in any district in which he has worked during a certain period, say at least two years. If, therefore, he have spent this period in a particular sub-district, the expense of his maintenance ought to be borne by that sub-district. If he have resided but a short time in a sub-district, he ought to be considered as chargeable upon the district or union at large.

The answer which we shall give to the question, whether mendicancy should be permitted in a well-regulated state of society, depends, in great measure, upon the nature of the provision which is made for the poor. A law, which attempts to prohibit a poor person from asking alms, cannot be rigidly enforced in a country in which there is only an inadequate provision for the destitute. The general feeling of mankind revolts against any proposal to inflict penalties for soliciting charitable aid, upon those who are unable to obtain a livelihood by other means. Yet mendicancy is a great social evil, especially since it is too often connected with imposture. If, therefore, adequate relief, in case of destitution, be guaranteed to the poor, it is not unreasonable that laws against begging be enacted. In those countries in which the poor have a right to relief, and in which the administration of that relief is carried on in a humane and liberal spirit, mendicancy may be

effectually repressed, but where no such right to relief is given to the poor, a law against begging can with propriety be enforced only against those who shall have refused to avail themselves of the assistance tendered by the administrators of the funds raised for the relief of the poor.

With regard to that class of institutions which tend to avert poverty by calling into activity the operation of prudential motives, such as savings' banks, friendly societies, insurance societies, &c., it is sufficient to say that, though perhaps they may be as well regulated under private management as they could be under an administration of a public kind, yet they ought to be encouraged by the state, and assisted by the municipal authorities as much as possible. It is right also that guarantees should be exacted, to prevent abuses in the conduct of these institutions. The most effective of such guarantees is publicity. In the case of associations which invite the coöperation of a large number of persons, it is desirable that periodical publication of the accounts of receipt and expenditure should be required by law. This principle has been recognized by the British legislature in regard of banking establishments. If an institution be well managed, it courts investigation, and welcomes publicity; if it be not well managed, the public should be protected against its malversation by the timely warning which is conveyed wherever publicity of operation is exacted.

The establishment of charitable pawn offices (*monts de piété*) has, in some continental towns, been found extremely beneficial to the poor; and, if well managed, these institutions are attended with profit, rather than with pecuniary loss. Though there is some risk of mismanagement, yet it is, perhaps, desirable that municipal bodies should be authorized to establish such charitable pawn offices in the localities for which they act.

When a large body of workmen are permanently employed by the state — as, for example, in arsenals, dock yards, &c., — it is desirable that a small deduction should be made weekly from their wages, in order to establish a fund, by means of which provision may be guaranteed for the casualties of illness, accident, &c. In Belgium a fund of this kind has been created in favor of those who are employed upon the railways made and maintained at the expense of the state, by means of a deduction of two per cent. from the wages of the workmen. The allowances granted in case of illness, &c., vary from 50

to 100 per cent. on the salary of the workmen, according to the circumstances of the case, and are regulated on a fixed scale. At the close of the year 1848, 4314 workmen, whose families amounted in number to 12,524 individuals, total 16,838, were liable to this contribution; and in 1849, the sum of 82,630 francs (about £3305) were applied from the fund so created, (augmented by other contributions,) in aid of the invalided members of this body, and of their families.

The same principle ought, perhaps, to be acted upon in regard of all functionaries employed by the state.

The intervention of the state might also be found advantageous in encouraging the establishment of provident institutions of a similar kind for the benefit of other classes.

In every community there will always be individuals who are desirous to propitiate the favor of God or of man by the foundation of charitable institutions. Most frequently such operations are effected by way of bequest — that is, individuals bestow upon charitable objects, to take effect after their death, wealth which they cannot carry with them into another world. The purposes for which such grants or bequests are made are generally either the foundation of almshouses, asylums, hospitals, schools, or the establishment of religious institutions. It is a question deserving of grave consideration how far such bequests should be encouraged by the state. It is certain that, in former times, much evil arose from too extended an operation of the motives, often of a very selfish character, which have led to the foundation of institutions which are called by some pious, by others, superstitious. These abuses have given occasion to the enactment of laws tending to restrain the alienation of property in mortmain, and even, in various Catholic countries, to the confiscation by the state of property belonging to charitable or ecclesiastical corporations.

Without venturing to deny that cases may hereafter occur which will require the intervention of the state, with a strong hand, to correct abuses, I confess that I am disposed to advocate the concession to all persons of the right of granting or of bequeathing at least a portion of the wealth which they have accumulated, for the purpose of founding charitable or religious establishments. At the same time, it may be admitted that this is a question which must be determined by considerations of expediency, not by principles of indefeasible right. The laws which regulate the devolution of property to individuals fall incontrovertibly within the domain of expediency.

The laws of entail and primogeniture, for instance, are considered by many to be very objectionable. By others, compulsory division of the property of a father amongst all his children is held to be still more liable to objection. If, in these cases in which the interests of private individuals are concerned, the statesman conducts legislation upon the suggestions of expediency, it can scarcely be denied that, *a fortiori*, a similar regard to expediency is justifiable in respect of the laws which regulate the alienation of property to corporate bodies.

Ought a Hindoo, or a Mahometan, to be allowed by a Christian Government to grant property for the foundation of temples dedicated to antichristian worship? Ought a Protestant inhabitant of a Catholic state to be permitted to bequeath funds in aid of a missionary society devoted to a crusade against the religion of Roman Catholics? Ought a Roman Catholic to enjoy the right of alienating landed property in mortmain for the endowment of a monastic establishment in a country of which the Government and population are, to a preponderating extent, essentially Protestant? To all these questions I answer in the affirmative, because I believe that the evils which result from invading the liberty of conscience, and from violating the political equality of all citizens of the same state, are infinitely greater than those which can result from the establishment of a religious institution which propagates tenets adverse to the public feeling of the country in which it is established.*

If this latitudinarian doctrine be applicable in regard of religious establishments, how much more so must it be in regard of those institutions which are purely charitable! There are few political economists so inflexible in their animosity against charitable endowments as to condemn the establishment of an asylum for the blind; and although it may be argued that lying-in hospitals encourage vice and imprudence, there are few mothers who will regard a donation to such an institution as an offence against the interests of humanity. In regard of all such institutions, the only point to which the state can direct its intervention without offending natural prejudices, or violating the rights of property, is to secure that the revenues shall not be applied to purposes other than those

* The general question of toleration will be found discussed under the chapter on "Religious Instruction."—M.

for which they were granted. Thus, for instance, if an orphan asylum have been founded by a wealthy individual, and it be discovered, after the lapse of a certain time, that the resources of this institution, instead of being applied to the maintenance of orphans, are appropriated in sinecures to officers of the establishment, in such case some remedy ought to be provided by the state. This is by no means an imaginary case. Many hundred instances of this kind might be adduced from among the charitable endowments of England. To prevent such abuses, a public board of charities has been erected in some countries, with authority to inspect all charitable institutions, and to bring under the cognizance of the tribunals flagrant deviations from the original purpose of the endowment. It is desirable that some such superintendence should be established in every country; but the mode of applying this superintendence ought to depend upon the peculiar circumstances, habits, and even prejudices, of the population.

CHAPTER XXI.

ON PUBLIC WORKS.

The execution of public works is a branch of public affairs which naturally belongs to the province of municipal administration, subject to the superintendence of a Minister of Public Works, or, if there be no such minister, subject to the superintendence of the Minister of the Interior, or of the authorities of the Treasury.

Without entering into details descriptive of the organization necessary for the execution of public works, it is sufficient to say, that such an organization ought to be framed upon principles similar to those which we have already laid down as applicable to the relief of the poor, and to other municipal functions. In accordance with these principles, the management of public works should be committed to those who are most interested in their execution and maintenance. Roads and other public works, which are required for the use of the inhabitants of a district, ought to be maintained by the body which is appointed to manage the affairs of the district. Main

lines, bridges, and other great public works, which facilitate the operations of the community at large, ought to be subject to the control of those who act for the whole community. Hence the "district council" will properly determine what public works are required for the use of the district. The "county board" will determine what public works are required for the use of the county. Parliament will determine what public works are required for the kingdom at large.

Roads which are useful only to the inhabitants of a small circle of country ought to be maintained by the committee of the sub-district in which they are required.

With regard to the execution of public works, it would, perhaps, be injudicious to establish an invariable rule of proceeding; but it may be stated, as a general principle, to which there are but few exceptions, that all public works should be executed by "contract," based upon tender, open to all competitors.

As, in regard of difficult operations in civil engineering, it is manifest that "district councils" and "county boards" are incompetent to judge whether a public work has been properly executed, these bodies ought to be assisted by the services of civil engineers, who should be required to make preliminary reports as to the most eligible mode of executing each work — to prepare specifications for the contractors — to watch the work while in progress — and, after its completion, to certify that it has been executed in conformity to the specification and contract.

The execution of great public works, sanctioned by the legislature for the benefit of the community at large, ought to be intrusted to a central Board of Public Works. In large states this Board ought to have as its president a responsible minister of state, who should be eligible to a seat in the legislature. The intervention of this central Board may sometimes be useful in regard of local works, more especially in the case of those which are executed, partly at the expense of the counties, districts, or proprietors immediately interested in them, and partly at the expense of the public at large. Such joint contribution in aid of useful objects may often be adopted with the greatest advantage. In a country, for instance, which has been newly settled, where there are few or no public works already existing, proprietors should be encouraged to make proposals for the execution of new lines of road, &c., on the condition that a portion of the expenditure should be borne by

themselves, that another portion should be contributed by the district, and the remainder by the state. In cases in which proprietors have no special individual interest in the work, a part may be contributed by the district council, and another part by the state. In all such cases it is obviously desirable that the central Board of Commissioners should take care that the funds voted as the contribution of the state shall be applied to the execution of the work in the most useful and satisfactory manner.

Whether roads should be maintained by means of tolls derived from turnpikes, or should be maintained by means of funds derived from public rates, is a question which naturally presents itself for discussion in connection with observations relative to public works. It is often said that a toll is the most equitable kind of tax, because it is paid only by those who use the public work for the support of which it is collected. This remark may be true in regard of tolls on piers, bridges, &c., but turnpike tolls on roads are far from being equitable in their pressure. Thus, a person who lives within a hundred yards of a turnpike gate pays as much on passing through the gate as if he had travelled ten miles of the road. A turnpike gate is an odious interference with the liberty of locomotion, which is one of the natural rights of man. It operates not only as a tax upon those who use a road, but also as an impediment which deters a large portion of the community from enjoying pleasure and advantage which would otherwise be open to them. How often have we seen that a turnpike gate, placed at the outlet of a town, checks and interferes with the recreation of the inhabitants, by preventing little excursions, which would otherwise be made for the sake of health or of enjoyment. Thus, while a very moderate gain results to the turnpike trust from the toll, a very great amount of privation is imposed upon the community. Then, again, it is found that the expense of collecting a turnpike toll is enormous in proportion to the net receipt. A local rate of £300 could in most cases be collected, at an expense not exceeding, at the utmost, one shilling in the pound, (or £15;) whereas, if that sum be collected from the public by means of a turnpike toll, it is probable that, at least, £100 will be absorbed in the mere expense of collection. Upon these and other grounds, the maintenance of roads by means of turnpike tolls ought to be avoided as much as possible, and the public roads of a district should be provided for by means of local rates applied

under the superintendence of "district councils" representing the rate payers. In those parts of Ireland in which the roads are maintained in the most perfect manner, turnpikes are unknown.

Whether railways ought to be constructed by the state or by private companies is a question which has been much discussed during the last twenty years, but which cannot be said to have been as yet fully solved. In England all the railways have been constructed by private companies. On the continent of Europe, on the contrary, many have been constructed and are maintained at the expense of the several states. In some instances the state assists the operations of private companies, or participates as a shareholder in the results of the enterprise. Probably longer experience with regard to the practical operation of these several systems is required to develop the relative advantages and disadvantages of each.

Judging upon general principles, I am inclined to think that the main lines of railroad in every country should be executed at the expense of the state, so that the public interest may not be sacrificed to the interest or caprices of private speculators. Private companies will always endeavor to extract — not to say extort — from the public the greatest possible amount of profit. The accommodation of the public is a matter which they regard only in so far as it is essential to the augmentation of their own gains. If a greater income can be obtained by the conveyance of 100,000 persons than by the conveyance of 150,000, they will form their arrangements in such a manner as to convey only the smaller number. If a charge of two pence per mile pays them better than a charge of one penny per mile, they will prefer the higher rate of charge. On the contrary, when railways are constructed at the expense of the state, the accommodation of the public is the principal object of the enterprise, and if the railway be properly managed, it will be the desire of those who represent the state to give to the public the greatest possible accommodation at the least possible rate of charge.

There are, of course, disadvantages incidental to every system. It is said that a private company is more economical in its original outlay, and in its permanent arrangements, than railway commissioners would be, in the disbursement of public money; and that, therefore, a private company can obtain a profit, where a public board would sustain a loss. I much doubt whether the experience of England justifies this asser-

tion. When we take into account the enormous sums which have been squandered in the competition of rival companies with each other, in parliamentary and legal expenses; when we take into account the extravagant prices paid for land, with a view to disarm opposition; and when we take into account all the other contingent expenses which fall upon a private company, but from which a public board would be exempt, we may doubt whether the railways of England have not cost much more under a system based upon private enterprise, than they would have cost if they had been constructed at the expense of the state.

Nor is it universally true that the management of affairs by a public board, acting on behalf of the state, is more costly than that of a private company, though it may be admitted that such is generally the case. It may be doubted, for instance, whether any private company could manage the affairs of the Post Office with greater efficiency and economy than has been displayed in the administration of that department.

I fully appreciate the force of an objection which may be urged, on constitutional grounds, against state management, namely, that it would augment to a most dangerous extent the patronage of the Government. Were the railways of England placed under the administration of a public board, it is almost certain that efforts would be made by successive Governments to render the distribution of situations connected with the railways subsidiary to their own party interests. This is a danger which forms almost an insuperable objection to any proposal for placing the permanent maintenance of railways under the management of a public board.

It has been said by competent witnessess that the railroads in Belgium, executed by the state, have been rendered subservient not only to the party interests of successive ministries, but even to the personal comfort of influential individuals; — that, with a view to provide places for the partisans of the Government, the railways have been encumbered with a greater number of officials than are necessary for their management, and that stations have been erected which have not been required by the public, merely to suit the convenience of other partisans. Whether such abuses exist or not in Belgium, is a point respecting which it is not necessary to raise any controversy; it is sufficient to admit that such abuses are almost necessarily incidental to the management of affairs of every kind by public boards. But we have to consider

whether this liability, checked as it is by the action of public opinion, is attended with so much evil as outweighs the advantages which result from a public administration of the affairs in question.

An alternative remains which has been adopted in some countries, and which well deserves consideration. It is, that all the permament works, connected with the construction and maintenance of a railway, should be executed at the expense of the state, and that, after their completion, the management of the locomotion and of the traffic should be consigned on lease (at a rent for a specified term of years) to private companies, who should be subjected to conditions calculated to protect the interest of the public.

In every country in which private enterprise is sluggish, or capital scarce, the state should either undertake the construction of railways, or should encourage their construction by loans to railway companies, at moderate interest, or by taking a certain proportion of the shares, in which last case, participation in the management ought to be reserved to trustees appointed to represent the interests of the public.

These observations apply to the construction of other works as well as of railroads. In Belgium not only railways, but also main lines of road and canals, have been constructed at the expense of the state; and though, perhaps, private capital might now be found available for the execution of some of these works, there is no doubt that Belgium would have been deprived, for many years, of the advantage which it has derived from them, if these undertakings had not been effected by the state. By adopting this system, Belgium was enabled to take precedence of the rest of Europe, in the construction of railroads. In Ireland several companies have been enabled, by means of public loans, borrowed from the state, to execute railways which could not have been accomplished, at the time of their completion, without such aid. In the United States of America, many great public works owe their construction to the assistance which has been rendered by the several states.

There are some public works which manifestly ought to be committed to the care and control of the public departments of the general Government, rather than to local bodies or to private companies. Among such works we may place fortifications, arsenals, naval yards and docks, palaces and national buildings, lighthouses, canals, railways, and main lines of road, executed wholly at the cost of the state.

It has been thought by some that the care of all the ports and harbors of a kingdom ought to be intrusted to a general public board, rather than that it should be confided, in each locality, to local bodies representing the commercial interests of the port. In this opinion I do not concur. I believe that those who are locally interested in a port or harbor will make arrangements for its maintenance, which will be both more efficient and more satisfactory than those which would be made by a general board. There is great reason to fear that if all the harbors of a maritime kingdom were placed under the control of a public board, immediately connected with the general Government, the rivalry of political interests would be brought into action, so as to give an undue preference to those localities which might be most subservient to the ministry of the day. Thus it would have been in the power of a central board to have obstructed the growth of Liverpool, with a view to favor the interests of Bristol. On the contrary, under a system of local administration, rivalry between competing ports produces results most advantageous to the public. That port will naturally be most acceptable, *cæteris paribus*, in which the greatest amount of accommodation is afforded to commerce, at the lowest rate of charge; and thus competition, instead of taking the form of secret intrigue or of parliamentary influence, brought to bear upon a government board with results injurious to one, if not to both, of the competing interests, becomes an honorable rivalry in the performance of a great public service.

We may here observe, that whenever a private company is authorized by the state to execute a public work, (by what is called, on the Continent, a "concession,") there should be reserved to the public a power of purchasing the work, at a reasonable price, after its execution. Thus, it may sometimes be expedient to permit a private party to construct a bridge on a public road, and to receive tolls therefrom, in compensation for the outlay, but in this case the authorities of the municipality, or of the state, ought to be authorized to take possession of the bridge, whenever it shall be for the interest of the public to make this change; due indemnification being afforded to the original speculators for their outlay. If such a power be reserved, either by a general statute or by a private act, the parties who undertook the work can have no right to complain of this resumption, inasmuch as they undertook it subject to this condition, with due notice.

We may here observe that, generally speaking, this mode of constructing public works is highly objectionable, because it subjects the public to the evils and inconveniences which result from a monopoly. If no adequate profit is to be expected from the construction of a public work, it is unreasonable that private individuals should be encouraged to lay out their money, for the public accommodation, in an unproductive undertaking. If a large return may be ultimately expected, it is equally unreasonable that the public should be subjected to the payment of a heavy tax, for the benefit of individuals. If the work be wholly in the nature of a private speculation, then of course those who expend their capital upon it ought to be at liberty to obtain from it whatever return they can procure, but in such case no exclusive privileges ought to be conceded in favor of the undertaking.

CHAPTER XXII.

ON SANITARY ARRANGEMENTS.

Arrangements calculated to promote the health of the community are obviously matters of municipal concern, subject to the superintendence of the Minister of the Interior.

This branch of social polity has been much neglected in the United Kingdom, though it is one upon which the comfort and enjoyment of the population depend, perhaps more than upon the possession of political rights. Whether from policy or from inclination, despotic governments often attend to such arrangements with greater zeal than is displayed by governments which represent the aristocracy or the middle class. The spirit of an aristocracy and a plutocracy is selfish and exclusive. Its government is conducted with a view to the interests of the wealthy and of the powerful, not with a view to the well-being of the poorer and feebler ranks of society. A despotic government, on the contrary, sometimes endeavors to reconcile the population which it rules to the absence of political liberty, by attending to their physical wants, and by making provision for their animal enjoyments. Recently, indeed, public attention has been called to the frightful condition of

the great towns in the United Kingdom, in regard of all those circumstances upon which the health of the community depends; and a cry for "sanitary reform" has become one of the watchwords of the hour. Fortunately it is one respecting which there can be but little party contest, though individual interests may come into collision with those of the public, and thus retard, for a time, the correction of evils which have been generated by want of foresight and of precaution.

In countries which have been for a long time inhabited by a numerous population, it is difficult to provide a remedy for the evils which result from crowding together masses of houses, without making arrangements for providing an adequate supply of wholesome water, for securing due enjoyment of light and air, for carrying away all impurities, by a good system of sewerage, for preventing the generation of pestilential vapors in graveyards, slaughter houses, and other receptacles of corrupting or fetid matter, for accomplishing other objects, such as the erection of baths and wash houses, calculated to promote the health of the poorer classes.

On the contrary, it is comparatively easy, in countries under process of colonization, to make provision for such objects, by requiring that when a town is about to be formed in any locality, such spaces shall be reserved, as may be necessary for the due construction of the streets, of reservoirs and fountains, of sewers, of cemeteries, of slaughter houses, of gas works, of public edifices, of public walks and gardens, &c.

It is obvious that, in order to carry into effect such arrangements, it is necessary that there should reside somewhere a directing and controlling power. If a town were to be formed to-morrow, under the operation of individual interest, or of individual caprice, it is probable that every one of the inconveniences which have been hitherto suffered in old cities, would be reproduced, through the absence of any systematic plan devised for the common accommodation of all.

In whom should the necessary powers be vested?

We answer this question, as we have answered other similar inquiries. A central board may be required to direct, suggest, superintend, assist, and in some instances control; but the details of practical administration ought to be left to the municipal bodies which act for the several local communities. Hitherto, such concerns have been surrendered too much to chance, or to private competition. In large towns, for instance,

several water companies undertake to do that which would be much better done by one general system of waterworks, formed with a view to the benefit of the public at large. Private companies interfere with, instead of assisting, the exertions of each other. In one point alone they agree. They are all desirous to get as much gain as possible from the public, with as little expense as possible to themselves. The establishment of public fountains, for instance, is an undertaking which would naturally be promoted by a municipal body chosen by the inhabitants of a town; but what private water company would ever voluntarily establish a public fountain, which should supply water gratuitously to the neighboring population? It is unnecessary to pursue this train of reasoning. It is sufficient to say that municipal bodies ought to be not only permitted, but encouraged, to make such arrangements as shall promote the health of the inhabitants of the district or town for which they act. To this end, they should not only be stimulated by the reports and suggestions of a central board of health, but should also be assisted by aid, afforded not always in the form of money, but also in that of professional skill, or of appliances which the more copious resources of the state can place at the command of a central board.

It may be doubtful, whether municipal bodies ought to undertake to provide lodging houses for the poor: but every encouragement should be afforded to societies or companies, formed for the purpose of supplying to the laboring classes comfortable residences, at a low weekly rent. Experience shows how much comfort — nay, more, how much splendor — can be enjoyed by the wealthier classes, through the means of small annual payments, contributed by a large number of individuals to the support of a club. The same principle of coöperation would secure to the working classes in towns cleanliness and comfort in regard of their rooms, of their meals, and of their other requirements, at a less charge than they now pay for the squalid tenements which they generally inhabit.

Without entering upon a formal discussion respecting the plans of socialists and communists, it may not be out of place to remark here, that while we reject, as neither feasible nor desirable, the fanciful schemes of these theorists, we may appreciate fully the advantages which arise from coöperation. A municipal body is itself a coöperative society — that is, it is enabled to give to the citizens, at a trifling cost, by means of

combined efforts, advantages which could be obtained by individuals acting separately, only by much greater sacrifices of time and money. A school is also a coöperative society. In a school, ten boys, nay, more, can be placed under the instruction of a single master, whereas, if the boys were taught separately, ten masters would be required to produce the same result. A similar observation applies to almost every institution that has been established by society.

The views of the communists and of the socialists are impracticable, not because they exaggerate the advantages of coöperation, but because they declare war against that fundamental instinct of man's nature, which impels him to act for himself — for his own individual advantage — for the gratification of his own individual selfishness, passion, or caprice. What avails it to me to know that my family could be maintained in a public boarding house at a cheaper rate than in a private residence; that they could be served upon silver instead of earthen ware; that they could be surrounded by gaudy and luxurious furniture, instead of the simplest conveniences? If I prefer the quiet seclusion of my own domestic circle to the pomp and splendor of a public establishment, it would be an act of grievous tyranny to compel me to abandon my cottage, for the purpose of being transferred to a palace.

But, in point of fact, this is not the alternative actually presented, for the palace exists only in imagination. It is assumed, that every one who enters the community will labor for the community with as much zeal as he would display in laboring for himself. This may be done to a partial extent, under the influence of religious devotion; but all the experience of mankind tends to prove that man will not work for another as he works for himself. If you attempt to contravene this law of nature, you retard instead of advancing social progress. Your scheme ends in failure and disappointment; a result which often discourages the benevolent from undertaking projects which might otherwise be attended with unquestionable advantage.

CHAPTER XXIII.

AMUSEMENT OF THE PEOPLE.

A BENEFICENT Government ought not to limit its efforts merely to the establishment of arrangements calculated to promote the health of the community; it ought also to do whatever lies in its power to provide suitable recreation for the people. Enjoyment of some kind — excitement of some kind — is indispensable to man; and those best deserve innocent enjoyment who give up the greater portion of their time to useful toil. Now, if rational and innocent pleasures are not rendered accessible to the working classes, they will naturally have recourse to those brutalizing excitements which are always within their reach. Many a laboring man spends his evening in a pot house only because no other circle in which he can enjoy social converse is open to him. Many a young man has attended a cock fight only because no more noble excitement has been presented to him. Had he been a citizen of ancient Athens, he would probably have spent his leisure hours in listening to the dramas of Euripides and Sophocles, or in taking part in those athletic exercises which developed and kept alive the manly prowess of the children of Greece.

It would be somewhat repugnant to the notions at present prevalent in the United Kingdom to contend that a state ought to encourage theatrical amusements. Yet the most rigorous Puritan must admit that it is the abuse, not the use, of dramatic representations that encourages vice. Would a dramatic representation of Bunyan's Pilgrim's Progress militate against the interests of religion or of morality? The stage might be so managed as to become a platform dedicated to the illustration and championship of virtue; and if supported or encouraged by the state, it would naturally conform to whatever direction, good as well as evil, might be imparted to it by the ruling power.

With regard to athletic exercises and games of skill, we have occasion to feel shame and regret when we contrast the feebleness and decrepitude of modern days with the vigor of antiquity. Horse racing and the manly amusement of fox hunting, which are the favorite excitements of the gentry of modern times, form but a poor substitute for the athletic exercises of Greece, or for the tournaments of the middle ages.

At one period in English history the practice of archery was not only an amusement, but a requirement exacted from every English peasant and yeoman. What manly exercise now forms part of the discipline of youth?

The governors of many of those states which call themselves free would be afraid to place arms in the hands of the population at large, or to encourage them to learn the use of implements of defence; otherwise, the rifle would now be, in the hands of an English peasant, what the bow was in former times. The hour will arrive when rulers, who have been accustomed to place their whole reliance upon standing armies, and to distrust the loyalty of their own population, will have reason to regret the decay of that self-relying spirit which they have labored to extinguish. I do not advocate the revival of pugilistic combats, though much may be said in favor of that "barbarous" amusement; but I cannot read Virgil's account of the games practised by the followers of Æneas, without feeling how immeasurably superior was the spirit which is breathed in the following lines —

> Hi proprium decus et partum indignantur honorem
> Ni teneant, vitamque volunt pro laude pacisci;
> Hos successus alit; possunt quia posse videntur —

to that emulation which now prompts the peasantry of England to catch soaped pigs by the tail, or to run in sacks — the rural sports of the nineteenth century.

In a well-governed community, not only should the population be encouraged to practise all sorts of gymnastic exercises, but also they should be trained to military evolutions, and to the use of arms. For such purposes days ought to be set apart, and prizes ought to be distributed by the municipal authorities. The acquisition of money has become the sole object of pursuit in modern days. Mammon now rules the civilized world with imperious sway. It should be the aim of the statesman to impart nobler emotions, more generous aspirations, than those which the love of gain can inspire.

There are some who affect to disapprove emulation in every form — whether in a boat race or in an academy. Yet, even such squeamish moralists may assist in providing recreation for the people. They cannot object to throw open to the multitude zoological collections, botanic gardens, museums of painting and sculpture, or to encourage attendance upon lectures directed to the advancement of literary and scientific knowl-

edge. It ought to be the pride, as it is the duty, of an enlightened Government to encourage all such pursuits, and there is no mode of encouraging them so legitimate, as that which calls into action the coöperation of the people themselves. Hence, the municipal representatives of the people should not only be empowered, but stimulated, to provide in each locality such arrangements as shall contribute in the highest attainable degree to the health, recreation, and intellectual improvement of the population. There is no village, however small, in which something might not be done to promote the enjoyment of the inhabitants. These things are in some countries left undone, merely because no organization has been formed for carrying such objects into effect. "What is every body's business is nobody's," says the proverb. It appears like intrusion on the part of an individual to do that for the public which the public neglects to do for itself; and if a benevolent or public-spirited individual hazards such an intrusion, some sinister motive will generally be imputed to him. Take the simplest instance that can be brought forward, in illustration of this observation. It generally happens that, in the vicinity of every village, there are spots of favorite resort, which attract by their beauty of scenery, or by some other charm. It naturally occurs to every one, that seats should be provided in such places for the accommodation of the public; yet seats are not provided. There is no public body authorized to make such arrangements, and each individual says to himself, "It is not my business. Why should I be called upon to expend my private funds for the accommodation of the public?" Or, if he be willing to incur the expense, he is deterred by the consideration that some unworthy motive will be attributed to him, in case he undertake to provide the desired accommodation. A thousand similar illustrations might be cited to exemplify our reasoning. Were political institutions organized with a view to promote the happiness of the people, much would be done that is now left undone; much would be left undone that is now done. To exact taxes which shall be squandered upon the parasites of Government, and to coerce those who offend against laws enacted for the maintenance of an artificial state of society, which is often repugnant to the requirements of nature, is too generally the principal, if not the sole object to which the whole energy of civil administration is directed. If taxes were levied with a view to promote the well-being and enjoyment of all classes of the community, they would be paid without

reluctance, and universal contentment would render superfluous many of the expensive appliances now employed for the restraint and coercion of a discontented population.

There is, perhaps, no country in Europe, in which so little has been done to promote the amusement of the people, as in the United Kingdom. Upon the Continent there are few towns of any considerable size, in which arrangements have not been made, either by the central Government or by the municipal authorities, to give to the inhabitants the pleasures afforded by public promenades and gardens, military music, theatres, museums of painting, sculpture, and natural history, &c. In the United Kingdom, on the contrary, even the public squares are, for the most part, reserved exclusively for the enjoyment of the privileged few, instead of being thrown open to the whole population; and access to the repositories of art — nay, even to the glorious old cathedrals which were erected during the time which we presumptuously designate as "the dark ages," can seldom be procured except by payment of a fee on admission. Yet we boast of modern refinement, civilization, progress, and philanthropy!

CHAPTER XXIV.

ON THE EDUCATION OF THE PEOPLE.

In a great empire, such as France, or Great Britain, it is desirable that there should be a "Minister of Public Instruction," specially charged with the superintendence of all educational affairs, in regard of which the intervention of the state is needed; but in small communities it is not advantageous to create a machinery more cumbrous or complex than the necessity of the case requires. We may, therefore, assign to the department of the Interior the superintendence of public instruction, as a branch of administration which naturally belongs to that department.

That the education of the people is one of the most important concerns which can affect the interests of society, is a proposition now universally admitted. Yet there is, perhaps, no question of social polity, respecting which so much contro-

versy exists, as respecting the means by which this object can be best attained. One class of reasoners contend that the intervention of the state is not needed at all; that the voluntary action of society itself is sufficient to develop the spirit and the agencies by which instruction may be secured to the community at large. On the other hand, another class of reasoners contend that the voluntary efforts of society are generally misdirected, and are always inadequate to produce the results which educational institutions ought to bear in view — that, therefore, the state is bound to provide for and superintend the education of the people. Between opinions so diametrically opposed to each other, it is impossible to suggest a middle course which shall be acceptable to either of these classes of reasoners. Yet we venture to think that such a middle course is most consistent with expediency. Upon this subject, as upon many other debated questions, we may hesitate to adopt any undeviating rule of policy. The educational arrangements of each country ought to be regulated according to the special requirements and peculiar tendencies of its population.

We cannot agree with those who think that the intervention of the state ought never to be applied to public instruction, because we find that just in proportion as ignorance prevails in a community, there will exist an indisposition to provide means by voluntary action for promoting education. We ought, therefore, to respect as benefactors of mankind, those sovereigns, and ministers, and popular bodies, and munificent individuals, who have founded schools, and colleges, and other seminaries, for the enlightenment of their fellow-countrymen; and we are led to conclude that the public revenues of a state can be applied to no object more legitimate than to public instruction.

On the other hand, it is not desirable that the operations of the state should wholly supersede the efforts of individuals. Least of all is it desirable that the state should interpose any constraint or impediment which can interfere with perfect liberty in regard of education. State institutions of every kind have a tendency to lose the spirit which infused life into them at their birth, and to become mere pieces of formal mechanism. When once the vivifying spirit is lost, it becomes the interest of all the office holders connected with them to consider them rather as appliances of patronage or of government in-

fluence, than as agencies ministering to the public good. The mind, even more than the limbs of man, requires perfect freedom for its operations and exercises. To formalize too much the education of a people, to subject education to restraints imposed by governmental administration, would be a tyranny more fatal to the development of genius and of the reasoning powers — more fatal to the progress of discovery, than even the hateful censure of the press, which is held in such just abhorrence by all lovers of freedom.

The state ought to guide, assist, and superintend education. The state ought to take measures for bringing within reach of every child in the community that sort of instruction which is best suited to its circumstances, and best calculated to promote its welfare and advancement in life; but these aims ought to be effected rather by developing the educational capacity inherent in each section of the community, than by constraining the mind of the country to assume a certain definite character through the instrumentality of centralized institutions.* The arguments which have been urged against excessive centralization in regard to the general functions of government, apply also to education. The arguments which we have brought forward in favor of local self-government, apply also to educational training. Self-reliance is a quality without which vigor of character cannot exist in nations or in individuals; and the habit of leaning too much upon governmental agency tends utterly to destroy a spirit of self-reliance. To construct a system founded on these principles is no easy task; but the statesman ought not to shrink from an endeavor to bring sound principles into practical operation.

* This is almost precisely the position taken by Catholics in this country and in Canada, in opposition to "the State" as a teacher. We hold that a good government ought to be the patron of schools, but not the author of systems; and we do not despair of the final triumph of the freedom of education throughout the United States. — M.

CHAPTER XXV.

ON RELIGIOUS INSTRUCTION.

EDUCATION is twofold, religious and secular.* Let us consider, separately, each of these departments of instruction.

If the conduct of men, in this world, depend upon their religious convictions — if their happiness in another, throughout all eternity, depend upon the opinions which they have entertained, and the actions which they have performed while on earth, then it would seem to follow that religious education is immeasurably the most important function in the whole circle of social requirements. Hence the preëminence which has, in every country, and under every form of religious observance, been assigned to the clergy. Hence the claim which the clergy of every persuasion advance to the support of the state, for the exclusive propagation of what they consider to be religious truth. Now, if it were possible to secure uniformity of opinion amongst mankind, and if it were certain that the teaching of a particular creed would make men better citizens than they become under a more latitudinarian liberty, it might be conceded, as an inevitable deduction, that the state

* It seems doubtful whether any branch of human learning, not strictly rudimental, can be taught without influencing faith and morals in some way. For example, Geology involves the authenticity of the Mosaic account of the creation and deluge; the English astronomers are at present engaged in a learned discussion on whether the planets are inhabited; Physiology begins with the question of the unity or variety of the types of mankind; History without a moral purpose is but the old almanac Lord Plunkett called it; Chemistry is made to counterfeit the very elements of our being; Metaphysics must be the handmaid or the deadly enemy of divinity. How, then, can there be education in these sciences, apart from ethical effects on the student's mind? We cannot conceive it. The sounder view would seem to be that so wonderfully illustrated by Dr. Newman, in his "Discourses on the Scope and Nature of University Education," where he shows that all science is related to theology, and can only be harmoniously and wholly learned by the light from heaven she bears wherever she appears. "If there be religious truth at all," argues Dr. Newman, "we cannot shut our eyes to it without prejudice to truth of every kind — physical, metaphysical, historical, and moral." Again, he asks a question the age dare not answer in the affirmative, nor the Catholic in the negative; he asks, "If this science, (theology,) even as human reason may attain to it, has such claims on the regard, and enters so variously into the objects, of the professor of universal knowledge, how can any Catholic imagine that it is possible to cultivate philosophy and science with due attention to their ultimate end, which is truth, if that system of revealed facts and principles which constitutes the Catholic faith, which goes so far beyond nature, and which he knows to be most true, be omitted from among the subjects of their teaching?" — M.

ought to encourage, nay, ought to permit the propagation of none but the true doctrine. Hierarchies, lay as well as clerical, influenced by these considerations, have frequently endeavored to secure uniformity of faith. This attempt was made by the polytheist government of Rome. It has been made by the several Catholic Governments, and also by the Protestant Governments of Europe. What has been the result? Persecution has, in some instances, as in the Low Countries, and in Germany, led to successful resistance. In other countries, as in Spain and Italy, an apparent uniformity of faith has been produced, but the measures taken have only produced a hypocritical conformity to the established religion, whilst they have checked, in some cases extinguished, the development of all that is truly great and noble in the character of man. Ferdinand, by expelling the Moors from Spain, lost his most industrious and accomplished subjects.* Louis

* Our author's historical views in this chapter are those of the prevailing English school, and are demonstrably fallacious. The true causes of the material decay of Spain, as developed by a patriotic and sagacious Spaniard, we have given before. (See *ante*, page 52.) The mines of Mexico, the oppression of the Netherlands, and the sudden centralization of "the Spains," have each had much more effect on the fortunes of that once great power than the expulsion of the Jews and Moors. The Spanish Inquisition was undoubtedly established to counteract real national dangers, and in accordance with the will of the Spanish people. On the soil were three nations — Jews, Moors, and Spaniards. The Jews undoubtedly formed a vast secret society, and this, with their great wealth, gave them immense power. Outwardly conforming to Christianity, they cherished their Judaism the more fondly that it was forbidden, and resorted to any and every disguise to defeat the intentions both of the church and state of Spain. They taxed themselves to remunerate the assassins of St. Peter Arbues; some of their number entered sacrilegiously into the priesthood; one such Judaizing Christian even attained to the see of Toledo, the highest ecclesiastical honor in the kingdom. The Moors were a conquered but unsubdued race, with whom the nation had been at war for eight hundred years. The bitterness of such a struggle is not easily forgotten. "When the Moors retained their religion," says Balmes, "they inspired hatred; when they abjured it, distrust." I am not defending the cruel outrages on the Moors and Jews, whether inquisitorial or popular, which stain the most glorious pages of Spanish history, but showing that there was some, if not sufficient ground for the conviction of Charles V., that there never could be peace in the peninsula until they were expelled. Rome interposed for them more than once, but the exigencies of policy stifled the mild suggestions of religion in this as in many another instance. Under Philip II., the Inquisition was turned against the Protestant propaganda of that time, whose zeal went so far as to lead them to smuggle their publications into the country headed up in casks of champagne and Burgundy. On the general subject of toleration, Montesquieu has laid down the leading principle that if a state has hitherto enjoyed a *unity* in religion, the sovereign ought to resist and punish the introduction of new religions, on their first appearance, as causes of division and danger to the state. With this clew in one's hand, we can walk through history securely, from the age of Augustus Cæsar until the present. It will not justify "the polytheist

XIV., in banishing Protestants from France, deprived that country of myriads of its most skilful artisans. The attempts made by Protestant England to extinguish Catholicity in Ireland, impoverished and degraded that kingdom, without achieving the desired end. Every where we find that efforts to secure uniformity of religious profession either have failed, or if they have partially succeeded after a frightful sacrifice of life, they have produced evils greater than any that are found to arise from unfettered liberty of discussion and from undisguised difference of opinion.

Neither is it an incontestable proposition that the professors of one particular creed are found to be more virtuous men, or better citizens, than those who profess other religious doctrines. It is said, by many of those who are best acquainted with the East, that the Hindoo and the Mahometan population of Asia are, in almost all respects, more virtuous and more moral than the Christian population of Europe; and we have no reason to conclude, from European experience, that the Quaker or the Baptist is a less virtuous citizen than the adherent of the Church of Rome or of the Church of England. The introduction of Christianity amongst aboriginal tribes and uncivilized nations, has generally been productive of vice and degradation amongst them, rather than of moral or social improvement.* It would, perhaps, be unfair to attribute this

government of Rome," nor the Protestant powers, whose very creed was private judgment. It will only justify the true faith, which, like its divine Founder, must be one, and cannot be contradictory. We repeat, we do not think the attempts of the Spanish sovereigns, well or ill advised, to preserve unity of faith in Spain, are the causes of her material decline; we find those causes elsewhere. Nor do we think that the Spaniards of the last three centuries are generally chargeable with "a hypocritical conformity to the established religion." In regard to Italy, we have to consider that Italy was begotten by pagan Rome, and was the imperial heart at which the Gothic spear was always aimed. Her Lombardy, her Venice, her Norman dynasty in the south, her long Germanic subjection, are amply sufficient to account for her present powerless condition, without charging it upon the "established religion." — M.

* We must again warn the reader against receiving the author's *ipse dixit* on these matters. Is Christianity to be charged with the guilt of the modern commercial spirit, which explores the ends of the earth only to plunder their inhabitants? Were the Saxons, the Danes, the Longobards indoctrinated by Christianity in "vice and degradation"? Did Christianity introduce "vice and degradation" among the North American Indians, or the aborigines of Paraguay? Or is it to be held accountable for the anti-Christian crimes of Spanish gold hunters or British economists, trading and oppressing in its name? The author should either have omitted this passage altogether, or have distinguished, with his habitual care, that there is a true and a false Christianity in the modern world; he ought to have distinguished between genuine missionary zeal and fraudulent mercantile pretences; be-

result to the teachings of Christian missionaries, but the fact that almost every indigenous population has degenerated after an intercourse has taken place between them and intruders, who are called civilized and Christian men, is one which has been established by the evidence of so many impartial travellers, that it can scarcely be contested.

Seeing, therefore, that it is impossible to secure uniformity of opinion, with regard to religious questions amongst men — seeing that the attempt to procure such uniformity necessarily leads to innumerable evils — seeing that it is evidently the intention of the Deity that differences should exist respecting matters of faith *— seeing that, if uniformity could be secured, there is no reason to believe that men would be better, or more virtuous, as members of society, than they now are — seeing that liberty of thought is the indefeasible right of every human being, — we are compelled to arrive at the conclusion, that the state ought not to undertake the propagation of religious opinions, as a national obligation, but that arrangements made by the state, respecting ecclesiastical affairs, should be founded upon considerations of expediency, and should keep in view the just claims of every section of the community, rather than the ascendency of any particular sect.

It is needless to inquire whether the ministrations of a priesthood are conducive to the happiness and welfare of mankind, because experience proves that, whatever may be the convictions of the philosopher upon this point, the great bulk of mankind, in all countries, and in all ages, have relied upon religious teachers as guides, who point out the way to future salvation. A sense of religious obligation, whatever modification it may assume, is as much an innate quality of man's nature as is the parent's love of its offspring, or the affection of a child for its parent. This sentiment naturally seeks the priest as the agent who shall direct and satisfy it. The religious inquirer, who exclaims, "What shall I do to be saved?"

tween the authority of the "Annals of the Propagation of the Faith," and the blue books on the Sandwich Islands and New Zealand. — M.

* To a Catholic Christian, the very reverse of this is "evidently the intention of the Deity." To us it is matter of faith that God our Father has made his church one in doctrine and in practice. Unity, with us, is an essential mark of the divine origin of our religion, and therefore the whole of the author's reasoning predicated on this assumption goes for nought with Catholics. Bossuet said it all in his "Variations:" Truth is one, and does not change; but Protestantism changes; therefore it is not the truth. (I quote from memory.) — M.

as naturally sends for the clergyman, as the patient who suffers under disease sends for the doctor. Though it cannot be denied that both doctors and clergymen often infuse more rancorous diseases than those which they profess to cure, yet it may be admitted, even by those who are most sceptical respecting the efficacy of their intervention, that their ministrations are, upon the whole, useful to mankind.* But were it otherwise — were the clergyman to be considered as an agent of evil rather than of good — (and such is the judgment which the clergy of adverse creeds, for the most part, form respecting each other) — still, this agent is one of the most influential members of society; and the statesman has to determine in what manner he shall be treated. To persecute him is a course as unavailing as it is wicked. You cannot banish the priest. This attempt has been tried in the case of the Jews; it has been tried in the case of the Catholics; it has been tried in the case of the Protestants; it has been tried in the case of various other religious denominations. Wherever a vestige of a sect remains, there will be found a priest. Clearly, then, it is for the interest of society that this functionary, so powerful, so indispensable, should stand in the light, rather than that he should lurk in darkness — that he should be rendered the friend of the state, rather than its enemy — that he should be made the patron of social order and of social harmony, rather than that he should be led to contemplate the subversion of existing institutions, as the means of advancing his own interests and those of the congregation with which he is connected. These considerations are equally applicable, whether the priest be a Jew, a Mahometan, a Hindoo, a Roman Catholic, or a Protestant. Equal liberty of conscience is the common right of all; and not only equal toleration, but also equality of civil condition.† It is not consistent with jus-

* This passage is unworthy of the author; it sounds more like an echo of Voltaire or Gibbon than the sincere conviction of a Christian gentleman. — M.

† On the general principle of toleration, see the authority of Montesquieu, *ante*, page 239. The whole of this passage, as we said, is predicated on an assumption we cannot receive, that "it is *evidently* the *intention* of the Deity that differences should exist respecting matters of faith." We are friends, not of toleration, but of freedom of conscience, so far as that freedom does not conflict with the rights of others; but we are so on quite different grounds from the latitudinarian liberalism of the author. We regard religious error with profound pity; we consider it its own worst punishment; we have unbounded faith in the power of charity; we have little or none in human coercion; we know how liable all the race of Adam are to err; we can despair of no man's conversion while he lives; these and

tice to tax the Hindoo for the support of the Mahometan religion, unless you are prepared to tax the Mahometan for the support of the religion of the Hindoo. Civil government is established, not to secure felicity in the next world for those by whom it is established, but to enable them to enjoy peace and prosperity while upon earth. Man is responsible for his religious opinions, not to his fellow-man, but to his Creator. If he violate a social duty, society may punish him for the breach of that duty; but the religious enthusiast has no right to presume that the doctrines which he repudiates will necessarily lead to a breach of social duty, and on this ground to prohibit their utterance.

From the foregoing considerations it follows, as a necessary deduction, that governments ought either to abstain altogether from interfering with religious instruction, or ought so to frame their arrangements as that no cause of just complaint shall be created, by giving advantages to one or more religious communities, to the prejudice or exclusion of the remaining sections of the population. The statesman has, therefore, to determine whether a government ought to make provision for the support of the teachers of the several religious communities which compose the population of a country, or whether it should leave them to be maintained by the voluntary contributions of their respective congregations.

Whenever all, or nearly all, the inhabitants of a territory profess the same faith, it seems to be natural and desirable that the ministers of that faith should be endowed by the state. In such case, none of the jealousies which arise between contending sects exist. On the other hand, in a community which is much divided in regard of religious opinion, it is simply a question of convenience whether it is more expedient that the clergy should depend upon voluntary contribution than upon a permanent provision for their support. Though this is a question which admits of much controversy, and upon which I speak with much hesitation, yet, upon the whole, I am inclined to think that it is more advantageous that the clergy should be supported by a settled endowment, than that they should be dependent upon the voluntary contributions of their flocks.

Religious teachers ought not to be placed in circumstances

such like considerations make us the disciples of the milder doctors, who condemned all violence, as foreign to the spirit of the gospel of peace, reconciliation, and mercy. — M.

which tempt them, from interested motives, unduly to stimulate the passions of the people or to humor their caprices. The minds of the clergy ought to be kept as free as possible from worldly cares, which are generated by poverty, as well as by excess of wealth. The sacred office ought not to be degraded by placing its ministers under the necessity of resorting to expedients for obtaining a livelihood, from which men of refined minds naturally shrink. The function of the priest ought to be an object of ambition to the son of the nobleman, as well as to the son of the peasant. This will not be the case, if the clergy are subjected to the degradation of an indirect mendicancy. But the consideration, which, of all others, is most conclusive in favor of a settled provision for the clergy, is, that where no such provision exists the services of the pastor are withheld where they are most needed. In wealthy communities voluntary contribution will generally produce funds more than sufficient to provide for the religious teaching of such communities; but a population which is very poor, or thinly scattered over the surface of the soil, is often left wholly unprovided with spiritual instruction, in those countries in which no established provision is made for the support of a clergy.*

When I speak of a settled provision for the clergy, I mean an endowment granted or secured by the state on terms which do not compromise the independence of the clergy. Great as may be the evils which result from too servile a dependence of the clergy upon their congregations, the evils which result from a servile dependency upon ministers of state are infinitely greater. By politicians, the interests of religion are for the most part wholly overlooked. The interests of party and personal aggrandizement are the cherished objects of their aim. If the clergy be dependent upon them, fawning sycophancy, a talent for intrigue, a skilful use of the weapons of political gladiatorship — not learning, not piety, not spiritual zeal, not active benevolence, will be the qualities which will recommend the clerical aspirant for promotion.

Neither ought the civil government to undertake the settlement of questions of religious controversy. A Christian government may, with propriety, assign to the priesthood of its Jewish subjects incomes derived from revenues to which

* These and the succeeding pages being simply suggestive or statistical, it is not necessary to trouble the reader with any further notes on this chapter. — M.

Jews equally with Christians contribute; but what could be more ridiculous than to see a Christian legislature undertaking to settle questions of religious doctrine or discipline for a Jewish community! Equally ridiculous is it to see a Parliament composed, in part at least, of Unitarians, Dissenters, and Roman Catholics, legislating for the internal management of the Church of England, or of the Church of Scotland.

It may be laid down as a general rule, that the civil magistrate ought in no case to interfere with the religious dogmas or discipline of any particular sect.

If no provision be made by the state for the clergy, then such dogmas and discipline will depend wholly upon *opinion* — the legitimate basis of religious responsibility. The experience of the Roman Catholic Church in Ireland, which during the last three centuries has been maintained exclusively by the force of opinion, effectually demonstrates that the intervention of secular authority is not necessary to enforce and uphold religious teaching. Nowhere has conscientious conviction been compelled to struggle with circumstances more adverse, with external hostility more menacing, or with corrupting influences more insidious; yet nowhere has there existed so firm an attachment to the spiritual supremacy of Rome. In case an endowment be provided by the state for the ministers of religion, it is perhaps impossible to eliminate altogether the intervention of secular authority in regard of ecclesiastical affairs. Questions will arise, for instance, respecting the appointment of clergymen to cures, in regard of which it may be not always easy to decide which of two competitors has been duly nominated; but the circle of such controversies may be very much narrowed by a resolute application of the principle of non-interference on the part of the state with the internal organization of each religious community.

One of the objections which may be urged against a state provision for the clergy is, the probability that all the arrangements made by the state will be thrown into confusion by the unexpected occurrence of a complete change of opinion on religious subjects amongst the members of the endowed church. When, at the time of the Reformation, a large portion of the population of Europe became Protestant, endowments which had been provided by the state for teaching Roman Catholic doctrines were naturally applied to the propagation of the doctrines of the Reformation, as soon as the people, for

whose use the endowments had been granted, had become Protestant. If the people of England were to return to the Roman Catholic Church, it surely would be quite reasonable that the revenues now belonging to the Church of England should be transferred to the Church of Rome. They would thus be appropriated to the religious requirements of the community, though the doctrines taught by the clergy would no longer be the same. These are not imaginary contingencies. A remarkable illustration of the suggested difficulty occurred a few years since in the Church of Scotland, when the secession of the Free Kirk from the Established Presbyterian Church of Scotland took place. A difference of opinion arose among the Presbyterians as to a question of discipline. Instead of leaving the question to be settled by the Scotch Church itself, Parliament (a body consisting almost entirely of persons who had no connection whatsoever with either Scotland or with Presbyterianism) interfered, and determined that the temporalities of the Church should belong to that section of the clergy only which resisted the proposals of those who sought to establish a change in the mode of appointing the minister to the charge of the parish. Thus, that portion of the clergy and laity who deemed it of essential importance to the interests of religion that the change which they recommended should be adopted, were left no alternative, except either to secede, or to acquiesce in a system which they had declared to be detrimental to the interests of religion. About four hundred of the clergy, including some of the best and ablest ministers of the Scotch Church, resigned their livings, in a noble spirit of disinterestedness and self-devotion, and threw themselves upon their congregations for a precarious support.

It is not impossible that the recent discussions in the Church of England, in regard to what has been called the Gorham controversy, may eventuate in a similar result. Upon the subject of baptismal regeneration, and other similar questions, the opinions of one section of the clergy and of the laity, who profess the articles of the Church of England, are directly at variance with those of another section, who subscribe to the same fundamental articles. If Parliament, or the courts of law, should undertake to interpret the articles of the Church of England in a sense favorable to either of these views, and insist upon conformity to such a decision, the adherents of the opposite opinion would necessarily be

driven into a secession. In the case of the Scotch Church, about one third of the laity supported the seceding clergy; and it is not easy to say on which side numbers would preponderate in England in the event of a rupture.

What, under such contingencies as these, ought to be the policy of the state, in a country in which the clergy are maintained by a national endowment?

It is manifest that, upon the principles which we have laid down, it would not be just that the seceding portion of the Church should be excluded from all participation in temporalities which have been dedicated to the common use of the whole community. The endowments of the Church of England are a property which belongs, not to that portion of the English Protestants which agrees in opinion with the Bishop of Exeter, or the Archbishop of Canterbury, but to all who subscribe the articles of the Church of England, or, rather, to speak more accurately, to the nation at large. It would, therefore, be an act of monstrous injustice, in the event of a compulsory secession, to throw upon the seceders the burden of maintaining their own clergy, and to give to five millions of people, for their exclusive use, endowments which had been previously designed and applied by the state for the religious teaching of ten millions. There can be no doubt that the occurrence of such contingencies as these forms a very strong argument against a state provision for the clergy, inasmuch as they necessarily lead to complaints of injustice and spoliation. But if other arguments be held still to preponderate in favor of a state provision for the clergy, the difficulties which arise from secession or dissent ought to be fairly met by equitable adjustment. The legislature of a country ought to do all in its power to prevent such a rupture as we have contemplated; we should, perhaps, rather say, that it ought to abstain altogether from intermeddling with controversial questions. But when a rupture finally takes place, it ought to deal with both of the contending parties as equally entitled to respect for their conscientious convictions, and equally entitled to the favor of the state. In the case of the Scotch Church, for instance, Parliament ought to have avoided the precipitate legislation which occasioned the secession; and if the secession was inevitable, it ought to have applied the endowments of the Scotch Church in equitable proportion for the maintenance of the secession clergy, as well as of the clergy of the Established Church.

The most remarkable instance of a violation of the principles of justice in regard of ecclesiastical arrangements, that is to be found in the annals of mankind, is presented by the position of the Church of England in Ireland. About one tenth only of the population of Ireland profess adherence to the Established Church; yet not only has the ecclesiastical property of Ireland (great part of which consists of endowments originally granted for Catholic purposes) been exclusively appropriated to the use of the clergy of the Established Church, but, till a very recent period, the population have been subjected to a most irritating species of taxation for the support of the Protestant Church, whilst the Roman Catholic clergy have been excluded from participation in the revenues raised for ecclesiastical purposes in Ireland. By recent legislation, the mode of levying this taxation has been rendered less oppressive than it was formerly, and its amount has been somewhat diminished; but in principle its application is as unjust now as ever it was. The ecclesiastical revenues of Ireland are a national property, which belongs to the whole people. By the injustice which usually attends usurpation, they have been appropriated for the benefit of only one tenth of the population. Incessant discontent has naturally been engendered by this injustice; and to this cause may, in part at least, be attributed much of the ill-will which has been habitually felt by the Catholics of Ireland towards the British Government. Justice manifestly requires that if only one religious persuasion is to be maintained in Ireland as an established Church, that established Church should consist of the Roman Catholic clergy, since the preponderating majority of the Irish people profess the religion of Rome. But if the principles which we have set forth in our preceding remarks be well founded, social justice requires that Government should either make provision for the ministers of all religious persuasions, or of none, in Ireland, as well as elsewhere.

In Belgium — in which country ninety-nine out of every hundred of the population profess to belong to the Roman Catholic Church — the clergy are maintained chiefly by an annual allowance paid out of the general revenues of the state; and although the number of those who dissent from the national religion is so small as to be almost insignificant, still, allowances are granted by the state to several Protestant clergymen, and also in aid of the religious ministrations of the Jews.

Wherever there exist, among the population, many varieties

of religious creeds, it is so extremely difficult to adjust, in a satisfactory manner, the claims of each religious community, so impossible to reconcile their conflicting opinions, that the statesman may feel himself compelled to adopt the alternative which, under other circumstances, he would have shunned — of leaving to each community the support of its own ministers by voluntary contribution. Such has been the principle adopted by the statesmen of the United States of America, and it appears to have been attended there with many beneficial results. It is said that greater harmony prevails in America, among rival sects, than elsewhere, and this blessed result has been attributed to the circumstance, that no jealousy is created on account of advantages accorded by the state to one sect, in preference to another.* It is manifest that wherever such a preference exists, discontent must naturally coexist. If one third of the people of England were Roman Catholics, one third Presbyterians, and one third Episcopalian Protestants, what would be the feeling of the remaining two thirds, in case a state endowment were provided for the religious teachers of one of these sects alone; say for the Roman Catholics? It is unnecessary to suggest an answer to this question, as every one must perceive that nothing could be expected except implacable jealousies towards the favored sect, and permanent disaffection towards the Government which was guilty of this injustice.

In favor of "the voluntary system," it may be urged, that during the times which immediately followed the appearance of Christ and of his apostles, the Christian ministers were maintained by the contributions of the faithful, and that it was not until the time of Constantine that endowments were provided by the state. It may also be urged, that though there had arisen, previous to the age of Constantine, many differences of opinion amongst Christians, yet it was not until after the clergy had been endowed by the state that the various sects began to persecute each other. In truth, many of those contentions, which are attributed to zeal for religion, are but the conflicts of avarice between those who are desirous to obtain

* This paragraph was written before the Knownothing party had arisen in America. The proceedings of that faction have not only been carried on in violation of the spirit and letter of the Constitution of the United States, which proclaims universal toleration, and the civil equality of all sects, but they have also tended greatly to discredit the republican institutions of America, in the minds of many who were disposed to regard them with admiration.

and those who are desirous to keep possession of the emoluments which have been assigned to the ministers of religion. This passion cannot, by any contrivance, be extinguished altogether. Even under the voluntary system it forces itself into operation, because the incomes of each class of the clergy are augmented in proportion as they can make converts from rival Churches; but at least all cause of complaint against the Government is removed, when the clergy of the various religious persuasions are treated alike, and when none are made the objects of state endowment.

It must also be admitted, that the dependence of the clergy upon the voluntary contributions of their flocks for their support, tends to generate a greater degree of mutual confidence and affection, and also greater zeal in exertion, than are to be found where the clergy are provided with incomes by the state. To a selfish, worldly-minded clergyman, maintained by a rich endowment, it is a matter of indifference whether he is loved or disliked by his parishioners, and whether his congregation is numerous or scanty. The less of intercourse and sympathy between him and them, the less will be the demands upon his purse and upon his time. Not so with the minister who is dependent upon his congregation. His personal interests as a man, not less than his spiritual influence as a pastor, are impaired if he do not possess their love and respect.

The practical statesman must determine the question, whether it is expedient to make a state provision for the clergy of all persuasions, or for none, according to the peculiar circumstances of each country. If the community at large be much divided in opinion upon religious subjects, as is the case in America, it is, perhaps, better at once to abandon all attempts, on the part of the state, to make just and satisfactory arrangements for the maintenance of the clergy. The inconvenience arising from an unsuccessful attempt to make such arrangements will be greater than the evils, if any, which arise from the voluntary system. But assuming that the circumstances of a country permit the statesman to carry into effect his desire to make provision for the clergy of different persuasions, an ulterior question arises as to the most equitable and most politic mode of giving effect to this desire. Let us take the case of a newly-colonized country, such as Australia, in which the principle that the clergy of various persuasions should be maintained by the state has been recognized. In New South Wales, in Victoria, and in Van Diemen's Land, the Roman

Catholic clergy, and the Presbyterian clergy, as well as the clergy of the Church of England, receive stipends payable out of the public revenues. In South Australia, on the other hand, the voluntary system has hitherto prevailed, and no provision has been made on the part of the state for any class of the clergy. Let us suppose that, in this rising colony, the legislature may hereafter feel desirous to provide settled incomes for the clergy, instead of allowing them to depend upon the uncertain support derivable from voluntary contributions. How can such an arrangement be made in the most just and satisfactory manner?

In the first place, it is obviously necessary that the relative numbers of the respective congregations should be ascertained. Whenever, therefore, a census of the population is taken, each individual ought to be called upon to say under what religious denomination he desires that he and his family should be classed. Let us assume, that a population of 100,000 souls is composed of persons belonging to different religious denominations, in the following proportions, viz.: — Church of England, 20,000; Presbyterians, 20,000; Church of Rome, 20,000; Unitarians, 20,000; Wesleyans, 20,000. The revenue out of which the clergy are to be paid, whether it arise from land or from taxation, belongs as much to the Wesleyan as to the member of the Church of England, to the Unitarian as much as to the Presbyterian. The provision for the clergy of each denomination ought, therefore, to be alloted as nearly as possible on terms of perfect equality. Let us assume that £25,000 per annum is an amount adequate to provide salaries for the several ministers. In such case, each religious community would be entitled to receive £5000 per annum, as the contribution offered by the state in aid of its religious ministrations. With respect to the subdivision of these appropriations some difficulty might occasionally arise, particularly in the case of internal contentions within the congregations themselves; but the distribution of the Regium Donum in Ireland, which is allocated to the clergy of several different denominations of Presbyterians and Arians, appears to offer an example which proves that this difficulty is not so great as might have been anticipated. All favoritism on the part of the Government should be sedulously avoided. All complications arising from theological controversy ought also to be carefully avoided. The ordinary affairs of every religious community are regulated by some organized authority. That authority, whatever

it may be, should be called upon to submit a scheme to the legislature for the distribution in detail of the amount appropriated to the religious denomination for which such authority acts. If the scheme proposed appear to meet the wishes of the denomination at large, Government ought to be authorized, by special enactment, to make distribution of the amount allocated to the clergy of such religious denomination, in accordance with the scheme proposed.

Changes in internal management — changes in the relative numbers of the congregations — will, in the natural course of events, occur, which will require corresponding changes in the appropriation and distribution of the funds applicable to the religious services of the population at large. In the course of half a century, the relative proportions of the different religious sects to the whole population may possibly be altogether inverted. To meet such changes, the law under which payments are to be made to the clergy ought to undergo periodical revision. It is not desirable that such revision should occur too frequently; because its frequent recurrence would tend to unsettle the minds and plans of those concerned in ecclesiastical arrangements, and because matters connected with religion can seldom be brought under discussion in a popular assembly, without giving occasion to angry disputes. On these grounds, it is desirable that such periodical revision should not take place more frequently than once in ten years. Assuming that a census of the population is made at decennial intervals, it would be convenient that the periodical revision of the Ecclesiastical Appropriation Act should take place during the year immediately following that in which the census is taken. It would thus be competent for the legislature to make any new arrangement which might be required by the circumstances which had taken place in the interval that had occurred since the last decennial appropriation.

It may be asked whether a state provision should be made for the clergy in a country in which a considerable proportion of the people repudiate such a provision for their ministers. Referring again to the case of South Australia, let us assume that, in addition to the sects already enumerated, there are 20,000 Independents, who reject all endowment by the state for their clergy. In this case, it can scarcely be contended that it would be a violation of justice to make provision for the ministers of the remaining sects out of the public revenue. Justice only requires that equal advantages shall be offered to

each religious community. The Independents are entitled to demand participation in the funds allocated to religious purposes; but, if they voluntarily repudiate any such participation, they are not entitled to thwart the general policy of the state, or to contravene the wishes of the rest of the community, by withholding endowment from the ministers of those sections of the population, by whom such an arrangement is preferred. The Quaker, who refuses to fight, has no right to expect that the rest of the community shall allow their country to be overrun by an enemy, nor has he any reason to complain if his property is taxed for the common defence of all. The circumstance that some persons of scrupulous minds entertain a conscientious objection to pay taxes, or to contribute in any form for the propagation of doctrines which they hold to be erroneous or idolatrous, is, however, a strong argument in favor of the voluntary system; and where such opinions prevail extensively throughout the community, it is, perhaps, better to abstain from doing violence to them, than to insist upon the establishment of a state provision for the clergy.

Assuming that it is desirable to make provision, by way of state endowment, for the ministrations of religion, a further question arises. Ought such endowment to be a complete and adequate provision, or ought it to be given merely as an aid?

It would appear to be expedient that the respective congregations should be stimulated to make contributions for religious purposes; but, if adequate provision be made for such purposes by the state, the motives which impel to individual sacrifice and individual exertion will be greatly weakened, if not extinguished. On the other hand, if the aid granted by the state be made conditional upon, and proportionate to, the amount raised by voluntary snbscriptions, it will follow, as a necessary result, that the assistance of the state will be supplied in greatest profusion where it is least needed, whilst it will be scantily afforded, or altogether withheld, where it is most required. If, for instance, the Government be authorized to grant £300 towards the building of a church, with an endowment of £100 per annum for the clergyman, wherever an equal amount shall have been subscribed by the congregation, a rich community would provide, without difficulty, the requisite contribution, whereas, on the contrary, a population consisting of the laboring classes, thinly scattered over the face of a large district, might find it impossible to raise the

requisite amount. This difficulty undoubtedly forms a serious objection to the principle of a joint contribution on the part of the state and of the congregation; yet still, upon the whole, many advantages are connected with this mode of arranging the intervention of the state in regard of religious endowments. It seems well calculated to maintain a healthy state of religious feeling in the community; exempt, on the one hand, from apathy and indifference — on the other, from the excesses of fanaticism. In the case supposed, something may be left to the zeal of the wealthier congregations, who are generally disposed to come to the aid of their poorer brethren. In any case, the principle of affording, on the part of the state, a contribution equal to that raised by the congregation will secure religious ministrations, perhaps as efficient, though not so pretentious, as those which are more richly endowed. The praise offered to Heaven in a log hut is as acceptable to the Creator as that chanted in a gorgeous cathedral; and the pastor who is "passing rich on forty pounds a year" will often be more loved and cherished by his congregation, and will thereby become a more influential guide, than the richly-endowed incumbent of a wealthy parish. No one, however, who regards the public interest, or the dignity of the clerical profession, would wish, in establishing a scale of allowances for ecclesiastical purposes, to frame such allowances on a standard inadequate to provide due compensation for the service performed.

Another question presents itself in connection with this subject — Ought the provision for the clergy to be derived from land, or from pecuniary grant?

We must here again repeat, that it is essential that the clergy should be independent of the executive Government. Then, provided that this independence be strictly maintained, the payment of allowances in money appears to be preferable to an endowment in land. If a property in land or houses be allotted to the clergyman of each parish, its value will vary from time to time, and sometimes that variation will be directly inverse to the changes which take place in the spiritual requirements of the congregation: that is, the congregation sometimes diminishes, whilst the property increases in value; or the property diminishes in value, whilst the congregation increases. Neither is it desirable that the clergy should be involved in the cares and contentions which are connected with the management of landed property. The possession of

a house, with a few acres attached to it, is an accommodation which may with advantage be provided for the religious teachers of the people, as also the site and precincts of churches and cemeteries; but to any other description of "clergy reserves" there are multiplied objections. These objections have been recently illustrated, in a remarkable manner, in the history of Canadian colonization.

The levy of tithe is a most obnoxious mode of securing incomes to the clergy. It brings the clergyman into perpetual collision with the individual members of his flock, in a manner calculated greatly to weaken his influence, and to counteract the benefit arising from his religious ministrations. A clergyman ought to present himself to the members of his congregation, not as a tax gatherer, but as a guide sent by Heaven to lead them to eternal felicity. If they find that this pastor is himself absorbed in worldly cares, — more especially if they find him eager for the acquisition of money, — he will attempt in vain to wean them from devotion to the concerns of this transitory world; he will in vain direct their contemplation to a future state of existence. If he point to higher realms, he must himself lead the way. They will follow his example rather than his precepts. When tithes are levied "in kind," this collision of pecuniary interests is carried into every field. Each sheaf gives occasion for an irritating dispute. The substitution, therefore, of a rent charge by way of composition for tithe is undoubtedly a great social improvement; but in whatever form the tax may be collected, it is odious, and generates ill will there where affection and confidence ought to prevail in the highest possible degree. Hence, it is desirable that when ecclesiastical revenues are derived from tithe, the tithe or tithe composition should be collected by some public board, and be paid to the clergy in graduated allowances, rather than that each individual clergyman should be appointed as tax gatherer over his own parishioners.

In all our reasoning with respect to endowments for the clergy, we assume that private individuals ought to be permitted to devote their property to religious, as freely as to secular, purposes. What restrictions may be necessary in regard to the disposal of property, is a question which deserves careful discussion. From those restrictions benefactions for religious purposes ought not to be exempt. Perhaps they ought even to be guarded with extraordinary precautions, as in the "Statutes of Mortmain," because men are

often most disposed to make concessions to the sanctuary, at the expense of natural heirs, at the moment when their minds are in a state of imbecility or of dismay. But wholly to prohibit the application of funds, amassed by private individuals, to religious endowments, would be to rob the mind of man of its noblest impulses, and to rob the community of its most honorable possessions.

Wherever property is subjected to legal settlement there will occasionally arise strife and litigation respecting its appropriation. This is an inconvenience from which, in regard to the ministrations of religion, society can escape only by rendering the clergy dependent upon funds provided from day to day. No church can be built, no permanent provision can be made for the minister, by either state endowment or by voluntary contribution, without incurring the hazard of litigation. This inconvenience, therefore, must be tolerated under any system of religious endowment that can be devised; but the plan of which we have here considered the outlines appears to be comparatively free from incitements to polemical strife or to litigious controversy. The principle upon which it is based has been adopted by the British Government in the Australian colonies, and it has also been tested with advantage in other countries.

I ought, perhaps, to abstain from attempting to present suggestions for the internal organization of an ecclesiastical system. The government of each religious community depends upon influences which lie beyond the control of the statesman. It would be as reasonable to expect an assimilation of all the leaves of the forest to each other as to hope for an assimilation of the opinions of mankind, or to hope that a symmetrical structure could be raised for religious worship in which men of different opinions would be contented to offer their adoration to the Deity. Nevertheless, as a member of the Church of England, I may be permitted to say that there are many abuses in that Church, which ought to be corrected without delay, and that the organization of our ecclesiastical system might be improved by changes which would not only obviate such abuses, but establish also between the clergy and the laity, and between the different ranks of the clergy, greater confidence and mutual attachment than now subsist.

It seems almost unnecessary to say a word in condemnation of simony, of non-residence, of pluralities, and of sinecures. Yet these abuses have been, at various times, defended by

speakers and writers who have professed themselves to be friends of religion and of the Church. But there are many other questions connected with the arrangement of an ecclesiastical system respecting which it is not so easy to pronounce a decided verdict.

Though strong objections may be urged against a direct election of the clergyman by his congregation, yet, assuredly, it is desirable that the pastor should be acceptable to his flock; and that a mere hireling, who cares for nothing but the temporal emoluments of his cure, should not be thrust upon an unwilling congregation. The congregation should, therefore, be authorized either to present to the patron the names of such clergymen as would be acceptable to them, or else should be empowered to exercise a *veto* upon the nomination made by the patron. An arrangement similar, though not perhaps identical, with that which prevails in the Free Kirk of Scotland, would possibly be as exempt from objection as any that could be devised.

It is also desirable that bishops should not be appointed by ministers of state, as has often been the case, upon considerations wholly irrelevant to their capacity for advantageously superintending the spiritual concerns of a diocese. Objections may be urged against every system of nomination that has yet been adopted by Episcopalian Christians; but, perhaps, none have been so open to objection as that which has prevailed in the Church of England. It cannot, indeed, be denied that many pious and learned men have been raised to the episcopal bench; but learning, and piety, and administrative ability have not been the qualifications which have recommended them to this sacred function. A great majority of the English bishops have owed their appointment to their support of the dominant political faction of the day; or to the accidental circumstance that they have been brought into friendly relations with ministers of the Crown. Now, it seems reasonable that the superintendence of ecclesiastical affairs should be intrusted to persons who possess the confidence of the clergy, and of the congregations over whom they preside, rather than that of the ruling politician of the hour. In the earliest and purest days of Christianity the people had a voice in the election of their bishops, and it would, perhaps, be desirable that this practice should be, to a certain extent, reëstablished. To a body of lay elders, acting concurrently with the clergy of the diocese for which a bishop is to be

nominated, might be assigned the privilege of presenting the names of a certain number of qualified clergymen, whose appointment would be acceptable to the diocese at large, out of which list a selection might be made by the head of the Church. In the Irish branch of the Roman Catholic Church, when a vacancy occurs in the office of bishop, the clergy of the vacant diocese meet and nominate three ecclesiastics (in the gradation of *dignus*, *dignior*, *dignissimus*) whom they deem best suited to fill the situation with advantage and satisfaction to both the clergy and laity of the diocese. These names are subsequently presented to the Pope, and he very rarely disregards the recommendation so submitted to him. This method of appointment is found to obviate those discontents which naturally arise when a stranger is intruded upon a community to whom he is not acceptable.

Whether it is desirable that the affairs of the Church of England should be regulated by Convocation, or by Parliament, is a question which opens a large number of topics for discussion. Upon theoretical principles it seems quite right and natural that the legislature should make regulations respecting every thing that is connected with the secular affairs of an ecclesiastical establishment which is upheld or endowed by the state; but, on the other hand, it appears to be in the highest degree absurd that a body of laymen, many of whom dissent from the doctrines of the Church of England, or are identified as representatives with dissenting interests of different kinds, should undertake to determine questions that are connected with the doctrine or internal discipline of a Church which they disown and repudiate. Reason, therefore, would seem to suggest that all questions of doctrine or discipline should be reserved for discussion by a Convocation, in which the Church should be represented through its legitimate authorities, to the exclusion of all dissent. The Church of Rome does not discourage the occasional meeting of provincial synods, and, in cases of extreme necessity, has convened general councils, although, under its peculiar form of hierarchy, there permanently subsists a supreme authority — consultative, legislative, and directory — which is adapted to provide for every exigency that can arise. The Presbyterian Church of Scotland possesses, in "the General Assembly," an organization well adapted for deliberation respecting the interests of the Presbyterian Church, and which exercises a sort of supreme authority over that religious community. Why

should the Church of England be deprived of the guardianship which the British constitution has provided for it, through the instrumentality of an institution, now almost obsolete, which is called "the Convocation"? To this demand it is difficult to offer a satisfactory denial. Yet, practically speaking, it may be doubted whether it would be advantageous for the Church itself that Convocation should be annually assembled. Ecclesiastical disputants delight in controversy. They love to raise difficulties respecting points which are in their own nature obscure, insignificant, or indifferent. If such controversies were debated in Convocation, subtle differences upon such points would be frequently raised, which would probably eventuate in schism. Considering the vivacity and acerbity of the disputes which have recently taken place respecting baptismal regeneration, it is highly probable that if Convocation had been called upon to determine this question authoritatively, a secession would have taken place, and the Church of England would, at this moment, be rent in twain upon a point which is now held to be an open question. Under apprehension of such collisions practical statesmen, and indeed the public at large, have shown little disposition to encourage a revival of the meetings of Convocation. Yet occasions arise, particularly in the Colonies, (where ecclesiastical organization is still very imperfect,) which indicate a want of some supreme deliberative body fitted for regulation of the affairs of the Church of England. It is now generally admitted that such a body ought to comprise lay communicants as well as ecclesiastics. It is felt to be essential to the maintenance of a cordial coöperation between the minister and his congregation, that administrative assistance and support should be afforded by the devout portion of the laity in regulating the affairs of the Church. Many of those, however, who feel the need of such coöperation in regard of administrative concerns, are yet of opinion that the laity should be altogether shut out from the discussion of fundamental points of doctrine. Indeed, the introduction of such topics, as a matter of argument, in a deliberative assembly, whether composed of laymen or of ecclesiastics, is always attended with danger. It ought to be presupposed, in the formation of each religious community, that the doctrines of such community have been already digested into a system, and that those who do not acquiesce in that system should secede from the communion rather than disturb its internal peace. Enough has been said to prove.

that it is no easy task to frame a satisfactory organization which shall meet the requirements of the Church without engendering schism; but I still think that the attempt ought to be made, and that it should be founded upon the principle of representation — a representation which shall include the laity as well as the clergy. The details of such an organization must depend upon the local circumstances of the country, and of the community for which it is to be provided.

CHAPTER XXVI.

ON SECULAR EDUCATION.

THE difficulties which belong to the adjustment of a system of secular instruction, though great, are not so insuperable as those which are connected with religious education. Here we have to determine, first — what is the object to be attained, and next — by what means that object may be accomplished.

A Government cannot do every thing. Some objects, desirable in themselves, lie beyond the domain, some beyond the reach, of governmental agency. Such are the manners and the habits, such the genius and character, of a people. Nations are like children. Their dispositions, abilities, and tastes vary; and the statesman has no more reason than the parent to hope that he can implant tendencies adverse to nature. He can only do what a judicious parent does. He can place within reach of the people the means of education, and excite them, by the stimulants of emulation and of duty, by honor and reward, to avail themselves of the opportunities afforded to them.

I shall not condescend to argue with the advocates of national ignorance — with those who contend that nations, when ignorant, are more happy, and more easily governed, than when enlightened. I have no principles of reasoning in common with him who cannot appreciate the pleasures and advantages of knowledge. I can only ask him whether he is desirous that his own son should be ignorant of every thing that does not fall under the observation of his senses; and that his senses should be so stupefied by brutal ignorance as

to be incapable of appreciating the glories of nature, and the triumphs of art, by which he is surrounded. If he answer in the negative, I infer that he denies education to the people at large, not because he is insensible to its value, but because, in a spirit of selfishness, he desires to retain the ascendency of his personal position, or of his class, by the degradation of his equals and subordinates.

I assume, then, that it is desirable that each individual in the community should enjoy opportunities of obtaining that sort of education which is best suited to his calling in life — that is, which shall give him the greatest possible command over the powers granted to him by nature, as also over the social resources and intellectual enjoyments which lie within his reach. Such is the proper aim of secular education. The aim of religious instruction is, to render him a virtuous member of society, to teach him his duty to his God and to his neighbor. It is unquestionably certain that mere intellectual cultivation does not necessarily render men virtuous; but its tendencies are favorable to virtue, and it augments in a high degree their capacity for enjoying and using the many benefits accorded by the Creator to mankind. Moral and religious training ought, therefore, to be combined with intellectual culture, but not to supersede it.

By what instrumentality can a suitable education be placed within the reach of every child in the community?

To this question experience answers without hesitation, that the mere voluntary action of society itself will not provide such opportunities, and that, therefore, either the community must consent to forego the advantages of a complete system of education, or must invite the assistance of those who are intrusted with the duties of legislation and government. It will scarcely be denied that, of modern nations, England stands amongst the foremost in regard of wealth and intelligence. If, therefore, an adequate system of educational appliances could be provided by the spontaneous and voluntary action of the community, it might be supposed that the educational arrangements of England would, after the lapse of many centuries, have attained as high a degree of perfection as the voluntary system admits. Much, undoubtedly, has been done by the munificence of individuals and of associations. Innumerable foundations have been endowed as colleges, scholarships, grammar schools, &c., by private benefactors; and the religious zeal of almost all modern sects has specially directed

its efforts to the extension of education. Yet no enlightened Englishman will maintain, that previously to the intervention of Government in aid of education, the community at large possessed sufficient opportunities of acquiring suitable instruction. Not to know how to read and to write is a disgrace even to the humblest member of society. Yet how large a portion of the people of England could neither read nor write in the year 1830! A large proportion of the population of England, and a commensurate share of its wealth, were dependent upon agriculture, yet scarcely an institution was to be found in the whole of England in which agriculture was taught as a science. Means of instruction in the art of design, and in the mechanical arts, were almost equally rare. If it were necessary to pursue this train of reasoning, it could be shown that in regard of almost every branch of knowledge, the progress of youth was a matter of accident, depending entirely upon individual energy, instead of being facilitated by those opportunities of advancement, which are provided where educational institutions adequate to the wants of the community exist. Scotland, on the other hand, had been redeemed from ignorance and barbarism by an established system of parochial education, and by the possession of five universities. Hence, although the educational arrangements of that country were far from perfect, yet in every quarter of the world the Scotchman was found to be more successful than his competitors — a success mainly attributable to the superior opportunities of instruction which he had enjoyed in his youth.

In the United States, and in Germany, the education of the people has been made one of the primary cares of Government during the last half century; and the beneficial results of such intervention may be traced throughout the whole social system of those communities in which it has been applied with the greatest energy and judgment.*

Assuming, then, that it is necessary that the state should aid and promote the education of the people, it becomes a task almost as difficult as it is important to determine in what manner this intervention can be most advantageously applied.

Where differences of opinion in regard of religion exist,

* It may, we think, fairly be doubted if the common school system of this country has augmented the national virtue, though it will require some years to demonstrate its full effects in this respect. The youth of the present day are the first common school generation, and they are still to be tested by experience. — M.

this difficulty is greatly increased by the rival claims and contending jealousies of the clergy of different persuasions. The high-priest, whatever be his creed, considers that education ought to be placed exclusively under the control of the clergy. If he be a fanatic, he further maintains that no doctrines should be taught in any seminary throughout the land, except such as accord with his own convictions. These arrogant pretensions are obviously untenable in a mixed community; but they give rise to perpetual conflict in a region where peace and good will are peculiarly to be desired.

Applying to secular education the principles which we have maintained with regard to religious instruction, we shall be prepared to contend that the state is not bound, as in performance of a public duty, to propagate the doctrines of any particular creed. But though the state ought, in a mixed community, to be wholly neutral in regard of religious teaching, it does not follow that it ought to discountenance the influences of religion. Except where such influences are so much misapplied as to become noxious to social welfare, or dangerous to social order, it ought to encourage, rather than to discountenance, religious observances. The state owes to the Jew or the Mahometan citizen the same obligations which it owes to the Christian, in regard of education. The child of the Jew should, equally with the child of the Christian, be furnished with opportunities of acquiring instruction in the different branches of knowledge, without interference with his religious tenets. As the state is not bound to encourage the reception, by such child, of the doctrines believed by his father, so it lies under no obligation to discourage or discountenance these doctrines. A conscientious parent, whether he be a Jew, a Mahometan, a Protestant, or a Roman Catholic, thinks that his child would purchase at too dear a rate the advantages of the best kind of secular education, if he were compelled to forego that religious training, which each deems to be essential to his well-being in this world, and to his salvation in the next world. To such a parent, every facility should be afforded for performing his religious duty towards his child. Whatever be the nature of the seminary in which the child is placed, opportunities ought to be afforded to him of being instructed in the religious tenets professed by those who are the natural guardians of his temporal and spiritual welfare. It is only when educational institutions are founded upon this principle, that they can claim the support of the

community at large. If attempts, open or concealed, be made to obstruct the reception, by the pupils, of religious doctrines, from their natural instructors, it is not to be expected that the clergy of the discountenanced persuasions, or those who are earnest in their religious convictions, will abstain from denouncing such efforts.

What is called "mixed or united education," that is, a system under which children belonging to different religious persuasions are brought together for the purposes of instruction, appears, when conducted according to these principles of mutual toleration, to be preferable to the system under which children are separated, during the period of their education, unless they belong to the same religious community. A state of society in which the Catholic, the Protestant, the Unitarian, and the Jew associate on terms of friendly and familiar intercourse, is surely happier than that in which the members of different sects frown defiance at each other when they meet, and employ energies, which ought to be given to the service of God and man, in bickerings that engender mutual hate. The more men of adverse opinions associate with each other, the more tolerant do they become. They find in each other much to be loved and admired, though they cannot all think alike upon religious questions. It may be doubted whether uniformity of opinion is to be desired. It may be doubted whether such uniformity is consistent with the structure of the human faculties, but it is beyond doubt that this uniformity has never yet been attained. Unless, therefore, it can be shown that it is not desirable that social intercourse of any kind should take place between persons who profess different religious creeds, there seems to be no sufficient ground for separating the children of such persons from each other during their infancy or youth. There are indeed some classes of seminaries, in which it is difficult, perhaps impossible, to carry on mixed education. For instance, there is the very common case of a clergyman of the Church of England, who takes pupils into his family circle, with a view to their education. It is not to be expected that a Roman Catholic or Jewish parent should send his son to be educated at such a school, because it is obvious that whilst, on the one hand, a boy would, under such circumstances, be deprived of opportunities of instruction in his own religious faith, he would, on the other, be continually imbibing doctrines of a different tendency, through the religious ministrations of which he is a witness. But in

the case of day schools, and in the case of universities, no such difficulties exist. The child of a Christian might derive secular instruction from the teachings of a Jew, without incurring any hazard to his religious opinions. He could learn from the Jew reading, writing, mathematics, the physical sciences, languages, and all the different branches of professional education, except divinity, with just as much safety as if he were taught by a professor of the same creed as that which he believes. He attends school or lectures for a certain number of hours daily, and at all other times he lives under the eye of his parents, or of some appointed guardian, whose duty it is to take care that his religious education shall not be neglected.

Such are the principles upon which, in my opinion, a system of national education ought to be founded. But, however honestly the neutrality of the state may be observed, there will always exist, amongst those who are peculiarly zealous about religion, a class of persons who will not be satisfied that their children should associate with, still less that they should receive instruction from, those who profess a different faith. Is the state bound to disregard, or shall it respect, these prejudices? Shall it abstain from all efforts to secure to the children of such persons the advantage of education?

To these questions we may answer, in the first place, that as in regard of religion, so in regard of education, no attempt should be made to coerce the conscience of man. Although abundance of argument may be advanced to prove that the state is justified in taking charge of all children who are to be its future citizens, yet every one instinctively feels that the parent is the natural guardian of his child, and that any attempt to substitute the care or authority of the state for the care and authority of the parent would be productive of consequences far more disastrous than those which result from misdirected education. Educational freedom ought to be maintained with the same jealous watchfulness which guarantees religious freedom. All idea of coercion, then, being abandoned, shall the children of those who honestly and conscientiously prefer "separate" to "united" education be wholly deprived of the advantage of assistance on the part of the state?

In answering this inquiry, it is not necessary to discuss the question, whether, in equity, a family which prefers separate education is, or is not, equally entitled with one which upholds united education to share in advantages attainable by means

of national resources, to which both equally contribute. If our previous reasoning be correct, this right cannot be justly contested. But it is enough to know, that it is more expedient that the children of such families should obtain a good education, than that their education should be neglected or perverted. On this ground, if upon no other, the state ought to offer assistance in aid of separate education. Applying these principles to practice, I conceive that in a parish in which there are Dissenters, Episcopalian Protestants, or Roman Catholics, a school should be established, which shall be open to the children of all religious persuasions. Whatever resources are available from local funds, and whatever assistance may be bestowed by the state, will, in most cases, be applied more beneficially, as well as more economically, if dedicated to the support of one good school, rather than if frittered away among several schools. In large towns, it may be possible to maintain, on the separate system, several excellent schools simultaneously for the several religious communities; but in country parishes it frequently happens, that the funds available for education would, if consolidated, secure the establishment of one good school, but would be quite insufficient to maintain, in a satisfactory manner, two, three, or more separate schools. Yet, should the circumstances of the parish be such, that a common school cannot be established by the consent of all for the purposes of united education, it is better that the assistance of the state should be divided amongst the several schools established by different religious communities, than that it should be withheld altogether, or that an invidious ascendency should be created by giving it exclusively for the benefit of one religious community.

These observations apply equally to University education. We may prefer a university which is open to all classes; but where zealots establish universities for the exclusive use of the members of their own communion, the state, instead of treating these universities as hostile establishments, ought rather to render such assistance as can be offered and accepted with advantage to the general cause of education.

Another difficulty connected with the intervention of the state in regard of educational institutions, is the tendency which exists on the part of all Governments to make such intervention subservient to party and political aims, rather than to the purposes of instruction. A network of educational influences, covering the whole community, is a most formida-

ble agency for enchaining the spirit of a people, if it be placed under the sole control of a central power, whether political or religious. If there were one or more schools in every parish, the teachers of which were appointed and liable to removal by the Government — if the teachers of academies intermediate between the elementary school and the university — and if the professors of the universities were subject to similar appointment and removal, it is certain that the Government, whatever might be its character, would make use of such influences to sustain its own power, or to propagate the opinions with which it might be desirous to imbue the community. Such an organization, if placed under the control of an astute and ambitious minister, might, even under a popular form of government, be rendered instrumental in overthrowing the liberties of the people. The amount of patronage thus placed at the command of the minister would become a means of corrupting those (and they form a large portion of every community) who set more value upon the attainment of a lucrative situation, than upon the enjoyment of political freedom. The hope of promotion, and the fear of removal, would operate upon the teachers so appointed, and render them subservient agents of the minister, and prepare them to carry forward his designs, however fatal they might be to the liberties of their country. When an educational organization is placed exclusively under the control of the clergy, it is naturally directed to the advancement of clerical aims ; * when it is placed exclusively under the control of the political leader of the day, it is as naturally applied to the advancement of his political views. In both cases, the education of the people becomes a secondary consideration. Hence, it is necessary, in framing arrangements through which the state shall promote the education of the people, carefully to guard against the undue predominance of such influences as those which we apprehend.

Here again we are compelled to fall back upon the principle of local self-government, as a protection against the dangers which arise from centralized agency. It is not necessary that any inflexible arrangements should be considered as essential to the organization of an educational system, provided that the evils which have been pointed out be carefully shunned, but

* By "clerical aims," the author, we suppose, implies the interests of the sects; but those who believe in a divinely-constituted church and priesthood can have no apprehension that the clergy will take too personal an interest in the education of youth. — M.

we may profitably consider the outline of such an organization as appears well suited to promote the instruction of the people, in the manner most advantageous to themselves and to the community at large.

Assuming, then, that the legislature and government are disposed to coöperate in the great work of national education, it is manifestly desirable that a central Board of Commissioners should be appointed to superintend the application of whatever assistance may be afforded by the state to the educational institutions of the country. Of this Board, the Minister of Public Instruction is the natural president. Such a Board should consist of eminent men, selected without regard to party considerations, and connected with the various religious denominations which compose the community at large. It may be doubtful whether these Commissioners ought to receive any salary, but I am inclined to think, where the duties are very onerous, at least *three* should receive compensation for their services.

In a large kingdom there ought to be a responsible Minister of Public Instruction, who should be eligible to sit in the legislature. It does not appear desirable that such a minister should be liable to removal upon every change of Government. He ought rather to be kept as much as possible out of the circle of partisan association. In the administration of the public departments in England, there are many offices in which a change of officials does not necessarily attend every change of ministry. The office of Minister of Education is preëminently one which ought to be exempted from the passionate agitations of party or faction.

In immediate connection with this Board, there ought to be normal schools and model schools. The training of teachers is one of the most important of the functions that can be performed through the instrumentality of a national system of education. In order to carry on such training in an effective manner, it is necessary that a model elementary school should be at hand. The art of teaching cannot be learned by mere theoretical study. The teacher must descend into the school room. There he instructs himself by teaching others. In a model school the most approved methods of instruction are practised. Each teacher, therefore, has an opportunity, which he might not otherwise be able to procure, of learning his profession under the most advantageous circumstances. To young men of good character, every facility of obtaining admission

into the normal school ought to be afforded, without reference to religious distinctions. At stated periods there ought to be public examinations, at which certificates or diplomas should be awarded to those who shall have proved themselves competent to undertake the duties and functions of a public teacher.

It would, perhaps, be unnecessary, as well as impolitic, to exclude from the office of teacher all except those who shall have studied in the normal schools of the state. Without the imposition of any such condition, those in whom the appointment of teachers rests would naturally select persons who had been trained in such normal schools, but none ought to be appointed to the charge of schools upheld by the state, except masters whose qualifications shall have been tested by a public examination, as well as by certificates of good character.

Among the duties which belong to a Board of Education, the preparation and supply of suitable books and school requisites is not the least important. It cannot safely be assumed in regard of intellectual efforts, that wherever there is a demand there will always be a supply. Until within a very recent period, there was a very great deficiency of books adapted for the elementary education of youth. There has, indeed, been much improvement of late in this respect, but it may be traced in great measure to the efforts made by educational boards or associations, not to the spontaneous operation of the principle of supply and demand. In encountering a public enemy, the war department of a state encourages the manufacture and employment of weapons of the most effective kind. Surely in a war against ignorance, there ought to be at least equal zeal applied to the discovery and employment of new and more powerful inventions.

Another duty which naturally belongs to a Board of Education is that of exercising a vigilant superintendence over all educational institutions which derive aid from the state. It will have been seen from what we have already said, that we advocate the maintenance of independence in the local management of educational institutions. But it is manifestly reasonable that means should be adopted for guaranteeing the proper application of whatever aid may be contributed by the state to the purposes of public instruction. Now, in order to secure this object, it is absolutely necessary that there should be an arrangement for securing constant and vigilant inspection. All schools assisted by the state ought to be periodically

visited by competent inspectors. These inspectors should either be appointed by the Board of Education, or if they be otherwise nominated, their nomination should be sanctioned by the Board. Upon each visit, they ought to make a report, which report should be submitted both to the local managers and to the central Board of Education. Public schools ought also to be open to the inspection of all persons who may desire to visit them — it being, of course, understood that visitors shall not be allowed to disturb the maintenance of order in such schools.

A question here naturally presents itself — What shall be the remedy applied by the Board, in case it find that the objects of the institution are perverted through neglect or misconduct in the local management? Those who love centralization meet all such difficulties by investing the central authority with power to appoint and remove the officers of every institution which is aided by the state. We, on the contrary, should rely upon the good sense and good feeling of local managers, believing that the risk of abuse is greater when all administrative power is vested in the central Government, than when it is shared by local managers. In the great majority of cases, the local managers would pay immediate attention to the observations made by the inspector in his report. If there were an abuse arising from dishonesty or incompetence on the part of the teacher, they would naturally desire to apply a remedy as soon as such abuses were pointed out, inasmuch as those whom they represent would be the sufferers from such abuses. In some cases it might happen that their judgment would differ from that of the Government inspector; and it ought not always to be assumed that the Government official is more capable of forming a sound judgment than the local administrators. Should the local managers, however, persevere in upholding, from sinister motives, a palpable abuse, the remedy that ought to be applied in the first instance is, to withhold the aid, whether in money or in its equivalents, which would otherwise be given. If the connection between the local institution and the central Board be of a temporary character, a cessation of such connection may ensue in case the local managers should continue obstinate in the maintenance of what is deemed by the central Board to be an abuse, and consequently a perversion of the public aid. If the connection be of a permanent character — as, for example, in those cases in which large endowments have been provided

by the state — the difficulty becomes more complicated. Let us assume, for instance, that a seminary has been founded chiefly through the instrumentality of a grant from the state, and that the local trustees or managers persevere in maintaining in office teachers who are so incompetent or wrongheaded that the public withdraws all confidence from the establishment, until at length the teacher is left in possession of a mere sinecure. This has been a case of not uncommon occurrence in the endowed grammar schools of England. On such occasions some remedy ought to be provided; but we may still doubt whether powers of removal ought to be vested in the Board of Education. We have reason to fear the substitution of one system of jobbing for another. We incline rather to think that cases of this kind ought to be made the subject of judicial or visitatorial investigation. The Board of Education ought to be authorized to call for such investigation by some summary process, and the tribunal of appeal, whatever it might be, ought to be empowered to make such changes in the local management as will restore the efficiency of the institution. If such a power of correction exist, the cases will be very rare in which it will be necessary to enforce it. The local managers would naturally prefer to conform to the wishes of the Board, rather than incur the chances of an investigation, which would reflect disgrace upon themselves, and probably lead to their dismissal.

It is not easy to set forth, in a publication which treats of abstract principles, rather than of the application of those principles to particular communities, all the details of an educational system. These details must vary according to the circumstances of each community; but we may enumerate the following institutions as those which are indispensably required in the educational training of every nation:—

Infant Schools.
Elementary Schools.
Academical Institutions.
Universities.
Professional Seminaries.
Museums of Art and Science.
Literary and Scientific Institutions.

In some countries it may happen, that establishments such as those here enumerated will have been founded and maintained by voluntary impulse, or from sentiments of religious

duty. But in general it will be found that, without the intervention of the state, the requirements of the community in regard of education will not be fully satisfied: a local organization ought, therefore, to be framed, which shall coöperate with the National Board of Education in securing opportunities of instruction to all the youth of the community. Such an organization ought to be of a municipal character. It ought to originate from, and to be dependent upon, those who are called upon locally to contribute the funds which are necessary for upholding these educational institutions.

We have already seen that every section, whether rural or urban, of each country, ought to be placed under the management of a local municipal body. For the smallest territorial division, namely, that which we have called "sub-district" or "ward," (commune, township, parish,) we have supposed that a committee has been nominated by the rate payers to manage the affairs of such sub-district. "District councils" and "county boards" will, in like manner, regulate the affairs of the larger districts, and of the counties. Bodies thus constituted would, in many cases, be found at first very little capable of forming a sound judgment respecting the best methods of educational training. They, therefore, could not be safely trusted with unaided direction of public instruction; but when assisted and guided by a central Board, such as we have described, the natural intelligence and the local knowledge of these homely administrators of affairs would promote the object in view perhaps more efficiently than the most highly-endowed deputies of a non-resident authority. By degrees, experience would mature the competency of the local administrators, and men would be found in each locality who would take a pride in qualifying themselves for the task of educational superintendence.

We have thus arrived at the conclusion that there ought to be in every locality elementary schools (including infant schools, open to the children of persons belonging to all classes, and to all religious persuasions; that if religion be taught in these schools, the attendance upon such religious teaching ought to be entirely optional; that where voluntary effort is found to be inadequate to secure education for the people, the municipal bodies which act for each locality ought to be empowered to establish schools by means of local rates, and of other funds at their disposal; that these municipal bodies

ought to superintend the administration of such schools; that the state ought also to contribute towards the support of them, with a view to secure to the utmost extent their efficiency.

Many questions arise with reference to the details of an educational organization, the solution of which would give rise to much interesting discussion. For instance, it may be asked, "In whom ought the appointment and removal of teachers to be vested?" "What ought to be the matter of instruction taught in elementary schools?" "Ought industrial training, as well as literary teaching, to form a part of the tuition?" "Ought military exercises to be practised by the scholars?" "Ought girls to be taught in the same schools with boys?" &c.

It would require an elaborate treatise to discuss, in a satisfactory manner, these and many other questions of a similar kind. We are, therefore, compelled to limit ourselves to the consideration of a few fundamental principles, which may serve to govern the opinions which we shall form with regard to these details.

Ascending from the elementary or primary school to the higher grades of instruction, we shall have no hesitation in concluding, upon the principles already established, that there ought to be in each "district" an academy or college, in which those whose condition in life, abilities, and inclinations enable them to cultivate the higher branches of literature and of science, may have opportunities of acquiring such superior instruction. The municipal council of the "district" ought to be empowered to found establishments of this class, wherever the institutions already existing are not sufficient to meet the requirements of the community.

Universities are manifestly a class of institutions which belong to the whole of a country rather than to any particular locality, and ought, therefore, to be founded by the state. Greater latitude and independence should be left to those intrusted with their management, than can safely be allowed in the case of inferior seminaries. A university, by its nature and constitution, congregates together a considerable number of men of the highest intellectual endowments. It is not right to degrade such men, by minute interference with their plans of education; and it is perhaps desirable that there should not be entire uniformity in the systems of instruction adopted at all the universities of a kingdom. It is an advantage rather than an evil, that different universities should acquire special re-

nown for their attainments in different departments of knowledge. Still, a power of visitation should be reserved to some competent authority, and if state assistance be rendered, it is to be expected that full reports should be made periodically, respecting the application of the funds granted, and respecting the progress of the university.

From these general considerations, we infer that the government of a university ought to be intrusted to a *senatus academicus*, composed of its professors. Inasmuch as it is manifestly for the interest of the general body of the professors that the character of the university should stand as high as possible, it is better that the nomination to vacant professorships should be intrusted to the *senatus academicus* rather than to the Minister of Public Instruction. If this power of nomination be vested in any minister of state, it is probable that it will be used with a view to political purposes, rather than to educational aims. It is desirable, however, that the candidates for professorships should be required to give some evidence, by public examination or otherwise, of their competency, and if this practice be adopted, the appointment might be vested in a mixed Board of Examiners, in which Board both the university and the state might be severally represented. Another mode of eliminating corrupt influence, and of securing efficiency in the appointment of professors, would be, to vest the nomination of candidates in the *senatus academicus*, but to require that the Minister of Public Instruction should confirm their nomination.

It is not necessary that any uniform rule should be adopted for securing residence at the central seat of the university. There is, undoubtedly, much to be said in favor of arrangements made with a view to domiciliate the student within the precincts of a college; but, on the other hand, there are large classes of pupils to whom extern residence is in every respect more convenient. In the case of many students of this class, an obligation requiring them to reside in a college, as boarders, would be equivalent to a prohibition denying to them the advantages of university education. The essential object to be secured is, not conformity to any particular system of domestic arrangements, but the acquisition of intellectual attainments of a high order. Provided that these attainments are tested by periodical examination, it matters little where or through what instrumentality they may be acquired. Hence, we approve of aggregating together, as constituent members

of a university, colleges of the highest class which are situated in different parts of the country. Such an affiliation tends to bring the advantages of university education within the reach of many young men who could not afford to settle themselves during several years at the central seat of the university. The "degrees" and the "honors" conferred at periodical examinations establish a sufficient bond of incorporation amongst the members, and upon the nature of these examinations, not upon residence or non-residence, will depend the character of the university.

In all educational seminaries, it is desirable that those who conduct them should have a pecuniary interest in the maintenance of their character and in their success. It is doubtful, indeed, whether, in the case of elementary schools, any fees ought to be exacted from the pupils. They are established chiefly with a view to promote the education of the poorer classes, and if a fee, however small, be required, it will be found that many parents will be unable or unwilling to pay that amount for the instruction of their children. If the children of such parents be admitted to gratuitous education, whilst others attending the same school are compelled to pay for their instruction, the poorer children will be branded with the character of pauperism, and feelings which are painful as well as injurious to all parties will be generated by this distinction. Yet, even in elementary schools, it is desirable that the emoluments of the teacher should in some measure depend upon the number of his pupils. In regard to the higher order of instruction, the objection which we have noticed can scarcely be said to apply, because the poorest classes can seldom hope that their children will be able to avail themselves of the advantages of academical or university education. Hence, although a moderate income ought to be provided in such institutions for the teachers, by way of settled allowance, they ought also to derive emolument from fees. Such fees should not be exorbitant. If excessive, they tend to deter parents from giving to their children the advantages of education. The payment of one penny or two-pence per week seems a mere trifle, when considered as an equivalent for even the humblest kind of instruction; yet there are many communities in which the exaction of such a sum for each child would greatly diminish the attendance of scholars. In like manner, it may be thought that the payment of five guineas for attendance, during six months, upon a course of lectures delivered

by an accomplished professor, would be very inadequate compensation for the instruction afforded; yet in some universities the exaction of such a fee would leave the benches of the lecture room vacant. In regard to details of this kind, it is impossible to fix any general scale uniformly applicable to all cases. The school fees must vary according to the wealth of the several communities, and according to their appreciation of particular departments of knowledge. The only point which we can with confidence establish is, that some payment, great or small, ought to be made to the teachers on the part of each pupil, as a stimulus to exertion, so that his income may to a certain extent be proportionate to the number of pupils under tuition. The payment of a moderate fee operates also upon the mind of the pupil as a stimulus to exertion. We are all apt to undervalue that which costs us nothing, and it will be found that the attendance of pupils at lectures for which a fee has been paid, will in general be more punctual than at those which are given gratuitously.

If there be any exemption from the payment of fees, in the higher classes of schools, that exemption ought to be made in favor of distinguished ability. If a scholarship, or a "bourse," be thrown open to competition, its attainment becomes an honorable distinction, not an eleemosynary gift. In this way the advantages of gratuitous instruction, of a superior kind, may be placed within reach of the poorest classes, without the risk of wounding any feelings of honorable pride. Thus, for instance, it might be provided that the boy who shall have distinguished himself most at an annual examination, held in the elementary school of his "sub-district," shall be entitled to gratuitous education in the academical institution of his "district;" and that a certain number of the boys who shall have most distinguished themselves at the annual examination of the district academy, shall be entitled to gratuitous education at the provincial university. Such a system of encouragement would operate most beneficially upon the minds of the humblest class of society, and throw open to their children the highest order of social career, without offending the prejudices of any class. For, however strong may be aristocratic dislike to the advancement of mere *parvenus*, who have forced themselves into high places by intrigue, or by the acquisition of wealth, there has been no age of the world in which the promotion of men of recognized genius, and of distinguished attainments, from the lowest to the highest rank of society, has been viewed

with jealousy by any member of an aristocracy who could lay claim to generosity of mind.

We may here observe that the organization above considered, by which educational institutions of various classes are placed under the administration of municipal bodies, has already, with suitable modifications, been successfully adopted, in several states, not only of Europe, but also of America. In Belgium, for instance, each "commune" is bound to maintain a school, and the general administration of the school, including the selection of a teacher, is confided to the "conseil communal." The central Government renders assistance, under certain contingencies, and under certain conditions; and it exercises continuous superintendence over the national education, through the visitation of its inspectors. Academical institutions, called *athenæums* and colleges, are also supported and administered chiefly through the instrumentality of municipal organization. Two universities are maintained by the state — those of Ghent and Liege — whilst there is a university at Louvain, which is chiefly dependent upon the Roman Catholic clergy, and another at Brussels, which has been established by the voluntary efforts of the citizens and of the public at large.

Let us here notice an important question, which deserves consideration. Ought parents to be compelled to educate their children, by the infliction of penalties, such as fine and imprisonment, in case they neglect this duty?

Many of the most earnest supporters of national education are disposed to answer this question in the affirmative. They contend that one of the highest duties which a citizen owes to the community to which he belongs, is the education of his children; and, if an individual can with propriety be compelled by penalties to perform any of the duties which he owes to society, this, they conceive, is one the compulsory enforcement of which is, in a peculiar degree, justifiable. Now, in civilized society, every individual is compelled, under fear of penalties, to do many things which are in themselves neither right nor wrong, but which are supposed to be beneficial to society. How, therefore, can those who enforce the performance of things that are indifferent in themselves, for the good of society, object to the enforcement of a primary obligation, due by every parent as well to his child as to the community in which he lives. Not only has this sort of reasoning been accepted as incontrovertible by many philosophers and philan-

thropists, but it has been acted upon practically in the legislative policy of several states.

Yet, however ardent may be our zeal for national education, we may hesitate before we acquiesce in this principle of compulsion. Interference with the freedom of action which naturally belongs to man, ought to be limited as much as possible to those cases in which such interference is imperatively required by the public interest. If this interference be justifiable, in regard to the performance of one social and personal duty, why shall it not be extended to all other kinds of moral duties? If a child ought to be sent to school, *a fortiori* he ought to be sent to church. Can the state rightly compel the parent to send his son to school, without also compelling him to send him to church? The acknowledgment of such a right, on the part of the state, to regulate all the domestic concerns of life, would give rise to a tyranny which, though adopted by the spontaneous action of public opinion in a free republic, would be more intolerable than the tyranny of a despot.

In regard of education, for example, it would not be sufficient to declare that each parent must cause his child to be educated. When this preliminary point has been established, it next becomes necessary to provide that the child shall be sent to a well-conducted school; otherwise a boy might attend a school in which he would be only nominally placed under instruction, and in which his time might be much less usefully employed than if he were working for his parents at home. These considerations lead to the conclusion, that children should be sent to no schools except such as are approved by ministers of state — a condition which would give rise to many political evils, and which would leave an opening for many abuses. Then it becomes, further, necessary to descend into minute details; to determine the age at which a child shall go to school; to determine the number of hours during which he shall remain at school; to determine the maximum distance which he shall be required to travel; to specify the books which he shall read, &c.; and each of these regulations must be enforced by penalties which violate the natural freedom of man.

Again, it may be asked, why a parent may not be allowed to educate his child at home. If I am disposed to give up a certain number of hours each day to the instruction of my children, would it not be a grievous hardship to compel me to send them to a school, in which they would be less carefully

taught? to say nothing of the expense which is generally connected with the education of children at school.

Taking into consideration these and many similar objections, we shall perhaps be led to conclude, that it is unwise to enforce education by means of direct penalties; but that every stimulant should be applied which can be legitimately used, to induce parents and children to avail themselves of the advantages of public instruction. We may even go so far as to admit that a *minimum* amount of educational attainment ought to be exacted as a qualification for the enjoyment of certain civil privileges, such, for instance, as participation in electoral rights.

Preparation for the professions is a branch of education which requires an organization special to each profession. It ought to follow, rather than to interfere with, the ordinary course of academical instruction. A young man destined for the ecclesiastical, legal, medical, or other professions, ought to acquire all the ordinary attainments secured by a good education, before he devotes himself to professional training. When at the university, he will probably give a preference to those studies which are most closely connected with his proposed pursuits in life. But after his university career is completed, he ought to be furnished with opportunities of more special instruction in the science to which he intends to dedicate himself. Hence it is desirable that there should be seminaries for instruction, not only in law, theology, medicine, but also in civil engineering, in agriculture, and in the other industrial arts, as well as in the fine arts. Considerable difficulty arises in determining what authority should be competent to grant degrees or licenses to practise in each profession. In the medical profession, for instance, there are, in the United Kingdom, a considerable number of different corporate bodies which have been empowered to grant medical degrees, the privileges connected with which have been more or less extensive. In some of these medical schools great laxity has prevailed in regard to the qualification for a degree, whilst, in others, the test of qualification has been very stringent. Hence, incompetent persons have been continually introduced into the profession. It is a question which admits of controversy, whether any person ought to be absolutely prohibited by law from practising any profession whatever; but, assuming that it is necessary for the protection of the public that incompe-

tent persons should not be allowed to exercise such a profession as that of medicine and surgery, it is clearly desirable that the test of qualification should be, as nearly as possible, uniform. Such uniformity can be obtained only by subjecting all candidates to examination by one tribunal. If such a board of examiners be constituted, in whom ought the power of appointing these examiners to be vested? If they be named by the corporate bodies of the profession, there is some danger that the interests of such corporations will sway their judgment, in opposition to the interests of candidates and of the public. If they be appointed by the Government, it is to be feared that political prejudices will warp them from the line of strict impartiality, or that they will make the interests of the profession and of the public subordinate to some party or political aim. Perhaps, therefore, the best mode of constituting a board of examiners authorized to grant degrees would be, to determine that it should be composed in part of members delegated by the profession itself, and in part of members named by the executive Government.

Whether disqualified persons be, or be not, prohibited from the exercise of professions, there ought to be a test of qualification, in order that the public may be made acquainted with the relative proficiency of the several candidates for their favor. This test ought to be applied through the medium of a public examination, conducted by a board of competent examiners. Such a public examination would operate as a stimulus to the exertions of young men of industry and talent, who, under the system which has hitherto existed, have often languished for years without obtaining an opportunity of making known the extent of their acquirements. In the legal profession, for instance, there has hitherto been in England no test of qualification, except attendance at dinner at some of the Inns of Court, during a certain number of days for a specified number of years. Practically, therefore, there has been no test of qualification by which incompetent persons could be excluded from the exercise of the profession of barrister, nor any by which the competency of those admitted to practise at the Bar could be ascertained. It would be greatly for the advantage of law students that, simultaneously with their admission to the Bar, there should be a public examination, and that the names of the candidates should be classed according to their proficiency, just in the same manner as the names of

candidates for "honors" are classed at the Universities of Oxford and Cambridge, at the time when the undergraduate is finally examined before he receives his degree.

These observations are applicable to every species of professional training. Indeed, the principle for which we contend ought to be extended to the administration of the public service. Before a person shall be appointed to a situation in any public department, he ought to be subjected to an examination by which his qualifications may be tested; and if there be many candidates, a scale of relative competency should be established, according to which preference should be given to superior merit. It would, perhaps, be too much to say that promotion in each department should always depend exclusively upon the proficiency exhibited at an examination; but the exceptional cases, if any, ought to be rare and special, in which superiority of merit may be made to yield to other influences.

All public institutions that are connected with the advancement of public instruction deserve support and encouragement from the state. Wherever a museum, a botanic garden, a mechanics' institution, or a literary society is established, on principles which guarantee its permanence and its freedom from party or personal malversation, the state, acting through appropriate agencies, ought to tender its assistance. This assistance need not always be of a pecuniary kind. There is generally some risk that money, when placed at the disposal of irresponsible bodies, will be misapplied; but such risk is greatly diminished in the donation of objects whose estimation is dependent rather upon scientific appreciation than upon pecuniary value. Institutions such as those here contemplated ought to be supported in part, if not wholly, by means of municipal funds, so that they may be available to the public at large, rather than become the exclusive property of a knot of private individuals. In every considerable town a gallery of paintings and of sculpture, a museum of art and science, a botanic garden, a public library, lecture rooms, with appropriate laboratories, a school of design, &c., ought to be established and maintained by the municipality. To such institutions the central Government ought to render aid by grants of books, pictures, casts, prints, specimens illustrative of natural science, medals, plants, and also by sending from time to time eminent men to give courses of lectures in the local institutions. Encouragement thus afforded in kind would greatly stimulate

local exertion; and although at first the movement might be sluggish or misdirected, yet by degrees a capacity for appreciating and promoting attainments in science, literature, and the arts, would be generated even in communities which had previously been wholly insensible to such influences.*

CHAPTER XXVII.

ON FINANCE.

THE department of finance is, perhaps, the most important branch of administration; because upon it all the others depend, if not for their existence, at least for their efficiency.

I do not propose to encumber these pages with a recapitulation of the different forms of financial administration which have existed at different times in different states. Let us, therefore, at once proceed to consider what are the objects for which a financial department is constituted. They are manifestly the following: —

1. To collect the funds which are necessary for defraying the expenses incidental to the operations of government — the levy of which funds, by taxation or otherwise, has been sanctioned by the legislature.

2. To provide for the safe custody of such funds when collected.

3. To apply such funds to the purposes for which they have been appropriated by the legislature.

4. To take measures for ascertaining, by a strict and final audit, that no misapplication of the public funds has taken place.

In order to carry into effect these objects, it is necessary that there should be a staff of officials of different classes. In a large state such officials will necessarily be very numerous. In every state, however small, a considerable number will be required. Amongst these, the first in station is the "Minister of Finance." He is the responsible organ of the Government in regard of all matters which relate to the public reve-

* As the discussion of principles in which our American experience and Catholic convictions have led us to disagree with the author may be said to close with this chapter, no further notes are supposed to be required for the reader's information or the publisher's intention. — M.

nue and expenditure, and as such he ought to have a seat in the legislature. The Minister of Finance in a large empire requires the assistance of a Board, whom he may consult, and to whom he can intrust the superintendence of matters which he may not have leisure personally to examine. Let us call such Board the Commissioners of the Treasury. A secretary will also be required, to record its proceedings, and to communicate with the public, or with the different departments of administration.

Collection of the Public Revenue.

The agency by which the public revenue is collected must vary in different countries, according to the taxes which are imposed. In England, different Boards have been constituted for the management of different classes of taxes. Thus, there has been a Board of Customs, a Board of Excise, a Board of Stamps, Commissioners of Woods and Forests, &c. It may be doubted whether a more simple and less expensive machinery would not have been equally efficient; but Governments naturally delight to maintain establishments which give them command of patronage, and thus enable them to provide for their followers, relatives, and dependants. The magnitude of the transactions, and still more, perhaps, the multitude of the objects which are subject to taxation, not only furnish a pretext, but occasion a real necessity, for the services of a very large number of officials in the collection of the public revenue of the United Kingdom. Not very long ago, almost every commodity that was imported into Great Britain from foreign parts was subject to duty. It became necessary, therefore, to keep an entry of the amount received upon every article, however trifling might be the amount derived from it. It can easily be conceived that this cause alone must occasion the maintenance of a large number of officials, whose services would be unnecessary under a simpler and more rational system of taxation. Even at present the scale of duties upon various articles of consumption is so high, that it is necessary to maintain a great number of officials, whose sole occupation consists in the prevention of smuggling. This expenditure might be reduced, if not wholly superseded, by the substitution of moderate duties, in the place of such excessive exactions as offer a temptation to the smuggler. It is found that smuggling ceases, when the duty imposed is so low, that an

attempt to evade it occasions more expense to the importer than payment of the duty involves. On the contrary, if the tax be so high as to leave a profit to the smuggler, more than sufficient to indemnify him for the hazards and expenses of the contraband trade, there will, certainly, be a brisk traffic in the hands of the smuggler.

A result which has arisen in the United Kingdom, from the imposition of heavy duties upon tobacco, deserves to be noticed as an illustration of the practical consequences which arise from excessive taxation. It has become necessary altogether to *prohibit* the home growth of this article, because the price paid by the consumer of foreign tobacco being greatly enhanced by the enormous duty imposed upon it, the home producer would obtain, not the natural price which the article would fetch, under a system of open competition, but a price greatly augmented by the duty. The tax levied upon foreign tobacco would, in fact, be a bounty upon the production of home-grown tobacco. Tobacco can be grown in parts of the United Kingdom, but it may be doubted whether it would be brought to market in competition with foreign tobacco, under an open trade, exempt from duty. In order, therefore, to prevent a factitious encouragement to the production of home-grown tobacco, it would be necessary to impose upon its manufacture duties of excise, equivalent to the customs duty levied upon foreign tobacco. Total prohibition of the growth of tobacco, in the United Kingdom, has been thought preferable to the imposition of an excise duty; and thus the natural rights of industry have been violated, for the purpose of upholding an unwise system of taxation.

The customs revenue will be found, upon analysis of the tables of receipt, to arise, for the most part, from the duties payable upon a very small number of articles. It is probable that the duties arising from a large proportion of the articles formerly comprised in the tariff of the United Kingdom, did not pay the expense of collecting them. Tea, coffee, sugar, tobacco, spirits, wine, wood, and a small number of other commodities, yield nearly the whole of the customs revenue, in the United Kingdom. Hence, we may infer that the duties of customs ought to be limited to that small number of articles, of which the amount consumed is very considerable. The colonial legislatures of Australia have recently adopted tariffs, founded upon this policy, and the abrogation of all minor duties has been attended with great advantage.

Without undertaking to develop fully the principles which ought to guide legislation, in regard to matters of finance, I avail myself of this opportunity to present to the reader a few general maxims relative to taxation.

1. The aggregate of the public taxes ought not to exceed the amount which is absolutely required to provide for the social wants of the community.

Many useful objects can be attained only by coöperation; and the most easy, as well as the most equitable, mode of securing combined effort, is the exaction from each member of the community of a pecuniary contribution, applicable to the objects which are to be accomplished. Yet it must not be forgotten, that taxation does not increase the funds available for employment, but only diverts their application from one object to another. A tax imposed for the erection of a palace takes from the agriculturist, the manufacturer, and the merchant, funds which would otherwise be employed in developing the reproductive resources of the country. Taxes, therefore, ought never to be imposed, except for the purpose of promoting objects which are, in themselves, justifiable; and of such objects the most advantageous are, generally speaking, those which tend most to foster industry, advance science, or protect the national security. Money expended upon the construction of a bridge, of a road, of a harbor, of a college, of a fortress, is, perhaps, more usefully employed than if it had remained in the possession of the tax payer; but taxation levied for the purpose of maintaining the idle pageantry of a court, is a diversion of the capital of society, from useful and reproductive employment, to unproductive consumption.

2. Taxation ought to be imposed upon the different classes of society equitably, in proportion to their means.

This principle has been habitually violated in all states — perhaps in none more than in the United Kingdom. Even at present, (A. D. 1853,) the great bulk of the revenue is derived from taxes paid chiefly by the working classes, such as taxes on tea, sugar, beer, tobacco, spirits, &c.

A property tax is the most equitable of all taxes; and those taxes which approach nearest in principle to a property tax, are most to be commended. Those which deviate farthest from this principle, are most to be condemned.

Thus a poll tax is the most unjust of taxes, because it imposes upon the poor man as large an amount of contribution to the requirements of society, as is exacted from the rich.

An income tax, such as has been in force in England, which imposes an equal and uniform rate of contribution upon incomes of every description, is manifestly unjust. An income derived from professional toil, or from mercantile enterprise, is obviously more liable to fluctuation, and represents a much smaller amount of capital, than an income of the same nominal amount, derived from the public funds or from landed property. It is therefore unjust to impose upon these different descriptions of income an equal rate of taxation. In other respects the principle of an income tax is objectionable only in so far as it involves the necessity of a vexatious inquiry into the private concerns of individuals; and in so far as it vests arbitrary power in those who assess the tax.

A land tax is objectionable only in so far as it is levied upon one particular class of the community. If it be accompanied by equivalent taxation upon other classes, it is as little liable to objection as any tax that can be devised. It does not check production if it be fixed in point of amount. It is easily collected. The produce of this tax goes at once into the coffers of the state, without enhancing the price of any article to the consumer. It is, in fact, a chief rent arising out of the land. In parts of India the state is the head landlord of the territory, and the rent of land constitutes the chief source of the public revenue.

A tax upon legacies is, perhaps, as little objectionable as any tax upon personal property. It ought, however, to be moderate. Otherwise it will be felt to be oppressive, and will be evaded. It ought also to be graduated. It is quite reasonable that a stranger, or a distant relative, should pay a larger percentage as legacy duty than a child or a brother. This principle of graduation has been adopted in the United Kingdom.

3. Taxes upon raw produce are most detrimental. They not only enhance the price of the article subject to them beyond the amount of the tax, but they also tend materially to diminish the amount of production. The duty being paid at the earliest stage of the manufacture, every successive manufacturer, and every successive dealer through whose hands the article passes, must obtain a profit upon the duty which has been advanced. When an article is subject to taxation, the duty ought to be levied as nearly as possible at the moment when it goes into consumption.

An arrangement connected with the collection of customs

and excise duties has been adopted in modern times, which tends greatly to facilitate the operations of commerce, and to diminish the inconveniences which result from the taxation of consumable articles. I allude now to the establishment of bonding warehouses. The commodity imported or manufactured is placed in the keeping of the Government, or, as it is called, *in Bond.* Under this arrangement the importer or manufacturer is allowed to defer payment of the duty until the article is required for consumption, and in case it be exported to foreign parts, it passes through the bonding yard without payment of any duty.

4. Taxes ought to be levied so as to interfere as little as possible with the operations of industry.

This principle is habitually violated in tax paying communities. Thus the excise laws subject the manufactures which are liable to excise duty, to the most harassing and vexatious regulations — regulations which tend to render production more costly, and to prevent improvements, as well as to restrain capitalists possessed of small means from engaging in the manufacture. It becomes necessary to watch every part of the process, and to direct by minute regulations all the details of the manufacture. Any deviation from these regulations renders the manufacturer liable to penalties. Hence, the capitalist is perpetually subject to vexatious interference, from which he can escape only by bribing the excise officer, and a temptation to fraud is thus presented at once both to the tax payer and to the tax collector. Excise regulations are founded on the assumption, that the process of manufacture has arrived at perfection. There can be no change. Experiments with a view to improvement are discouraged, if not forbidden, because they require a deviation from the prescribed routine of process.

It is indeed wonderful that a manufacturing country such as England should so long have submitted to the excise taxation, which has encumbered several important branches of her industry. Only a few years have elapsed since the manufacture of glass was relieved from the excise duty to which it was subject. The manufacture of paper is still burdened with excise taxation. There is perhaps only one article, the production of which justifies the imposition of an excise duty. That article is spirits. Inasmuch as it is desirable to discourage, rather than to encourage, the use of spirits, it is quite justifiable to impose upon its manufacture as large an amount

of duty as can be obtained. There are natural limits to that amount, for if the duty be excessive, illicit distillation will indubitably flourish, and the contraband article will undersell the licensed trade. It has been found in Scotland and Ireland, that as long as the duty on spirits does not exceed a certain amount, very little illicit distillation takes place, but whenever an attempt has been made to levy a heavy duty, that attempt has revived the contraband manufacture.

When excise duties are moderate, the number of officers required for their collection is comparatively insignificant, but if they be excessive, a legion will not suffice to prevent frauds upon the revenue.

5. Taxes which interfere with the transfer of property, being both vexatious and injurious, ought to be avoided. Thus, the imposition of a stamp duty upon written receipts is most harassing. It is, indeed, often evaded, but the evasion is attended with pain and risk. Thus, also, stamp duties upon deeds by which property is transferred check the purchase and sale of land, encourage vexatious litigation, and frequently entail upon families the most grievous injustice.

6. Duties of customs, when imposed upon suitable commodities, afford an easy and unobjectionable mode of raising a revenue. Thus, no one can complain of a moderate duty upon the import of wines, spirits, tobacco, and of other luxuries, but it is essential that such duties should be of moderate amount. If the customs duties be excessive, one or other of two results inevitably follows. Either an enormous outlay is incurred in maintaining an organization for the prevention of a contraband trade, or the duties are evaded by successful smuggling. In Spain, the customs being excessive, great part of the foreign commerce of that country has been carried on by means of a contraband trade.

If the customs duties be not moderate, an undue encouragement is afforded to the domestic manufacture of articles which could be obtained on cheaper terms from abroad. The excessive duties formerly levied in the United Kingdom upon foreign corn may be taken as an example of the pernicious effects which result from excluding foreign produce, by duties which practically amount to prohibition. Had a moderate, instead of an excessive, duty been at all times leviable upon foreign corn, the fierce antagonism of interests which arose in reference to this question would never have been excited, and a considerable amount of revenue would have been derived from this source.

A system of duties levied *ad valorem*, that is, in proportion to value, appears to be most equitable, but in practice it is found to be objectionable, inasmuch as it gives occasion to fraud. In all financial operations, as little as possible ought to be left to the judgment of officials. Wherever discretion is exercised, an opening is left for partiality, and however unimpeachable may be the integrity of officials, it is difficult to avoid at least the imputation of partiality. There are some departments of public affairs — for instance, the administration of justice — in which it is impossible to avoid this inconvenience, because the judges who preside in the legal tribunals must, of necessity, be invested with discretion; but no such necessity exists in regard of taxation. It is more easy to levy a fixed duty upon every hogshead of sugar imported, than to require, first, that a declaration shall be made of its value, (a declaration which may or may not be correct,) and subsequently, that it shall be subjected to a duty by way of percentage upon that value.

7. Taxes injurious to health ought to be avoided.

Thus, a tax upon windows is most objectionable, because it tends to prevent houses from being built in the manner most conducive to health and comfort. Air and light are two elements upon which, more than upon any other circumstance, except diet, the well-being of the human frame depends. It should, therefore, be a primary object with all Governments to encourage the construction of houses in the form which shall afford the freest circulation of pure air, and the introduction of light. What can be said, then, in defence of a financial measure, which, instead of encouraging, absolutely prohibits, particularly in the dwellings of the poor, even a moderate enjoyment of these primary gifts of nature?

8. Taxes upon knowledge are peculiarly objectionable.

If it be a crime, on the part of the statesman, to debar the people from enjoyment of good food, of pure water, of fresh air and light, upon which the well-being of their bodies depends, it is almost equally criminal to debar them, by financial regulations, from the free enjoyment of those intellectual resources, upon which the improvement of their minds depends. Hence we are compelled to condemn excise duties upon paper, stamp duties upon newspapers and upon advertisements, as well as all other taxes which impede the advancement of knowledge. Taxes upon knowledge are sometimes justified, on the plea that they repress the dissemination of cheap lit-

erature of an immoral kind. But if it be desirable that the state should interfere with the propagation of opinion of any kind, (a very doubtful proposition,) it would be much more rational to direct such interference against the abuse itself, rather than indiscriminately to deprive the community of an acknowledged advantage, in the hope of thereby indirectly repressing a contingent evil. In point of fact, it is well ascertained that taxes upon knowledge militate against the circulation of useful literature, to a much greater extent than against that of dangerous publications.

9. Taxes which tend to check provident habits are much to be deprecated.

Instead, therefore, of imposing taxes upon policies of insurance, every possible encouragement ought to be given by the state to operations which are based upon foresight and prudential thrift. It has even been proposed by some that the state itself should found insurance offices, in order to guarantee to the public protection against losses from fire and other disastrous contingencies; and, also, in order to encourage frugality, by the insurance of lives, the sale of annuities, &c. Institutions founded by private enterprise may, in some countries, be sufficient for the requirements of the community; but if, from want of confidence, or other causes, there be a reluctance to invest private capital in such establishments, it may become expedient that the state should undertake this function.

10. Taxes levied on dealers, technically called "licenses," are, for the most part, indefensible. They are not only liable to all the objections which apply in general to taxes upon industry, but they operate very unequally upon the individuals who are subject to them. It is almost impossible to graduate a license duty in such a manner as that it shall fall upon each dealer in exact proportion to the amount of business done, or of gain acquired by him. If it be uniform, it is manifest that it will bear with very different pressure upon the struggling huckster and upon the successful capitalist. Such taxes ought, therefore, to be avoided, or, if resorted to at all, they ought to be imposed rather in aid of municipal funds than of the finances of the state. If a citizen is compelled to pay a license fee to the municipal treasury of the city or district in which he lives, he has, at least, the satisfaction of feeling that he obtains for this payment advantages which he can directly appreciate. The street in which he lives is paved, lighted, watered, &c., and he directly participates, as an elector or as

a member of the municipal council, in the administration of the funds to which he has thus contributed. Hence, if the statesman finds it absolutely necessary to seek for a contribution from this source, it is, perhaps, desirable that he should conciliate the public feeling in favor of this kind of tax, by conceding a certain percentage of its proceeds — say, a half — to the municipality from which it is derived. Under such an arrangement its collection might be advantageously left to the municipal authorities, inasmuch as they could levy it with less difficulty and expense than would attend its collection by officials dependent upon the central Government.

It is a question which well deserves consideration, whether other taxes, such, for instance, as a property tax, might not be collected in a more satisfactory manner by the municipal authorities than by state officials, — a certain percentage being allowed to the municipality in consideration of its performance of this function.

There is one class of dealers, in favor of whom few would be disposed to claim exemption from taxation. I allude to those who deal in spirituous liquors. To the exaction of a graduated license fee from such dealers there would, probably, be little opposition in any legislative body; but the practice which has prevailed in the United Kingdom of granting spirit licenses to acceptable persons as a matter of favor, is open to much objection. By being invested with a discretionary power to grant or to refuse licenses, local magistrates have been enabled to exercise a petty tyranny over individuals, which has been in the highest degree galling. Every dealer in spirits, or in any other commodity, ought to be empowered to take out a license, as a matter of right, on payment of the required fee; and his license should be forfeited only in the event of his being duly convicted, before a legal tribunal, of keeping a disorderly or disreputable house.

11. Direct taxation is, in many respects, more advantageous than indirect taxation. The community feel its pressure more immediately, and are thereby disposed to enforce economy in the application of the public revenue. Indirect taxation imposes upon the consumer a charge, which is often much greater than the amount actually realized to the revenue. The duty paid upon malt or leather, for example, imposes a charge upon the consumers of beer or of shoes greater than the amount paid to the public treasury; because the manufacturers and retailers of these articles require a profit upon

the duty paid by them, as well as upon every other portion of their outlay. Nevertheless, direct taxation is generally less acceptable to the community than indirect taxation; because direct taxes cannot be evaded, whereas the payment of taxes upon consumable articles appears to depend upon the will of the consumer. In reality, however, the chief reason why the latter description of taxation is preferred by the influential classes is, that indirect taxation falls with much heavier pressure upon the poor than upon the rich. The workman who earns £20 or £30 per annum pays as much malt duty, and nearly as much tea duty, for his personal consumption, as is paid by the possessor of £10,000 per annum.

12. A charge on the transmission of letters can scarcely be called a tax. It is simply the exaction of a fixed rate of remuneration for a specific service. A full equivalent is given for the payment required — nay, more than an equivalent. In Great Britain, only a penny is charged for the transmission of a letter to the Hebrides. Were it forwarded by means of private conveyance, its transmission would, probably, cost several shillings. It may be doubted whether a mercantile association could convey letters at a lower rate of charge than that made upon the postage of letters. All the observations which we have offered with regard to railways apply to the transmission of letters by post. There is, certainly, no tax which is paid by the public with so little discontent as the charge upon letters. Indeed, since the establishment of the penny postage, every one who reflects upon the subject feels grateful for a convenience rather than disposed to complain of an exaction, when he pays the trifle which is required to indemnify the state for the conveyance of his letter.

In one respect alone can an objection be raised against the principle of postage. It is founded upon monopoly. Conveyance of letters by private hand is attended with penalties; and no public company is permitted to undertake as a speculation the transmission of letters. Practically, however, this monopoly is not felt to be a grievance; because in individual cases the penalties are easily evaded, and because no private company would carry on this service at a less rate of charge to the public than that which is made by the Government.

13. We may here take an opportunity of observing, that a Government monopoly is, generally speaking, a very objectionable mode of raising a revenue. In Austria and Spain, for instance, the sale of tobacco has been a monopoly in the

hands of the Government. Where such a monopoly exists, the public is prevented from enjoying the advantages which arise from competition in the production of the article. Not only is the price greatly enhanced, but the quality is greatly inferior to that which would be supplied by free competition. To these inconveniences must be added the evils of smuggling. The Government also becomes involved in a complication of mercantile transactions, which require an expensive administration, and which can seldom be so well managed by public officers as by private individuals. In British India, the sale of salt and of opium is still subject to a Government monopoly; but in the United Kingdom such monopolies have been almost wholly abandoned. During the reigns of Elizabeth and James I., the practice of levying revenue by means of monopolies was very frequent, and occasioned much discontent. These discontents, combining with the extension of sounder principles on subjects connected with political science, led to the gradual abandonment of governmental monopolies.

Akin to this system of taxation is the practice of farming the public revenue — a practice which has prevailed to a very considerable extent in different countries at different times. In ancient Rome, for instance, various branches of the revenue were farmed. In France, during the last century, the public revenue was collected, for the most part, through agency of a similar kind. In the modern administration of finance, this practice has generally been condemned and abandoned, as liable to many objections, and generative of many abuses. When the public revenue is farmed by tax collectors, it becomes necessary to arm individuals with the full powers which are required for the collection of the revenue, and these powers are wielded with a view to the private interest of such individuals, rather than to the public interest of the state. Hence arise exactions which are profitable to the farmers of the revenue, but injurious to the state, and oppressive to the tax payers. When the public taxes are farmed, a much larger proportion of the whole amount levied from the people falls to the collector than when the taxes are collected by officials appointed by the Government. The farmer is a speculator, who guarantees the payment of a certain income, the receipt of which is uncertain. He must, therefore, be paid a large percentage, in order to remunerate him for such guarantee. As for the actual collection, it is evident that nearly as many persons, at an expense nearly, if not quite, equal,

must be employed by a farmer of the public revenue as would be employed by a well-regulated Board of Finance.

A "seignorage" upon coin, though not a very productive source of revenue, appears to be unobjectionable in principle. It is generally admitted that the manufacture of the coin of the realm ought to be reserved as a monopoly in the hands of the Government, since it is manifestly desirable that the medium of exchange which passes from hand to hand should be guaranteed as possessing a certain specific value; and it is not unreasonable that the state should derive a profit from this operation. If the current value of the coin coincide exactly, or nearly, with the intrinsic value of the precious metals of which they are composed, then a motive will often arise to tempt those who hold such coin to melt it; because, in the fluctuation of commercial demand, bullion may, at particular moments, be required more than coin. But if the coin have a nominal value greater than its intrinsic value, this motive can never exist. Thus, if a piece of gold, which is worth in the market four pounds, were made, when converted into coin, a "legal tender" for payment of debts amounting to five pounds, no one would be tempted to melt sovereigns for the purpose of manufacture; because the loss upon the operation would be considerable. But if the sovereign, when coined, be not more valuable than the metal which it contains when uncoined, then it will often be cast into the melting pot, in spite of any laws which may be made to prevent its fusion.

14. Duties on exports are objectionable in the case of nearly all products which are subject to competition in foreign markets; and even in the case of those articles which cannot be supplied by any other country except that in which the duty is imposed, they tend to diminish consumption, and thereby to check foreign commerce. Nevertheless, it may be contended that an export duty may be levied upon some commodities, for the purpose of raising a revenue, without inflicting greater inconveniences than those which are incidental to duties upon imports. China, for instance, possessing a monopoly of tea, might impose an export duty upon tea, and thus raise a considerable revenue, without thereby checking consumption more than it is checked by the import duties levied upon it in the United Kingdom and in other countries to which it is exported. The British Government have been able to raise a revenue exceeding five millions sterling per annum upon the import of this commodity. Why might not the Chinese Government

have participated in this revenue by the imposition of an export duty?

Much, also, may be said in favor of duties upon the export of raw materials used in foreign countries, in the manufacture of articles which compete with the manufactured produce of the exporting country. Thus, for instance, an export duty upon wool, copper, iron, coal, would tend to lower the price of these articles to the domestic manufacturer, whilst it would enhance their price to the foreign manufacturer. An advantage would thus be secured to the manufacturers of the exporting country, and, at the same time, a source of revenue would be opened, from which a considerable income might be obtained in aid of the public expenditure.

There is, perhaps, only one description of *manufactured* commodity, in regard to which the same reasoning applies as that which has been urged in favor of an export duty upon certain classes of *raw produce*. I mean the export of machinery. As machinery is used by foreigners in producing articles which come into competition, in neutral markets, with similar fabrics made in the country which exports machinery, it seems reasonable to discourage rather than to encourage the export of articles which afford to the foreigner the means of advantageous competition. On the other hand, it is contended, that if the export of machinery be prohibited, or discouraged by heavy export duties, foreigners will gradually learn to manufacture machinery for themselves; and thus eventually the object proposed in the imposition of an export duty will have been defeated, whilst a market will have been lost for an important product of domestic industry.

It is to be observed, also, in reference to export duties of every kind, that, whatever may be the force of the theoretical reasoning by which they are supported, they will always be deemed objectionable by the producers of the articles upon which they are imposed, and perpetual clamor will be raised against them as long as they are enforced. An export duty on coal, for instance, might operate by way of encouragement to the manufacturers of England, but it would certainly diminish the export of coal to foreign countries. The producers of coal, therefore, would naturally remonstrate against the imposition of a tax which they find to be injurious to their interest. Similar influences render it difficult to maintain an export duty upon any other article. Hence, producers of every class now seek encouragement rather by the imposition of protec-

tive duties upon the import of foreign manufactures than by export duties, which tend to lower, in the home market, the price of the articles upon which they are imposed.

15. The practice of raising money by way of *lottery* can be justified only when the prizes proposed are of such a nature as elicit sentiments which are in their own nature commendable. The issue of tickets for the purpose of effecting some laudable undertaking, by means of the money derived from their sale, cannot be said to stimulate any unworthy cupidity when the prizes proposed are objects the purchase and distribution of which it is desirable to encourage. Thus the sternest moralist does not object to a lottery in which a fine picture is procured, and assigned as a prize, and of which the surplus profits are applied to some useful or charitable object. But to encourage the passion for gaming, by appealing to that avidity which covets mere money, is clearly a violation of public morality, whether this passion be evoked by state lotteries or by state gaming tables. The minister who encourages gambling, as a financial resource, becomes responsible for all the misery and ruin which naturally result from indulgence of this vice.

16. A tax upon absentees cannot be relied upon as a productive source of revenue; but in principle it is perfectly consistent with justice; and, under the special circumstances of particular countries, its levy may be dictated by motives of national policy higher than considerations merely financial.

It may be admitted, indeed, that, under ordinary circumstances, nothing should be done to discourage the free movement of individual citizens. If, on the one hand, a loss be sustained by the temporary absence of wealthy individuals from their country, yet, on the other, an advantage arises from the acquisition and diffusion of information gained by foreign travel. Few persons visit foreign countries without bringing home some ideas, the application of which may be useful to their fellow-citizens upon their return. In general, therefore, an absentee tax is to be avoided. In the case of France or of England, for instance, the produce of such a tax would be insignificant, whilst, by deterring Frenchmen and Englishmen from visiting foreign countries, it would tend to check the intercommunication of useful knowledge. But there are some countries, the circumstances of which are exceptional, and in which so great an amount of evil is occasioned by the non-residence of proprietors, that in them every legitimate means ought to be adopted for checking absenteeism. Such is the

case of Ireland. A large proportion of the soil has, by confiscation, or otherwise, fallen into the possession of persons who not only never reside on their estates, but some of whom have never even seen them. It has been calculated that more than a third of the net rental of the country is sent out of Ireland to absentees, who make no return whatever for these remittances. A drain of this kind practically operates exactly as if a tribute were imposed upon the country by a foreign enemy. Under such circumstances, sound policy suggests that a tax should be imposed of such a nature and amount as would induce these absentee proprietors either to reside upon their estates or to sell them to residents; or, in case they decline to accept either of these alternatives, will make some compensation for their absence.

Such a taxation is not less just than expedient. Various duties are incidental to the possession of property, the performance of which requires the presence of the proprietor. It is not necessary to enumerate these duties in detail, because they will naturally suggest themselves to every intelligent mind. We may, therefore, cite but a single illustration. A resident country gentleman is fined if he fail to attend as a juror at the assizes to which he has been summoned. Does not the principle upon which a resident proprietor is subjected to this penalty, apply *a fortiori* to the non-resident?

It is to be observed that a tax upon the absentee proprietor being, in this point of view, considered as a compensation to the district in which his property is situated, for the evils which result from his absence, the proceeds of this tax ought to be applied in aid of local objects.

When Sir Robert Peel imposed an income tax upon Great Britain, he subjected to this tax all proprietors who, whilst residing in Great Britain, derived their incomes from Ireland. He thus proved that it is possible to levy such a tax, and admitted that it is not inconsistent with justice; but he violated the principle for which we contend, by applying the proceeds of the tax to imperial purposes, rather than to the local wants of Ireland: and he made no attempt to extend the operation of the tax to those Irish proprietors who reside in foreign countries.

It would seem to be unnecessary to remark, that the expense of collecting the public revenue ought to be brought annually, by way of estimate, under the consideration of the legislature, if we did not know that, until a very recent period, the ex-

penses connected with the collection of the revenue of the United Kingdom were almost wholly withdrawn from the cognizance of Parliament. The administrators of the financial departments of Government were in the habit of expending several millions every year upon objects connected with the collection of the revenue, without asking Parliament to sanction a single item of this expenditure. Such a practice naturally affords a temptation to wastefulness, and encourages all kinds of malversation.

Public Debt.

Nations as well as individuals are frequently under the necessity of incurring debt, in order to avert calamities, or to obtain advantages which cannot be procured without some extraordinary addition to the available income of the year. Despotic sovereigns have frequently collected masses of treasure, with a view to be enabled to meet reverses of fortune, or to take advantage of opportunities of success. Amongst free nations, on the contrary, there generally exists greater disposition to incur debt, than to amass treasure. It is thought that the money of the people is more profitably employed by the people themselves than by the state, and therefore, such nations seldom make an effort to provide by taxation a surplus with a view to its being hoarded as a reserve against unfavorable contingencies. If accident or unusual good fortune should bestow an unexpected surplus, that surplus is commonly expended with all possible haste, rather than laid up as a reserve. Free nations are found to be more willing to pay taxes imposed by themselves, through their representatives, than nations from whom taxes are exacted by the will of a master. No tyrant would ever have ventured to impose upon the English people such exorbitant taxation as has been inflicted upon them by their Parliament. This observation has frequently been made with respect to other states as well as to England.

When no surplus has been hoarded to meet contingencies which require large expenditure, it is natural that a nation should endeavor to provide such contingent expenditure by means of loans, rather than by imposing upon itself a great immediate sacrifice. Hence arises the formation of "a national debt." Except in extreme cases, where the safety of a nation is at stake, the formation of a national debt is an injustice to the posterity of those by whom it is incurred. Neither individuals nor nations are justified, on principles of equity, in

imposing upon their successors a burden of debt, except for the attainment of some great national object. Thus, for example, no American citizen can complain of an addition to the national debt, incurred for the purchase of the territory of Louisiana from France; nor can any humane Englishman regret that twenty millions sterling were added to the national debt of England, in purchasing the emancipation of the negro slaves. But, unhappily, it has been found that debt has been incurred more often for the gratification of some passion or caprice, than in efforts to ward off impending danger, or to serve the real interests of mankind. Of the eight hundred millions of debt incurred by Great Britain, how small a portion has been expended upon objects which justice and humanity sanction! Intrusive meddling with the international contentions of the continental states; a wicked, but happily an abortive, attempt to deprive the British colonies in America of their natural rights and liberties; interference, alike impolitic and unjustifiable, with the domestic concerns of France at the period of her great revolution; such are the objects on account of which the greater part of the debt of Great Britain was originally incurred. For these objects, all of which are now disapproved by the verdict of posterity, the British nation is compelled, and will probably during many centuries be compelled, to submit to privations which are felt more or less by every member of the community, and by none more than by the working classes. Happily the origin of this debt is either not known, or it has been forgotten by those who pay the interest upon it. Otherwise a poor man would never buy a pound of tea without cursing the memory of those statesmen, whose domineering spirit tempted them to incur an expenditure which still enhances the price of all the necessaries of life.

The mode of borrowing, under which the national debt of Great Britain was incurred, has been scarcely less unjust to posterity than the debt itself. For every £100 received by the state for immediate use, a debt of much larger amount has been imposed upon posterity. It has been calculated that the principal of the debt now existing amounts to nearly two fifths more than the sum actually advanced by the lenders. Upon borrowing a sum of £100, the Government, instead of creating Government stock to the amount of £100, and undertaking to pay thereupon the rate of interest current at the time when the loan was made, have generally given to the lender a claim for a much larger amount of stock, bearing a lower rate of

interest. Thus, instead of creating a debt of £100 in Government stock, bearing interest at 4½ per cent., the Government has given to the public creditor, in exchange for the £100 which it has borrowed, a claim for £150 Government stock, bearing interest at 3 per cent. Consequently, if posterity were disposed to discharge this loan, it would be compelled to pay £150 for every £100 actually received.

The loan of 1815 will furnish a practical illustration of this mode of borrowing.

"In the loan of £36,000,000, contracted for in June, 1815, the *omnium* consisted of £130 in three per cent. reduced annuities, £44 in three per cent. consols, and £10 in four per cent. annuities, for each £100 subscribed.

"The loan was contracted for on the 14th June, when the prices of the above stocks were three per cent. reduced, £54; three per cent. consols, £55; four per cents., £70. Hence the parcels of stock given for £100 advanced, were worth —

	£	s.	d.
£130 reduced, at £54, . . .	70	4	0
£ 44 consols, at £55, . . .	24	4	0
£ 10 four per cents. at £70, .	7	0	0
£184	£101	8	0

"Thus a capital debt of £184 was created in favor of the creditor who lent £100 to the state. If he happened to have been previously a fundholder, he could have obtained for stock of the same amount, in the same securities, £101 8s. upon the loan, independently of any discount for prompt payment." *

Some trifling advantage is gained, at the moment when the debt is incurred, by adopting this mode of negotiating a loan; but the advantage is by no means commensurate with the injury and injustice inflicted upon posterity. In commenting upon the loan of 1815, Mr. MacCulloch (article Funds) observes, that "the interest payable upon the different kinds of stock created, amounted, on the whole loan, to £5 12s. 4d., per cent. Had from £5 15s. to £6 per cent. of interest been paid for the loan, it might have been obtained without funding any additional capital, and had that been done we should have been able, within four or five years, in consequence of the fall of interest after the peace, to reduce the charge on account of

* From MacCulloch's Dictionary of Commerce, article *Omnium*.

the loan to 3 or 3½ per cent.; but owing to the way in which the contract was made, we have not had, and will not have, any means of reducing the exorbitant charge on this loan, so long as the market rate of interest is above 3 per cent., except by paying £174 for every £100 originally received, exclusive of the £10 of 4 per cent. stock. We believe that we are within the mark when we affirm, that owing to this erroneous mode of funding, the country is at present paying from £6,000,000 to £7,000,000 a year, on account of the public debt, more than it would have had to pay, had the same sums been borrowed and funded without an increase of capital."

If £100 be borrowed during war, at 4½ per cent., by the creation of debt, (or, as it is called, of "Government stock,") bearing interest at 4½ per cent., then, upon the return of peace, Government is generally enabled to obtain a reduction in the rate of interest payable upon the debt, by offering repayment of the principal. This repayment can be effected, in consequence of the fall which has taken place in the current rate of interest, through the means of a new loan contracted at a lower rate of interest, or, in case a financial surplus afford means of repaying the principal, the debt may be expunged (whatever may be the current rate of interest) upon payment of £100. In the case supposed, in which the Government has borrowed £100, upon an increase of capital amounting to £150 3 per cents., there can be no reduction of the interest payable on the debt, until the current rate of interest shall have fallen below 3 per cent., because the Government could not replace the first loan by one obtained on more advantageous terms. It would further seem, that if the resources of the state should afford means of repaying the principal, it would be necessary to pay £150, the amount of debt created, instead of £100, which was the amount actually received. Practically speaking, however, this is not exactly the case, because when any surplus of income is applied to the discharge of the national debt, the Government go into the stock market, as purchasers, and buy, like any other purchaser, Government stock, at the price current of the day. This the Commissioners of the National Debt often procure for £90 — sometimes less — sometimes more — a claim for £100, and thereby extinguish, *pro tanto*, a portion of the national debt, without paying the full nominal amount of the capital for which the state is responsible.

From these observations we deduce the conclusion, that a

Government, in contracting a loan, ought never to enter into an engagement to repay an amount of capital greater than that which it actually receives, but should submit, if necessary, to the payment of a higher rate of interest upon the amount borrowed, rather than attempt to gain a momentary advantage, by imposing an unjustifiable burden upon posterity, in the shape of a stock denoting an amount of capital greater than that actually received.

Notwithstanding the unanswerable objections which have been made by writers on finance to the practice of funding by increase of capital, Mr. Gladstone, in 1852, proposed to Parliament the conversion of a 3 per cent. stock into a 2½ per cent. stock, offering £110 stock, at 2½ per cent., for £100 of 3 per cent. stock. Had this conversion taken place, to any considerable extent, the capital of the public debt would have been increased, *pro tanto*, by one tenth, and it could scarcely be expected that any future reduction of interest would have been effected, because it is very improbable that £100, in the 2½ per cent., will ever sell in the stock market for more than £100, (in other words, that the current rate of interest will ever be less than 2½ per cent.,) in which case alone could a reduction of interest be effected by an offer to pay off the principal of this debt.

Mr. Gladstone, at the same time, proposed another alternative, of a totally different character, which will illustrate the advantages of a system of conversion founded upon the payment of a high rate of interest. He offered £82 10s., (irredeemable before 1894,) in a 3½ per cent. stock, in exchange for every £100 of the present 3 per cents. Now, if, after 1894, the Government should be able to borrow money at a less rate than 3½ per cent., it would be in a condition to compel the holders of this new stock (3½ per cents,) to accept a lower rate of interest, by threatening to pay off the principal due to such stockholders. The market rate of interest being less than 3½ per cent., it would be able to raise the capital required to pay off dissentients, at an annual interest less than 3½ per cent., so that the public would gain in the case of either assent or dissent on the part of the new stockholders.

The mode of contracting a loan, which is most equitable in its bearing upon the interests of posterity, is that of raising money on terminable annuities. Under this arrangement the national debt would become gradually extinguished, after the lapse of a certain number of years, and thus the resources of

the state would gradually be left unimpaired by the acts of former generations. The following example, though perhaps not capable of exact realization, will serve to illustrate the principle for which we contend.

When interest is at 4 per cent., the state would obtain £100, (or thereabouts,) under engagement to pay £4 per annum, in perpetuity. Now, the present value of an annuity of £1 per annum, to continue for 70 years, reckoning compound interest at 4 per cent., would be £23,394, (according to the tables given in MacCulloch's Dictionary of Commerce.) For £4 per annum, the present value would therefore be $4 \times 23{,}394 =$ £93,576; so that if the state were to borrow money under an engagement to pay an annuity of £4, terminable at the end of 70 years, it would receive £93,576, (or thereabouts,) instead of £100; but, in the one case, the debt would be altogether extinguished after the lapse of 70 years, whereas, in the other, the debt is left as a perpetual burden upon posterity.

It is a debatable question, whether a nation is bound by any obligation of duty to hold itself responsible for engagements contracted by preceding generations, more especially when those engagements have been contracted in an unthrifty or unjust manner, for the attainment of ends which it disapproves, or from which it has sustained actual injury. In regard of ordinary legislation, it is a principle universally admitted, that every law may be repealed, and that no legislature can make unchangeable laws which shall be held to bind future generations. In like manner, it may be contended, that the existing generation is not entitled to squander the revenues which belong to posterity; and that those who lend money to a state ought to understand fully that no future generation can be bound by engagements to which it has not been a contracting party.

I am not disposed to dispute the abstract truth of this doctrine. I conceive that the propriety of respecting the claims of the public creditors of the greater part of the national debt of England rests upon considerations of expediency, not upon obligations of duty. But unless a crisis of national bankruptcy should occur, I hold it to be most unwise even to discuss the question whether a nation ought to hold itself responsible for debts contracted in its name by its legitimate authorities. Such discussions tend to shake public credit, and credit is, perhaps, the most important element of national strength. When a private individual loses his credit, he becomes incapacitated

for every undertaking which requires the confidence of his fellow-men. Nor is it otherwise with nations. The soldier serves his country with cheerfulness upon a slender pittance, because he knows that a pension is guaranteed to him for life after the expiration of his period of service, and he feels assured that no succeeding Government will, in his old age, question his right to receive that pension. In moments of emergency, the capitalist also, instead of hoarding and concealing his treasures, voluntarily proffers them for the service of the state, because he feels assured that his loan will be recognized as a charge upon the national revenue as long as it remains unpaid. If this confidence be destroyed, the capitalist will conceal his treasure, or transfer it to some other country, at the moment when his aid may be most required. The extinction of a national debt is dearly purchased by the loss of such confidence — by the loss of credit, of character, and, perhaps also, of national independence.

Upon other grounds of expediency, too, it is desirable to consider engagements made with the national creditor as a claim which ought to be scrupulously respected. These engagements could not be cancelled without inflicting an amount of suffering upon individuals far greater than that imposed by the taxation which provides the annual interest payable upon the national debt. The tax payer is subjected to a burden which is more or less oppressive, according to the amount of the national debt, and according to the nature of the taxes by which the charge upon it is defrayed; but still the burden is inconsiderable, when compared with his whole annual income. But if the national debt were to be suddenly expunged, myriads would be thereby plunged into a state of utter destitution.

Some advantage, also, arises from a national debt, in so far as it affords to persons of all classes a safe investment for their savings. There is always a large quantity of Government stock in the market — that is, a considerable number of public creditors are compelled or induced by their private circumstances to sell for the highest price that they can obtain their pecuniary claims upon the country. Thus, 3 per cent. stock — in other words, a claim for £100, bearing interest at 3 per cent. — is sold at prices which generally range from £80 to £100, according to the amount brought into the market by sellers of Government stock, when compared with the amount required by buyers. An individual, therefore, who desires to obtain an investment for his money, which shall secure to him

the receipt of an annual interest, without subjecting him to any risk of delay or disappointment in the receipt of such interest, has always an opportunity of buying Government stock — that is, of becoming a purchaser of a portion of the national debt. To every family in the kingdom this opportunity, incidental to the existence of a national debt, is an advantage or a convenience. Even the poorest classes now partake in this advantage, through the medium of savings' banks, which exist in every part of the United Kingdom. The thrifty servant or laborer, who deposits in the neighboring savings' bank half a crown a week, spared from his earnings, becomes one of the creditors of the national debt.

On the 20th November, 1841, there were in the United Kingdom 555 savings' banks, of which one had made no return, but the remainder exhibit the following results: —

Number of Depositors.		Amount deposited.	Average Amt. of each Deposit.
Depositors, ...	824,162	£22,915,940	£28
Charitable Societies, . . .	8,778	478,096	54
Friendly Societies, . . .	8,264	1,080,653	131
	841,204	£24,474,689	£29

Since the above return was furnished, these amounts have greatly increased.

By accounts presented to Parliament, it appears that the gross amount of all sums received from savings' banks by the Commissioners for the Reduction of the National Debt, from their commencement in 1817 to the 20th November, 1854, was not less than £70,829,757; and the gross amount of all sums paid to them amounted to £34,720,905.

The national debt is composed of two classes of securities, one of which is called "the funded debt," the other "the unfunded debt."

The funded debt consists of Government stock, representing money which has, at different times, been borrowed, at different rates of interest, under an engagement that, until the principal of such stock shall be paid, it shall bear interest at a specified rate. This is, in fact, an engagement to pay a perpetual annuity, (subject to redemption,) as the public creditor cannot demand repayment of the principal; and in this respect, a loan to the Government differs from loans on mortgage, or

other loans to private companies or individuals, where the principal lent is generally recoverable, at pleasure, by process of law.

The unfunded debt differs from the funded debt, inasmuch as the Government undertakes, in the case of the unfunded debt, to replace, at the end of a specified term, the amount borrowed. This debt consists, for the most part, of what are called exchequer bills, which are payable at the end of a year. These bills form a very desirable kind of investment for persons who wish to secure to themselves the repayment, at a specified time, of the full amount of their disposable capital. They are issued at a rate of interest which varies according to the state of the money market, and are generally at a premium. Of late the ordinary rate of interest has been 1½d. to 2½d. per day for £100.

On the 5th May, 1846, the funded and unfunded debt of Great Britain and Ireland stood as follows:—

Funded debt of the United Kingdom, .	£766,672,822
Exchequer bills outstanding, ...	18,380,200
	£785,053,022
The annual charge upon the national debt, including terminable annuities, amounted at the same time to	£27,609,767
Management, ...	93,111
Interest on exchequer bills, ...	422,654
	£28,125,532
In the year 1854, the capital of the national debt amounted to	£775,041,272
And the charge for interest and management of the national debt was as follows:—	
Funded debt, ...	£27,286,499
Unfunded debt, ...	490,462
	£27,776,961

Great advantage results from the gradual conversion of the capital of the national debt into life annuities. Provision is thus made for the ultimate extinction of the national debt, whilst, at the same time, facilities are afforded to individuals for purchasing life annuities, under circumstances which insure solvency and fair dealing.

At one period, English functionaries relied much upon the maintenance of a sinking fund as a means of gradually redeeming, and of ultimately extinguishing, the national debt. It is manifestly desirable that every debtor should lay aside a portion of his income for the purpose of liquidating his debts; and in the case of an empire, it may be expedient even to impose additional taxation, with a view to provide a surplus income applicable to such liquidation — in other words, to establish a sinking fund. But it is equally manifest that no advantage can arise from setting apart a sinking fund whilst the debtor continues to incur new debts. In such case he is compelled to borrow not only that amount which his necessities require, but also an additional amount, for the purpose of maintaining his sinking fund; and as a debtor can generally borrow a lesser sum on easier terms than those on which he can borrow a greater, it would appear to be more politic to apply the reserve provided as a sinking fund to meet current expenses, rather than borrow an additional loan for the purpose of maintaining the sinking fund. Yet, during the last great war, British statesmen continued to maintain a sinking fund at a time when each year a new loan was contracted. It was supposed that this policy tended to support public credit, and hope continued to suggest, from year to year, that a time was approaching when the sinking fund would become really a surplus income available for the reduction of the debt. At length Parliament perceived the futility of such a system, and has fallen into the opposite extreme, by refusing to provide a sinking fund, even in time of peace. Whatever surplus income may casually arise from the ordinary relation between receipt and expenditure is applied in reduction of the national debt; but no special reserve is made for the purpose of effecting such a reduction; and, in the ordinary course of events, a *deficit* upon the financial transactions of the year is a contingency at least as probable as that of a *surplus*. It is now argued that it is more advantageous for a community to be freed from the extra taxation which would be required for maintenance of a sinking fund, than to liquidate annually a portion of the national debt. To me it seems that this reasoning is founded upon a selfish and shortsighted disregard, not only of the interests of posterity, but also of the strength and security of the present generation. During peace, no year ought to elapse without bringing with it the application of a considerable surplus of income in reduction of the national

debt, except upon the occurrence of such contingencies as render imperatively necessary the contraction of a new loan. Of such contingencies we may take as examples the indemnification of the slave owners on the abolition of slavery, and the occurrence of the famine in Ireland.

When it becomes necessary to borrow money, a Government has first to determine what kind of stock shall be created — that is, what terms it shall propose to lenders; and next, in what manner these terms shall be negotiated — whether the loan shall be taken by contract, or by open subscription. Two loans which have been effected in England and France respectively during the year 1855 will illustrate the different systems upon which the operation of borrowing money from the public may be conducted. In England, a loan of sixteen millions being required, the nature of the stock which was to be given in exchange for this amount was announced by the Chancellor of the Exchequer, and capitalists were invited to offer tenders for the loan by way of public competition. Practically there was little competition, and the whole loan was contracted for by a single house. In France the Government announced that it would grant a certain specified amount of stock in exchange for every £100 advanced by lenders, leaving to each lender the option of saying what amount he was prepared to advance. Under this system proposals were made by an immense number of lenders, and above eighty millions sterling were offered, whilst only twenty millions were required.

Now, it is not easy to say which of these modes of contracting a loan is most advantageous to the Government in a pecuniary point of view. Probably there is not much difference in the financial results of the two systems. In all such cases the public may expect to obtain money at a rate of interest which will be regulated by the current value of the existing Government securities — that is, of the old national debt. But in a social point of view, it seems desirable that the Government should deal directly with the public, rather than through the intervention of a contractor. In the latter case, a few great capitalists share the loan amongst them; in the former, a large number of independent individuals, who have at command moderate sums of money, are enabled to find an advantageous investment for their savings upon the occasion of a new loan. And since the aggregate amount of capital which is possessed by the whole community is greater than that possessed by a few contractors, it would seem to follow

that the profit obtained by the contractors might be saved by the Government, if it were to deal directly with the public at large, rather than with a few capitalists, or — as was the case on the recent occasion — with a single individual.

Custody of the Public Money.

In considering what is the best mode of securing the custody of the public revenue when collected, we are naturally led to make a few observations upon banking. In former times it was customary for states to hoard in the national treasury or exchequer all moneys collected for the use of the sovereign or of the public. But the establishment of banks has greatly altered the arrangements required for the custody of the public revenue. In England these funds have, during the last century, been, for the most part, deposited with the Bank of England. The public money so deposited generally amounts to several millions sterling. Thus, for instance, during the week ended on the 21st August, 1852, the public deposits (including the accounts of the Exchequer, the savings' banks, the Commissioners of the National Debt, and dividend accounts) amounted to £5,844,525. The Bank of England undertakes the payment of the dividends upon the national debt, and affords to the state all the same accommodation that an ordinary bank affords to an individual in regard to the safe custody of his funds, and the payment of any disbursement which he may be desirous to make out of such funds.

In the United States of America the public funds were formerly placed in the custody of banks; but in consequence of the speculation and other abuses engendered by this practice, they were subsequently withdrawn, during the presidency of General Jackson, and are now deposited in the public treasury and sub-treasuries of the Union.

The Bank of Ireland performs in Ireland the same functions in regard to the custody and disbursement of the public revenue, as those which the Bank of England performs in England.

To the Bank of England and other banks is assigned a very important participation in the exercise of that prerogative, which gives to the sovereign the right of coining money. Every individual who takes gold to the Bank of England is entitled, for every ounce of such gold, to receive coin bearing

the nominal value of £3 17s. 10½d. By parties engaged in pecuniary transactions with the Bank of England, it is generally found more convenient to receive notes than coin, and as these notes are convertible into coin at will, they circulate as money without any depreciation of their value. As long as the Bank promissory note for five pounds is convertible on demand for five sovereigns, so long the note will circulate freely without depreciation. During the last war, it was thought necessary, at a critical moment, to exempt the Bank from the necessity of paying coin in exchange for its notes. This exemption continued during the period of what has been called "the Bank restriction" — that is, from 1797 to 1821, A. D. During the early part of this period, the notes of the Bank of England, though no longer convertible into coin, suffered no depreciation, because they were not isused in excess. But by degrees the Bank Directors were tempted to issue a larger amount of promissory notes than the exchange transactions of the country required, and their notes became consequently depreciated so much, that in order to procure in the market an ounce of gold, it became necessary for the purchaser to give £5 4s. in notes of the Bank of England, instead of £3 17s. 10½d., the standard rate at which notes had been convertible into coin previous to the Bank Restriction Act of 1797. Thus it appears that the paper circulation of the Bank of England underwent a depreciation of more than 25 per cent. in consequence of the suspension of cash payments.

The power of issuing notes is thus equivalent to a right of coinage, and is attended with considerable profit to banking companies. It costs but a mere trifle to manufacture and print a bank note, and whilst it continues in circulation, it is as valuable as coin. A bank is thus enabled to discount bills with its notes, and to obtain a profit upon a capital which is, in some sense, fictitious, inasmuch as it has little intrinsic value. Great losses and inconvenience have resulted to the public, at different times, from the inability of banks to pay, in cash, promissory notes, which circulated freely while they were in high credit, but which, on the occasion of a run or of a commercial crisis, have suddenly been presented for payment in coin. At the close of the year 1825 and commencement of 1826, seventy banking establishments were destroyed within a period of six weeks. In 1814, 1815, and 1816, no fewer than 240 country banks stopped payment, and eighty-nine commissions of bankruptcy were issued against these establishments. These

disasters have led to much discussion as to the best means of preventing their recurrence.

Upon general principles, it seems not unreasonable that bankers, as well as private individuals, should be allowed to issue promissory notes, payable in cash, on demand, or at specified periods. But, on the other hand, considering that they thus become enabled to coin money, (for it is found that notes will always be preferred to coin as a circulating medium,) it becomes necessary to provide for the public some guarantee against the insolvency of banks. Various measures have been suggested for the accomplishment of this object. By some it has been argued that the state ought to reserve to itself the sole right of issuing notes for circulation. It is contended that the state ought thus, on the one hand, to secure for itself the profit which arises from the circulation of bank notes, and on the other, ought to provide, for the holders of such notes, perfect security in regard of their convertibility into coin. The latest arrangement — that brought forward by Sir Robert Peel in 1844, is founded upon a compromise between the two contending principles, namely, that of permitting unlimited freedom and competition in regard of bank note circulation, and that of establishing, on the part of the state, one sole bank of issue.

In founding a new community, it would, perhaps, be advisable to reserve to the state the sole right to issue circulating medium, but considering that banking establishments have been already formed in every part of the British empire, which establishments have enjoyed the privilege of issuing notes since their foundation, it may be doubted whether it would be desirable that they should be now deprived of this privilege. The public ought rather to rely for security upon such measures as would compel these banks to afford sufficient guarantees for their solvency, and particularly for the convertibility of their notes into coin, at the will of the holders of them.

Thus, for example, it ought to be enacted, that every bank which issues notes should be bound to deposit with some state official, connected with the department of finance, an equivalent to the amount of notes issued by it in securities, the credit of which cannot be questioned, such as Government stock, Exchequer bills, &c., so that in case of a run upon the bank for coin, there may be adequate funds available for the payment, in specie, of all the notes in circulation. A person who

deposits money in a bank is a voluntary lender to an establishment in which he places confidence, and must be contented to incur the risk incidental to such a transaction, but the poor man who receives a bank note, in payment of his wages, is utterly unable to judge whether the bank from which it issues is worthy of confidence. Practically, he cannot refuse to accept payment in whatever currency circulates through the vicinity. It therefore becomes necessary to provide for the holders of notes some protection against the contingency of a failure of the banks. That which is here suggested inflicts no wrong upon the bank, because such establishments are always under the necessity of investing a portion of their capital in Government securities, and they would equally receive the dividend or interest upon such securities, when invested to their credit in the name of a Government official as when unfettered by such intervention. In the case of a failure of the bank, such an arrangement would undoubtedly operate unfavorably upon the interests of depositors and of creditors, but public policy often requires that one class of creditors shall have precedence over another. Thus, for instance, a mortgagee claims payment of a debt, on the sale of an estate, in priority to the creditor who has advanced money upon simple contract, though the amount advanced by each of these creditors may have been the same.

Periodical publication of the accounts of each bank, that is, a statement of its assets and liabilities under general heads, forms a very efficient protection to the public against insolvency on the part of these establishments. Provided that the returns so published are correct, (and it is easy to secure their accuracy,) no very important aberration upon the part of any bank from sound principles of banking can long escape the vigilance of the mercantile community; and a bank is soon made to feel that it must not risk a withdrawal of the confidence of the public. Such periodical accounts ought to be published not less frequently than once per month. In the case of the Bank of England, weekly accounts are laid before the public through the Government Gazette; and it is, perhaps, desirable that all other banks should, in like manner, furnish similar returns weekly for publication.

In some of the states of Europe, a description of bank called "Mont de Piété," exists for the purpose of lending money to the poor on pledge. These institutions are in fact pawnbroking establishments, carried on by means of capital

belonging to the state. They protect the public from the fraud, extortion, and plunder which too often disgrace the business of pawnbroking when carried on by private individuals, and therefore they might be established with advantage in the larger cities of an empire, through the agency either of a governmental or municipal administration, or even of benevolent associations.

It is difficult to determine as an abstract problem the question, whether the money of the public ought to be deposited in a national bank or in a public treasury. The solution of this question, like that of many others, must depend upon the peculiar circumstances of each country. We may, however, observe, that the establishment of a special organization for the custody of the money of the state is attended with much more expense than is incidental to its deposit with a banking establishment. In the former case, it is necessary to incur all the expenses incidental to the formation of a public department, such as the erection of buildings, the payment of a large number of officials, &c. The money, too, lies unproductive in the coffers of the treasury. In the latter case not only is it unnecessary to incur any such expenses, but a bank can even afford with profit to pay a small percentage, as a compensation for the use of the public deposits. Unless, therefore, there be something peculiarly unsound in the system upon which the banking establishments of a country are carried on, it would seem more expedient to use this agency for the receipt and disbursement of the money of the state, than to create a special organization for the purpose. Of course we here assume, that proper guarantees will be provided to protect the public from any loss arising from mismanagement on the part of the bank.

Control and Application of the Public Revenue.

We have seen that in states subject to what is called Constitutional Government — that is, in which a representative assembly forms one branch of the legislature — it is the peculiar privilege of such representative assemblies to vote and appropriate the supplies that may be required for carrying on the public service. It is in general desirable that these supplies should be granted by way of annual vote. But it has been found expedient to withdraw from annual discussion some items of expenditure, with a view to avoid the appearance of instability, which might arise in respect of the fundamental institutions

of the state, if they were subjected to the fluctuating caprice or passion of a popular assembly. Thus, provision of a permanent kind has been made in the United Kingdom for the maintenance and personal expenditure of the sovereign, for the salaries of the judges, and also for various other classes of pensions and salaries. At the commencement of each reign, a "civil list" is granted by Parliament, which embraces the greater part of the expenditure necessary to maintain the personal state of the monarch; and this arrangement cannot be brought in question during the life of the sovereign. Expenditure of this permanent kind is provided by a charge upon the consolidated fund, whilst the ordinary supplies are voted by way of annual estimate.

It may be laid down as a general principle, that the public expenditure ought to be brought under the annual review of the representative branch of the legislature. If any exception be admitted, these exceptions ought to be founded upon some very strong and specific grounds of expediency. Such review ought to take place through the medium of annual accounts and annual estimates. Every portion of the expenditure of the past year ought to be set forth in an annual account; and — subject to the few exceptions already contemplated as made on specific grounds — every portion of the expenditure of the ensuing year should be brought forward by way of estimate for the sanction of the legislature.

In framing such estimates it is sometimes necessary to leave a certain discretion to the several departments with respect to the application of a portion of the funds placed at their disposal for particular services. Thus, for instance, it will be found that in the navy estimates of the United Kingdom very large sums have been habitually voted for the purchase of materials for ship building, without any specification of the nature or qualities of the materials required. But all estimates should be as specific as circumstances will admit them to be. Publicity is the best check upon every kind of abuse; and it is better to incur the inconvenience which may sometimes arise from entering into minute details, than to leave to officials a dangerous latitude with regard to the disposal of public money.

Whenever a discretionary power is to be exercised, the officials of the Treasury appear to be the authorities to whom naturally belongs the duty of sanctioning the exercise of such discretion, as they are bound to exercise a general inspection and control over the application of all sums voted by the legis-

lature. Thus, for instance, if a sum of money be voted for the service of a particular department — say for public works — though the Board of Public Works is the most suitable agent for ascertaining and reporting upon all the circumstances connected with a proposed public work, and for superintending the outlay of public money upon it, yet no such work ought to be undertaken without the sanction of the Board of Treasury. All the various departments ought to submit to the Treasury Board and to the legislature annual reports respecting the application of the money placed at their disposal, and respecting the general progress of affairs in each department. The reports made periodically to Congress, and the reports made to Parliament by the Poor-Law Commissioners, by the Boards of National Education, by the Emigration Commissioners, &c., afford illustrations of the system here recommended. In the administration of the public affairs of the United Kingdom several departments make no such annual report; and it is a matter of chance whether the inquiries of public men elicit an exposition of details which ought, as a matter of course, to be periodically submitted to Parliament and to the public.

All public functionaries of every grade ought to be entitled to receive pensions after having been in the public service during a certain number of years. Such pensions ought to be accorded, not as a favor, but as a right; and ought to be graduated according to the length of service. Thus, every functionary who may desire to withdraw from the public service after having been employed during ten years, ought to be entitled to receive a certain percentage on the amount of the salary which he had previously enjoyed, and this pension ought to increase, in case he continue in the service, in proportion to the number of years during which he shall have served.

With a view to make provision for the families of public functionaries, to take effect after their death, a certain percentage ought to be stopped out of their annual salaries. These savings, whether they be in the nature of deposit in a savings' bank, or of a life insurance, ought not to be liable to confiscation at the pleasure of the Government, but should be regarded as the property of the individual from whose salary the deduction has been made. In some cases in which provident arrangements of this kind have been made, the functionary is liable to lose the benefit of his savings in the event of his dismissal. Such a proceeding is scarcely consistent with justice, and it tends to produce a humiliating sense of de-

pendency on the part of officials towards those who have the power of thus robbing them in a moment of the savings of a life.

Audit of Public Expenditure.

In all well-regulated states every disbursement should be subjected to audit, with a view to ascertain that the moneys appropriated to particular services have been duly applied. Without such an investigation it would be impossible to prevent malversation of every kind. It is the business of the auditor to ascertain that the expenditure has been conformable to the purpose for which it was authorized; and, also, that all the parties engaged in carrying into effect such purpose have been duly remunerated, and have given proper receipts in discharge of their respective claims.

We may here observe, that it has been found expedient to execute almost all public services by contract, determined by competition, and, often, by acceptance of the lowest tender. Though instances occasionally arise in which work would be better performed on special order by trustworthy parties, yet a system of contract, open to competition, is the only mode of procuring supplies and of effectuating public objects which affords a guarantee against favoritism and corruption. It has, therefore, been generally acted upon in the administration of public affairs in the United Kingdom.

The following question here suggests itself: "In what manner ought the Board of Audit to be constituted?"

We have already seen, that in regard to almost all the central departments of executive government, it has been thought desirable that the nomination of officials should be confided to the discretion of the executive, without any intervention on the part of the legislature. But the character of an Audit Board suggests a deviation from this practice. An Audit Board is created as a check upon the Government, to prevent the possibility of misapplication of funds voted by the legislature. It seems, therefore, to be ridiculous to give to the executive the nomination of officials, whose duty it is to watch and keep in check the conduct of the executive itself in regard of financial affairs. Hence, we infer that the legislature ought, directly or indirectly, to nominate, or, at least, to confirm the appointment of this class of public functionaries.

Nor is this proposal unwarranted by precedent; for, in Belgium, the institutions of which country are, in many respects,

extremely well organized, the Audit Board (*La Cour des Comptes*) is named by the Chamber of Representatives. It consists of a president and six councillors, who are appointed for six years, and their appointment may, at any time, be revoked by the Chamber of Representatives. Practically, there is, perhaps, little difference in the results which arise from the mode of appointment prevailing in England, where the Audit Board is appointed by the executive, and that prevailing in Belgium, but, assuredly, the latter is the most consistent with sound principle.

CHAPTER XXVIII.

ADMINISTRATION OF NAVAL AND MILITARY AFFAIRS

During the middle ages armies were seldom maintained on a permanent footing by the sovereigns of Europe. When an occasion for war arose, an appeal was made to the feudal nobility, who were bound to bring their retainers into the field whenever their services were required by their country or by their sovereign. In those times the different kinds of military service were not separated by such strict classification as now exists, and we frequently find a renowned commander engaged in service on land during one campaign, and, in the next, directing the operations of a fleet at sea. Since the practice of maintaining large standing armies and fleets has prevailed in Europe, it has become customary to keep more separate the different branches of the science of war; and to train both officers and men for that service only for which they were originally enlisted. Hence, we now find that, in the United Kingdom, four distinct and independent services have been created for the national defence against foreign enemies. These are the army, navy, ordnance, and militia.

Navy.

In a country such as Great Britain, whose safety mainly depends upon its fleet, the importance of its navy and the magnitude of its naval operations render necessary a separation of the management of the naval service from that of the

land forces. In the United Kingdom a Board of Admiralty presides over this department, and, as the First Lord of the Admiralty always holds a seat in Parliament, and in the Cabinet, he is one of the chief responsible ministers of state, as well as principal official in this department.

To this department belong the construction and equipment of vessels of war; the transport of troops; the management of naval arsenals; the enlistment, discipline, payment, and preservation in health of seamen and marines; the maintenance of establishments calculated to advance the sciences of navigation, of naval tactics, and of geographical discovery; the superintendence of asylums for superannuated and disabled seamen; the payment of half pay and pensions to the non-effective officers and men who have earned retired allowances.

Whilst we abstain from entering into minute details, connected with the administration of naval and military affairs, we may, with profit, advert to a few general considerations, which appear to be of primary importance.

In the first place we may observe, with reference to enlistment and promotion, that circumstances seldom arise which can justify coercive "impressment." Impressment is another word for kidnapping a man into a state of slavery. Once the seaman is placed on board a vessel of war, he becomes a slave during the continuance of his service; that is, he must absolutely surrender the exercise of his own will, and implicitly obey the orders of his superior officers. Should he refuse obedience, he is subjected to the same punishments as are used for the coercion of slaves. These observations apply likewise to the "conscription" of soldiers. To compel men to place themselves, for a protracted term of years, in such a condition, is to exercise towards them the worst kind of tyranny. In the case of the Negro, humanity repudiates such cruelty, and he who carries into bondage a native of Africa is justly punished as a pirate. How, then, can similar cruelty be justified, when it is designated by the name of impressment or conscription? Under the apprehension of actual invasion, a nation may surrender its freedom for a time to a dictator, and as long as this specific emergency lasts, the services of every citizen, whether by land or sea, may be justly claimed, and even compelled, in protection of his native soil. But such liability cannot rightfully be extended beyond the actual defence of homes and altars. Such contingencies are rare in modern times, and the possibility of their occurrence has been

used only as a pretext to justify impressment in the British navy.

Recruits, whether for the army or the navy, ought to be made to understand the full extent of the responsibilities which they incur on entering these services, and instead of being crimped or kidnapped, they ought rather to be allowed a limited time for reconsideration, in case they have hastily allowed themselves to be enrolled. In order to induce respectable young men to enter the army and navy, every possible effort should be made to render these services acceptable, so that admission into them may be coveted rather than shunned. Pecuniary bounties, on enlistment, are justifiable in case of necessity, but a much surer mode of rendering the service acceptable is to treat the members of the force in such a manner as will encourage a sentiment of pride in their profession, and an assurance that if they conduct themselves well they will secure for themselves advancement, and an honorable provision for life. It is found, even in the treatment of convicts, that rewards are much more influential than punishment in producing good conduct. The soldier or seaman should be enlisted for a specified period, say for five years, seven years, or ten years, and a pension, graduated according to the length of his service, ought to be secured to him after he shall have served during a certain period, say after seven years' service. After the lapse of this time his pension ought to increase in proportion to the number of years during which he may remain in the service. Extra pay ought to be allowed for good conduct. Promotion ought also to be given as a reward for intelligence and efficiency, combined with good conduct. Under such a system, corporal punishments would become unnecessary, as an instrument of discipline. Of course offences of various kinds will be committed in the army and navy, as well as in every other walk of life, and offences must be punished; but so far from coercing the soldier or the seaman to remain in the service, dismissal from it, with disgrace, ought to be held to be the severest of all punishments. It is found that, in the management of the police force of Ireland and of London, — consisting of bodies amounting to ten thousand men and five thousand men, respectively, — the fear of dismissal operates as a motive which is sufficiently strong to secure general good conduct on the part of the members of the force. Why should it be otherwise in the army or navy? Of course these principles must be applied with modifications

suited to the circumstances of the case. A seaman, for instance, who has engaged to make a particular voyage, ought not, even in the mercantile service, to be allowed to quit his ship until that voyage shall have been completed. A soldier who has been removed, at great expense, to a distant colony, ought not to be permitted, except with the consent of his superiors, to leave the service, until the period for which he enlisted shall have expired. In all cases, however, it would be desirable that the seaman or soldier should be allowed to redeem himself from servitude by the payment of such a sum as will indemnify the Government for the charges incurred in providing a substitute for him.

Boys ought to be encouraged to enter the naval service. When their parents are alive, this should, of course, be done only with consent of the parents; but in the case of orphans, particularly of those brought up in orphan asylums, workhouses, and similar establishments, many boys would be found disposed voluntarily to adopt the naval profession, in preference to any other, if their attention were early directed to maritime affairs.

The practice of paying off and discharging seamen from ships of war, upon their return to port, appears to be calculated to inflict injury both upon the service and upon the individual seaman so discharged. The seaman finds himself in possession of a large sum of money, under circumstances in which he is tempted to spend it with reckless extravagance, at a moment when he is liberated from all restraint. He ought rather to be encouraged to exercise prudence at the moment of temptation, and every facility should be afforded to him for laying up his earnings, as a provision for his old age, or for the domestic comfort of his family in case he marry.

With regard to promotion, it would seem desirable that every officer, both of the army and navy, should serve in the ranks for a certain time, and that promotion, instead of being determined by the influences of pecuniary or aristocratic interest, should depend upon merit and capacity. In the British army, promotion to the higher ranks of the profession depends almost entirely upon money or aristocratic interest; and as the British army has been distinguished by many brilliant successes, it is assumed that a system which produces such results cannot be susceptible of amendment. But what glories can compensate for the heart-burnings which are perpetually inflicted upon deserving men, by a system based upon

injustice? How often does it happen, that the meritorious officer of the British navy and army, who possesses every qualification that is necessary to form a great military commander, is left to pine in obscurity in the lower grades of his profession, merely because he does not possess interest at head quarters, or because he cannot command the money requisite for the purchase of advancement, whilst juniors far inferior to him in professional qualifications are placed over him, because they possess these adventitious advantages.

It is undoubtedly desirable that the arrangements of the army and navy shall be such as to attract, rather than to repel, young men who possess the advantages of rank and of wealth. It is a great safeguard to a country, not only against foreign enemies, but also against domestic usurpers, that its armies should be filled with persons whose circumstances and connections in life are such as naturally attach them to the maintenance of national freedom. It is far easier for a usurper to win the support of men who have nothing to rely upon but their military pay, than it would be for even a Wellington to make the military aristocracy of the British army subservient to the designs of his personal ambition. A military career has been considered, in all ages, the most honorable sphere of exertion for young men of spirit, whose circumstances render them independent of the drudgeries of life; and it is surely better that the young aristocracy of a country should employ themselves in martial exercises or achievements, than that they should give themselves up to effeminate pleasures. In opening the highest gradations of the army and navy to merit and ability, in whatever rank these qualities may be found, it is apprehended by some that the tone of manners would be lowered by the introduction of vulgarity. It is our belief that grounds for such apprehension would not exist, if educational as well as professional attainments were made a test upon which promotion should depend. It is found that barristers, sprung from the lowest ranks of society, take their place beside the most refined members of the aristocracy of Great Britain, without inflicting upon the order to which they have been introduced by their abilities any disparagement through vulgarity of manners. If the aristocracy of England were not continually recruited by the masculine vigor and intellectual endowments of these distinguished children of the democracy, it would soon become effete, and would lose the respect of the nation. The British people regard the

peerage with pride, chiefly because that body becomes "the Valhalla" — the ultimate repository — of the national heroes, judges, and statesmen. Why should we anticipate, then, that the admission of accomplished members of the democracy into the higher ranks of the army and navy would lower the tone of manners prevalent in those professions? There is reason to believe, on the contrary, that it would tend rather to raise than to lower the standard of manners; for those best acquainted with the mess room and the gun room are least disposed to attribute to the sentiments which at present prevail there the superiority claimed as resulting from an aristocratic system of promotion.

It may be urged, that it is easy to declare, as a general principle, that promotion ought to depend upon merit and capacity, but that great difficulties arise in attempting to give effect to this general principle. How shall the merit and capacity of candidates be ascertained? If it be left to a commanding officer, or even to a board, to determine these qualifications, what guarantee can be provided against favoritism? Will not those in whom shall be vested the privilege of selection discover merit and capacity in the candidates whom they are desirous to promote? Again, it will be asked, shall a valuable officer be left forever in the lowest grade of his profession, merely because he does not manifest as much ability as is exhibited by his juniors? Ought not the advancement of such an officer to depend, in some measure at least, upon seniority of standing? If the principle of advancement by seniority be admitted, shall it extend to privates as well as to officers? If common soldiers be raised from the ranks on account of seniority, how can persons of low habits and of ignorant minds be excluded from promotion? If advancement depend upon seniority, will not the highest commands be reserved exclusively for men who have lost that physical strength which is necessary to secure vigor in action?

These difficulties are, undoubtedly, incidental to a system of promotion which depends exclusively either upon merit or upon seniority, but the suggestion of them does not form any adequate justification for a system of promotion depending upon purchase. Nor are these difficulties insuperable. Assuredly it is not desirable that any one should attain the rank of an officer who is not possessed of a certain amount of education. But there is no difficulty in establishing a test of educational attainment, whether general or professional, and if a

sergeant can prove that he possesses the attainments which we are accustomed to consider as essential to the position of a gentleman, he will be qualified to associate, on equal terms, with those whose importance is derived chiefly from their wealth or rank.

It might be also arranged, that after a certain number of years of service in each grade, officers shall be advanced from the lower to the higher steps of their profession; so that every one whose conduct has been irreproachable, and who possesses a certain minimum of educational and professional attainment, shall be assured of promotion. As in universities scholarships are reserved for those who exhibit extraordinary ability, so in the army and navy a certain proportion of the appointments ought to be reserved for those who exhibit extraordinary capacity. In regard of military and naval science, it is easy to ascertain, by public examination, the attainments of every candidate. There, therefore, remains only the difficulty of rewarding distinguished field service. This must depend, in great measure, upon the public opinion of the profession. If advancement were to be granted to an individual, expressly upon the ground that he had distinguished himself in a peculiar degree by the skill and bravery which he had displayed in the field, it would scarcely be possible, even for the most corrupt of administrators, to award such a distinction to persons who were notoriously undeserving of it. At the present moment pensions are granted annually for meritorious service, in various departments of the administration of the United Kingdom. The nature of the service is set forth in the annual estimates which are laid before Parliament, and seldom is any question raised with respect to the propriety of the selection. A similar statement might be exacted in the case of all promotions given for distinguished service, so that if any manifest favoritism were exhibited, public attention might be immediately drawn to it. No administration would lightly encounter the sort of criticism to which such favoritism would give rise.

I am inclined to think that education at naval and military seminaries is the best mode of securing for young men an introduction as officers into the naval and military services, whilst it has the advantage of being exempt from the imputation of partiality or of invidious distinction. Instruction during two or three years at such a seminary would, in ordinary cases, enable a young man to undertake the duties of an

officer, without actually serving in the ranks. If the expenses incidental to such education were as considerable as those which belong to training for other professions, they would necessarily exclude those who could not afford to incur this expenditure. Thus, the views of parents, who are unwilling that their sons should be thrown into the sort of association which prevails amongst private soldiers and common sailors, would be rendered compatible with the justice which is due to the lower ranks of these professions.

Under such a system as that which we here contemplate, there would, of course, be no purchase of commissions in any grade of the services. Introduction to the rank of officer would be attained either by preliminary education at a military seminary, or by promotion from the ranks, adjudged by an impartial authority as a reward for high military qualifications, combined with good conduct.

Army and Ordnance.

Though in the United Kingdom the Ordnance service has been kept separate from the general administration of the army, it seems naturally to belong to the same department. The objects of military organization may be classified as follows, viz.: —

The maintenance of a force capable of defending the country from foreign enemies, involving arrangements for enlisting, training, arming, paying, feeding, clothing, preserving in health, moving, and stationing such troops.

The maintenance of arsenals, fortifications, and barracks.

The maintenance of establishments formed for the advancement of military education.

The maintenance of asylums for superannuated soldiers, and the payment of pensions and allowances to the non-effectives of the army.

The army consists of infantry, cavalry, artillery, and engineers. Each branch of this force being dependent upon the aid of the rest, every effort should be made to preserve between them harmony of feeling and unity of action. Though a certain degree of classification be necessary, yet there exists, perhaps, at present, too rigid a separation between the different branches of the military service. No man can be considered a perfect soldier who is not capable, upon an emergency, of serving as a gunner or dragoon, as well as in the ranks of

the infantry; and so far from interposing impediments to the migration of officers and men from one branch of the service to another, the military authorities ought rather to make it the imperative duty of every soldier to learn the exercises and evolutions which belong peculiarly to each separate branch of the army.

For obvious reasons, it is desirable that there should be, in the cabinet and in the legislature, some minister who may be responsible for the management of the army. Such responsibility cannot fairly be exacted from any minister unless he be possessed of an overruling authority, which shall enable him to direct and control all the administrative arrangements of the service. It would be too much to expect that he should be held responsible for the movements of armies when in the field. These must necessarily be left, in great measure, to the general in command of the forces which are actually engaged in a campaign; but he is primarily responsible for the general plan of any campaign which may be undertaken, inasmuch as no campaign ought to be set on foot without his concurrence; and upon him lies the responsibility of providing all the means which are necessary for the success of the military operations which have been so sanctioned by him.

With a view to his being enabled to perform these duties efficiently, he ought to be president of a board in which every branch of the military service shall be represented, so that mutual coöperation may be secured between the different sections of the service, and so that all may be brought into subordinate consultation with the responsible head of the war department.

The necessity of such an organization has been painfully evinced by the occurrences which have taken place in the war that has arisen during the composition of the present work. It appears that in Great Britain there has been an almost incredible want of coöperation between the different branches of the military service, and the absence of a controlling authority has exempted the parliamentary representatives of the war department from adequate responsibility; for responsibility is correlative with power, and no one can be expected to do that which he is not furnished with means to accomplish.

The efforts which have been hitherto made to correct these defects in the administration of the British army have been of the clumsiest kind, and bespeak, on the part of British statesmen, but little capacity for organization. Could any

thing, for instance, be more ridiculous, than to place in Parliament two responsible ministers, one of whom should be called "Secretary at War," and the other "Secretary for War?"

It is scarcely necessary to observe that the naval and land forces of a kingdom must be governed by a special code of laws, called martial law. The soldier and the sailor, on entering into these forces, must be content to surrender the natural liberty which belongs to every freeman. Many acts, which are in themselves innocent, — such, for instance, as sleeping on a watch, — must be restrained by the severest punishments. Prompt obedience to all lawful commands is the first duty of a soldier, and disobedience must be prevented by measures which would be deemed arbitrary and tyrannical in civil life. In cases of complaint respecting the conduct of officers or men, recurrence to the ordinary tribunals of the country would involve delay and embarrassment, which, at critical periods, would be of fatal consequence. Martial law, therefore, is necessary for the maintenance of discipline, but it ought to be carefully framed upon principles of equity, and ought to be impartially administered. What, for instance, can be said in favor of a system of administration which permits an officer to appear in a barrack yard in a state of intoxication, with impunity, yet subjects to severe punishment the private who is guilty of a similar offence?

It would be idle to discuss here the propriety of that policy which has induced the nations of modern Europe to maintain large standing armies. Pride, jealousy, apprehension are motives with which it is vain to reason. If a French politician be asked why France keeps on foot 500,000 soldiers, whilst 250,000 would be amply sufficient for all legitimate purposes, he will reply that Russia maintains double that number, and that France must preserve a high military position in Europe, if she wishes to command respect. If a Prussian be asked why Prussia keeps on foot an army of 300,000 men, when half that number would be sufficient for all legitimate purposes, he will answer that France and Austria maintain superior forces, and that Prussia would not be safe if she were to leave herself at the mercy of rival powers. Sentiments such as these have prompted the several nations of Europe to maintain, during peace, permanent armies on a scale which may be said to have arrived at the *maximum* that a peace establishment could bear, whereas the true policy of nations ought to suggest to them the propriety of reducing this stan-

dard to a *minimum*. Not less than three millions of men have, in the aggregate, been maintained during peace by the nations of Europe for naval and military service. As these men contribute nothing towards their own support, they must be supported by the industry of others. The expenditure connected with the various accessory circumstances, incidental to the maintenance of such a force, is scarcely less onerous than the support of the force itself, and must likewise be defrayed by taxation drawn from the industrious portion of the community. Could nations agree to adjust such matters by negotiation, there seems to be no reason why the standing armies of Europe should not be reduced, in regular proportion, to at least one half of their present numerical force, without endangering the balance of power or the protection of social order. But since it is hopeless to expect any such adjustment, each nation must take measures for its own security. For this security Great Britain relies upon its fleet rather than upon its standing army, which is insignificant when compared with those of the nations of the Continent. The United States of America maintain neither a large navy nor a large standing army, yet consciousness of their internal power and resources enables them to hold as high a tone, perhaps a higher tone, in negotiation, than any other nation in the world ventures to assume. There is no doubt, however, that the respect of mankind depends much upon the possession of available power: and if the navy of Great Britain were to become less formidable than that of France, not only would her influence amongst European powers be diminished, but even her very independence would be endangered. Every nation ought to make such preparations for defence as may secure it from aggression. Those who possess power are seldom attacked, but the weak and unprepared are at all times exposed to danger. It is therefore the duty of patriotic statesmen of all countries, but more especially of those that are liable to be overrun by a foreign enemy, to take every precaution that can protect them from invasion. Among these precautions we may place the maintenance of fortifications, and of such a standing army as can be supported without imposing an excessive burden upon the national resources. But far more important than the erection of fortresses or the maintenance of standing armies, as means of defence, is the security derived from encouragement of a manly and patriotic spirit amongst the inhabitants of a country, sustained by the con-

stant practice of martial exercises and of military evolutions. In a country that is liable to invasion (and what country is not liable to invasion?) every young man should be taught the use of arms, and should be trained to military movements as an indispensable part of his education. It may be said that the time given up to such instruction would be more usefully applied to other pursuits. This might be true if money-making, or study, or pleasurable indulgence were the sole objects of life. But since the happiness, the glory, and the prosperity of a country depend upon its liberty and its independence, it is necessary for every nation which prizes these blessings to employ the instrumentality by which they may be preserved. It is too late to learn the art of war when the enemy's foot is upon our threshold. The most reckless bravery will then be unavailing, unless sustained by the appliances of war. Nor is it true that the time given to military training is time wasted. Youth and manhood require exercise — a condition essential to the preservation of health. Why should they not find recreation in rifle practice, at least as animating as that of the cricket ground or of the bowling green. There is no student whose vigor of mind would be impaired by an hour's drill. A knowledge of fortification, of engineering, of gunnery, cannot be superadded to his other acquirements, without furnishing him with a kind of practical knowledge which will be found useful on a thousand occasions in life. For example, no one can thoroughly understand the military operations recorded in history unless he be in some measure acquainted with military tactics; and if the student have devoted himself to the pursuit of experimental science, there is no reason why the art of making gunpowder should be the only chemical operation neglected by him.

In accordance with these sentiments, we may conclude that every nation ought to rely mainly for its safety upon its militia, or national guard, and that no pains should be spared to render such a force efficient. Difference of judgment may, indeed, arise as to the best mode of organizing the militia; and upon this point the statesman must be guided, in some measure, by the character of the people whom he governs. For instance, it is a question whether the officers of a militia ought to be appointed by some superior authority, or whether they ought to be elected by the force itself. With reference to such a question as this, it may be answered without hesitation, that appointment by way of election appears to be best

suited to a republic, as being most conformable to the spirit of republican institutions. There are even some countries, subject to monarchical rule, in which the officers of the militia are chosen by the force itself. Such, for example, is the practice in Belgium. But, on the other hand, there are many states in which popular election to military command of any kind is incompatible with the general character of their political institutions, and in which it would therefore be unwise to introduce prematurely the practice which may be found beneficial in a republic.

The militia being in its nature partly a civil, and partly a military force, a question arises, whether it ought to be subject to the control of civil or of military authorities.

In the United States of America, the President of the Union is commander-in-chief of the militia, as well as of the army. In Great Britain, the sovereign is nominally the head of the militia, as well as of the army; but the subordinate agencies through which this authority is exercised are civil, not military. In the United States, the local militia is subject to the command of the civil authorities of each state, not of the military authorities of the Union. In England, the militia is immediately subordinate to the Lord Lieutenants of counties. In Belgium, the management of the "garde civique," or militia, is one of the functions of municipal administration. It is primarily constituted by the action of the communal authorities, and the central control over it is vested, in time of peace, in the Minister of the Interior. The Minister of War interferes with its operations only in time of war.

We infer, therefore, as well from experience as from theoretical principles, that the militia ought to be considered as a civil, rather than as a military force. On constitutional grounds, it would be highly objectionable to give to a military chief the permanent command of that organization upon which the citizens rely for protection against the ambitious designs of domestic, as well as of foreign invaders. Since, however, strategic operations, on a large scale, cannot be effectually carried on, without the combination of every element of military power that is available, circumstances will occasionally arise, such, for instance, as an invasion, in which it may become necessary, for the public safety, to intrust the command of the militia to the military authorities of the realm; but every such operation should take place under the special sanction of the legislature, and should be limited

strictly to the period during which actual hostilities are carried on.

It is obvious that a militia, or national guard, is a force which is, by its nature, strictly defensive. Upon extraordinary occasions it may be required to move beyond the limits of the district in which it is raised; but, in general, this force should be considered stationary, and its duties should be such as would not interfere, to any considerable extent, with the ordinary avocations of its members. With a view, however, to meet every contingency, it is, perhaps, desirable, that with each large body of militia a movement column should be connected, consisting of young and unmarried men, whose services might be employed in any part of the territory for defence of which such militia shall have been organized; but this movable column ought not to be liable to foreign service. It would be necessary, of course, that its members, whilst on duty, should receive pay at least as remunerative as that of ordinary soldiers; but, when a militia man, or a national guardsman, is not compelled to leave his own district, or to do more than attend drill and occasionally take part in a military movement, it is not more reasonable that he should expect to be paid for such service than it would be reasonable that he should expect to be paid for attending as a juror at assizes or quarter sessions. Every country has a right to claim from its inhabitants the performance of such public duties as can be fulfilled without imposing upon them an unreasonable sacrifice of time or money. Upon this principle, men are expected to attend as jurors, as guardians of the poor, as town councillors, to the duties which belong, severally, to those functions; and, surely, no exemption from this general principle can be pleaded in the case of that which is the highest and most honorable of all functions — the defence of one's country against a foreign or domestic enemy.

The military organization which exists in Switzerland approaches very nearly to a realization of the views upon which our observations relative to a national militia are founded. In Switzerland every young man is bound to learn military exercises as a part of his education, and in each *commune* days are set apart for military training. For movements and combinations of a more extensive kind than can be practised in the communes, the militia of each *canton* is collected and subjected to exercise during a certain number of days every year; and in addition to these exercises there are also federal

operations of a similar kind, in which the troops of the several cantons are brought together in a federal camp, for the purpose of being made accustomed to all the evolutions which belong to the movements of a large army. Whether such a system would be as effective for offensive operations as that of a standing army is perhaps doubtful, but it is admirably suited for the defence of a country against foreign invaders. Every citizen is thus trained as a soldier, and such military training does not require that he should be carried away from his industrial occupations for a certain number of years, as is the case under the military organization which prevails in Prussia and other continental states. The general result of this system is, that Switzerland, with a population of 2,200,000 souls, can bring into the field, at a week's notice, an army of 275,000 men — viz.: the federal contingent and reserve, amounting to 125,000, and the landwehr, amounting to 150,000 men.

The financial results of this system are equally favorable. Without taking into account the enormous saving which arises to the country from not forcing a large number of the citizens into the permanent service of a standing army, and thereby interrupting their industry, we find that the maintenance of the military force of Switzerland imposes an average charge per head on the population of not more than 1 franc 5 centimes, whilst in France the expense of maintaining the army imposes a charge of 10 francs 75 centimes per head on the population; in Belgium 6 francs 45 centimes; in Prussia 5 francs 44 centimes.*

With regard to foreign service we may remark, that the maintenance of a national militia tends greatly to facilitate the levy of troops for the regular army. Young men trained in the militia naturally acquire love of the military profession, and if the army be well managed, there will always be a disposition to enlist from the militia into the army. Such an exchange should, however, be in all cases voluntary — never compulsory. Whatever momentary advantage may appear to result from recruiting by conscription or compulsion, it never can be justifiable to take men away from their homes, and expose them to the hazards of war in a foreign country, for the purpose of maintaining some imaginary point of honor,

* The above statements respecting the military system of Switzerland, are taken from a very interesting work, "D'Anvers à Genes," written by Mr. Jottrand, a Belgian writer of high authority.

or of sustaining some imaginary interest. It is otherwise in the case of invasion. Then all are bound to contribute to the defence of their homes. During the last European war in which Great Britain was engaged, England was for a short period threatened by Bonaparte with invasion. In such an emergency every citizen might with propriety be called upon to take up arms for the protection of his country; but it cannot be said that every citizen could be justly rendered liable to serve in the war carried on in the Peninsula, for objects by no means essential to the independent existence of the British nation, and in maintenance of a policy which many eminent statesmen have condemned.

Of all kinds of military power, that which is most to be deprecated is the employment of foreign mercenaries. No surer evidence of the feebleness of a state, or of the decay of its public spirit, can be afforded, than dependence upon foreigners for its defence. Among the causes of the decline and fall of the Roman Empire, dependence upon barbarian mercenaries must be accounted one of the most influential. The employment of hired *condottieri* was destructive to the Italian republics; and it is impossible to exaggerate the evils which were produced during the middle ages by the practice of engaging the services of mercenary troops, called "*free companies*," but who more properly might have been denominated *brigands*. The mischiefs which experience has shown to result from the employment of foreign mercenaries are not accidental, but are necessarily incidental to the maintenance of this description of force.

Foreign troops can feel little interest in the objects for which a constitutional force ought to be maintained. The acquisition of pay and plunder, not the defence of homes and altars, is the motive which subsidizes their service. For pay and emolument they are ever ready to use their arms in the cause of tyrants, and instead of being the protectors of a nation's liberty, they become the instruments by which it is inthralled. Should serious danger arise, they are naturally unwilling to shed their blood in mortal strife for a country which is not their home; and they easily find, or make, some pretext for changing sides, thus carrying away to the enemy, at the moment of greatest peril, the means of resistance upon which the people who employed them relied for protection. Nor have the cases been rare in which foreign troops, subsidized to defend a weak

nation, have become their masters. Thus the Anglo-Saxons acquired dominion in Britain, and thus their posterity have established their power in India. The disposition to employ foreign mercenaries is a development of national feeling which ought to be watched and checked with the gravest anxiety by those who value the honor and independence of their country; because its approach is insidious, and is generally excused by specious pretexts. When a people become wealthy and luxurious, they naturally become unwilling to undergo the hardships of war and the restraints of military discipline. Those who lead opinion find it easy to convince them that the services of foreigners are much less costly than those of natives, and that the national power will be advanced more if the citizens apply themselves to the pursuits of industry, than if they devote themselves to the unprofitable exercises of military service. Yet the time will assuredly arrive when a country which relies upon foreign mercenaries will discover that no sacrifice would have been so costly as the extinction of its martial spirit and patriotic self-reliance.

Whilst we deprecate reliance upon foreign troops as a permanent force, we are not bound to conclude that no occasions can occur which justify the employment of foreign auxiliaries. Many instances might be cited in which nations contending with an antagonist more powerful than themselves have saved their freedom by such alliances; but in these cases the nation has relied mainly upon its own efforts, and has used foreign arms only as a temporary aid.

Whether a Government ought to allow its citizens to engage in foreign service, is a question which admits of controversy. I incline to think that the inhabitants of a free country ought not to be prevented from enlisting in any service to which their military ardor may attract them, provided always that such engagements do not lead them to bear arms against the country to which they owe natural allegiance. In the days of chivalry, the nobles of Europe were in the habit of acquiring fame and experience as volunteers in campaigns in which their country was not a party; and this military training tended greatly not only to invigorate individual prowess, but also to give strength and security to the nation of which they formed a part. To every sort of legitimate enthusiasm a free career should be permitted. A young noble, such as La Fayette, in turning his back upon the seductive pleasures of an effeminate court, to serve

as a volunteer in the ranks of a people struggling for their independence, stands forth in honorable contrast with the servile courtiers of the reign of Louis XV.; and in these cases individual honor forms no unimportant element of national glory.

It is manifest, that if the free enlistment of troops in a neutral state be allowed to one belligerent, it must also be allowed to his adversary; otherwise the state ceases to be neutral. It may thus happen that citizens of the same state shall be found contending in opposite ranks during a war. This frequently happened in former times in regard of the Swiss, who were permitted by the Confederation to enlist in the military service of states, which were frequently brought into collision with each other. Undoubtedly, such a result forms a grave objection to the practice of enlistment for foreign service.

In the war which is being carried on while I am writing this paragraph, an effort has been made by the British Government to enlist troops in the United States. That attempt has been suppressed by the action of the local authorities, but if it had been unimpeded, it is probable that Russia would have derived more advantage than injury from the proceeding; because, in such a case, the Government of the United States could scarcely have been justified in preventing Russia from causing privateers to be fitted out in the ports of America, and such privateers would have inflicted upon British commerce injuries tenfold greater than any that could have resulted to Russia from the enlistment in America of a few thousand soldiers.

I do not belong to that whining tribe of philanthropists, who profess to imagine that war can at all times be avoided. Undoubtedly, if men were perfect as angels war would never be necessary, because unprovoked aggression would never occur; but as long as mankind are swayed by the impulses of ambition, cupidity, or revenge, war is a contingency for which every nation should be prepared. Hostilities may sometimes be averted by friendly arbitration, and an Amphictyonic Council of representatives, deputed by different nations, might sometimes interpose with effect to prevent a rupture; but what guarantee can be provided, which shall effectually eliminate from such a council the operation of vehement passions and of sinister influences? Weaker states, such, for instance, as Saxony, Bavaria, Wirtemburg, Belgium,

may derive security from the mutual jealousies of their neighbors, which they could not find in their own policy, institutions, or means of defence; but no nation can be said to enjoy perfect independence, except those which are prepared to defend their own soil against every invader. The example of Switzerland shows that a large population is not required to insure the independence of a nation. So also a few thousand Afghans were found to be more formidable foes to British power in Asia, than many millions of Bengalese. Courage, sustained by martial exercises, is, under heaven, the only secure defence of a people. Without courage and military training a nation lies helpless, inviting the inroads of an invader; but when prepared for war, and animated by a spirit ready for the encounter, it will generally command that peace which, if unprepared, it would sue in vain.

If the opinion of the wise and good could restrain the passions of mankind, it would be much more desirable that philanthropists should apply themselves to the propagation of sound doctrines respecting the circumstances and contingencies which justify war, than that they should advocate its total cessation. Notwithstanding the experience derived from the history of man, during three thousand years, nations and their rulers appear to be as ignorant, or rather, perhaps, as reckless, of the first principles of justice, at the present moment, as they were during the age of Sesostris or of Cyrus. In the pacification of Europe, at the treaty of Vienna, states, formerly independent, were portioned out, with as little regard to national feelings or prescriptive rights as if they had been mere booty exposed for allotment by a party of successful brigands. England claims for herself the first place in directing the opinion of Europe to aims sanctioned by justice and humanity, yet her conduct during the most recent, as in the earliest days of her history, has been little else than a course of unprovoked aggression upon unoffending nations, or of unprincipled acquisition in her dealings with nations weaker than herself. During the last twenty years, for instance, she has carried on war in Spain, in Syria, in Afghanistan, in Scinde, in India, in China, for objects, many of which were not sanctioned by justice or morality; and her dealings towards the inhabitants of Southern Africa, New Zealand, and Borneo have been prompted by insatiable cupidity, as well as stained by a reckless effusion of blood.

I am not at liberty to encumber these pages with an essay

on war, but I cannot quit this subject without setting forth a few elementary observations with respect to the causes and objects which give rise to hostilities between nations. However much at variance with the practice of mankind may be the propositions which we seek to establish, we can have no hesitation in affirming that the following objects are not legitimate causes of war.

1. The acquisition of wealth or territory, belonging to nations who have given no offence which can justify aggression, is not a legitimate cause of war. This proposition is so incontrovertible that it needs neither discussion nor elucidation. Yet, at least nine out of ten of the various wars recorded in history have originated in this desire of aggrandizement.

2. The vindication of acts that are, in their own nature, unjustifiable, is not a legitimate cause of war. It has frequently happened that occasions for quarrel have arisen through the misconduct of the functionaries of a nation. Such misconduct has provoked the resentment of an aggrieved people, and thus has given rise to hostilities. Instead of taking into consideration the original cause of conflict — instead of disavowing and punishing the offending functionary, as the real culprit — nations have generally returned blow for blow, until seas of blood have been shed in vindication of acts which an impartial observer would have pronounced to be indefensible. Contingencies of this kind have been of frequent occurrence in the relations between supreme governments and their dependencies, and have given occasion to many successful revolts.

3. Apprehension that a wrong may be inflicted by a party who stands in an independent, neutral, or even menacing attitude, does not justify hostilities, until the commission of some overt act shall clearly manifest an aggressive design.

In the official papers which were submitted to Parliament, in justification of the war in Afghanistan, it was assumed that designs hostile to the British Government in India were entertained by the rulers of Afghanistan, but the evidences of such intention, brought forward to sustain this assumption, were of the most slender and unsatisfactory kind. It is impossible to read these papers, and those relative to Scinde, without feeling that, in regard to these countries, the British Government were guilty of unprovoked aggression upon unoffending nations. In the case of Afghanistan it encountered the

retribution which it deserved, by being compelled to abandon that country with disgrace. In the case of Scinde, usurpation was successful, but the apologist of British injustice finds some palliation in the circumstance, that the native authority which was overthrown was itself a usurpation, and that its Government was more oppressive to the people of Scinde than that which has superseded it.

The seizure of the Danish fleet in the harbor of Copenhagen, during the last European war, is perhaps one of the most remarkable instances that recent history affords of the perpetration of wrong under an apprehension of contingent danger. In the hostilities between France and England, Denmark assumed an attitude of neutrality, but in 1807 the British Government became apprehensive that Napoleon would violate this neutrality, and make himself master of the Danish fleet. Under the apprehension that a wrong might be committed by others, the British Government resolved to inflict a grievous wrong upon an unoffending power — thus perpetrating a crime on the pretext that they only anticipated its commission by an adverse belligerent. Accordingly, the Danish capital was bombarded, and the Danish fleet was carried away and treated as part of the legitimate spoils of war.

4. The breach of a treaty has been generally held to be a sufficient cause for declaring war against the party by whom it has been infringed. That the violation of a treaty generally affords a legitimate occasion for war, is a doctrine which I am not disposed to controvert, but we cannot admit the universality of its application. Many treaties have been concluded in the name of a nation, by parties who have not been duly authorized to act on behalf of such nation. Many stipulations have been made, which ought not to be held binding upon a people, unless confirmed by general and continuous assent. A treaty, like any other law, may contain enactments and stipulations, which, though suited to one state of circumstances, are wholly unsuited to another. As it would be contrary to the first dictates of common sense, to declare that a particular law should be held binding under all possible circumstances, so in regard of treaties, it must be tacitly understood, if not avowedly expressed, that the contracting parties shall have power to modify them, or to set them aside, in case the circumstances under which they were made be altogether changed. In the discussions which took place between France and England, with regard to the Spanish marriages contemplated or

contracted by the sons of Louis Philippe, English statesmen contended that France was still bound by the engagements of the treaty of Utrecht, (A. D. 1713.) Now, it is manifest that no one generation has a right to bind other generations throughout all time, and therefore, even if the circumstances of Europe had not in the mean time undergone a total change, the French nation might, without impropriety, have refused to be bound by engagements contracted more than a century before this discussion took place; but considering that the whole continent of Europe had in the mean time undergone a complete *bouleversement*, which had altered all the circumstances contemplated by the contracting parties, it would seem to every impartial reasoner that the stipulations of the treaty of Utrecht ought to be considered as obsolete, and that a war founded upon an alleged breach of its stipulations would not have been justifiable, unless sustained by other considerations more cogent than this pretext.

"The famous commercial treaty with Portugal, negotiated by Mr. Methuen, in 1703, was almost universally regarded, for a very long period, as admirably calculated to promote the interests of England; but it is now generally admitted by every one who has reflected upon such subjects, that few transactions have taken place by which these interests have been more deeply injured. It stipulated for the free admission of British woollens into Portugal, from which they happened at the time to be excluded, but in return for this concession, a concession far more advantageous to the Portuguese than to us, we bound ourselves forever hereafter to admit wines of the growth of Portugal into Great Britain, at two thirds of the duty payable on the wines of France." *

Can it be maintained that a treaty containing such an obligation is binding on the British nation throughout all ages?

An engagement made by the representatives of a nation to do an act which is itself immoral cannot be held binding. Thus, an engagement to supply a certain number of slaves every year to another country, such as that contracted under the *Assiento* Treaty, cannot bind even the generation in whose name it was made. The violation, therefore, of such an engagement cannot be considered as a legitimate cause for war.

Neither can the enforcement of stipulations, which are unjust and oppressive, be considered as a justifiable cause of

* MacCulloch, Comm. Dict. Art. Treaties.

war. It has often happened that, by force or fraud, Governments have been induced to conclude treaties which were manifestly disadvantageous to the nations whom they represented. It would be absurd to maintain that a nation ought throughout all time to be compelled to maintain engagements extorted by superior force. Whenever it acquires power sufficient to enable it to cancel an unreasonable engagement that has been imposed by a superior force, it is at liberty to take measures for redressing the wrong to which it may have submitted when it was weak. This right is inherent in every society, and, even though it may not have been maintained in theory, it has always been acted upon in practice. An individual may, perhaps, feel himself bound by engagements made to a robber or a murderer, who permits him to retain his property or his life upon certain stipulated conditions; but no system of jurisprudence has ever attempted to enforce such engagements. So *a fortiori* in the case of nations no Government can make engagements which shall be held binding upon a community, unless such engagements be in their own nature consistent with the principles of justice.

In all ages treaties have been violated without scruple when the interests of one or other of the contracting parties have suggested such a violation. The most solemn engagement that has been entered into between nations, in modern times, is the Treaty of Vienna (1815, A. D.) — an engagement the provisions of which extend to every part of Europe. Yet several of the provisions of this treaty have been already set aside under the pressure of altered circumstances. But though the violation of treaties may be admissible in extreme cases, and, particularly, when such treaties are founded upon injustice and oppression, yet this doctrine ought to be applied with caution in the ordinary transactions which take place between nation and nation. In general it is expedient to submit to a wrong, rather than to violate an engagement — more particularly in those cases in which, by the terms of the agreement, a power is reserved to each of the contracting parties to reconsider the conditions of the treaty after the lapse of a specified period. As a general principle, the strict observance of treaties ought to be cherished amongst nations with as much fidelity as is exhibited by a man of honor in regard to the maintenance of private engagements, even though those engagements may be disadvantageous to him.

5. The maintenance of an usurped privilege is not a legiti-

mate cause of war. Thus, the claim of Denmark to levy dues upon vessels passing into the Baltic through the Sound is indefensible, and any attempt to enforce it by military or naval operations would be unjustifiable. The commercial nations of the world have, for the most part, acquiesced in the payment of these dues; but, except in compensation for some advantage rendered by Denmark, such as the construction of lighthouses, &c., there can be no title, founded upon abstract justice, to such a privilege. In the same manner, the claim of Turkey to exclude other nations from the passage of the Dardanelles is not sanctioned by the principles of abstract justice. All nations have an equal right to navigate all seas; nay, more, all great arteries of communication, such as navigable rivers which pass through the dominions of several independent states, ought, likewise, to be open to the free commerce of all nations. It is not enough to say that such transit may be dangerous to the states whose dominions lie contiguous to these channels of communication. No state is exempt from danger: and if this plea be admitted to defend one usurpation, it may be used to justify another, until at length all such difficulties shall be determined by the mere possession of power. It is a question whether a state which is entirely enveloped by others, without possessing any natural means of communication, may not in justice demand from its neighbors a right of transit; but where a navigable river, such as the Rhine or the Danube, passes through several independent states, it is a monstrous assumption on the part of any one of them to deny to the rest the advantages afforded by nature. This is a proposition, in support of which it is not necessary to adduce arguments, because it is as clear as the proposition, that every human being has an equal right to breathe the air of heaven. Yet the preponderance of might over right has been so universal that, even to this hour, these elementary principles of justice are not recognized by nations in their dealings with each other.

With a view, as it is said, to prevent collisions between nations, it has been generally recognized as a principle of international intercourse, that the portion of the sea which lies within three miles of any coast appertains to the country to which that coast belongs. Thus the capture of fish by foreigners has been prohibited within these limits. It deserves to be considered whether this principle is founded upon rational grounds. Would not the same arguments, which are

applied to the operations of foreigners upon the sea, be *a fortiori* applicable to their operations on land? Foreigners are allowed to dig and carry away gold from California and Australia. In other countries foreigners are allowed to work mines, to fabricate goods, to raise agricultural produce, with a view to exportation. Why, then, should a foreigner be prevented from availing himself of those maritime resources which nature has evidently designed to be common to all mankind? Collisions frequently arise at present, in consequence of the attempts which have been made to infringe this natural right. The fishermen who are in pursuit of a shoal of fish will never stop to consider whether they have passed the exact limits determined by a treaty. Such collisions would be obviated by declaring that the sea beyond low water mark is open to the peaceful operations of all nations.

In regard of ships of war, it is more difficult to determine what principles ought to be applied under the circumstances here contemplated. To me it seems unreasonable to prevent ships of war, belonging to all nations, from passing through any strait whatever. Let us suppose, for instance, that Russia may hereafter intercept the free access of commercial nations to the navigation of the Danube. In order to check such a proceeding it might become necessary for France or England to send a fleet into the Euxine, with a view to vindicate this right. Would it be reasonable that Turkey, by possessing command of the Dardanelles, should prevent the ingress of such fleets into the Black Sea? Or, on the other hand, if Austria or France inflict a wrong upon Russia, is it reasonable that Turkey should take upon itself to prevent the Russian fleet from seeking redress by reprisals in the Mediterranean? Quite irrespectively of the questions brought to issue in the present war, it seems to me that the Dardanelles and Bosphorus ought to be thrown open, not only to the commerce, but also to the naval forces of all nations. This solution of the main difficulty which has arisen in adjusting terms of peace during the present war, having been offered by Russia, it is wonderful that the British Government should have rejected it. It would have afforded a much surer guarantee for the preservation of the independence of Turkey than would be found in the annihilation of the Russian fleet; because the independence of Turkey has at least as much to fear from France as from Russia. The right of access to the Black Sea, on the part of all nations, would

establish a counterpoise between the rival powers, which would tend to protect her independence; whereas, if Russian influence be extinguished, that of France will preponderate at Constantinople.

6. A nation is not justified in going to war with another because it refuses to surrender refugees.

Every nation is entitled to determine the conditions upon which it will receive foreigners within its borders. It may exercise towards them unlimited hospitality — receiving, without impediment, every individual who is desirous to settle within its boundaries — or, it may contract treaties of extradition, by which it shall engage to deliver up criminals to the authorities of the country from which they have escaped. The former of these alternatives is that which is most consistent with the natural rights of man, and with the independence of nations. It appears, indeed, to be extremely reasonable that engagements should be formed between neighboring and friendly states, for the mutual extradition of criminals; but difficulties arise in determining the meaning of criminality. That which is a crime in one country is often held to be a virtue in another; for instance, after the revocation of the Edict of Nantes, the profession of Protestantism subjected Frenchmen to punishment. Was England bound to treat as criminals the Protestant refugees who escaped to her shores from France? In like manner, to propagate the Roman Catholic religion was a crime punishable at law in Ireland and England, during the early part of the eighteenth century. Was France bound to surrender to England the Irish Catholics who sought refuge there from this cruel persecution? No one will maintain that, in either of these cases, the reception of refugees would have afforded a legitimate cause of war. These observations are equally applicable to political offences: it was a crime in France to resist the usurpation of power by Louis Napoleon, in December, 1851, whilst in Belgium, a country whose present constitutional existence originated in a successful revolution, such resistance might justly be held to have been the duty of every citizen. Would France have been justified in going to war with Belgium, if she had refused to give up the political refugees from France, who sought protection within her confines? Clearly not. Such a war would have been undertaken in violation of the principles of justice.

No nation is bound to act as an instrument of police for

another; otherwise it might happen, that a state would be compelled to do for another state acts which it would not do in the case of its own citizens. The fugitive slave law of the United States is open to this objection. The authorities of those states in which slavery is not permitted to exist, are bound to aid in the apprehension of slaves who have escaped from slaveholding states; so that the authorities of Pennsylvania are compelled to do for Carolina that which it would be criminal to do for the inhabitants of Pennsylvania. Even in regard to those crimes which all mankind are agreed in desiring to repress, such as theft, forgery, murder, &c., it is doubtful whether treaties of extradition are desirable, because they furnish a pretext to powerful nations for interfering with the internal concerns of their weaker neighbors; and also because it may happen that persons, falsely charged with such offences, shall be delivered up, under such treaties, to unjust condemnation. If a country, in which free institutions and an equitable system of judicature are established, enter into a treaty of extradition with a country of which the judicial administration is notoriously defective or corrupt, it may happen that an accused person, who would, assuredly, be acquitted in the former country, shall be delivered up to unjust condemnation in the latter. Contingencies of this kind are not imaginary; and they form a very sufficient ground for hesitation, before we sanction the policy of treaties for the surrender of any class of criminals.

It must be admitted, however, that a nation is justified in demanding that refugees shall not be allowed to abuse their privilege of asylum in other countries, so far as to make such countries the arsenals from which they may carry on, without molestation, a warfare against the authorities of the land from which they have escaped. It would manifestly be a breach of amicable relations, if a nation were to permit the refugees from a state, with which it professes to be at peace, to carry on hostile operations against that state. Such a proceeding would clearly form a legitimate ground for war.

Every nation ought, in its legislation, to reserve to itself the right of commanding foreigners to quit its territory, and in case of danger the exercise of this power will generally avert any difficulties which may have arisen from the reception of refugees; but to expel a refugee merely upon the demand of a foreign Government, is to confess weakness or cowardice, unless the antecedent conduct of the refugee shall have been such as to justify his expulsion.

If a country contracts treaties of extradition, it ought to take measures for preventing foreigners from entering its territory when under pursuit for crime. To deliver up to his pursuer a fugitive who has made his escape under circumstances which may or may not be justifiable, is a proceeding which is repugnant to every generous mind, and which ought, if possible, to be avoided.

To the question, "What circumstances justify a nation in going to war?" we may answer, —

1. It is not only allowable, but it is an imperative duty, on the part of every nation to defend itself from invasion. In the case of an invasion, the whole population ought to rise *en masse*, to protect its independence. Every peasant should become a soldier, every wife and every daughter an auxiliary. All the ordinary courtesies of warfare should be forgotten. Between two armies fighting on a neutral soil for ascendency, there cannot be shown too much of chivalrous generosity towards each other. But when the territory of a high-spirited and independent people is invaded, without just cause, by an ambitious neighbor, forbearance is misplaced. To exterminate the enemy by every agency that nature or art supplies, is the first duty of the citizen. It is a misapplication of humane sentiment to condemn what is called the ferocity of a nation, when it is contending against an invader. "War to the knife," is the motto which ought to be inscribed upon the banner of those who are defending their homes and altars. They should neither give nor receive quarter. We ought to applaud, therefore, rather than to condemn, the fierce and unrelenting animosity which was displayed by the Guerilla bands of Spain against the French, when that country was invaded by the troops of Napoleon. If the sickly sentimentality, which preaches forbearance on such an occasion, had prevailed in the Peninsula, the French dominion there would never have been overthrown. Though Britain may justly boast of the valor displayed by her troops, and of the skill displayed by her commanders, in the campaigns of the Peninsula, yet this valor and this skill would have been ineffectual, if they had not been supported by the partisan warfare carried on by the Guerillas of Spain, with immitigable ferocity, during the whole of the contest. Humanity denounces cruelty in every form; but if an enemy comes to plunder, ravish, and destroy an unoffending population, the extermination of such a foe is humanity, not cruelty. Can humanity forbid us to put to death the incendiary or the assassin?

2. War is justifiable when it is undertaken by way of reprisal for wrongs inflicted.

If the Government of a country sanction the commission of an act of violence or of injustice by any agent or functionary dependent upon its authority, then the party injured is justified in using whatever methods shall appear to be most effectual for procuring redress. This may be done either by resorting, in the first place, to reprisals, or by an immediate declaration of war. To procure indemnification and redress ought to be the sole object of the party wronged, and negotiation for peace ought to be set on foot whenever such indemnification shall have been secured. In almost all cases of this kind, the questions at issue can be settled by the mediation of an indifferent party; and before hostilities are commenced, arbitration ought to be sought for by the aggrieved party.

3. Cases occur in which a nation is justified in going to war in support of a people oppressed by a superior power. The principle of self-protection will sometimes suggest such intervention. An ambitious neighbor is the common foe of all surrounding communities; and if he be allowed to subjugate one country without interruption, it may be presumed that he will subsequently proceed to make himself master of all others that are incapable of resisting him. It is upon this principle that what has been called "the balance of power" has been to the statesmen of Europe an object of so much solicitude during the last three centuries. Subsequently to the acquisition of an ascendency in Europe by the Emperor Charles V., the jealousy of European nations was for a long time directed against the House of Austria. On the other hand, the power of France was rendered so formidable by the ambition and victories of Louis XIV., that this spirit of self-protection was concentrated in the combinations against this monarch which were formed at the close of the seventeenth century. Again, the career of Napoleon awakened, at the commencement of the nineteenth century, the most lively apprehensions. One after another, the nations of Europe lost or surrendered their independence to this conqueror. The most unprovoked and unscrupulous of his aggressions was his seizure of the crown of Spain. In this case, if ever, surrounding nations were justified in upholding the independence of the aggrieved and invaded country. It may be questioned whether Great Britain acted wisely in engaging in a deadly contest with Napoleon; but it cannot be doubted that she was fully

justified in assisting the efforts made by the Spanish patriots in resistance to the subjugation of their country. Self-protection is one of the fundamental instincts of human nature, and is held to justify defensive measures under every possible contingency; but neither are we at liberty to exclude from the transactions of nations the operation of motives of a more generous kind. When a weak man is causelessly attacked by one who is stronger than he, the spectator rushes to the combat, and takes part with the injured. If this generous impulse be deserving of applause in the case of individuals, it is equally commendable in the conflict of nations. The cold calculations of prudence will, perhaps, suggest that such intervention is seldom unattended with danger to those who interfere in contests in which they have no immediate concern; but we doubt whether, even on grounds of expediency, the policy of non-interference is that which is most consistent with wisdom. Were there no apprehensions of the interference of disinterested parties, all small and feeble states would be swallowed up by their more powerful neighbors. It is the fear of retribution which may be inflicted by the combined armament of independent powers, rather than a sense of rectitude and forbearance, that restrains the ambition of great powers, and protects the independence of the smaller states.

It rarely occurs that the intervention of a foreign power in contentions between a Government and its subjects is justifiable. What friend of national freedom does not denounce the recent intervention of Russia, in the struggle between Hungary and Austria? or the intervention of France in support of the tyranny of Ferdinand of Spain, after the congress of Verona? Yet, it would be too much to say, that there are no occasions upon which a nation ought to afford assistance to revolted subjects battling for their liberty. Who condemns Queen Elizabeth for having afforded such assistance to the states of the Dutch Netherlands? Who does not applaud France for having tendered friendly aid to the revolted colonists of Great Britain, when they were struggling for the independence of North America?

Not only is it desirable to determine, by the fundamental rules of equity, the causes and occasions which shall be held by the opinion of mankind to justify a war, but it is also desirable to determine, by considerations of right, rather than by the predominance of might, the mode in which war ought to be carried on by contending belligerents. Such questions be-

long to what is called "the law of nations," and would require a separate treatise for their proper discussion. It is sufficient here to observe, that some of the practices frequently resorted to by belligerents appear to be inconsistent with natural equity, though they have received the approbation of some who are versed in the law of nations. Thus, for instance, the claim advanced as of right, to search the vessels of neutrals upon the high seas for the goods of an enemy, gave occasion to a system of depredation which exasperated in the highest degree the minds of the Americans, and eventually led to a war between the United States and Great Britain. I shall not here review the arguments which have been urged for and against the principle that "free ships make free goods," or, in other words, that the goods of an enemy found on board the ship of a friend ought to be exempted from capture; nor those which have been advanced for and against the other contested principle, that the "goods of a friend found on board the ship of an enemy ought to be restored to him." It seems to me that a just regard for the independence of neutrals ought to guarantee them against any interference whatever while prosecuting their commercial enterprises upon the open main. The very utmost concession that can with safety be granted by neutrals upon this point is, that belligerents shall have a right to ascertain by visitation that an enemy's vessel has not hoisted the colors of a neutral. When an enemy's port is actually under blockade, the blockading force is perhaps justified in preventing the ingress of neutral vessels, because it is the object of war to straiten in every way the resources of an enemy, and because neutrals make themselves parties to the contest in case they furnish supplies to a beleaguered stronghold; but a due regard to the interests of commerce, and to the honor of independent nations, suggests that such interference should be limited to the vicinity of the blockaded port, and to cases in which the blockade is real, not nominal.

The seizure of an enemy's person or goods, without a declaration of war, is not sanctioned by the principles of equity. An embargo may indeed be justifiable, by way of *reprisal*, because, in such case, the enemy has, by a violation of the amity previously subsisting, practically made a declaration of war; but to commence a war without due notification, by seizing the persons and property of peaceful and unoffending citizens, is an act at variance not only with the principles of

equity, but also utterly abhorrent to a chivalrous sense of honor. The nineteenth century might, upon this point, take lessons in generosity from the spirit of the middle ages, which it is now the fashion to condemn.

A question has lately been raised, whether it be consistent with the general interest of mankind to allow privateers to carry on war under *letters of marque and reprisal;* and English opinion has inclined to the adoption of a principle that such a mode of carrying on war ought to be treated as piracy.

It is extremely natural that the English people should at present wish to establish such a doctrine, because they possess a superiority, not to say a supremacy, at sea, by means of their great naval armaments; but it would be very unsafe for other nations, who have not applied their maritime resources to the creation of a great navy, to acquiesce in the establishment of such a principle as a part of the law of nations.

It has, indeed, been adopted, with great propriety, as a settled maxim, that individuals ought not to be allowed to carry on war, unless when authorized by the Governments to which they are subject. Except in the case of a sudden invasion, or in cases in which the natural instinct of self-defence is brought into operation, no individual is justified, even in time of war, in undertaking a buccaneering expedition upon his own account. But the energy and valor of individuals constitute one of the main elements of the strength of a nation, and every nation is at liberty to call forth that energy and that valor, in whatever manner shall best conduce to its own protection. Let us take, for instance, the case of the United States of America. It has heretofore been the policy of that Government to abstain from taxing the people for the creation of great armaments, either at sea or land. Hence, its naval force is much inferior to that of Great Britain, and even to that of France, although its mercantile marine greatly exceeds the commercial marine of France, and probably will soon surpass that of Great Britain. Now, if a war were to arise under this state of circumstances, the power of the United States would be almost entirely paralyzed, if it had bound itself to abstain from privateering, because the construction of a navy is a task which cannot be suddenly accomplished, whereas, in a few weeks, the United States would be able to cover with privateers every ocean on the globe. It would, therefore, be an act of suicide on the part of the United States, or of any other commercial nation except that which is in command of

the sea by its naval force, to acquiesce in the doctrine which a regard to the special interests of Great Britain now induces English publicists to promulgate.

CHAPTER XXIX.

DEPARTMENT OF FOREIGN AFFAIRS.

THERE are few states, if any, in the world, whose affairs are not in some measure connected with those of other countries. A nation, therefore, cannot be wholly indifferent to the proceedings of its neighbors; and circumstances may occur in which it ought to watch those proceedings with extreme vigilance. Collisions will often arise unavoidably between nations as well as between individuals, from the clashing of their respective interests, or from the promptings of pride and ambition. A wise Government ought to foresee and provide for such contingencies. Hence arises the necessity for appointing functionaries who shall be charged with the special duty of superintending the foreign relations of a country. The principal of these functionaries is called "the Minister for Foreign Affairs."

It is desirable that this minister should have a seat in the legislature, so that he may at all times be at hand to explain every circumstance connected with the foreign policy of the country, when such explanations are required. He is also naturally a member of the Cabinet Council as the organ of communication between the Government of his own country and the representatives of foreign powers. In minor states, such as Bavaria, Wirtemburg, &c., foreign relations may not require the maintenance of a large number of functionaries; but in the case of a great empire, such as that of Great Britain, France, Russia, &c., it is desirable that it should have accredited agents at all the principal seats of government in the world. These agents bear different names according to their rank and to the importance of their mission, such as ambassador, envoy extraordinary, and minister plenipotentiary, chargé d'affaires, consul, &c.

Though mischief has occasionally arisen from the intermed-

dling of foreigners in the domestic affairs of countries to which they have been accredited as diplomatic agents, yet, upon the whole, the presence of the representatives of foreign powers at the several seats of government has tended greatly to preserve the peace of the world. Offence would often be generated by misunderstandings, which are removed by timely explanation, and the friendly intervention of a disinterested party through its representative has often averted a war by mediation, where there has existed a serious ground of quarrel. In regard, also, of the ordinary transactions of life, the presence of diplomatic agents, even of the lowest class, is found to be attended with great advantage. The consul who resides at a foreign port unites in his own person the functions of several different classes of officials; and if he be a discreet, well-informed man, contributes much to the maintenance of good order among those of his countrymen who resort to the port in which he is stationed. He acts not only as a diplomatic agent who protects the civil rights and commercial interests of individuals belonging to the nation he represents, but he also exercises some of the functions of a magistrate, and some of the functions of a notary public; moreover, he is not unfrequently enabled to adjust disputes, as an impartial arbitrator between contending parties.

Diplomacy is supposed to be a craft which requires, more than any other, the exercise of simulation and dissimulation. It has been said that an ambassador is "an honest man who has been sent abroad to tell lies for the good of his country." It may also be said that he is a spy sent to watch every movement that takes place in the country to which he is accredited. I am not among the number of those who think that an honest man may do for his country that which it would be a disgrace to him to do for himself. I therefore utterly repudiate the notion, that it is necessary for a diplomatist to depart from the direct paths of truth and rectitude. He ought, indeed, to be distinguished for discretion and self-control. He is bound to exercise a proper reserve in his communications with the representatives of interests that are often in a state of rivalry with those of his own country; but I am convinced that in diplomacy, as in every other department of human affairs, "honesty is the best policy." A plain-spoken rectitude is upon every occasion not only more honorable, but more conducive to the success of all legitimate aims, than the most wily arts and contrivances. But whilst we abjure all manner of deceit

in the intercourse of nations and of their representatives, we may enjoin the most assiduous cultivation of all those branches of knowledge which naturally belong to the department of foreign affairs. An accomplished diplomatist ought to be perfectly acquainted with the past history of the world, and, more particularly, with all those international transactions which have given occasion for treaties. He ought to be versed in the law of nations. He ought to be thoroughly acquainted, not only with the details of modern geography, that is, with the situation, interests, institutions, and resources of every state in the world, but he ought also to know the general characteristics of the dispositions of the statesmen who guide their affairs. He ought to be master of those ancient and modern languages which have been chiefly used in the conduct of diplomatic intercourse. In manners, he ought to be affable, yet dignified and self-possessed, uniting the refinement of courts with the simplicity of the domestic household. He ought to be acute in observation, and vigilant in acquiring all such information as can be obtained without having recourse to mean and dishonorable expedients. In short, the very highest description of education is requisite to form a perfect diplomatist. Yet there is, perhaps, no class of officials, in the appointment of whom suitable qualifications have been so generally disregarded by the British Government, as in that of the various functionaries connected with the department of foreign affairs. The higher offices of this department have, for the most part, been reserved for favored members of the aristocracy, whilst the inferior situations have been generally bestowed upon political retainers, whose want of capacity or of diligence unfits them for success in the ordinary avocations of life.

The profession of the diplomatist ought to be made the subject of educational training just as much as the profession of the lawyer, doctor, clergyman, or civil engineer; and promotion from the lower grades of the profession should depend upon the display of abilities, discretion, and experience, as well as upon proficiency in those attainments which we have described as qualifications for a diplomatic career.

I have not placed among the qualifications of a diplomatist, a knowledge of etiquette, and of the forms of precedency. Yet, at one period, no inconsiderable amount of energy, as well as of tact and research, was expended upon the ceremonials of intercourse between the representatives of different states. The comparative influence of these states was supposed

to be indicated by the position which was accorded to their representatives on all occasions of ceremonial display; and, under these circumstances, precedency was deemed to be an object worthy of ambitious effort. Many amusing anecdotes might be adduced in illustration of the sort of contention which formerly existed between diplomatic agents in regard of precedency. These contentions frequently interposed a serious impediment to the transaction of international affairs, and always created unnecessary delay. Upon this point, at least, we are wiser than our ancestors, and expedients have been discovered for obviating disagreements in regard to the mere formalities of international intercourse. A nation that possesses intrinsic power can afford to waive priority in regard of matters of ceremony. It would be well, upon all occasions, to determine mere questions of precedency by the adoption of some expedient which cannot hurt self-love — such, for instance, as that sometimes resorted to in the collocation of names on a list, by alphabetical arrangement, rather than by an attempt to give to each individual his proper precedency. At the coronation of Queen Victoria, precedency was, if I recollect rightly, yielded to the representatives of foreign powers, not according to the relative importance of the several states which they represented, respectively, but according to seniority, by which arrangement the representative of one of the smallest states in Europe took precedence over the ambassadors of the most powerful. If etiquette and ceremonial be made a matter of study, it ought to be rather with a view to discover means of avoiding contentions upon such a subject, than with the desire of maintaining that exact position, and no other, which is assigned by the fantastic rules of ceremonial observance.

The value of diplomatic representation is now so generally appreciated, that there are few considerable states in the world which refrain from employing such an agency for the advancement or protection of their external interests. The Empire of China is still an exception. It has never yet condescended to send an embassy to Europe, and it receives with jealousy, and only under galling restrictions, the representatives of foreign powers. England, in her intercourse with Rome, emulates the exclusive policy of China. It is a penal offence to hold diplomatic intercourse with the Pope; and though great inconvenience results from the absence of an accredited agent at the centre of Christendom, (an inconvenience

which leads to an evasion of the statutory enactments on the subject,) yet the fear of papal influence is still so strong in England that the British legislature has not ventured even to contemplate the reëstablishment of diplomatic relations with Rome, except upon the condition that no Roman *ecclesiastic* shall be accredited to the court of St. James.

It may be admitted, indeed, that this distrust of Rome, though contemptible, whether it be an indication of weakness or of bigotry, is not altogether without foundation. The representatives of the Pontiff of Rome have generally been disposed to interfere to an undue extent in the domestic concerns of the countries in which they have been received. Such interference finds a pretext, if not a justification, on the ground that the Catholic population of every country in the world is bound to look for guidance in spiritual affairs to the head of the Catholic Church, and it is not possible to dissociate this spiritual supervision from the temporal affairs of life.

The office of ambassador has been in all ages invested with a peculiar sacredness, which shields it under all circumstances of danger; but this protection is accorded only upon the understanding that the ambassador shall not abuse his privileges. If, therefore, the representative of a foreign power intrigue against the Government and institutions of the country to which he is accredited, or if he use the opportunities of his office to excite dissension, he forfeits his claim to personal respect, and, in extreme cases, even hazards his personal security.

Whether the representative of a foreign power ought to be held liable to be sued by a civil or criminal process for ordinary delinquencies, is a question which admits of controversy; but there can be no doubt that every nation is justified in requiring the withdrawal of an ambassador, in case he abuse the privileges of his position. Thus, in our own days, we have seen that Sir Henry Lytton Bulwer was expelled from Spain on charge of intermeddling too much with the domestic factions of that country.

CHAPTER XXX.

ON TRADE, COMMERCE, AND INDUSTRY.

In every considerable state there ought to be an official department for superintending the progress of the national trade, commerce, and industry, presided over by a responsible minister. However perfect may be the institutions and policy of a country, circumstances will frequently occur in regard of which the intervention of such a department will be found advantageous. The minister of this department ought to be assisted by a Board, and the attention of these functionaries should be constantly brought to bear upon every matter that can affect the industrial interests of the realm. Day by day, some new question arises in a great manufacturing or commercial country, in regard of which the advice or assistance of the Government is required by the industrious classes. To whom shall they apply? The ministers of the several departments are too much occupied with the details of administration over which they respectively preside, to have leisure for the consideration of questions which do not fall within the range of their ordinary duties. It is therefore desirable that functionaries should be at hand, whose duty it shall be to collect information, to receive suggestions, to offer advice, and to render assistance, with a view to the advancement and development of the industrial energies of the people. If it be found, for instance, that a particular enactment of the legislature has produced unforeseen consequences which are detrimental to agriculture, trade, or manufactures — if it be found that the policy of a foreign Government, or the proceedings of a colonial dependency, are checking commercial enterprise — the president of the Board of Trade ought to bring the subject of complaint before the minister to whose department it belongs, authenticating complaints by undeniable proof, and suggesting a suitable remedy. If such a Board were appointed merely for the purpose of collecting and diffusing statistical information, its establishment could not be considered as superfluous. The value of accurate statistics is now so universally felt, that it is almost unnecessary to say any thing in favor of such researches. An exact knowledge of facts in every science furnishes the only safe data upon which theories can be constructed. When such statistical knowledge is unat-

tainable, surmise necessarily supplies the place of accurate information, and the most fanciful theories are based upon vague conjecture. Statistical investigation sobers the extravagance of fancy, and corrects the errors of judgment. It would be as reasonable to suppose that the commander of an army could make judicious arrangements for a campaign without knowing exactly the amount of force placed at his disposal, as it is to expect that a statesman can form sound conclusions with respect to the bearing and tendency of political measures, without having before him all the data upon which calculations must be founded, combinations adjusted, and results ascertained.

The investigation and continuous registration of vital statistics — that is, of the number of the population, of its births, deaths, and marriages — and the various questions which are connected with this section of statistics, belong, perhaps, more properly to the department of the Interior than to the department of Trade and Commerce; but, through whatever agency such researches may be made, it is desirable that the information collected should be compiled and presented to the public in a synoptical form. In a well-regulated state, tables ought to be annually published, in which should be set forth every statistical fact that is necessary to illustrate the condition of the country in regard to its population, its finances, its defensive forces, its education, secular and religious, its commerce, its manufactures, its industry.

I may here remark as a singular fact, that although in Great Britain the amplest statistical information respecting financial and commercial affairs is periodically submitted to the public, yet, in regard of agricultural products, accurate statistics have not hitherto been collected; consequently, every reasoner has formed by estimate such calculations as support the hypothesis which he desires to establish, and the candid inquirer is left in uncertainty as to the facts upon which his reasoning should be founded. A return ought to be annually obtained, showing the number of acres under each kind of crop, the amount of stock, &c., together with every other sort of information that can illustrate the actual condition of the country in regard of its agricultural resources.

But the functions of a Board of Trade ought not to be limited to the mere collection of accurate information. Its higher and more important duty consists in aiding the industrial efforts of the population. A certain school of political econo-

mists are disposed to regard all interference on the part of the Government with the industrial operations of a country as pernicious. They contend that trade, commerce, and industry need no encouragement, but flourish in the highest degree when unfettered by regulations of any kind. They profess to ask for nothing but liberty, and deprecate protection or encouragement. This opinion has been founded chiefly upon observation of the many evils and abuses which have been generated by measures which were originally designed to foster particular branches of industry. But the tenets of these economists are also upheld by theoretical reasoning which is independent of experience and observation. It is assumed by them that self-interest will always lead men to employ their capital and toil in the most profitable field of adventure, and that if the state interfere to encourage the application of enterprise to any particular object, it thereby diverts labor from a more profitable to a less profitable occupation. It is contended further, that if money be levied by taxation from the community at large, for the purpose of being subsequently applied to the encouragement of any particular branch of industry, by way of bounties or otherwise, capital is unjustly and unwisely taken from persons who employ it advantageously, in order that it may be expended in a manner less advantageous to the community. It is argued that each country ought to raise those products which it can bring to market more cheaply than its neighbors, and exchange them with foreigners for the other commodities which it may require, if those commodities can be produced at a cheaper rate in foreign countries.

It is well that these doctrines should be promulgated as theories, because a general acceptance of them as abstract truths will tend to keep in check that disposition which naturally exists amongst men to encumber every operation of life with a network of regulations; but in the practical management of affairs, such doctrines never have governed, nor ever will govern, nor ever ought to govern the conduct of those who are appointed to rule the destinies of nations. The political economist places before his mind, for solution, but one simple problem: "What system of managing human affairs would, in the absence of all disturbing causes, most conduce to the accumulation of wealth?" But the moralist, the philanthropist, and the statesman are not content to consider the production of wealth as the sole object for which political and social in-

stitutions are founded. Man enters into fellowship with man, not in order that he may acquire the greatest attainable amount of wealth, but in order that he may enjoy social happiness; and when he has secured that happiness, or, at least, as large a share of it as is attainable on earth, he will not only make sacrifices of comfort, but will peril life itself, to defend it from interruption by an oppressor or an invader. There are those also who look upon life as a mere season of temporary trial, and who fix their regards upon eternity. These naturally profess indifference to the objects which occupy the lucubrations of political economists. They refuse to bend their knees to the idol mammon. They despise, perhaps abhor, his worshippers. The time has not yet arrived when all mankind shall agree, "that to buy in the cheapest market and to sell in the dearest" is the consummation of human wisdom. The statesman, therefore, still deems himself bound to inquire, what laws and what institutions will secure the greatest amount of social happiness, not the greatest amount of wealth. He deems himself bound to take into account the health, the morals, and the security of the nation which has been placed under his care, not less anxiously than its enrichment.

Let us take an example from recent legislation, in illustration of these two different modes of dealing with human affairs. Not many years ago humanity was shocked by revelations, made after careful inquiry, respecting the treatment of children in the factories and mines of England. It was found that the tender infant was habitually taken from the scenes of its natural pleasures — from the opportunities of early instruction — and thrust into a dark mine, or a dismal factory, there to exhaust its youthful energies during the whole day, and often during part of the night, in some monotonous operation which could be performed by infant hands more cheaply than by other mechanism. Children, sometimes not more than six years old, were consigned to this servitude, and treated by avaricious employers or necessitous parents exactly as if they had been mere pieces of machinery, which would bear a certain amount of wear and tear for a limited number of years, and which must then be cast aside as worn out — worthless in body, still more worthless in mind. A statement of the amount of toil imposed upon these helpless creatures would surpass belief, if it were not authenticated by evidence of the most incontestable kind. Further inquiries produced disclosures even still more shocking. It was discovered that in

the mines young women, when arriving at the age of puberty, were kept at work almost in a state of nakedness, and compelled to undergo a description of toil fit only for beasts of burden, under circumstances calculated to destroy every impulse of modesty, and to deprive them of all those innocent enjoyments which are the natural inheritance of youth. How does the political economist, who contends for unlimited liberty in all the operations of industry, deal with such cases as these? The parent, he says, not the state, is the natural guardian of the child. The family must find subsistence. Why should not the child contribute to such subsistence by his labor in the factory or the mine? Such was the language of the adorers of mammon, but for the honor of humanity it must be recorded, that some even of the political economists listened to the dictates of benevolence rather than to the dogmatism of science, and lent their aid to the legislation which mitigated, though it did not wholly remove, this national gangrene — one of the fruits of what in modern times is called "Civilization."

It may be admitted, as a general principle, that all interference on the part of the Government with the natural operations of society is to be deprecated, except some manifest advantage may be expected from such intervention. It may also be admitted as a general principle, that perfect freedom of industry would be preferable to a system of trade encumbered with commercial and financial regulations, if mankind could be guaranteed against the occurrence of wars, and could be relieved from the necessity of providing by taxation for national requirements. But since taxes must be levied, the statesman is compelled to inquire what description of taxes — that is, what kind of interference with the operations of industry — will be least injurious to the people. And since experience tells us that a nation cannot expect to enjoy peace unless it be prepared for war, the statesman is bound to provide for the permanent security, as well as for the immediate gratification of the people. Now, in contemplation of contingent hostilities, he is compelled to consider what social condition is most conducive to the enjoyment of permanent security. However much at variance with the present current of opinion our tenets may be, we cannot but answer that the state which is least dependent upon foreign nations is that which is most secure from the aggressions of external foes. If a nation depends for its supply of food upon its intercourse with

foreigners, it is manifest that upon the occurrence of a war it may be placed at the mercy of its enemies. If the wishes of a certain school of politicians could be realized, Great Britain would give itself up wholly to manufacturing and commercial industry, and would become a gigantic workshop, trusting entirely for its supply of corn to importation from foreign countries. Now, it may be admitted that as long as it can secure to itself command over the ocean, little inconvenience would result to its population from a general war, because the necessary supplies might be obtained from some quarter or other of the world. But let us suppose that by a combination of unfavorable circumstances — such, for instance, as an alliance between France and the United States of America, in hostility to England — the naval power of Great Britain may be crushed. What, under such circumstances, would be the condition of a population dependent for food upon foreign nations? Instead of being the most powerful, Great Britain would become the feeblest of modern states. War would produce to this great kingdom all the horrors which result to a beleaguered fortress from obstruction of its supplies of provisions. France, Spain, Germany, Russia possess within their own borders all that is necessary to maintain their own population. The United States of America not only possess a similar sufficiency, but largely export from their superabundance. The Dutch, it is true, have subsisted as an independent nation, during nearly three centuries, without being able to raise within their own confines the cereal food requisite for their subsistence; but their independence results rather from the jealousies of surrounding nations than from their own intrinsic power. England, in former times, was accustomed to boast, even when her naval supremacy was doubtful, that her insular position, and the bravery of her inhabitants, enabled her to defy the world. But that boast will be made no longer, if ever a combination such as existed in 1780 be brought to bear in hostile operation against her security and preëminence. If the supplies of corn and cotton which she receives from foreign countries were to be cut off, millions must starve. It may be said that the peculiar circumstances of Great Britain are such as leave her no alternative but that of encouraging to the uttermost commercial relations with foreign countries, in the hope that such international relations may render the maintenance of peace a condition essential to the interest and happiness of all mankind. This sense of

dependence upon the good will of foreign nations has already reached such a point, that at the time when the Emperor Napoleon III. was supposed to be planning an invasion of England, a large body of the leading merchants of London presented to him an address in deprecation of warfare. Were I an Englishman, I should feel deeply humiliated by this prostration of the national pride; but it is one of the natural fruits of the doctrine which teaches that the accumulation of wealth ought to be the first object of consideration to a great nation.

By political economists, the exports and imports of a country are generally regarded as infallible tests of its prosperity. If exports and imports be increased, it is assumed that a corresponding increase must have taken place in the national wealth. This fallacy may not deceive reflecting minds, but it produces great impression upon the unreasoning multitude. A little consideration will prove, that exports and imports may be largely increased, without any increase in national wealth, and concurrently with a great loss of national power.

Let us suppose, for example, that there are 100,000 agricultural laborers who each produce, on an average, beyond their own subsistence, agricultural wealth to the value of £20 over and above what the land which they till would yield in a state of nature; and let us further suppose, that these laborers emigrate to America. Whilst they remained in England, the products of their industry were exchanged for goods manufactured in England of the value of £2,000,000. Now, let us suppose that after their emigration they still continue to consume English manufactures, and that they exchange for such manufactures corn and other agricultural produce, raised by them in America. In this case the table of exports will show that there has been an increase of £2,000,000 in the value of the exports, and a corresponding increase in the value of the imports; but no one can affirm that there has been an increase in the national strength and prosperity. It will be said, perhaps, that the agricultural laborer would not emigrate unless he could raise in America a greater amount of produce than in England with the same amount of toil, and that such being the case, the English manufacturers will now obtain from America the supplies of corn, &c., which they require, at a cost less than that which they formerly paid to their fellow-countrymen when they cultivated the fields at home; in other words, they now give manufactures which are worth (say) only £1,500,000 for the same amount of agricultural produce

which formerly cost £2,000,000. This may be admitted; and in such case the manufacturers would apparently gain £500,000 per annum; but who will say that England has been rendered stronger or happier by the loss of one hundred thousand citizens?

Again, let us suppose that 100,000 agricultural laborers abandon rural employments, and betake themselves to manufacturing industry in great cities. Their place not being supplied by other laborers, they now become dependent upon foreign imports for the food which is necessary to support them and their families. This food they obtain in exchange for manufactures which they produce, and thus a great augmentation takes place in the amount of exports and imports, without any augmentation whatever in the wealth of the community. But as they produce more manufactured articles than are necessary for the purchase of their food, they must strive to obtain a market for such manufactures, and thus the amount of exports and imports is further augmented. It will be said, perhaps, that if the industry of these laborers be more valuable when applied to manufactures, than it was when applied to agriculture, the nation has gained by the change of employment that has taken place. If, for example, instead of producing, on an average, a surplus value of £20 per man, (above what is required for their mere subsistence,) they now produce a surplus value of £25 per man, the nation has gained in wealth £500,000 per annum; but the contrary supposition is at least equally probable; and if it should be found that after the first temporary stimulus which tempted them to leave agricultural labor shall have ceased, they can obtain only £15 per man for their manufactured articles, the position of the laborers themselves, and of the nation, will have been deteriorated, although there has been a great increase in the amount of exports and imports. In the mean time the manufacturers who originally obtained their food and agricultural produce from these 100,000 laborers, in exchange for their manufactured commodities, must now send abroad these commodities to procure food, and thus exports and imports are still further increased. If they can obtain food, &c., from abroad, at a price less than that which they gave for it at home, the nation may be said to be thereby enriched; but this increase of wealth is dearly purchased by the change which has, in the mean time, taken place in the circumstances of the country, and in the character of its popu-

lation. Instead of enjoying independence, which to nations, as well as to individuals, is one of the primary blessings of life, the population have become dependent, not for their prosperity alone, but for their very existence, upon the good will of their neighbors; and even if this good will could be permanently secured, it remains to be proved that human beings, when crowded into the narrow and filthy streets of a manufacturing town, or shut up in mines and factories and founderies, are as happy as when they enjoy the pure air, the healthy occupations, and the homely pleasures of rural life.

In order to make this train of reasoning more palpable, let us state in figures the result of this supposed change of employment. The calculation is of course only an approximate estimate.

Whilst the population relied upon their home market, 100,000 agricultural laborers (under which term we include all classes engaged in raising agricultural produce) gave, after providing for their own subsistence and that of their families, food, &c., to the value of £2,000,000, in exchange for home manufactures of a similar value, and there were no exports to or imports from foreign countries.

When these 100,000 laborers betook themselves to manufacturing industry, it became necessary in the first place to import the food, &c., required for maintenance of them and their families. We will suppose that £10 per man is the amount required for the purchase of this food. Manufactured goods must, therefore, be exported to foreign countries, for the purchase of corn to the value of . . £1,000,000

Let us suppose that each man produces, on an average, manufactures of the value of £20 over and above what is necessary to purchase the food required by him and his family. Manufactures will now be exported in exchange for foreign produce of various kinds, to the value of £2,000,000

£3,000,000

The manufactured commodities, which were formerly supplied to the home agriculturists, must now be sent abroad in exchange for agricultural produce, whereby there will be an addition to the exports of the value of £1,000,000

Total, £4,000,000

There will thus have been produced, by the change of employments, an augmentation in the value of the national exports of not less than £4,000,000, accompanied by a corresponding increase in the imports. Whether there will have been any augmentation in the wealth of the community will depend upon contingencies which vary from year to year. In time of peace, it is probable that a larger amount of agricultural produce would be obtained from abroad for a given amount of manufactured commodities than would be obtained from the home agriculturist, whilst in case of war, or of general scarcity, the price of food obtained from abroad may greatly exceed that at which it could have been grown at home. But though there may be some uncertainty as to the results of the change of employment, in regard to the creation of national wealth, it may be affirmed without hesitation, that it has had the effect of deteriorating the condition of the people in regard of morals, vigor, and security.

The reader must not suppose that the foregoing reasoning is intended to justify the imposition of excessive duties upon the introduction of food from foreign countries. Still less is it urged in deprecation of all foreign commerce. It is brought forward in order to uphold the old-fashioned doctrine, that home trade is preferable to foreign trade, and that the increase of foreign trade is to be considered a subject of exultation only when it does not displace to a corresponding extent the interchanges of domestic industry.

If this reasoning be well founded, we arrive at the conclusion that, provided a commodity can be produced at as cheap a rate at home as that at which it can be obtained from abroad, a preference ought to be given to the home producer rather than to the foreigner. We may go farther, and in regard to some articles we may contend that, influenced by special considerations, the statesman ought to encourage home production, even though it may not be as advantageous in a pecuniary point of view as interchange with the foreigner. Let us suppose, for example, that sugar can be procured from beet-root at a cost of production very little exceeding that at which sugar could be raised in tropical regions by the labor of slaves; and let us further suppose that a country, such as Germany, which possesses no sugar colonies, requires a certain annual supply of this commodity. If the imposition of a slight differential duty upon foreign sugar would enable the home producer of beet-root sugar to exclude

from the German market the sugar of slaveholding countries, the German statesman would be fully justified in imposing such a duty. The culture of beet-root and its manufacture into sugar is a species of occupation which it is desirable to encourage. The culture of the sugar-cane, by slaves, is a sort of labor which it is desirable to discourage. If sugar be imported from abroad, the supply of this most necessary article may, at any time, be interrupted by war, in which case its price would rise far above that at which beet-root sugar could be profitably grown at home. On the other hand, the consumer ought to be protected from a monopoly price, by the admission of foreign sugar at a moderate duty. Foreign sugar would thus enter into competition with home produce, whenever the producer sought to extort a price greater than that which would naturally arise from the protection afforded by the duty. When the duty has the effect of excluding the foreign article, home production is encouraged; and when the price of the home product rises to an exorbitant amount, the introduction of the foreign article lowers the price, and gives a gain to the revenue in the amount of duty paid upon the quantity imported.

Next to the home trade, we may place trade with colonies, as that which is most advantageous to an empire. If a portion of the population of any country emigrate to distant lands, it is desirable that they should find a market for the surplus products of their industry, and there is no market to which they so naturally resort, as to that of the mother country. The intercourse which spontaneously grows out of the domestic connection which exists between the mother country and her colonies, would itself engender a sort of home trade, even though no preference were given by fiscal regulations to their mutual interchanges over those which take place with foreigners. This tendency has been clearly illustrated in the case of the Australian colonies. The tariffs of these colonies are now framed in such a manner that the foreigner is placed on terms of perfect equality with the natives of the United Kingdom, in all the operations of Australian commerce; yet the great bulk of the shipping engaged in this traffic is English, not foreign. As long as colonies are well governed, an affectionate intercourse will naturally subsist between them and the people from whom they spring. This intercourse will become a source of mutual profit in time of peace, and in time of war a means of mutual protection.

Compare the relations which subsist between Great Britain and her colonies with those which subsist between Great Britain and any foreign country. In the markets even of the most friendly states, she is encountered by discriminating tariffs and by trade regulations, hostile to foreign import, whereas in her own colonies she enjoys either a preference, or, at least, the opportunity of free competition. If a war should arise, she may, indeed, have to assist in the defence of distant dependencies, but the trade which she has carried on with these dependencies has created a mercantile marine which, more than the equipment of fleets, tends to give her a supremacy on the seas.

During the last three hundred years, the advantages of commercial traffic with colonies has been appreciated by the statesmen of Europe, and an attempt to grasp these advantages gave rise to a system of monopoly, which tended to defeat, instead of promoting, the object so keenly sought, namely, imperial aggrandizement by means of colonial traffic.

Though colonization has seldom been systematically encouraged by the Governments of European states, yet, when the enterprise of individuals and of companies has established colonial settlements, these Governments have generally interposed to extort from them as much profit of every kind as they have been deemed capable of yielding. The operations directed to this end have often been as short-sighted as they were selfish. Thus, the Spanish Government endeavored to exclude foreigners altogether from the Spanish settlements of Central and Southern America: the attempt engendered a contraband trade, which neutralized all the advantages anticipated from the exclusion of foreign commerce; and after producing many other evils, probably tended, in no slight degree, to induce these colonies to shake off the dominion of the mother country.

The colonial policy of England formerly, in like manner, strove to preserve for the British manufacturer and trader a monopoly in the markets of the colonies. In regard of some commodities domestic manufacture was altogether forbidden to the colonists, and in regard of almost every article produced in the colonies, regulations were enacted under which such articles could be exported only to Great Britain, and could be conveyed only in British ships. It is right to observe, however, that a similar monopoly was created in favor of the produce

of the colonies. The competing productions of foreign settlements were excluded from the British market, either by direct prohibition, or by discriminating duties. This system of colonial monopoly has been gradually modified, but traces of it are still to be found in the recent legislation of the British Parliament. Of late years, indeed, the British public have perhaps had more reason than the colonists to complain of restrictions and discriminating duties, maintained for the encouragement of colonial trade. In illustration of these complaints, I need only refer to the discussions which took place respecting the removal of discriminating duties upon foreign sugar, and upon foreign timber, which were so long upheld for the benefit of the colonies. But it was not always so, and the best writers upon American affairs are of opinion that the attempts made by the British Parliament to prevent direct trade between the British colonies and foreign countries, tended much to generate that spirit of discontent which eventuated in the war of independence.

Now, assuming that, next to home trade, the most advantageous description of traffic is that which takes place between a mother country and her colonies, we naturally inquire, "What policy will most effectually conduce to the extension of colonial traffic?" "Ought such traffic to be encouraged by means of discriminating duties, or ought we to apply to colonial intercourse the principles of free trade?"

The current of public opinion in England now runs strongly in the direction of free trade. Formerly, the protection of domestic manufactures and the encouragement of colonial traffic, by means of fiscal regulations, were objects sanctioned and enforced by minds as acute as any that now employ themselves in the investigation of political science. Perhaps this strange variation of opinion may be accounted for by the change which has taken place in the circumstances of Great Britain. As long as foreigners were able to sell manufactured commodities in the British market at a price lower than that at which they could be profitably sold by the British producer, so long commercial jealousy was directed against the introduction of foreign manufactures. Indeed, even now, at a time when the manufacturers of England combine to denounce and abrogate every fiscal regulation which tends to protect from foreign competition the agricultural industry of the United Kingdom, duties varying from 10 to 25 per cent. are levied

upon almost every manufactured article imported from abroad.* But the advantage thus obtained is comparatively slender; because, in regard of almost every description of commodity, the English producer is now able to undersell the foreign manufacturer. There is no longer a contest with foreigners for the supply of the British market, inasmuch as the British manufacturer is now in a condition to compete with foreign producers, even in their own emporia. To him, therefore, freedom of trade has become an object of vital importance. He feels that, if he can persuade the Governments of all other countries to abolish discriminating duties, he will be able to supply the population of those countries with fabrics which they have heretofore obtained from their own looms and factories. The same monopolizing spirit of commercial selfishness, which formerly induced the British manufacturer to exclude foreign commodities from his home market, now impels him to proclaim the advantages which arise from universal freedom of trade.

So, also, with respect to the Navigation Laws. During the seventeenth century the Dutch enjoyed a marked preëminence in the carrying trade of Europe, and under a system of free navigation it was found that the British merchant was unable to compete with the skilful and enterprising rivalry of the Low Countries. With a view, therefore, to secure to the British merchants a monopoly of the carrying trade in those ports over which Great Britain exercised control, the celebrated Navigation Acts were passed during the protectorate of Cromwell and during the reign of Charles II. By these Acts not only was foreign shipping excluded from the coasting trade of Great Britain, and from the trade between Great Britain and her colonies, but it was even enacted that from Asia, Africa, and America, commodities should be imported

* Since the above paragraph was written, a remarkable illustration of the truth of this observation has been brought under the personal notice of its writer. When he was passing through Victoria, from Van Diemen's Land, in 1854, a gold vase, which was manufactured in Melbourne, of Australian gold, and which cost £800, (weighing about 125 ounces of the purest gold,) was presented to him by his fellow-countrymen resident in that colony. It was shipped by the donors to London; and upon its arrival, the banker to whose care it was consigned was informed that it could not be taken out of the Custom House until 10 per cent. had been paid upon its value, and 17s. per ounce upon its weight; but that it might be reëxported free of duty. It was subsequently sent to Belgium, where payment of the duty upon its admission was suspended, on condition of its reëxportation at a future time. Thus the duty payable upon this object, a product of *colonial* industry, would have been nearly 25 per cent. upon its value in the United Kingdom.

into the United Kingdom only in British vessels, and that from the states of Europe, foreign vessels should only import goods which were of the growth and manufacture of the country to which such foreign vessels belonged. Thus, for instance, a Dutch vessel was not permitted to import wine from France.

During more than a century and a half the Navigation Laws were regarded as enactments which afforded unquestionable evidence of the wisdom of the statesmen by whom they were devised, and of the nation by which they were adopted. Assuredly they seem to have produced the results which they were designed to effect. The Dutch lost the ascendency which their mercantile marine had previously enjoyed, and the British navigator usurped a monopoly in the trade of Great Britain, and its dependencies, that tended to establish a naval supremacy to which Great Britain owes its glory and its security. Now, however, when the ascendency of the mercantile marine of England has been so fully established that it is able to compete, particularly in regard of steam navigation, with its most enterprising rivals, in all parts of the world, a large class of British politicians repudiate the principles upon which the Navigation Laws were founded; and it is believed by many persons engaged in commercial transactions, that Great Britain will gain more than she can lose by their total abrogation — more especially if she can persuade other nations to follow her example. It is not surprising, therefore, that a thousand arguments should be found in support of a change of policy from which such results may be anticipated. From first to last these questions have been determined in Great Britain by considerations of self-interest. It is therefore natural that other nations, also, should be guided by self-interest in their mercantile policy. We have now to consider what is the policy which an enlightened self-interest will prescribe.

We may assume as a postulate, the general principle that all restrictions upon liberty, if not in themselves an absolute evil, are at least attended with inconvenience. These inconveniences ought, therefore, to be incurred only where there is a manifest expectation of attaining thereby advantages which will more than compensate for them. We ought to rely mainly upon the operation of natural causes, rather than upon artificial means, for the production of results. Thus assuming that colonial traffic is more advantageous than foreign com-

merce, we naturally seek to devise means for the extension of colonial trade. How can this object be best attained? I answer, not by recurring to a vexatious system of monopoly, but by encouraging, on a large scale, systematic colonization.

Colonization is the natural means of providing for a population that tends to expand itself beyond the narrow limits within which it was originally confined. In such a country as the United States, which possesses an immeasurable extent of fertile territory still unoccupied by civilized man, this process of expansion takes place insensibly, and the work of home colonization proceeds by a gradual process which is almost unobserved until it exhibits results which astonish mankind by their magnitude and success. In such a land, political economists speculate in vain upon the danger of over-population, and upon the tendency of population to increase more rapidly than the means of subsistence. Common sense revolts against the application of such theories to a country which is capable of containing a population twenty-fold greater than the number of its present inhabitants. Every one feels that the season has not arrived when it may become necessary from prudential considerations to adopt maxims which are in direct antagonism with nature, and which are destructive to human happiness. A large family of children is considered a blessing, not a burden, and every industrious immigrant is welcomed as a valuable acquisition to the strength and resources of the republic. Whilst this process is going on in America, the nations of Europe are moaning over the evils which attend what is called over-population, and listen with favor to the *nostrum* of every political quack who may devise some scheme for defeating the kind dispensations of Providence. In the case of those nations which do not at present possess any portion of the unoccupied regions of the earth, there is some excuse for these complaints; but in the case of the inhabitants of the British isles, whose Government has usurped unoccupied territories which would give subsistence to a population at least tenfold greater than that of the United Kingdom, the cry of over-population is wicked as well as ridiculous. That there will be, at particular seasons, a pressure upon the resources of every nation, is a truth which the experience of all ages establishes. This pressure arises sometimes from visitations of Providence; more often from the perversity of man — but, under the existing circumstances of the British isles, it is the fault of those who rule on earth, not

the will of Him who rules in heaven, if any portion of the inhabitants of those islands are left for a considerable time without adequate provision for their maintenance. We have witnessed within the last ten years what has been called a famine — that is, the root of the potato, upon which the inhabitants of Ireland mainly depended for subsistence, perished from disease, and the people were allowed to starve in myriads, although every tide that receded from the shores of Ireland carried away from that realm food which had been produced by the industry of the starving population. Now, it is not too much to affirm that if half the energy which was displayed by British statesmen and by the British Parliament in carrying on the war against Napoleon I. had been applied to the protection of the Irish people from disasters incidental to this potato failure, that people might have been saved from the calamities by which they were overwhelmed during a period of six years. Among the resources available for this object was an extensive system of colonization. In the British possessions of North America, and of Australia, several hundred thousand of my fellow-countrymen, who were allowed to perish as vermin on their native soil, might have found happy homes, in which, by their industry, they would have enriched and strengthened the British Empire. It would be presumptuous to question the inscrutable design of Providence in inflicting this calamity upon the people, and this blindness upon the rulers of Ireland; but we may humbly venture to scan the results; and whilst we find that the famine of 1846, and of subsequent years, has greatly stimulated the dispersion of the Irish nation, we find also that this dispersion has carried them to a land in which they may hereafter become foes formidable to their former oppressors. Had a wise and beneficent spirit animated the rulers of Ireland in 1846, the Irish might have been rendered grateful and contented subjects or colonists. By the heartless policy adopted towards them, nearly a million were allowed to die of hunger, and upwards of another million have been driven to seek a refuge in the United States of America. Of the population of that Republic — the commercial rival of England — they are now the most hostile to the interests of Great Britain; and the hour will yet arrive when Englishmen will bitterly lament that infatuated policy which destroyed or alienated from them so large a portion of that nation which has so largely contributed to the protection, to the glory, and to the prosperity of the British Empire.

Returning from this digression respecting Ireland, we repeat that, at particular moments, it will unavoidably occur that a portion of the inhabitants of thickly-peopled countries may find a difficulty in procuring the means of subsistence. A sudden change in the demand for a particular commodity, a commercial crisis, a general scarcity may take from a multitude of individuals their accustomed employment. It may be said that the persons so unemployed are a surplus population; but in such an empire as that of Great Britain, casualties of this kind could, under a wise Government, produce but little inconvenience. If arrangements were made by which the safety-valve of colonization were always left open, the pressure would be temporary, whilst the advantageous results of such an impulse to colonization would be permanent. It is not to be expected, it is not to be desired, that those who feel comfortable in their circumstances at home should emigrate to distant lands. It is uneasiness of position that induces men to move. Temporary visitations, therefore, are probably inflicted by Providence with the design of dispersing the crowded masses of populous states over territories that are less densely peopled. Governments ought to accept and to obey this impulse, instead of endeavoring to thwart its natural operation.

It is feared by some that encouragement of colonization would abstract from the mother country large masses of capital which would never be replaced. Apprehensions of this kind may, indeed, be reasonably entertained in regard of many of those investments of capital in foreign speculations which have found favor with the moneyed interest of England. Loans to foreign Governments — advances for the purpose of carrying on the erection of public works, or the exploration of mines in foreign countries — may be justly considered as dangerous speculations; but the capital advanced in judicious colonization never can be lost to the mother country. In the first place, it is to be observed, that an expenditure applied to the removal of what is really a surplus in the population involves no sacrifice whatever, because the funds employed in aiding emigration would otherwise be expended in maintaining this unemployed section of the people in idleness at home. But even if we assume that the whole amount of the advance required is an actual outlay of funds which might otherwise be advantageously employed, we may still contend, that it can be employed by a manufacturing and commercial nation in no

channel which will yield so much profit as in the transfer to a colony of those who cannot find occupation at home. The amount of capital required for this purpose is comparatively small. In establishing new settlements, indeed, a considerable advance is needed; but emigration to colonies already established involves little expense beyond the mere conveyance of the emigrant. Once landed in those regions in which there is an abundance of fertile soil, and which are capable of producing objects required by the mother country, the laborer who was unemployed at home becomes immediately an instrument for augmenting the wealth of the empire. It is to be observed, also, that the expenditure of capital advanced in colonization promotes the most important branches of national industry. The shipping of the mother country is employed in the conveyance of the emigrants, and their outfit is furnished by its manufacturers. Mr. Merivale, writing on colonization in the year 1841, says that whilst each inhabitant of the United States consumes British manufactures to the value of about 10s. per annum; each Portuguese, about 6s.; each German, 5s.; it appears from the exports of 1840, that each individual of the population of New South Wales consumed the value of £11 per head. (See Lecture IV.) Now, if this comparison had been made for the year 1852–53, the contrast would have been much more favorable to colonization. It has been estimated, by competent authorities, that during the year 1852, gold, to the value of above £12,000,000, was exported from Victoria alone, although the population of that colony did not amount, at the close of the year, to 200,000 persons. This export (which is exclusive of the value of wool and other produce exported) was, of course, compensated by a corresponding amount of imports. The only drawback to this unprecedented prosperity has been the inconvenience occasioned by scarcity of labor. Yet England has driven, and still continues to drive, myriads of industrious citizens to the United States of America, instead of encouraging them to direct their steps to Australia.

In answer to the question, "By what means can colonial traffic be most effectively encouraged?" I do not hesitate to say, that if it could be clearly shown that the system of monopoly which found so much favor with European statesmen after the discovery of America, were really that which conduces most to the prosperity of the mother country and of the colonies, it ought to be maintained despite of the denuncia-

tions with which it is now commonly assailed. But it will be seen, upon investigation, that this system involves the necessity of making many sacrifices for its maintenance. Sacrifices ought to be borne cheerfully when they are necessary to secure some compensating advantage; but wantonly to incur them, without obtaining an equivalent, is a proceeding which indicates but little wisdom on the part either of a nation or of individuals. If a system of monopoly be adopted at all, it must be mutual and correlative. It would be a monstrous oppression to exclude the colonies from foreign intercourse, without giving them, as an equivalent, a monopoly in the home market of the mother country; and *vice versa*, the colonist has no right to expect a preference for his productions, unless he be prepared to give a similar preference to the productions of the mother country. Now, let us assume that by the operation of discriminating duties or prohibitions, the manufactures of foreign countries are practically excluded from colonial markets, it is manifest that, in regard of all those articles which can be obtained on cheaper terms from foreign lands than from the mother country, a tax is imposed upon the colonists by such exclusion. If, for instance, a British colony pays £100,000 per annum for British silk goods, which could be imported from France at a cost of £75,000, it is clear that the colony pays on this article alone a tax of £25,000 per annum for the maintenance of a traffic with Great Britain in preference to a traffic with France. By some political economists it is contended, that this sacrifice is imposed without securing to the manufacturers of Great Britain any advantage whatever. They maintain, that such discriminating duties and monopolies tend to direct capital to a branch of manufacture in which Great Britain cannot compete with its rival, whilst the same capital and labor might be more profitably employed in the manufacture of some commodity which can be produced at less cost in Great Britain than elsewhere. This reasoning proceeds upon the supposition, seldom verified by experience, that the workman who loses his customary employment will find no difficulty in obtaining some other employment which will be equally profitable. It also assumes the existence throughout the world of universal freedom of trade, uninterrupted by wars or other casualties. But even if we reject the doctrines of these philosophers, and admit that to the home manufacturer the possession of a monopoly in the colonial market is attended with advantage, we may yet doubt whether

it is wise to burden the colonist with a tax for the purpose of securing this advantage. It is manifest that the colonists must be dissatisfied with such a tax, unless they obtain an equivalent advantage by means of a monopoly for their productions in the home market of the mother country. But no such equivalent can be afforded without deranging the whole commercial policy of the empire. If Great Britain, for instance, were to claim in the markets of Australia a preference for her manufactures over those of foreign countries, justice would require that the wool of Australia should be admitted for home consumption on terms more favorable than those upon which foreign wool is admitted. Now, it would not be difficult to show that such a bargain would, upon the whole, be disadvantageous to the British manufacturer.

Similar reasoning may be applied to fiscal regulations, which are framed with a view to give a preference to the produce of colonies in the markets of the mother country. If sugar produced in Cuba can be sold in London for twenty shillings per cwt., whilst a price of thirty shillings per cwt. is necessary to remunerate the producer of Jamaica sugar, it is manifest that the colonist will be undersold by foreigners, unless he be aided by a discriminating duty of at least ten shillings per cwt. If such a discriminating duty be imposed on foreign sugar as will keep it out of the market, the difference between the price obtained by the colonist and that at which it could be sold by the foreigner is, in fact, a tax imposed upon the British consumer for the maintenance of a traffic with the colonies, in preference to traffic with foreign countries. Now, in such cases as that of the West Indies, considerations of policy, of equity, and of humanity may require that a moderate preference should be given to the produce of the British possessions over that obtained by slave labor; but in general it will be found that a system of discriminating duties imposes upon the consumer a sacrifice, for which no adequate compensation is afforded.

Let us take another example. It may be assumed, that it would be for the advantage of England that the supply of raw cotton, which she now receives from the United States of America, should hereafter be obtained from her own colonial possessions. In both India and Australia cotton could be produced; and as British manufactures are admitted free of duty into these possessions, whereas in America they are subjected to heavy taxation, the exchange of British man-

ufactures for Indian or Australian cotton would be more advantageous to the British manufacturer than the present traffic, provided that cotton could be produced at as cheap a rate in these territories as in America. The growth of cotton in India and Australia is, therefore, an object which ought to be encouraged by every British statesman; and if proper attention were bestowed upon this object, it is probable that the cotton of these British possessions would, eventually, compete in the market on equal terms with the cotton of the United States. But however desirable may be this result, every manufacturer in Great Britain would resist a proposal to impose a discriminating duty upon foreign cotton, with a view to favor the growth of colonial cotton, because such a duty would derange all the operations of commerce in this article, and impose upon the consumers of British cotton manufactures a sacrifice more than commensurate with the advantage that might be expected to arise from the imposition of the duty.

In contending that home trade and colonial trade are, generally speaking, more deserving of encouragement than foreign commerce, we are not to be understood as depreciating the value of commercial intercourse with foreign nations. The object of all mercantile transactions is to enable individuals and nations to obtain, by the interchange of commodities, the greatest attainable amount of the comforts and enjoyments of life. With this view, individuals and nations exchange the surplus products of their industry for articles which can be more easily produced by others. If a commodity can be produced at home, or in a colony, on terms as advantageous as those on which it can be imported from foreign countries, statesmen ought to encourage the development of this capability by applying such stimulants as sound policy suggests; but as there are very large classes of objects which cannot all be produced in the same climate, they must be sought for in different regions of the earth. Hence arises the advantage of foreign commerce. In former times, Spain and Portugal possessed territories which varied so much in geographical position, that almost every known article required for consumption might, by judicious encouragement, have been produced in those territories. Such is also now the case of the British Empire and of the United States of America. If these nations were entirely cut off from intercourse with foreigners, they would be able to produce, within the confines of

their own territories, almost every article that is now an object of commercial exchange. But there are many nations in the world who are not so favorably circumstanced. The people of Germany, for instance, are compelled to look to foreign countries for all kinds of tropical productions. Even in the case of such an empire as that of the United Kingdom, it is found to be more advantageous to procure certain commodities from foreign nations than to attempt to force, by artificial encouragement, their production at home or in the colonies. Thus, for instance, tea can be grown in Assam and other provinces of British India, and it would be very desirable that its growth should be encouraged by all legitimate appliances; but no one would venture to argue that the existing trade with China should be checked, in the hope of thereby encouraging the growth of tea in British India. In like manner, wine can be produced at the Cape of Good Hope and in Australia; yet the statesman who should exclude the wines of France, of the Peninsula, or of the Rhine from the British market, with a view to encourage the colonial wine grower, would ill deserve to be considered as a benefactor by the English nation.

In the early legislation of modern Europe, encouragement of the *producer* was too often considered the sole object to which the attention of the statesman ought to be directed; in recent times, the claims of the *consumer* have been more generally taken into account. The true interests of both are often concurrent; but when they are in direct antagonism to each other, as is generally the case where monopoly exists, the consumer may justly demand the removal of restrictions which impose upon him a needless sacrifice of enjoyment or of pecuniary means. For the sake of the consumer, therefore, foreign competition ought to be permitted, even when it interferes with the interests of the home producer, or of the colonial producer; and foreign trade, which does not interfere with these interests, ought to be encouraged by all legitimate means. In some cases, a moderate amount of protection may be advantageously secured to the home or colonial producer by differential duties, but those duties ought never to be so excessive as altogether to prohibit competition.

An incidental advantage results from foreign commerce, which ought not to be overlooked; I mean its pacific tendency. When a large interchange of commodities permanently subsists between two nations, the pecuniary interests of all who are concerned in the production of those commodities are

imperilled, if not sacrificed, by the occurrence of a war between them. A regard for self-interest, therefore, checks those warlike aspirations which are so natural to man, and which are so frequently evoked by jealousies engendered between rival nations. Mutual interchange of commodities, exceeding in total value £30,000,000 per annum, is perhaps the chief bond which now keeps the peace between the United States of America and Great Britain, and which counteracts the many ambitious or revengeful impulses that tend to bring the gigantic Republic of the West into collision with a country from which it has sustained, at various times, manifold wrongs.

On the other hand, it may perhaps be said that the commercial spirit is fraught with warlike tendencies, inasmuch as it eagerly grasps at every opportunity of gain, and is unscrupulous as to the means by which its acquisitions are made. It may be doubted whether the lust of conquest is as formidable a foe to the peace of the world as is the cupidity of commerce. An Alexander the Great or a Napoleon arises once in a thousand years, but the encroachments of mercantile rapacity are incessant. In all ages it has tempted the strong to render the weak subservient to its lust of gain. If illustration were required to establish this assertion, where could it be exhibited in more striking relief than in the recent history of Great Britain?

We must not leave the consideration of this department of national policy, without discussing the question, whether a wise Government ought or ought not to encourage the formation of a mercantile marine, by regulations similar to those which we have described as formerly enacted in the Navigation Laws of the United Kingdom.

The answer to this question will depend upon the peculiar circumstances of the country to which it is applied. If that country consist, for the most part, of an inland territory, the circumstances of which preclude it from all hope of ever obtaining an ascendency on the seas, its interests will be best promoted by throwing open its ports to the vessels of all nations, without any restriction or preference in favor of its own marine. If, on the contrary, it be a maritime state, possessed of extensive colonial dependencies, it cannot be denied that the security and power of such a state greatly depend upon the amount of its commercial marine. Every encouragement, therefore, that can be given by fiscal regulations to the formation of such a marine, ought to be afforded, provided

that this encouragement does not require sacrifices more than commensurate with the advantages obtained by them.

Commerce may be classified under four heads — coasting trade, colonial trade, foreign trade, carrying trade. Now, it was formerly thought — and in my opinion wisely — that the coasting trade ought to be reserved exclusively for shipping built, or at least owned and navigated, by natives. Political considerations suggest that this branch of traffic should not be left in the hands of foreigners, over whom the state can, in times of difficulty, exercise no effective control. It is possible, indeed, that, as a matter of economical calculation, it can be shown that this trade can be carried on more cheaply by foreign vessels than by a domestic marine, and that therefore restrictions which exclude foreigners from it impose a tax upon the consumer, which might be avoided by encouraging competition. But even if it were so, this tax is more than compensated by the comparative strength and security which results from the exclusion of foreigners. Let us imagine, for example, what would be the situation of England if 50,000 French or Dutch seamen, navigating French or Dutch vessels, were engaged in carrying on the coasting trade and the fishing trade that exist between the several ports of the United Kingdom. It is possible that in time of peace the French or Dutch competition would reduce the expense of conveyance, and that the English consumer would thereby enjoy a trifling advantage; but if a war should occur between France and Great Britain, what would be the consequences of such a dependence upon foreigners? In one fortnight the United Kingdom might be deprived of a large proportion of the marine appliances upon which its security depends. These maritime resources might be placed at the disposal of an ambitious invader, for the transport of troops, and the vessels would be navigated by sailors perfectly acquainted with every channel of access to the country so menaced with invasion. Dearly, indeed, would the economical advantages which result from free competition be purchased by consequences so fraught with danger to national independence.

At a time when national security was deemed in Great Britain a matter of greater moment than commercial gain, it was thought desirable to foster as much as possible all the maritime resources of the state. With this view, the coasting trade was reserved exclusively to natives, and every

possible encouragement was given to the carrying on of fisheries by natives. These old-fashioned notions are now exploded, and the love of cheap goods prevails over every other consideration. The result of this change will, probably, not be fully felt by the present generation; but it is one of the many premonitory symptoms which indicate, even in the midst of unrivalled opulence, the approaching decay of British power. Any one who has seen the sort of crews who navigate the Great British steamers in the East may justly feel apprehensions for the maritime ascendency of Great Britain, when he reflects that the present policy of British statesmen will probably lead to the substitution, even in her own ports, of a similar class of seamen for the old "mariners of England, whose flag has braved a thousand years the battle and the breeze."

The same reasoning applies to colonial trade. It is undoubtedly desirable that the commercial intercourse which takes place between the mother country and her colonies, should be conducted by native rather than by foreign shipping, and for the attainment of this end, a maritime nation ought to be ready to make some sacrifices, if necessary, of pecuniary interest. A difficulty, however, arises from the circumstance that the interests of the colonies may not be coincident in regard to this point with those of the mother country. Thus, if we seek an illustration in the circumstances of the British Empire, we shall find that to the North American provinces, (particularly to New Brunswick,) in which ship building has been carried on to a great extent, the exclusion of foreign vessels from the colonial trade may have been attended with advantage, whilst the West Indies have derived injury rather than benefit from this exclusion.

It may be said, indeed, that the interest of the mother country, and that of her colonies, must necessarily be identical; but this is one of those illusory sayings which are not verified by practical experience. It might be argued, in like manner, as an abstract principle, that the interests of Ireland cannot be at variance with those of England. This proposition would be as demonstrable as a theorem in mathematics if Ireland were well governed; but practically the management of Irish affairs has been such, during the ascendency of British rule in that country, that it has been almost a matter of indifference to the great bulk of the Irish nation, whether Frenchmen or Englishmen occupy London. In regard to

this very question of navigation, it is a matter of indifference to the Irish nation whether the commerce between Ireland and other parts of the world be carried on in British or in foreign shipping. The number of ships built annually in Ireland has been, of late years, perfectly insignificant; and to the great mass of the population, the flag which bears the stripes and stars of the United States would be as welcome as the ensign which heralds the arrival of an English vessel in the ports of Ireland — an ensign which, though upheld by Irish arms, and defended by Irish valor, has too often been waved in triumph over the ruin and humiliation of Ireland.

In the case of Australia, the interests of the colonial consumer now lead him to desire that the freest competition should exist among all nations in the conveyance of goods to and from the shores of this Continent. Hereafter it may be otherwise. Whenever the Australian colonies shall establish their independence as a great confederated Republic, they will probably be influenced by the same considerations which induce other Governments to exclude foreigners from their coasting trade. At present no sufficient motive exists to induce them to desire such restrictions. The inhabitants of Australia have no reason to wish that an American steamer should be prevented from carrying passengers and cargo from Sydney to Melbourne, or from Melbourne to Adelaide. To them, therefore, the restrictions imposed by navigation laws would be a burden rather than a benefit; but whenever they shall possess a considerable marine, and whenever they shall desire to establish maritime ascendency in the southern hemisphere, they will probably adopt the principle upon which the Navigation Laws were founded, and endeavor to foster their own maritime strength by regulations and restrictions, despite of the theories which affect to demonstrate the impolicy of such legislation.

Maritime intercourse between independent nations ought to be founded on the principle of perfect reciprocity. A nation is not entitled to exact from foreign countries advantages which it is not prepared to concede to them. However desirable it may be to a maritime people that commercial intercourse with a foreign country should be carried on only in their own vessels, yet it is manifest that any attempt to establish such a monopoly will be met, and ought to be met, by countervailing efforts on the part of the foreigner. Such collision actually occurred under the operation of the Naviga-

tion Laws of Great Britain in the relations between Great Britain and the United States, and occasioned the modification of these laws by what have been called *reciprocity treaties*. At one period, discriminating duties were imposed, by which the tonnage of foreign shipping entering British ports was subjected to heavier imposts than those imposed upon British shipping. But it having been found that other nations were prepared to encounter these discriminating duties by retaliatory measures, it was at length resolved to abandon all attempts to exclude foreign shipping from the trade of their own ports by means of such fiscal regulations. A sense of natural equity suggests that in the interchange of commodities produced in two independent countries, the vessels conveying such commodities ought to enter the ports of each other on terms of perfect equality. It is quite consistent with equity, and it may be consistent with national policy, to exclude foreigners from the coasting trade of any country; as, for instance, to prevent a Dutch vessel from carrying coals from Newcastle to London; but if an English ship be allowed to carry British manufactures to a Dutch port, it would be in the highest degree unreasonable to prevent a Dutch vessel from bringing Dutch produce to an English port. In such case there must be mutual exclusion or mutual admission. In short, there must be perfect *reciprocity*.

It is more difficult to determine what ought to be the policy of a maritime nation with regard to the foreign carrying trade. Ought the ports of France, for instance, to be thrown open to Dutch or English vessels importing American produce from the United States? In this case natural equity is silent. If it be for the interest of a nation to exclude a third party from such a carrying trade, no one can complain that any principle of international equity has been violated by this exclusion. This is a question of policy which can be determined only by consideration of the peculiar circumstances of the country to which it is applied. At one period those circumstances may suggest a policy diametrically at variance with that which was wisely adopted at a preceding period. If a statesman has reason to believe that his countrymen can compete with other nations in the external carrying trade, he may justifiably consent to the admission of foreigners into the carrying trade of the country which he governs, provided that he can obtain for his own countrymen admission, on the same terms, into the ports of foreign countries.

It is to be observed that a restriction which excludes foreigners from the external carrying trade, and requires that all produce imported from a foreign country in foreign vessels must be of the growth or manufacture of the country from which such produce is imported, and to which such vessels belong, tends to check commercial interchanges. Every such check to commercial interchange is injurious to the economical interests both of the consumer and of the producers of a nation whose prosperity depends upon the export of its manufactures. It is therefore possible that the advantages sought by excluding foreigners from the carrying trade would be countervailed by a general diminution of its mercantile transactions. The question, however, is one which admits of much doubt, as will be seen by considering the following illustration.

In the year 1842, the commerce carried on between the United Kingdom and the kingdoms of Northern Europe was conveyed by the following amount of shipping:—

	INWARDS.		OUTWARDS.	
	British.	Foreign.	British.	Foreign.
	TONS.	TONS.	TONS.	TONS.
Russia, . . .	269,279	57,431	181,737	49,510
Prussia, . . .	87,202	145,499	65,643	133,865
Norway, . . .	1,385	98,979	2,925	91,776
Denmark, . .	5,199	59,837	79,739	131,714

By inspection of these figures (taken from MacCulloch's Commercial Dictionary) it will be seen that whilst, in the trade with Russia, British shipping greatly preponderated, — being more than three fold that of Russia, — in the trade with Prussia, Norway, and Denmark, there was an enormous preponderance of foreign over British shipping. From these statistics it may be inferred that, under ordinary circumstances, British shipping cannot profitably compete with the shipping of Prussia, Norway, and Denmark. Therefore, when the carrying trade is thrown open unreservedly to all nations, it may be expected that the produce of Russia and of other countries, in the ports of which British shipping

formerly predominated, will henceforth be, in great part, conveyed to the British market by foreign vessels. Possibly such a change may be compatible with the economical interests of the British consumer; but I leave to others the task of showing how far it will tend to uphold the maritime ascendency of the United Kingdom.

Bounties.

Let us now consider the policy of encouraging production by means of bounties upon the production and export of particular articles — a policy which has found much favor at various times and in various countries.

At one period, a bounty was granted by the British Parliament upon the export of corn. In like manner, bounties have been granted upon the export of fish, and upon many other articles. It would be easy to multiply examples illustrative of the prevalence of this policy. But we shall employ our time better in investigating its operation and results.

A bounty is a pecuniary gratuity paid to the producer, importer, or exporter of a particular commodity. Inasmuch as the money so applied by a nation must be raised by taxation, the grant of a bounty involves the exaction of a contribution from the community at large, in order to promote the extension of some favorite branch of industry. It may be generally inferred from the concession of a bounty for the encouragement of a particular object that some difficulty exists in attaining that object, or that some sluggishness is to be overcome by the hope of gain, greater than that which ordinarily attends the application of capital and labor to other speculations. The grant of a bounty to a trade already flourishing, would naturally be considered as a wasteful, if not mischievous, expenditure. A bounty has the effect of directing capital to a speculation which is itself hazardous and doubtful. It may also have the effect of inducing capitalists to carry on permanently a trade which, without such bounty, would not yield the ordinary rate of profit. Thus, for example, if the ordinary profit on the investment of capital be ten per cent., and a particular sort of trade or manufacture will yield only six per cent., it is probable that it will be abandoned, unless aided by a bounty of at least four per cent. In such case, a bounty manifestly has the effect of imposing

upon the community at large a tax for the maintenance of a particular trade which yields a rate of profit less than that which may be gained in other fields of commercial enterprise. In a pecuniary point of view, therefore, such bounties must necessarily be attended with loss to a nation. It is possible, however, that this loss may be fully compensated by advantages of a social or political kind, so great as to justify the adoption of a policy which could not be defended on economical grounds. If, for instance, it be deemed an object of paramount importance, as a guarantee of national power and of national security, that the coasts of a maritime country should possess a race of hardy fishermen, accustomed to the dangers of the sea, it may be perfectly consistent with political wisdom to uphold a system of bounties upon the capture and cure of fish by native fishermen, even though it be demonstrable that a greater amount of pecuniary gain would be acquired by the nation, if the capital and labor employed in the fisheries were directed to other enterprises. The policy of encouraging fisheries by means of bounties may now, indeed, be considered as in some measure obsolete; because, since the application of steam to navigation, the importance of maintaining a nursery of seamen has ceased to be a matter of paramount interest. To the engineer, rather than to the mariner, will henceforth be confided the protection of maritime countries. But there have been periods at which the encouragement of fisheries by a judicious system of bounties was a very legitimate development of statesmanship and patriotism.

Even the sternest political economist does not hesitate to subscribe to the funds of the agricultural association of his neighborhood, which distributes *premiums*, in other words, "bounties," to those who exhibit preëminent skill in the tillage of land, or who rear the best breeds of cattle. So, in like manner, a nation may wisely interpose to stimulate the attainment of any object which it deems to be desirable. The principle that where there is a demand there will always be a supply, cannot be relied upon as a truth whose operation is universal. Take, for example, the modern architecture of England. Perhaps at no period of England's history has there been so large an amount of money applied to the construction of public and private buildings as during the present generation. Yet all this encouragement has failed to produce any considerable number of edifices (ought I not rather to say any single work?) that can rival the masterpieces of antiquity.

To excite the emulation of artists by means of *premiums* or bounties, may be a proceeding which the mere economist would condemn; but those who love the glory and the triumph of beauty justly deem that this age would be more enriched, as well as ennobled, by eliciting and honoring the efforts of one immortal genius than by the accumulation of heaps of gold in the coffers of sordid money grubbers.

Let us take another instance. In the country of my birth, home-grown flax can compete with foreign flax, yet, in consequence of want of skill in the preparation of this article, a large proportion of the flax which is used in the linen manufacture of the United Kingdom is imported from abroad. Already a considerable stimulus has been given to the home growth of flax by the operations of the "Flax Improvement Society." Now, if a parliamentary grant of moderate amount, judiciously applied through the instrumentality of this society, should have the effect of largely displacing the foreign import, who will contend that the bounty so granted would be misapplied? In such case, hands that are now idle would be employed in the growth and preparation of flax, and the goods which are now sent to the foreigner, in exchange for flax, would be consumed by the home producer in Ireland.

Again, the principle of non-intervention may be most beneficially violated by the establishment of schools of design, and of other industrial schools. Experience has abundantly shown, that the operation of self-interest and of competition has not hitherto succeeded in carrying to the highest perfection many of the processes of art. Is it inconsistent, then, with political wisdom and with true economy, to bring to the aid of the manufacturing skill all the resources which the highest order of science and of education can bestow? Many combined advantages can be secured by a public institution, which are rarely attainable by individuals, or even by companies. The statesman who refuses to give to the industrious classes of his countrymen those advantages, may justly be reproached with negligence; and if he withhold them in obedience to the mandate of some speculative dogmatist, he adds to that reproach the charge of blindness and incapacity.

Let us consider another example, suggested by the circumstances of Australia. There is every reason to believe, that if the alpaca could be domiciled in Australia, the production and export of its wool would soon become a copious source of augmented wealth to these colonies. Considerable ex-

pense, difficulty, and hazard attend the attempts to import these animals from South America. These difficulties have hitherto deterred private capitalists from making the attempt. Now, in a case of this kind, it is manifestly the duty of the Colonial Governments to grant a bounty upon the import of alpacas, and upon the production of a given amount of alpaca wool. Had such a bounty been offered ten years ago, it is probable that a large amount of wealth would thereby have been secured to these colonies. If, however, the experiment had failed, the burden imposed by the grant of a bounty upon the community would have been imperceptible, whereas, the loss incured in an unprofitable speculation might have been ruinous to an individual.

Similar reasoning may be applied to all hazardous enterprises which, if successful, may be attended with great advantage to the community. There is no doubt that steam navigation between Great Britain and America has been greatly encouraged by the liberal contracts which have been made with steam companies for the conveyance of the mail. An agreement to pay £50,000 a year to a company for the conveyance of bags which weigh but little, and occupy but an inconsiderable space, is a sort of national bounty offered to encourage a doubtful speculation. If the Government of the United States had been animated by a just sense of the importance of establishing a transatlantic steam communication with Ireland, they would long since have entered into a similar contract with some American steam company for the conveyance of mails to the Shannon or to Galway. The proposal has languished for the want of such a stimulus. In like manner, it would be for the interest of the United States, with a view to acquire an ascendency in the Pacific, that its steam marine should be encouraged by a beneficial contract to undertake the establishment of a regular line of postal communication between the Isthmus of Panama and Sydney or Melbourne.

Let political economists say what they will, bounties ought to be discarded only when they are unproductive of advantages commensurate with the pecuniary sacrifices which they involve. Of such a nature, for instance, is a bounty upon export in a trade which is fully capable of sustaining itself without public aid. The grant of such a bounty has the effect of enabling the exporter to sell goods to the foreigner at a price lower than that at which they can be sold at home. The native community, therefore, is taxed, in order that the

foreign consumer may be enabled to purchase goods at a rate cheaper than that at which they can be sold in the home market. Such a policy well deserves to be branded with contempt and ridicule.

Drawbacks sometimes operate as bounties. A drawback, in its strict meaning, is the repayment of a duty advanced by the producer upon an article in some stage of its manufacture before it is brought to market. This repayment has generally been made with a view to encourage the export of manufactured goods which are subject to duty in the process of their manufacture. Thus, when an excise duty was levied on glass and on soap, a drawback or allowance, supposed to be equivalent to the duty, was allowed to the exporter of these commodities. Practically the drawback has often exceeded the duty paid, in which case it may be considered as a bounty; and as such it is, of course, subject to the remarks which have been made respecting bounties. When a drawback is merely a repayment of a duty, it is not liable to any objection in point of principle, because it is obviously unwise to subject to taxation an article which is to be brought into competition in foreign markets with a foreign commodity of the same kind which is free from taxation. It is, however, to be remarked, that, inasmuch as the concession of a drawback generally affords opportunity and encouragement to fraud, it is desirable to avoid the imposition of taxes under such circumstances as render necessary the payment of a drawback.

A privileged monopoly is a description of bounty which is, perhaps, the most injurious of all to society. When governments have been desirous to encourage hazardous undertakings, or to reward favorites for real or imaginary services, they have frequently bestowed upon them the privilege of a monopoly, by which all competitors are excluded from competition in the purchase, manufacture, or sale of a particular article. Thus, in different countries, an exclusive right to trade with the East Indies was given to favored companies, in order to encourage a regular traffic with those regions. During the seventeenth and eighteenth centuries, the folly and injustice of shutting out half the globe from the enterprise of individuals were not as apparent as they now are to statesmen, or to the public, and reasons of policy were used as pretexts to justify the concession of exclusive privileges to favored incorporations. It was supposed that an irregular trade, carried on by private and irresponsible individuals, would produce collisions with

native powers, which would ultimately check commercial intercourse, whilst, on the other hand, it assumed that chartered companies would proceed with greater caution, and would be possessed of ampler means of providing for the protection of their factories. Modern experience has shown that these arguments in favor of exclusion do not counterbalance the evils which result from monopoly. It is now universally felt that monopoly is equally adverse to the interest of the producer and the consumer. By limiting the number of purchasers, it diminishes the total amount which might otherwise be received by producers of the article which is monopolized, and by limiting the supply, it enhances the price to the consumers. It also renders the producer comparatively indifferent as to the quality of the article which he brings to market. It is an invention which operates solely for the benefit of the intermediate trader, whether that trader be an individual, a company, or a Government.

Yet, although reason and experience equally condemn the practice of granting monopolies to favored individuals or companies, there are still cases in which the practice is free from objection. The concession of a *patent* to a person who discovers a new process, or invents a new machine, gives to him during a certain term an exclusive monopoly in the sale of his invention. *Copyright*, in like manner, secures to an author for a certain period a monopoly in the sale of his literary compositions. In these cases, public opinion sanctions the grant of exclusive privileges, even though it may be felt that the loss inflicted upon the public is greater than the gain secured to the individual. It is for the interest of society that efforts should be made to invent and to improve processes by which labor may be abridged, or human comfort promoted. Such efforts will not be made, unless some reward be offered to those who are successful, and therefore, on grounds of public policy, remuneration of some kind ought to be provided for the person who has added to the enjoyments of life. But even if we suppose that discoveries will be made and promulgated, without any regard to pecuniary considerations, still it will be felt by every generous mind that discoverers ought to be rewarded for their ingenuity or their perseverance. The self-adjusting kind of compensation secured by the grant of a *patent* appears to be a more convenient mode of providing an adequate reward, than any other that can be devised. If the discovery be really useful to mankind, then the public demand for the article com-

pensates the discoverer; if it be not useful, then no injury is inflicted by the concession of a monopoly to the inventor, and he receives no compensation, because his invention is not sought after by the public.

It may be asked, "For what term ought the exclusive possession of a right to fabricate an article to be reserved to its inventor?"

Some able writers (see in particular the works of Mr. Jobard) have contended that the discoveries of an inventor ought to be rendered by law a property transmissible, forever, as an inheritance, just as property in land or money is transmissible, and that all other persons, except the representatives of the inventor, ought to be prohibited from encroaching upon that property, with as rigorous an exclusion as is applied in the case of an estate. It is argued that, in point of equity, the person who discovers a new invention has at least as good a claim to exclusive possession of it as a person has to a property which he has purchased and cultivated. It is also maintained that the concession of this privilege would develop so much the inventive faculties of individuals, who are now unwilling to lose their time in pursuits from which they can obtain no adequate compensation, that the community would gain by the concession of privileges which at first sight appear to be at variance with its interests. It is contended further, that unlimited competition has a tendency to induce manufacturers to deluge the market with bad, but low-priced, goods, and to encourage all manner of fraud in the manufacture and sale of them; whereas, an inventor having a permanent interest in the sale of an article which would still be subject to the competition of articles of a kindred, though not identical kind, would, for his own sake, endeavor to preserve for it as high a character as possible.

There is much force in this reasoning; and an experiment as to the operation of such a law would, if it were feasible, be very advantageous. But it is to be remembered that if such a principle were adopted in actual legislation, and afterwards found to be pernicious, it would be very difficult to abrogate it; because all those to whom exclusive privileges had been conceded would in such case imagine that they had claims for compensation, whilst it would be impossible for any state to award such compensation. We may, however, admit that legislation has hitherto erred in limiting too much the period assigned to inventors for exclusive enjoyment of the fruits of their discoveries.

In all cases in which exclusive privileges are conceded to individuals or to companies, a right of redemption ought to be reserved to the public. Thus, for instance, in those cases in which an inventor has made a discovery the universal adoption of which would be attended with advantage to the community, some authority, acting on behalf of the public, ought to be authorized to purchase the patent right at a valuation, with a view to throw open to public competition the manufacture of the patented article. This valuation might be determined by a simple arbitration. The cases would be rare in which such a right of redemption would be exercised; but it is probable that its exercise would in such exceptional cases be found equally advantageous to the public and to the patentee.

Every institution, every law, every custom, every enterprise, that can affect the industrial operations of a country, may fitly attract the attention of the Board of Trade and of its responsible minister. The extent and comprehensiveness of this sphere of action render it impossible for us to enumerate in detail the various objects to which its consideration ought to be applied. But it is to be remembered that Governments may err as well by meddling too much with the transactions of society, as by neglecting altogether those appliances which tend to promote industrial and social advancement. The rule which we have laid down with regard to interference with the natural rights of man is equally applicable to the operations of trade and commerce. Perfect freedom of action should never be violated, except when such freedom is productive of evil, or when a great public benefit may be obtained by the interference of the state. If we were to scrutinize the various regulations which have been imposed by Governments at different periods, in restriction of man's natural liberty of action, we should probably find that more evil has been inflicted than prevented by such restrictions. It would be amusing also to observe how different, in different ages and in different countries, have been the views of expediency under which these regulations have been framed. For example, to augment, by every possible means, enjoyment of the comforts and luxuries of life, is the chief aim of modern legislation; among the Romans, on the contrary, indulgence in luxury was restrained by sumptuary laws. Philosophers of modern days are overcome by apprehensions that population will increase faster than the means of subsistence; the Romans, on the con-

trary, visited celibacy with penalties, and encouraged marriage by rewards. Nay, even in our own times, whilst the student of political economy, after reading in the metropolis of the empire the essay of Malthus on Population, is tempted to devise schemes for repressing the productiveness of the human species, we find that in the colonies of Great Britain there is a general complaint that hands are wanting to gather the productions which Nature offers to man. Fortunately, Nature vindicates her own laws, and every effort to thwart the natural operation of those laws is eventually counteracted by some manifestation of the mischievous consequences which such efforts produce.

At present it is the fashion for theorists to argue that every description of trade should be left unfettered to the freest competition. Yet the political economist who advocates this doctrine in the lecture room, would not hesitate to summon to the police office the driver of a cab or of a hackney coach, who should attempt to exact more than the *maximum* fare allowed by law for the conveyance of his person and luggage. We are told, in like manner, that all contracts in regard of navigation ought to be left perfectly free. Yet the legislature finds itself compelled, by a sense of humanity, to enact a code of regulations respecting the number of passengers that shall be carried by emigrant vessels in proportion to tonnage, and further to prescribe the supplies of food, and even of medical comforts, which shall be available for the use of each passenger. We are told that every individual ought to be allowed to follow any lawful calling which interest or inclination may induce him to adopt. Yet, if he should be desirous to establish a public house for the reception of travellers, and for the sale of spirits, he is under the necessity of applying for a license, which may be withheld from a worthy applicant through vindictive motives of private or political malice, and conceded to an unworthy applicant through undeserved favoritism.

Examples of this kind tend to show that all general principles admit of modification according to circumstances; but still we may confidently promulgate, as a general maxim, the principle that interference with that liberty of action, which is the natural right of every human being, ought to be avoided as much as possible.

In regard of industrial and commercial transactions, as in regard of political administration, centralization ought to be discouraged. There are, indeed, some objects, such, for in-

stance, as the establishment of lighthouses, which can be effected more advantageously by central than by local action; but, upon the whole, it is a principle of almost universal application, that the transactions of society will be better managed by those who have a direct and personal interest in them than by those who act on behalf of the community at large.

It must not be imagined, however, that in contending against centralization, we are opposed to the principle of association. On the contrary, as in the political system we find that many things can be effected by a municipal organization, which cannot be advantageously accomplished by individuals, so, in regard of commercial undertakings, many objects can be effected by means of associations which cannot so well be attained by individual effort. For this reason, every possible encouragement ought to be given to the formation of societies founded for the advancement of industrial or mercantile enterprise. In the United Kingdom, the progress of industrial development has been greatly retarded by the operation of the law, which renders a person who enters into a trading company liable to the whole extent of his property for payment of the debts of the partnership, in case of the failure of the speculation. It is certain that a great number of persons possessed of money would have invested that money in commercial and industrial enterprises, if they had not been deterred from doing so by apprehensions of the responsibility which they would incur under the operation of this law. Take, for instance, the case of a country gentleman of good estate, who is prudent, and lays by a few hundred pounds every year. If he were protected by a law limiting the liability of individuals to the amount of capital subscribed by them to a mercantile association, he would naturally employ these savings in some favorite undertaking, which promised not only a profitable return to the capitalist, but also a development of resources hitherto inert, which would be attended with much benefit to the local community; such, for instance, as the establishment of a communication by steam, the reclamation of land, the introduction of a manufacture, &c. But if he cannot take a part in such efforts, without risking his whole fortune, he naturally prefers to leave his money unemployed in a bank, or to invest it in Government securities, at a much lower rate of interest than that which he might expect to receive from these useful undertakings.

On the Continent of Europe the law of limited liability

prevails in several states, and persons subscribing capital to mercantile associations risk only the amount of capital which they subscribe. In Belgium, not only is this principle admitted, but there are also "anonymous" partnerships, in which the partners are unknown to the public, and the visible property of which is alone responsible for the obligations of the society.

It may be said that societies of this kind defraud their creditors, in case they incur liabilities beyond the amount of their capital and assets. But surely self-protection from such casualties lies in the power of the creditor. He is not compelled to furnish goods on credit, and if he deals with such a company only on the condition of payment in ready money, no injury can be sustained by either party.

In the case of all joint stock companies, periodical publication of their accounts ought to be rigorously enforced, with a view to the protection, not only of creditors, but also of the partners of companies.

The development of national industry depends much, if not altogether, upon laws, political institutions, and civil government. We find, for instance, that agricultural improvement is mainly dependent upon the nature of the laws relating to land. If the transfer, descent, and occupation of landed estates be encumbered with vexatious or oppressive conditions, it can scarcely be expected that agriculture should flourish. A volume might be written to prove, by the experience of different nations, that upon the nature of the land tenure which prevails in each country depends its agricultural prosperity. Here it is sufficient to say, that *simplicity of title*, *security of possession*, and *facility of transfer* are conditions essential to every well-regulated code of laws relative to land. It is almost needless to observe that the feudal tenures formerly prevalent throughout Europe have, for the most part, been wanting in these requisites. There is considerable difficulty in modifying a system which has become interwoven with long-established prejudices, habits, and institutions. Yet the statesman should never despair of amending what is objectionable, however inveterate the evil may have become. In countries newly colonized, it is comparatively easy to avoid those inconveniences, which have been engendered by the vicissitudes of events in societies of ancient standing. Titles are naturally simple in the original disposal of land; and, if a good system be adopted for the registration of wills, convey-

ances, and encumbrances, these titles can be kept free from complexity, provided the laws relating to the succession and transfer of landed estates be not unnecessarily complex.

Much may be said in favor of the law of primogeniture and of entail, in countries where an aristocratic form of government prevails; but it may be stated, as a general principle, which is peculiarly applicable to new colonies, that it is expedient to deal with land as with any other description of heritable wealth, and to impose upon its alienation as few legal restrictions as possible. Those who, by thrift and industry, accumulate large fortunes, are generally disposed to divide them equally among their children. In a new colony almost every successful settler is the founder of his own fortune; and if legislation were to be guided by colonial feeling, rather than by European precedent, it is probable that in every new community the law of primogeniture would be abrogated, and that in cases of intestacy the estate would be divided equally among the children. Under the circumstances of a new settlement, there are no aristocratic interests to be maintained. There being no hereditary titles, public policy does not require that a preference should be given to one child rather than to another, in order to enable him to maintain a factitious dignity transmitted from his ancestors. All the members of a family being equally prized as citizens of the state, ought to enter upon equal terms into the career of life. If a preference were to be given to any of the children, reason suggests that this preference should be given to the youngest, because, at the death of his parent, he will have had less opportunity than the elder children have had of advancing himself in the world by matured abilities and experience. It is, perhaps, doubtful whether the law of primogeniture ought to be abolished in the aristocratic states of Europe, but the considerations here brought forward seem to me sufficient to justify all new communities in following the example of the United States, by enacting that, in cases of intestacy, the estate of the parent shall be equally divided among all the children.

Similar, and, perhaps, more powerful considerations of public policy dictate the abrogation of laws which fetter the alienation of land. In countries in which hereditary titles are to be maintained, it has been considered advisable to arrange the laws relative to the succession of property in such a manner, that the possessor of a title of rank shall not find himself divested of the means of supporting the social position which

that title naturally confers. It thus becomes necessary to prevent the person who is in possession of the family estate from alienating that estate; and with this view the law of entail appears to have been instituted. The law of entail has a tendency to encourage the consolidation of estates; so that the lands of a country where primogeniture and entail prevail naturally fall into the possession of a very small number of proprietors. Facility is afforded for the acquisition of property by descent, or marriage, or bequest, but great difficulty is thrown in the way of its alienation. Now, there are few social evils greater than the accumulation of large tracts of territory in the possession of a small number of proprietors. It is quite unnecessary to enter into elaborate arguments in order to prove this assertion. Every one feels that it is more advantageous to society that a district worth £100,000 per annum should be possessed by one hundred proprietors, who each enjoy an estate worth £1000 per annum, than that it should be monopolized by one great proprietor. In so far, therefore, as the law of entail tends to produce the consolidation of estates into large masses, it is to be deprecated.

In France and in Belgium, the division of property has, perhaps, been carried on to a prejudicial extent, in consequence of the law which *compels* the subdivision of a property among all the children upon the decease of the parent. But in all communities, and especially in those communities in which industry rapidly realizes gain, every facility ought to be given for the investment of pecuniary accumulations in the purchase of land. Nothing so much tends to the preservation of order, and to the contentment of all classes of society, as the prevalence of a conviction that every industrious and frugal man may ultimately hope to become a possessor of a portion of the soil of his native country. Now, laws which prevent the division and sale of land perpetually kept out of the market masses of landed estates, the title to which ought to be as transferable as any kind of pecuniary property. In many cases these estates are withheld from public competition, without the slightest possible advantage to their nominal owners. How often have we seen enormous estates, when loaded with debt, kept for a succession of years under the control of Chancery, or of encumbrancers, under circumstances which render utterly hopeless their redemption by the family to which they nominally belonged. This evil had grown in Ireland to such an overwhelming magnitude, that at length, by a special

enactment, the British Parliament provided facilities for the dismemberment of such encumbered estates. Though the interests of many of the original proprietors were recklessly sacrificed, through the depreciation of property, which was occasioned by misgovernment during the years of famine, yet it is admitted on all hands that the practical operation of this measure has been extremely beneficial. It has transferred the proprietary right in large tracts of land from nominal possessors, who, through insolvency, were utterly unable to perform the duties which a landlord owes to his property, and has vested the possession of this land in industrious and enterprising capitalists, who are willing and able to carry out social and agricultural improvements. The result of this experiment is encouraging, and (whatever may be thought as to the policy of altering the present laws of entail) there is no difficulty, except such as arises from the chicanery of lawyers, in extending to all other parts of the British Empire similar facilities for the purchase and sale of lands which are encumbered with debt.

If it be desirable to simplify the title and secure the possession of property to its lawful owners, so is it equally desirable to define and regulate upon just principles the relations between proprietors and their tenants. It may indeed be argued, that the arrangements between landlord and tenant ought to be settled like any other transaction between buyer and seller, by specific contract, and that such contracts should be rigidly enforced by law. But practically the landlord is often prevented by law from making a contract which shall be beneficial to the tenant. Thus, a proprietor who has only a life interest in his estate (and such is the case of a large proportion of the owners of land in the United Kingdom) has been prevented by law from giving leases of duration sufficient to encourage the investment upon them by the tenant of any considerable amount of capital. By such restrictions the agricultural prosperity of the country is manifestly retarded. What tenant can, with prudence, invest money in expensive buildings upon a lease of short duration? Practically speaking, it may also be said that there is no description of contract with which the law does not interfere by the establishment of regulations which govern such contracts. For instance, the laws relative to bankruptcy and insolvency are so framed as to provide protection to the insolvent, bankrupt, or trader, from the consequences of an imprudent contract. The laws

against usury establish a legal rate of interest which protects the borrower. But in the case of contracts between landlord and tenant, the laws of the United Kingdom, and especially of Ireland, have been framed almost exclusively with a view to the interest, real or imaginary, of the landlord. Thus, for example, if a tenant builds an addition to his homestead, the property in that building ought clearly, in justice, to belong to the tenant by whom it was constructed, not to the landlord, so that upon the expiration of the lease the tenant ought to be entitled to remove it, in case he be not offered for it adequate compensation. But British law enacted that the benefit of all improvements made by the tenant shall ultimately accrue to the landlord, thus reversing the policy which is dictated by a sense of natural justice, and by an enlightened expediency.

In those cases in which a tenant has, by the application of his skill and capital, added to the permanent value of the property which he holds, he ought not to be displaced without receiving adequate compensation for his outlay. It is indeed difficult to arrange, in a satisfactory manner, the details which are necessary to give effect to this principle of natural equity. Perhaps an arbitration between the landlord and the tenant is the most satisfactory, as well as the most simple, mode of adjusting these claims.

I am not prepared to contend that a person who acquires landed property in fee should be prohibited from settling it, during, at least, one generation, in such a manner as shall appear to him most conducive to the interests of those for whom he wishes to provide, or even in such a manner as shall gratify his pride or his caprice. If a frugal and industrious person accumulate a large sum of money, and therewith purchase an estate, it seems reasonable that he should be allowed to give the life use of it to any one for whom he may wish to make temporary provision, without, at the same time, conveying to him full power of disposing of the inheritance. Public policy suggests that this power of creating limited interests in property shall not extend beyond one generation, and in England the law of entail has been modified by these considerations of public policy. But, in order to encourage the creation of permanent tenures, the possessors of life interests in estates ought to be permitted to grant leases of land, even in perpetuity, at a fair rent, under the

sanction of some authority whose intervention may protect the interests of those who are next in reversion.

Though it is extremely doubtful whether the general operations of agriculture can be carried on by societies more advantageously than by individuals, yet there are special cases in which the principle of association may be beneficially applied. Thus in regard to extensive operations of drainage and irrigation, it often becomes desirable that several adjoining proprietors should concur in undertaking some work or system of works which shall be for the common advantage of all. Now, in order to enable the parties who are interested to coöperate in the execution of such enterprises, it is desirable that a general law should be passed, by which such associated efforts may be facilitated and encouraged.

The organization of associations for the preservation of fisheries ought to be encouraged. Inland fisheries form not only a valuable description of property, the possession of which is much prized, but also a source from which may be derived considerable augmentation to the food of the community. This resource ought, therefore, to be developed and protected to the utmost possible extent. It is in the nature of a fishery that its effective preservation depends upon the coöperation of many parties who are not brought into immediate contact with each other. The spawning ground may lie at a great distance from the spots in which there is the greatest capture of fish. If, therefore, impediments such as dams prevent the ascent of fish to their spawning grounds — if noxious matter be discharged into rivers so as to poison fish — if fish be taken when out of season — if the young fry be destroyed, the community at large, as well as the proprietors of fisheries, sustain a loss, the infliction of which might have been averted by wise regulations. All those who enjoy the right to fish in a river are interested in its conservation, from its source to the sea, and should be encouraged to form themselves into associations for this purpose.

Whether the public at large ought to be excluded from the right of fishing in inland waters, is a question of some difficulty. If an individual possesses within his estate a small piece of water, it appears to be not unreasonable that he should possess an exclusive right to fish in it. On the other hand, it seems to be a monstrous invasion of natural right to prevent the community at large from fishing in a large lake,

which may be bounded, not only by many different properties, but also, as in the case of some lakes in Ireland, by several different counties.

Even in a country in which the rights of private property are guarded with the most rigid tenacity, every one ought to be allowed to fish in a lake or river who possess land adjoining that lake or river; and also, to permit others to fish, at all lawful seasons, in right of access to his ground. If there be public property adjoining such waters, that property would, upon this principle, naturally give to the public a common right of fishery in its vicinity, and thus, every large expanse of water would, practically, be thrown open for fishing to the whole community.

In regard to sea coast fisheries and fisheries in tidal rivers, both natural equity and public policy concur in declaring that they ought to be open to all mankind. Any attempt to prevent the industrious inhabitants of a country from freely applying their energies to the capture of fish on the coasts, bays, and tidal rivers of a country, is so manifestly at variance with the public interest, that a law, giving a monopoly of this privilege to individuals or to companies, could be enacted only by a legislature ignorant of the first principles of social economy and of natural right.

The conservation of fisheries which are open to the public at large naturally devolves, not upon an association of private individuals, but upon some public body. What public department can most suitably be charged with this function? This is a question to which it is not necessary to give a peremptory answer. Some would assign it to the Board of Trade, some to the Board of Public Works, some to the Admiralty; others, perhaps, would contend that it ought to be left to the municipal representatives of the locality in which the fishery is situated.

"Upon what principles ought a Government to deal with the mineral resources of a country?"

To this question we may answer, that in the original occupation of any territory, the underground treasures of the soil are as much the property of the public as its surface, and that it is competent for the legislature to make such regulations with respect to them as may be deemed most conducive to the public advantage.

In some countries an exclusive right to search for minerals

is conceded to the possessor of the soil, as an incident which naturally accompanies its proprietorship. In others, it is reserved to the state, and becomes subject to the disposal of the public authorities, specially appointed for that purpose by the legislature.

Considering the immense importance of this branch of national wealth, it appears desirable to adopt such a system of regulations as shall develop to the utmost a disposition to apply industry and enterprise to the discovery and working of mines. Now, if an exclusive right to search for minerals be reserved to proprietors of the soil, it may happen that indolence, caprice, want of capital, and many other influences may prevent the proprietor from himself working, or from encouraging others to work, mines which might be worked with profit, as well to the speculators as to the community at large. It seems advisable, therefore, that the underground wealth of a territory should be thrown open to the free competition of industry and capital. Even in those countries in which the right to search for minerals has been already granted to individuals, the state is entitled to say to the proprietor who possesses beds of mineral wealth, "Either you must work these mines yourself, or you must permit others to work them!" In such case, a certain specified proportion of the produce may be reserved to the proprietor as a compensation for his rights of ownership.

On the other hand, if the state have reserved to itself the right to dispose of the mineral resources of a country, it is not unreasonable that a preference should be given to the proprietor of the soil, in case he be disposed to take a lease of the mines which are under its surface, on terms as advantageous to the public as those which are offered by other speculators; and even in case he decline to use this privilege of preëmption, he ought to be compensated for surface damages by those who undertake to work the mines.

These appear to be the leading principles which are dictated by a sense of natural equity and of public utility in regard to mining operations. It is not necessary for us here to enter into all the details which are requisite to give practical effect to them.

CHAPTER XXXI.

COLONIAL AFFAIRS.

The local circumstances of some nations are such as almost preclude them from possessing colonies. Thus, Bavaria, Wurtemburg, Switzerland, and several of the German states which do not possess seaports, could not undertake the establishment of colonies with a prospect of thereby securing such advantages to the mother country from colonization, as are enjoyed by maritime nations. On the other hand, Spain, Portugal, Holland, and Great Britain, have covered the globe with colonies, the establishment of which has, upon the whole, been highly advantageous to the countries which have sent them forth, though those advantages have been, in great measure, impaired or forfeited by the mistaken policy under which these colonies have been governed.

There is no more legitimate mode of extending the power and influence of a country, or of providing employment and subsistence for its redundant population, than the establishment of colonies. The Government of every country, therefore, which is fully peopled, ought anxiously to direct its attention to this important branch of social policy. The world has hitherto presented, at all times, territories either wholly unoccupied, or only partially occupied by uncivilized tribes, upon which territories enterprising nations might have founded settlements, without violating the natural rights of any other community. Even now, though the greater states have absorbed into their dominions large tracts of territory which ought to have been left open to mankind at large, yet regions available for settlement might be acquired by friendly convention with those who lay claim to them. Great Britain has, in recent times, been foremost in carrying forward the work of colonization; and her self-aggrandizing spirit has led her to monopolize to herself almost all the unoccupied regions of the globe. Thus, within the last two centuries, natives of the British Isles, or their descendants, have acquired the whole of North America, the whole of South Africa, the whole of Australasia, including New Zealand, and a large portion of the most populous and productive regions of Asia. Whether it be reasonable that one nation should thus monopolize a large portion of the globe, is a question which deserves

discussion: and if the continental powers of Europe were disposed to seek grounds for quarrel with Great Britain, they might without impropriety hold a congress, for the purpose of determining whether the claim which England advances to the possession of a whole continent, such as that of Australia, is consistent with the rights of other nations. This is a question which, to some of the nations of Europe, is not a matter of mere speculation. Take, for example, the case of Belgium, of Prussia, of Denmark, of Austria, and of other highly peopled countries, which do not at present possess colonies. If they were disposed to seek an outlet for their redundant population, they would be debarred by the monopolizing claims of Great Britain from settling in some of the fairest regions of the earth, which, though in every respect suited for colonization, are now almost entirely unoccupied. There has been, indeed, of late, a large annual emigration from Germany to the United States of America; but colonization of this kind involves the loss of nationality, the eventual loss of the language, and institutions, and customs of these emigrants — a loss to which no nation ought voluntarily to submit.

This question is one which will be determined by

> "The good old rule, the simple plan,
> That they should get who have the power,
> And they should keep who can."

As long as Great Britain possesses an ascendency at sea, she will struggle for the maintenance of her claims, however unjustifiable they may be in themselves, and no one single nation will venture to contest with her these claims. It may also be said in favor of her usurpation, that she only follows the example of her predecessors. The earliest colonists of whom we read — the Phœnicians and the Greeks — were accustomed to plant their settlements wherever they could maintain them by force of arms. They did not hesitate to avow, that power was the sole sanction which they required for their usurpation. Spain, in like manner, in her discovery and conquest of Central America and South America, set at nought the claims of the aboriginal population. England is more hypocritical, and affects to find pretexts which will justify her rapacity: but the result is the same. The weak are compelled to give way to the strong. The Red Indians in North America, the aborigines in Australia, the Kaffirs in

South Africa, are gradually exterminated from the soil which gave them birth, whilst the Asiatic is compelled to receive as masters those who originally obtained a footing in Eastern lands under the guise of merchants or of friends. Yet, even from England, colonization has been carried on by the voluntary impulse of the people, rather than promoted by the energy or wisdom of the Government. So late as 1840, when a society of Englishmen were desirous to establish colonies in New Zealand, it was with difficulty that they could induce the British Government to sanction or even to acquiesce in such colonization, and within the last ten years, upwards of a million and a half of British subjects have emigrated to the United States of America, who ought to have been encouraged by the Government to settle themselves in the colonies of Great Britain.

It is, indeed, contended by some writers of authority, that it is a matter of indifference to the mother country whether her emigrants establish themselves in a foreign country, or in a colony. By these writers it is argued that the independence of the United States has, upon the whole, been more useful to Great Britain than would have been their retention in a state of colonial subjection. Whilst I admit that the independence of a colony is more advantageous to the mother country than its retention as a misgoverned and discontented dependency, I cannot but think that for the mother country, if not for the colonies themselves, the maintenance of an intimate connection is more advantageous, if they be well governed, than separation. A spirit of commercial rivalry and of political antagonism, which has sometimes amounted to actual hostility, exists between the United States of America and Great Britain. British manufactures have been subjected to heavy duties, levied for the protection of the domestic industry of America. In regard of general policy, the public mind of America not only does not receive an impress from the mother country, but, on the contrary, is often in direct opposition to it; and instead of identity of sentiment, there prevails the acerbity of contradiction. Compare this state of feeling with that which would have existed if all causes of discontent had been removed. That portion of the population of the United Kingdom which finds a difficulty in procuring a livelihood at home would have obtained remunerative employment in the Western Empire, and centuries would elapse before this field of colonization would cease to

be an attractive and profitable means of occupation to the redundant energies of the old country. British manufactures would naturally have monopolized the American market, not by means of protective tariffs, but by the natural operation of mercantile connection. Great Britain would have been regarded with veneration and affection. From her example would naturally have been sought instruction in arts, in literature, in science, in government, and the intercourse of domestic relationship would have established an identity of interest and feeling, which would have been the surest guarantee of mutual protection in the case of danger menaced by a common foe.

Let us now consider what are the principles of government, and what the form of organization, which are best calculated to promote the common advantage both of the mother country and of its colonies.

Here again we may safely recur to the two great classes of agency which, in former parts of this work, we have deemed applicable to almost every object of political administration. These are *central guidance*, and *local self-government.*

If a country be possessed of colonial dependencies, it is manifestly desirable that there should be a separate department for colonial affairs, presided over by a responsible Minister for the Colonies. If the colonial empire be very extensive and populous, it is desirable that this minister should be assisted by a permanent board of management. The want of some fixedness of policy, in regard of the administration of colonial affairs, has been much felt in Great Britain. Each change of Government necessarily brings with it a change in the ministry of colonial affairs. Now, considering that Great Britain possesses upwards of forty important colonies, and considering also the great variety which prevails in their institutions and local circumstances, it is utterly impossible that any statesman, however able, can be competent to understand fully the bearings of every question submitted for his decision, unless he shall either have acquired, by long official experience, a minute knowledge of colonial affairs, or shall be assisted by a board, consisting of persons who have acquired such experience. This inconvenience has been much aggravated by the disposition which has existed, on the part of the central authority at home, to interfere with all the petty details of local administration. Though there exist, in almost all the colonies, local legislatures, yet little reliance has been placed

upon their competency, and even in regard of such matters as a turnpike road bill, a minister sitting in Downing Street has thought himself more competent to form a sound opinion than the parties locally intrusted with the duties of legislation. There is something preposterous in the practice which has existed of referring every question that has arisen in Australasia to the home Government for ultimate decision. A distance of 12,000 miles — a three months' voyage — interposes an impediment which must, in itself, render such intervention unsatisfactory; and when it is found that ignorance, or partiality, or regard for imperial rather than for colonial interests, determines the ultimate settlement of questions reserved for consideration at home, it is not surprising that such intervention should give rise to unceasing discontent.

It is a difficult problem to determine what are the subjects and functions which ought to be reserved for the control of the central authorities at home, and what duties should be assigned to the local authorities in the colonies. This problem ought, perhaps, to be solved by an enlightened consideration of the circumstances of each settlement, rather than by the application of any inflexible rule. It cannot be denied by the warmest advocates of self-government, that imperial intervention is not only justifiable but desirable in certain cases. No one will contend, for instance, that a person resident at Gibraltar, Malta, or St. Helena, is entitled to claim the same description of control over the local affairs of those settlements, as he would possess in regard to the local affairs of Canada, or New South Wales, if he were an inhabitant of those colonies. These spots are, in fact, not so much colonies as military positions, and it would be as absurd to apply to them the principles of self-government, as it would be to give to each member of a military force that independence of personal action which is the right of every ordinary citizen. In like manner, it is obvious that in a penal settlement laws must be enforced for the restraint and coercion of offenders, which would be intolerable in a country inhabited by freemen. To subject a rising colony to the evils which result from the introduction into it of convicts, is to inflict upon it a grievous wrong, but as long as a settlement established for penal purposes continues to be a mere penal station, it is manifest that the principle of self-government cannot be applied to it, without the risk of introducing general confusion.

Even in regard of settlements formed by voluntary emi-

gration, I am not prepared to contend that in their infant state the same privileges of self-government, independent of imperial control, can safely be accorded to them as may with propriety be confided to populous and established colonies. For instance, if a few thousand settlers locate themselves in such a country as New Zealand, they ought not to be allowed to deal with the aboriginal inhabitants of the country, and with their territory, in whatever manner their cupidity may suggest. In such case, the imperial authority at home is bound to interfere, for the purpose of protecting the rights and interests of the natives; and consistently with these rights to make such regulations with respect to the lands, as shall be most advantageous, not alone to the first settlers, but also to others who may subsequently emigrate to these settlements.

In the whole circle of political problems, there are, perhaps, none which are so difficult to solve, as those which are connected with the intermixture of races whose habits and ideas are altogether discordant. To suppose, as some have supposed, that there is an inexorable law of nature which renders necessary the extermination of uncivilized aborigines, whenever they come into contact with what is called civilization, is to impute to Providence disastrous results which ought justly to be charged to the wickedness of man. A more humane philosophy denies that the oppression of the native inhabitants of the West Indies, of Mexico, and of Peru, by the Spaniards, or that the gradual extermination of the Red Indians of America and of the Kaffirs of South Africa, by the colonists of Britain, have resulted from any inexorable necessity. These results are rather to be attributed to the operation of insatiable rapacity on the part of the settlers, uncontrolled, and in some instances encouraged, by the Government of the colonizing country. On the first discovery of America, the avidity of the Spaniards was directed to the acquisition of gold, and the most horrible atrocities were committed upon the native inhabitants, with a view to extract from them the precious metals, which they or their country possessed. Modern philanthropy is loud in condemning these atrocities, but the spirit which gave occasion to them still lives unchanged. The objects of cupidity are no longer the same, but this passion still operates with unabated vigor. The aborigines of newly discovered countries are not now robbed of gold, simply because they do not possess the precious metals, but they are robbed of their lands, and thereby deprived of their means of

subsistence. They are treated as noxious vermin, and when they resent injuries by retaliation, they are hunted down and exterminated. A volume might be filled with authentic extracts, narrating the operations of the Anglo-Americans in North America, of the English in Africa and Australasia, of the French in Algeria, which would abundantly establish the truth of these allegations. With regard to the past, reproach is unavailing, but, in reference to the future, we have to consider how a repetition of these occurrences, which justly excite our shame and indignation, may be avoided.

Are we to arrest the march of colonization, lest it may trample upon the aboriginal children of the soil which we desire to colonize?

I do not hesitate to say, that if colonization could be carried on only by means of cruelty and injustice, it were better that it should be repressed than that it should be encouraged on such conditions. But in truth there is no incompatibility between the interests of the settlers and those of the aboriginal inhabitants of a thinly peopled territory. In almost every instance in which a new region has been discovered by Europeans, the natives at first welcomed their advent with anticipations of augmented happiness. Alas! how soon were those anticipations disappointed!

Wandering tribes, who live either by hunting or by pastoral resources, naturally spread themselves over tracts of land, which are so extensive that portions of such regions may be ceded for agricultural purposes without perceptibly interfering with the requirements of the natives. It would be unreasonable to contend that a territory, which is capable of supporting many millions of human beings, should, throughout all time, be reserved as a game preserve for a few thousand savages. At the same time the prior claims, the "vested rights" of the aboriginal inhabitants ought to be distinctly recognized, and carefully maintained, as paramount to those of the intruding population. Under such conditions a Government is justified in making equitable arrangements for the purchase of land from the natives for the purposes of colonization. Heretofore, such purchases have been generally made, if made at all, by individuals or by companies, who have seduced the natives to exchange their possessions for some bawbles of trifling value, or for some pernicious equivalent, such as ardent spirits or firearms. By these means the aborigines have been tempted to become the agents of their own demoraliza-

tion and destruction. A humane Government, on the contrary, ought to prohibit all such traffic, and to offer equivalents, which will not only contribute to the immediate gratification of the aborigines, but also qualify them and their children to become members of a civilized community. When a native race obstinately refuses to lend itself to these efforts — when it wilfully rejects what we call the blessings of civilization — it is difficult to say what expedient ought to be adopted, with a view to render them harmless, if not useful neighbors. But it may be doubted, whether an attempt to reclaim a savage race has ever been honestly and equitably made without success. How seldom has such an attempt been made with a sincere design to benefit an aboriginal population! "At one of the Indian towns a silver cup had been stolen — its restoration was delayed: with hasty cruelty, Grenville (the leader of the expedition) ordered the village to be burnt, and the standing corn to be destroyed." (See Bancroft's History of America.) This incident, which occurred upon the first settlement of the English in a district in which they had been kindly received by the native inhabitants, may be said to exemplify the uniform treatment which savage tribes have experienced whenever they have come into contact with colonists stronger than themselves. Even in our own times, the theft of a horse or a cow from a settler living upon the borders of the Kaffirland has been avenged by a plundering forray, in which indiscriminate desolation and massacre have been inflicted upon the native population. Is it surprising that these reckless cruelties should have generated an inextinguishable hatred of European settlers in the minds of aborigines, in the place of that friendly welcome with which the stranger was at first greeted? What would be the state of Europe, if every case of border robbery were to give rise to an invasion of the country to which the robber was supposed to belong! If a Belgian steals a horse from a Frenchman, the matter is made a subject of juridical investigation, with a view to the punishment of the offender, not of international conflict. Justice between man and man is, in principle, the same in all parts of the world — is the same between men of every race and color. If an Englishman kills a Kaffir, except in self-defence, he ought to be punished as if he had murdered an Englishman. If a Kaffir steals a bullock from a settler, he ought, individually, to be punished for this offence; but his whole tribe ought not to be exterminated.

It is not easy to define the circumstances under which an aboriginal population should be treated as individual subjects, in contradistinction from those in which they ought to be treated as an aggregate body, forming a separate nation in the midst of a newly settled people of another race. In the former case, they ought to be entitled to enjoy all the privileges which belong to other citizens, on terms of perfect equality. In the latter case, the law of nations, rather than municipal law, would appear to be applicable; but it must be modified by the peculiar circumstances of the connection existing between the two races. In any case, the suggestions of a sense of justice are clear and peremptory. If a Government be resolved to obey that sense of justice, rather than the sinister suggestions of self-interest, a satisfactory solution can be found for almost every difficulty that can arise in the intercourse of civilized men with aboriginal tribes.

If, therefore, it be found that the colonists who establish a settlement in the midst of an aboriginal population, exhibit a disposition to plunder, to oppress, and to exterminate them, it is the imperative duty of the Government of the mother country to interpose the imperial power, with a view to prevent such wicked injustice. Highly as we may value the principle of self-government, we ought to desire the abrogation or suspension of every constitutional principle, rather than consent to a systematic violation of the rights of an aboriginal population, which may justly claim the protection of the metropolitan Government against the aggressions of its colonists.

Again, in regard to such a question as the introduction or maintenance of slavery, the mother country is manifestly entitled to prescribe conformity to the general policy of the empire. If one or all of the Australasian colonies were to take measures for establishing slavery even in a modified form, it would not only be the right, but it would be the duty of the imperial Government to interpose its authority, and forbid such measures. There is every reason to believe that if the emancipation of the slaves in the colonies of Great Britain had been left to the slaveholding colonies themselves, several generations would have passed away before slavery would have been abolished. However ardently we may advocate the principle of local self-government, we cannot object to the exercise of an overruling authority, when that authority is applied to protect the fundamental rights of mankind.

In like manner, questions affecting the general interests of

the empire ought not to be determined by the colonial legislatures without the concurrence of the imperial authority. Among such questions, we may cite those which involve peace or war. If, for instance, one of the colonies of Australasia were to take possession of Tahiti, the empire would, by such a proceeding, be involved in a war with France. It is manifest that any proceeding of this kind ought to be subject to imperial control, so long as a colony continues politically connected with its mother country. Colonies are protected by the armed force which belongs to the empire at large. It is, therefore, reasonable that those who administer this force should be consulted, before acts are done which may require the interposition of such protection.

Of a kindred nature are questions affecting the commercial policy of the empire at large. Great Britain, for instance, has concluded with various independent states commercial treaties, called "Reciprocity Treaties," which guarantee to the contracting parties that they shall be mutually placed on the same footing with the most favored nation in regard of all duties levied upon the commodities and shipping which belong to them respectively. Now, if one of the colonial legislatures were to impose discriminating duties upon imports from foreign countries — if, for instance, the Jamaica legislature were to levy higher duties upon articles brought from Mexico than upon similar articles brought from the United States — such discriminating duties would involve a departure from the general policy of the empire, which would lead to embarrassments of a most dangerous nature — to retaliatory proceedings, if not to actual war. It is obvious that the imperial executive ought, in regard to such cases, to possess the right of interposing a veto upon the proceedings of the colonial legislatures; and if the executive should neglect to interpose its veto, the imperial legislature is entitled by its own inherent authority to rescind any colonial enactments which are at variance with the external policy of the empire.

Again: should an attempt to establish a system of religious persecution be made in any colony, it ought to be resisted, in the first place, by the executive authorities of the mother country, and in case these authorities neglect to offer resistance, this duty ought to be undertaken by the imperial legislature. Unhappily this contingency is not altogether imaginary. In the early settlement of the Puritans in New England, several cases of atrocious persecution occurred, which ought to have

been suppressed by the Government of Great Britain. In our own days, almost all the civil disabilities to which dissenters from the Church of England were formerly liable have been removed. Should any attempt be made in a particular colony to revive or create similar disabilities, it would be the duty of the British Parliament to vindicate the imperial policy, and to apply a suitable remedy to evils generated by colonial intolerance and injustice.

On the other hand, the imperial authorities, whether legislative or executive, ought to be very slow to interfere with any local enactments which concern only the domestic welfare of the colonies themselves. Even when mistakes are committed, it is better that those who suffer from such mistakes should themselves correct them, than that a habit of intermeddling should be indulged by the central Government in regard to local affairs. The relationship of parent and child suggests the principle upon which the intercourse between a mother country and its colonies ought to be conducted. Whilst the offspring is weak and tender, it is nursed — in childhood, it is educated and controlled — in adolescence, it is guided — arrived at maturity, it is treated as entitled to entire independence of action, in regard of every matter which does not involve the general interests of the family. So in regard of colonies. As soon as they are sufficiently advanced to be qualified to enjoy the advantages of local legislation, they ought to be encouraged to exercise self-reliance rather than to indulge a self-abasing and humiliating spirit of dependency.

Among the privileges which ought to be guarded with the most vigilant jealousy by a colony which possesses legislative institutions, we may place, as the foremost, the exclusive right to levy taxes. It is not necessary to remind the reader, that this question was brought to issue by the struggle which terminated in the establishment of the independence of the United States of America. Attempts made by the Parliament of Great Britain to levy taxes in America, by virtue of imperial enactment, gave rise to successful resistance to the power of the mother country; and since that period it has generally been admitted as an unquestionable principle, that no taxes should be levied in the free colonies of Great Britain, except by virtue of enactments passed in their own legislatures. During the progress of the American war, it was hoped that an unequivocal concession of this right might have the effect of reconciling the alienated minds of the American colonists,

and also of deterring those who in Canada and Nova Scotia still remained faithful to Great Britain, from taking part with the revolted colonists. With these views the Declaratory Act of 1778 was passed, by which the British Parliament formally renounced all claim to the right of taxing the colonies of Great Britain. The practice, however, of the Imperial Government has not always been strictly conformable to this principle. Even in the recent case in which legislative councils, elected by the people, have been granted to the Australian colonies, the spirit, if not the letter, of this enactment has been violated. By the fundamental Act, which established these legislative councils, the Imperial Parliament appropriated a specific portion of the colonial revenue of each of the colonies to the purpose of what is called a "Civil List." It is to be observed, indeed, that the objects to which these funds were appropriated were local, such as the maintenance of local executive and judicial authorities; and of local establishments for ecclesiastical purposes; but, nevertheless, the undoubted privileges of the colonists were, by such imperial appropriation, infringed; and this infraction has naturally given occasion for well-founded discontent.

Such interferences with the privilege of self-government proceed either from an unfounded distrust of the good sense and loyalty of the colonists, or more generally from a desire upon the part of the central authorities at home to grasp or retain for themselves the patronage and influence arising from official appointments in the colonies. The official who is nominated by the colonial minister of the empire, and who receives a salary which is dependent upon the will of that minister, not upon the will of the local representatives of the colonists, naturally becomes an instrument for carrying into effect the designs of the Imperial Government rather than for realizing the wishes and just expectations of the inhabitants of the colony. Now, unless it can be shown that a body of immigrants, settling themselves in a distant colony, are so ill-qualified to manage their own affairs, that they require perpetual interference with their local concerns on the part of persons who have no permanent interests connected with the welfare of the colony, there surely is no pretext for establishing an arrangement which renders the principal officers of the colonial Government dependent upon the imperial authorities at home, rather than upon the colonists for whom they administer the functions of government.

Under the practical operation of constitutional government, and specially under that of the British constitution, the minister appointed by the sovereign is compelled to relinquish office as soon as he ceases to possess the confidence of a majority of the representatives of the people. This result arises, not from any legal enactment, but from the control over the finances of the nation which is possessed by the House of Commons. Were an obnoxious minister retained long after he had ceased to possess the confidence of the representatives of the people, the supplies would be stopped, and if he were perseveringly kept in office by the sovereign, a revolution would probably ensue. It is perfectly natural and right that colonists should desire to possess similar control over the officials who conduct their local government. Hence arises the demand for what has been called "responsible government" — that is, for a constitutional system which shall afford a guarantee that local officials shall cease to hold office as soon as they cease to retain the confidence of a majority of the representatives of the colony. Now, it is not enough that the enjoyment of responsible government should be verbally conceded by the mere caprice of the Imperial Government at home. It ought to be secured by some constitutional guarantee. Such a guarantee may be found in one or other of the two following alternatives, or in both of them.

Either the officials of a colony ought to be removable by address of the legislature, or their salaries ought to be dependent upon the votes of the representatives of the colonists assembled in the legislature.

In the United States of America almost all the officials of the States are elected by the people, and it would, perhaps, be desirable that the Governor of each colony should be elected by the colonists, either directly by the people, or indirectly through their representatives in the legislature. Such a mode of appointing executive officers, however, is not congenial to the notions at present prevalent in Great Britain, nor is it consistent with the usual practice of monarchical government. We may assume, therefore, that as long as a connection shall exist between the mother country and her colonies, the Governor of each colony will be appointed by the imperial executive, and that to him will be confided the nomination of all other officials. Now, it is manifest that the members of a local government, so constituted, might retain office for an indefinite time after they had ceased to possess the

confidence of the colony, if they were neither removable by address of the representatives of the colony, nor dependent upon them for their salaries. Such a system of government was actually carried on for many years in Lower Canada. The local Government was unable to command the support of a majority in the legislature; yet, nevertheless, the imperial ministry at home persevered in retaining in place officials who did not possess the confidence of the colony. The consequences ensued which might naturally be expected to arise from a collision between executive and legislative authorities. The functions of each were exercised with a view to thwart the other, rather than with a view to promote the general welfare of the colony. Universal discontent was generated, and a rebellion ensued, the suppression of which cost the Imperial Government little less than three millions sterling. Since that period a wiser policy has been adopted, and so far as ministerial pledges can guarantee political rights, the principle of "responsible government" has been conceded to Canada. But so important an element of public liberty ought not to depend merely upon the word of a minister. It is, therefore, desirable that all local officials should be removable upon the address of the legislature; and that their salaries should be dependent upon the vote of the legislative representatives of the colonists.

It is thought by some that an exception to this liability should be made in favor of the Governor of the colony, inasmuch as he ought to be considered as the representative of the sovereign. But, in point of fact, though it is customary to speak of colonial governors as if they were representative of royalty, there is, in reality, little analogy between the office of the sovereign and that of the governor of a colony. The sovereign is supreme head of the executive power. He receives advice, and issues commands. The colonial governor is but a subordinate agent appointed to carry out the will of the imperial ministry. Instead of issuing commands, he receives them; instead of receiving advice, he offers it. The ministers of the sovereign, not the sovereign himself, are responsible for the acts done in his name upon their advice. The colonial governor is personally responsible to those who appoint him, and may be impeached for misconduct. Now, if he be a responsible functionary, is it not reasonable that he should be responsible to those whose affairs he administers? The main object of institutions which confer upon a

colony the right of self-government, is the welfare of the colonists. This ought, therefore, to be the primary object to which all the energies of the executive authorities of a colony should be directed, and with this view the public opinion and wishes of the colonists ought to be consulted by their executive authorities. Now, it is impossible to watch the proceedings of colonial governors who are dependent solely upon the Imperial Government, without perceiving that the principal aim of their exertions is to conduct themselves in such a manner as shall give entire satisfaction, not to the colonists, whose affairs they administer, but to the ministry at home by whom they have been appointed, or by whom they are removable. Were they dependent upon the colonists, the primary object of their efforts would naturally be the welfare of the colony, and their reward would be its approval and confidence.

Upon these grounds, the concession by colonial Assemblies of what has been called a "Civil List," is highly objectionable; more especially unless it be accompanied by a statutory enactment providing for the removability of all officials upon the vote of the colonial legislature which grants the Civil List. The "Civil List" of a colony has little analogy with the "Civil List" of the sovereign of the United Kingdom. The Civil List is granted to the sovereign at the commencement of each reign, in lieu of the hereditary revenues which he would otherwise have inherited as possessions of the Crown. It has been thought that it is not desirable that there should be an annual discussion in the legislature respecting the personal expenses of the monarch; but the salaries of the ministers are dependent upon the annual vote of Parliament, because it has been deemed desirable that they should be dependent upon the representatives of the people for the emoluments of office. On constitutional grounds, therefore, the grant of a Civil List, such as has been exacted from the colonies, is objectionable, and on grounds of expediency it is unnecessary, if not inconvenient. If a party of emigrants were placed in a wilderness, they would soon find themselves under the necessity of constituting a government, and to the officers appointed to administer this government they would naturally grant suitable remuneration. When the imperial legislature imposed upon the Australian colonies, by the reservation of a portion of their revenues, the necessity of providing a "Civil List" for the maintenance of certain departments of government, it was thought that the amount so reserved

was excessive. Had the resources of these colonies declined instead of increasing, a permanent grievance would have been inflicted, by the imposition of a burden greater than those resources could have well borne. Such has been the case in Jamaica. But, in consequence of the discovery of gold in Australia, the requirements of the executive have far outgrown the amount reserved as a Civil List in the schedules of the imperial Act; and experience has shown that the colonists would, of their own accord, be willing to grant more liberal salaries to their public officers than those which have been awarded by the imperial statute.

It may be admitted that the salaries of the judges ought not to be subject to annual vote, but should be provided by a permanent settlement. Nothing is more essential to the due administration of justice than that the judges should be independent of the pressure of executive influence, upon the one hand, and of party faction, on the other. Hence, in the United Kingdom it has been wisely arranged that the salaries of the judges shall be provided by fixed charges upon the consolidated fund, rather than by way of vote upon an annual estimate. It would be quite proper that the colonial legislatures should follow the example of the Imperial Parliament, and provide fixed salaries for the judges by way of permanent enactment; but, inasmuch as there is no reason to suppose that they would be unwilling to make such provision, and inasmuch as they are more competent than the Imperial Parliament to determine what in each colony may be considered as a suitable remuneration for the judges, there is no reason which calls for or justifies the interference of Parliament with the inherent right by which the colonial legislatures are entitled to deal with this department of financial expenditure equally with all others.

Still less ground is there for the intervention of the imperial legislature in regard of the remuneration of ecclesiastical services. Without reverting to the questions relative to Church affairs, which have already been discussed, at considerable length, in this work, we may assert, as an incontrovertible principle, that, in a free colony, arrangements relative to ecclesiastical affairs ought to depend upon the will of the colonists themselves, not upon the dictation of any external or superior authority. In England the majority of the people, or, at all events, a majority of the influential classes, prefer the maintenance of a national endowment for religious pur-

poses, to reliance upon the voluntary contributions of the people. Throughout the Continent of Europe, similar inclinations prevail. In the United States of America, on the contrary, there seems to be a decided preference in favor of the voluntary system. In Australia different modifications of opinion have been found to prevail in different colonies. In South Australia public feeling has been, for some time at least, adverse to a state provision for the clergy. In Victoria, on the contrary, large grants, in excess of the amount reserved for ecclesiastical purposes by the imperial Act, have been made in support of the various kinds of religious worship which prevail in that colony. In New Zealand the Canterbury settlement was founded upon the express understanding that the Church of England should be the established Church of the colony. Now, in each of these cases it is surely more reasonable that the colonists should be allowed to adopt whatever ecclesiastical arrangements are most acceptable to them, rather than that perpetual heart-burning should, as in the case of the clergy reserves of Canada, be generated by the imposition upon a colony of a form of Church endowment which may not be acceptable to its inhabitants.

In regard, likewise, of taxation imposed for the maintenance of establishments necessary for the protection of the colonists, the local legislatures ought to possess unlimited control. If, indeed, a group of colonies be united by a federative connection with each other, in such case the common defence of all may be intrusted to a federal organization, and it may be advisable to authorize a congress of delegates to levy a proportionate contingent of troops and munitions of war from each member of the confederation. But the chief reliance of colonists ought to be placed upon their own internal vigor and capacity for self-protection. In every colony not only ought an efficient police to be established, but all the male population of every grade ought to be trained to the use of arms. The principal towns exposed to hostile irruptions ought also to be protected by fortifications. In the British colonies such implicit confidence has been placed in the naval superiority of the mother country, that the colonists utterly neglect to provide against the contingency of a hostile incursion. This apathy has been encouraged by the British authorities, through apprehension lest the colonists, if possessed of independent strength, might use that strength in resistance to the misgovernment of imperial functionaries,

rather than in defence of their country against a foreign foe. Those who anticipate contingencies which do not appear to be immediately impending are generally encountered with cold contempt or undisguised ridicule; but it is impossible to contemplate the present state of the Australian colonies, without feeling that they are most inadequately provided with the means of resisting an invading foe.* The wealthy capitals of these colonies invite buccaneering expeditions, by offering the prizes of unresisted pillage; and the colonists appear to want that spirit of self-reliance which forms the best protection of a country against a domestic tyrant or a foreign foe. Upon a recent occasion, when it was thought necessary by the legislatures of Victoria and of New South Wales to secure the presence of a military force in those colonies, they requested the British Government to send out troops, who, though maintained at the expense of the colonies, are wholly dependent upon the will of the Imperial Government. If the British Government had felt disposed to make a tyrannical use of the physical power at their command — as, for example, if they had exacted a large tribute of gold from these colonies — the colonists themselves would thus have furnished them with the means of carrying into effect such a design by the voluntary introduction of a military force which is bound to obey any commands which it may receive from the imperial authorities at home.

Except during war, flourishing colonies, such as those of Australia and North America, ought to impose no expense upon the mother country, and seek no protection from her. It is a preposterous demand to require that the inhabitants of Great Britain, who are more heavily taxed than those of the colonies, and who individually do not, upon the average, enjoy as large a command of wealth as the colonists, should be rendered liable to any expense on account of such colonies. On the other hand, it is unreasonable to expect that the colonists should pay for the maintenance of any establishments over which they have no control. In the infancy of settlements, such, for instance, as those of New Zealand, it may be necessary to maintain, for a time, an armed force at the expense of the mother country. It may be impossible for the few original settlers, who occupy such a territory, to defray the expense of maintaining an adequate force; but when once a colony

* Written in 1853.

is firmly established — when it ceases to apprehend violence from the incursions of uncivilized savages, and when it is at peace with the civilized nations of the earth, it ought to rely upon its own domestic organization of police and militia for the maintenance of its internal security. If a war should occur, in which the colonies become involved in the contentions of the mother country, then it is natural that mutual assistance should be rendered; and, if the fleets and armies of the empire be brought to the protection of a colony, it is only right that such a colony should, by voluntary effort, make compensation to the utmost extent of its ability for the protection so afforded.

What authority ought to define the limits of each colony?

For several years the settlers of Port Philip expressed an earnest desire that the territory which adjoins Port Philip should be politically separated from New South Wales, to which colony it formerly belonged, and that a separate government should be constituted for this portion of Australia. Had the determination of this question depended upon the voice of the legislature of New South Wales, it is probable that as much reluctance to such a separation would have been evinced by that body, as has been shown by the Parliament of Great Britain with regard to the proposed repeal of the Legislative Union existing between Great Britain and Ireland. To meet such cases as these, it is desirable that the imperial legislature should enjoy a supreme power of intervention. In the case here cited, Parliament did so interfere, and established a separate government at Port Philip, under the name of the colony of Victoria — a separation which has already conduced much to the well-being and contentment of the colonists of Port Philip. Similar controversies have arisen in the United States, with respect to the subdivision of particular states. In some cases there has been a violent struggle between the interests of the inhabitants of the older settlements in these states, and the interests of those who sought their division. It is manifestly desirable that questions of this kind should be settled, not by a fierce struggle between the citizens of the same state, but by the impartial determination of the federal legislature in Congress.

We have next to consider "whether it is desirable that the imperial legislature should possess the prerogative of determining the general principles upon which land shall be granted in the colonies."

By a constitutional fiction, it has been assumed that all unappropriated lands in the British Empire belong to the Crown. No modern statesman has dreamed of proposing that the revenue arising from the disposal of these lands should be reserved for the personal use of the sovereign, but this fiction, derived from the antiquated notions of feudal times, has been used as a pretext for reserving to the minister of the day and to his nominees, the disposal of a large amount of revenue and patronage which ought properly to have been placed under the control of the colonial legislatures. A fund of this kind, placed at the disposal of the Governor of a colony, who has been appointed by the executive at home, obviously furnishes him with the means of influence, perhaps of corruption. Yet it may be doubted whether the Imperial Parliament ought, unreservedly, to abdicate the right to determine the general principles upon which the unoccupied lands of the Empire shall be regulated. These lands belong not alone to the handful of colonists who may happen to be the first to found a settlement in their vicinity. They belong also to the nation at large. They are the natural inheritance of the redundant population of the mother country. It may, therefore, be contended that while a colony is in its infancy, the imperial legislature ought to reserve to itself the power of dealing with its unoccupied lands in whatever manner shall most conduce to the advantage, not only of the colonists already established in the territory, but also of those who may afterwards emigrate to it.

This prerogative has been exercised in regard of land in Australia by the British Parliament, by several enactments, of which the principal has been the Land Sales Act (Act 5 & 6 Vict. c. 36,) an enactment which has given rise to much discontent. In British America also, great dissatisfaction, for a long time, resulted from the maintenance of the claim of the Crown to an exclusive control over the territorial revenues of those provinces. To appease this dissatisfaction, all claim to regulate the public lands in North America has been surrendered to the local legislatures by the British Parliament, and there is every reason to expect that a similar surrender will be made to the Australian colonies. Nevertheless, without impugning the policy of these concessions, we may still doubt whether, upon general principles, it is desirable that an imperial legislature should, in all cases, abandon the right to regulate the disposal of unoccupied public lands to the

first settlers who may establish a colony in their vicinity. It is natural that such settlers should grasp for themselves possession of large tracts, without any regard to the claims and interests of future comers. Formerly it was not unusual for the Government to bestow upon favored individuals enormous tracts of territory, and the prosperity of several of the colonies in North America and Australia has been greatly checked and retarded by these reckless and profuse grants.

Influenced by a keen perception of the evils which resulted from the improvident allocation to individuals of vast tracts of land, several of the ablest statesmen and most profound thinkers of the present generation have adopted the opinion, first prominently brought forward by Mr. Edward Gibbon Wakefield, that a considerable *minimum* price ought to be placed upon all unoccupied public land. Without discussing in detail all the questions which are connected with this theory, we may observe that such an arrangement manifestly tends to check the acquisition, by individuals, of a greater extent of land than they can manage with profit to themselves. No one ever refuses to receive a grant of land which costs him nothing, though he may not be in a condition to turn it to account. Even in regard of "depasturing licenses," it has been found, in Australia, that the consequence of exacting only a very trifling annnal payment for extensive sheep runs has been, that flockmasters have often acquired occupatory possession of more land than they required for the flocks which they possessed. The granting of land, whether in fee or in occupation, at a price which is merely nominal, obviously has the effect of securing, as a monopoly to a few individuals, that territory which ought to be available for the use of all the colonists who may settle in an unoccupied country. On the other hand, it may be laid down as a general maxim, that individuals will not pay a considerable price for land, unless they hope to be able to obtain a profit from possession of it. The payment of a reasonable price, therefore, affords a guarantee that the land so acquired will be applied to useful purposes, whilst at the same time the price which has been paid for it becomes a fund available for the general good of the whole community.

It is not surprising that these views have not been acceptable to the early occupants of unsettled territories. They naturally desire to appropriate to themselves, individually, as much land as possible, and if they cannot obtain it by favor as a gratuitous grant, they wish to purchase it at a nominal

price. It is, therefore, to be feared, that if the determination of a minimum price for land were left to the colonial legislatures at too early a period, they would place upon it such a value as would enable the capitalists of the colonies to obtain a proprietary right over enormous tracts. Should such a result ensue, the small capitalist, the thrifty and hard-working artisan or laborer, will afterwards be debarred from acquiring land in fee with that facility which ought to exist in all new settlements. It is to be remembered, too, that colonial legislatures seldom represent the whole community. They are elected by only a portion of the people, and the personal interests of the members are identified with those of the wealthier classes of their constituents, rather than of the population at large. Those who in the legislature of New South Wales have been loudest in protesting against the high *minimum* price affixed upon lands by the imperial legislature, have been the great flock-masters of Australia, and are not identified in interest and feeling with the people at large. Unless the colonial legislatures were to be chosen by universal suffrage, it could scarcely be expected that in regard to such a question as the sale of wild lands, they would feel disposed to take into due consideration the interest of all those who may hereafter desire to become possessors of land in the colonies. If, for example, an uncontrolled power of disposing of the public lands of New South Wales had been surrendered to the legislature of that colony, immediately after it had become an elective body, there is every reason to believe that those lands would have been divided among the squatters; and that the permanent possession of enormous tracts of territory would have been surrendered to a few individuals. Even so late as the year 1849 a committee of the Legislative Council of New South Wales submitted a deliberate proposal, that the squatters should be entitled to purchase the lands held by them, at the rate of five shillings per acre. Had these views been adopted by the Home Government, much of the best land of the colony would have been alienated forever, at a price which is merely nominal.

With regard to the temporary occupation of wild land, as distinguished from its permanent and proprietary possession, there is little difficulty in determining the principles which ought to regulate the policy of legislation, whether imperial or colonial. It is clearly desirable that wild lands should be turned to account whilst they remain unsold, and the tenant,

or squatter, who, by means of his capital or industry, is able to render them productive, instead of being regarded with jealousy, ought to be considered as a benefactor to the colony. But no tenure ought to be conceded to him, except such as shall be consistent with the interests of the population at large, and with the general principles of justice. Every possible facility ought to be given to the possessors of capital, whether of great or small amount, to acquire a permanent inheritance in the soil; and, therefore, a mere occupier should be allowed to hold land only provisionally, until purchasers can be found for it. At the same time, both justice and expediency suggest that the occupier should be indemnified for any substantial improvements which he may have made during the term of his tenure. The capital which he shall have profitably expended (the amount of which may be determined by arbitration) ought to be considered as a lien or charge upon the land, and ought to be repaid out of the proceeds which arise from its sale. In order to encourage occupiers to establish for themselves comfortable homesteads in the wilderness, they ought to possess a *right of preëmption* in regard of their dwellings, and of a limited quantity of land immediately contiguous. This right of preëmption would, of course, exclude the competition of strangers for the purchase of the homestead, in all cases in which the occupier may be willing to give the fair value of the tenement as determined by arbitration.

Assuming, for the reasons above stated, that, in the infancy of a colony, it is advisable that the imperial legislature should determine the minimum price at which public land shall be sold in the colonies, we have next to inquire, whether it ought also to be empowered to dispose of the proceeds which arise from the sale of these lands. In the United States, this question has been settled in favor of the supreme Government. The appropriation of the fund which arises from the sale of wild lands is, for the most part, reserved to Congress, not to the legislature of the state in which the land sold is situated. Although, in abstract reasoning, it may be contended that the territory of an empire belongs to the whole people, not to each separate band of colonists, yet, on grounds of practical expediency, it may be doubted whether it is advisable to apply to the general purposes of the empire the funds which arise from the sale of land in the colonies.

Those who pay an artificial or factitious price for that which in a state of nature is almost valueless, may fairly claim that

the funds so paid by them shall be applied chiefly, if not exclusively, for their use. In applying a portion of these funds to *emigration*, the interests both of the mother country and of the colony are simultaneously promoted. I do not mean to contend, that under all circumstances, a considerable portion of the land fund should be applied to the promotion of emigration. In the case of the United States, for instance, it is found that by voluntary emigration upwards of a quarter of a million of persons have been of late years added annually to the population. In such cases as this, it would be superfluous, if not dangerous, to apply an increased stimulus to immigration. But in general, it may be said confidently, that the land fund of a colony can be applied to no purpose which is so useful, as is the introduction of emigrants from the mother country; and, if the mother country suffer from a redundancy of population, it is evident that the benefit is of a twofold nature — advantageous alike to the country which bestows and to the country which receives this migrating population. Even the most fertile land is valueless, unless labor be at hand to gather the produce which it yields. The settler, therefore, in paying a price for the proprietary rights in wild land, only advances a portion of his capital for an object of paramount importance to his own individual interest, when the amount paid by him is applied to the introduction of immigrant labor. By the supply of labor, he is soon indemnified for his outlay, because this labor assists him to raise or gather produce which he otherwise could not obtain, whilst at the same time it creates a market for his produce. If, on the contrary, the sum which he has paid in the purchase of land be carried off to be expended in another part of the empire, upon objects in which he has no immediate interest, the price so paid by him for wild land is in fact a most onerous burden, operating as a special tax upon his industry and enterprise. In the former case, a charge for wild land is but the assessment of an equitable contribution upon each capitalist for the common benefit of all, by which the general interests of the settlement are advanced; in the latter case, it is a tax which discourages the employment of capital and industry in colonization.

By similar reasoning, it might be shown, that next to emigration, the object to which the proceeds arising from the sale of wild land may be most legitimately applied, is *the construction of roads and bridges, and other public works* which tend to open up and promote the improvement of the lands, from

the sale of which these funds are derived. If the price exacted for land be applied to the improvement of such land, to exact this price is but to assess a contribution which is subsequently applied for the benefit of the land owner. It is not so much a tax as an advance of capital. Without roads, bridges, and other similar public works, the soil is, in many cases, of little value. If the proceeds, arising from the sale of land, were to be expended in a distant country, or upon objects in which the settler who purchases the soil has no immediate interest, he might reasonably remonstrate against the imposition of a price upon unoccupied and uncleared land; but if the funds raised in this manner be applied to objects from the promotion of which he derives a direct and immediate benefit, he has no right to complain of this charge — a measure adopted upon grounds of general policy, which we have shown to be suggested by the soundest principles of colonization.

Similar reasoning may be applied to the receipt and application of funds derived from other special sources. By another constitutional fiction, derived from feudal times, the sovereign claims a right to what are called "royalties" — amongst which are gold, and other kinds of minerals. An attempt to realize, for the personal use of the sovereign, an income from such discoveries as those which have recently taken place in Australia, would not have been tolerated either at home or in the colonies; but it was to be apprehended that this antiquated claim would have been made a pretext for carrying to England a large proportion of the net proceeds arising from the rent of the gold fields, or from the license fees paid by the miners. In the Spanish colonies of America, a certain percentage of the precious metals obtained from the soil was claimed as a tribute, and a vast amount of gold and silver has been remitted as tribute to Europe, from those settlements, since their discovery. Had the Government of Great Britain attempted to carry away such a tribute from Australia, great discontent would have been excited in the colonies, and possibly actual resistance might have taken place. At all events such an attempt would have fostered a desire for the acquisition of independence. A tribute might, however, have been exacted under a less obnoxious, though not less injurious form, if the British Government had leased to companies, formed in England, the exclusive right of working the most valuable mining fields. Had such a course been adopted, the gold fields, instead of being open to the industry of every

energetic colonist, of every class, would practically have become a monopoly, possessed by absentee companies. Laborers would have been sent out from England to work, at specified wages, and the profits arising from the working of the mines, instead of being participated by almost every family in Australia, would have been carried off to swell the bloated plethora of metropolitan opulence. That such results have been averted, is a circumstance which ought to be attributed rather to the good sense and forbearance of the central authorities who happened at the moment to be in power, than to any constitutional guarantees possessed by the colonies.

The course which has been adopted by the Government, though open to criticism, has been less objectionable than either of the proceedings above indicated. Assuming, as we are justified in assuming, that the colonists at large may lay claim to a participation in the value which belongs to the underground treasures of the soil, as well as to those which are found upon its surface, it was not unreasonable that steps should be taken immediately after the discovery of gold for realizing an income from the operations of the miners. If it were possible to levy a percentage upon the whole amount of metal produced from the mines, this would, perhaps, be the most equitable mode of obtaining an income from the mineral resources of any country. But the difficulty of collecting such a percentage is so great, under the existing circumstances of Australia, as to render it highly inexpedient to adopt such a mode of proceeding. A futile attempt was made in the legislature of Victoria to levy an export duty upon gold, in addition to the exaction of a license fee from the miners. Though this proposal at first received the sanction of a majority of the Legislative Council of Victoria, it was soon perceived by the public of the colony that such accumulated taxation upon one particular branch of industry was in itself unjust, and also that it would be utterly impossible to levy this duty, without erecting such a machinery for preventing the smuggling of gold as would by its cost have entirely absorbed whatever gain might have resulted from the tax. No better alternative was suggested for raising a revenue from gold than the exaction of a license fee from the diggers. Yet it is questionable whether it is politic to impose any tax of considerable amount upon the personal industry of the diggers. Were the gold fields to prove hereafter less productive than they were when first discovered, it is probable that the imposition of so heavy a tax

as thirty shillings per month would divert from the diggings a considerable proportion of those who have extracted from them that wealth which has contributed so much to the prosperity of Australia. On the other hand, considering that the mining operations necessarily involve a large public expenditure in the maintenance of a special police, and of an official staff, required to regulate and adjust the "claims" of the miners, it may be contended that it is only reasonable that a certain special contribution should be exacted from those whose operations occasion such outlay. Without denying the justice of this argument, I am still inclined to doubt whether it is expedient to subject the miners to any personal contribution which can operate as a discouragement to their industry. The indirect advantages which result to the finances of a country, from the acquisition of wealth by its inhabitants, are greater than any that could be acquired by the imposition of a heavy personal tax upon those who produce that wealth. Let us suppose, for instance, that a sum of three pounds (sterling) per month were exacted from each miner — as was at one time proposed by the Government — it is certain that the immediate effect of levying so heavy a tax upon a very precarious branch of industry would have been to deter a large proportion of the diggers from the pursuit of gold seeking. Possibly it might have altogether cleared the gold fields of their mining population. By such an injudicious attempt, therefore, to grasp an immediate profit from the operations of the miners, not only would the finances of the colony have suffered, through a diminution in the consumption of all articles subject to customs' duty, which would otherwise have been required by a large body of successful gold diggers, but it is probable that even the receipt arising from the license fees would have been diminished, if not annihilated.

I have illustrated the general principles which we have been discussing, by a reference to what has fallen under our observation in the Australian colonies of Great Britain; but the principles themselves are applicable to almost every colony that has been hitherto, or may hereafter be established. From the foregoing remarks we deduce the conclusion, that even if it were admitted that the imperial legislature is justified in determining the class of objects to which the territorial revenue arising in each colony ought to be applied, yet the specific appropriation of the actual proceeds of that revenue ought to be confided to the local representatives of the colonists, not to the

executive authorities of the empire or of the colony. The experience of British colonization abundantly proves, that when such a fund is placed at the uncontrolled disposal of the colonial minister or of the local executive, it is almost uniformly applied in such a manner as to occasion discontent, generated by the imputation, if not by the fact, that favoritism and corruption influence its disposal.

We have next to consider whether the legislature of the mother country ought to retain the power of framing and of altering the constitutions of the colonies, or whether this power ought to be unreservedly confided to the colonists themselves.

Upon this point we find that the past conduct of colonizing nations has been by no means uniform. The states of Greece, which established upon the shores of the Mediterranean and of the Euxine a vast number of colonies, appear to have allowed to their colonists such complete powers of self-government that they may be considered as having been independent communities from the moment of their foundation — the allies, rather than the subjects, of the mother country. In the early settlement of British colonists in America, great latitude was allowed to them in regard to the choice of their local institutions and form of government. When a new state — virtually a colony — is added to the American Union, the inhabitants are encouraged to frame for themselves a form of local government which shall be acceptable to them; and as soon as the population has reached a certain specified amount, the new state becomes entitled to representation in Congress, as an independent member of the confederation. In the case of recent British colonization, the Government of the mother country has, for the most part, claimed for the Imperial Parliament the task of constructing and altering the constitutions of the several colonies. Under the Act recently * passed for conferring upon the Australian colonies larger powers of self-government, through the agency of assemblies elected by the colonists, than they formerly possessed, the privilege of making further alterations in their constitutions has been conceded to them; and a more liberal spirit appears now to prevail amongst politicians of all parties, than existed in the early part of this century, in regard to the concession of constitutional rights to British colonists. This spirit has been likewise evinced in the

* Written in 1853.

grant of a liberal constitution to the colony of the Cape of Good Hope; and in recent extensions of the constitutional prerogatives of the legislature of Canada.

Though there is every reason to believe that even in the earliest infancy of a settlement, the colonists might safely be intrusted with the privilege of framing their own domestic institutions, yet it may, perhaps, be advisable, that the Government of the mother country should, at first, guide and control the operations of settlers in moulding a constitution suitable to the circumstances of the colony. If a settlement consist of an intelligent, orderly, and united population, and be established upon a well-considered system, it may be advisable that full powers of self-government should be conceded to it from the very moment of its foundation; but there are many cases in which conflicting interests and passions prevail, which can be best harmonized by the intervention of an impartial and supreme authority. Take, for instance, the case of a conquered country. In the period immediately succeeding the conquest, it might be unsafe to intrust a discontented population with powers of self-government, perhaps never before possessed by them — powers which would probably be directed against their conquerors. When such conquered territories attract a large number of immigrants from the mother country, jealousies naturally arise between the original inhabitants and the new-comers. Under such circumstances the process of amalgamation is gradual, and a wise Government will endeavor to abstain from every act that can tend to give an ascendency to one race above another, or can generate hostilities between them. It is impossible, therefore, to lay down any inflexible rule which can be considered uniformly applicable to all cases. Suffice it to say, that a wise and liberal-minded statesman will never fail to remember that the institutions of each colony ought to be framed in such a manner as to promote, to the greatest possible extent, the welfare and contentment of the colonists. It may be said that he ought also to bear in mind, and protect the interests of the mother country in relation to her colonial dependencies; but these can never be permanently advanced by any measures which are incompatible with the welfare and contentment of the colonists.

When an important change is proposed to be made in the constitution of a free people, it seems reasonable that the nation at large should, previously to the final adoption of the proposed change, have an opportunity of expressing its opinion

respecting it. When the British Parliament substituted septennial for triennial Parliaments, great dissatisfaction was created, not only by the change itself, but also by the circumstance that no appeal was made to the people by means of a dissolution of Parliament, for the purpose of ascertaining their opinion respecting this innovation. So also, in the case of the Legislative Union between England and Ireland, majorities in both Houses of the Irish Parliament were tempted by corrupt bribes, offered by the British Government, to consent to the extinction of a legislature which had been in existence for nearly six hundred years, and no ratification of this act has ever been since given by the Irish people. Hence has arisen much heart-burning and discontent, which would not have existed if the Union had been an international compact, adopted, after due consideration, by a majority of the Irish people. After the lapse of half a century the want of such a sanction is felt to deprive the enactment of all validity, except such as is derived from force and coercion. In the United States of America fundamental changes in the Constitution have been referred for consideration to conventions of the whole people; and even in France the Emperor Napoleon III. has, with equal tact and propriety, sought to legitimate his usurpation by three successive appeals to the opinion of the French people. Although the mode in which he originally substituted his dynastic power for the Republic, of which he was the chief magistrate, deserves everlasting condemnation, yet, it must be admitted that no dynasty was ever more firmly based upon the sanction of a nation, so far as its opinion could be elicited by exercise of the suffrage, than that of the present ruler of France.

From the foregoing considerations we may lay it down as a general principle, that previous to a fundamental and organic change in the constitution of any country, the opinion of the people who are to be affected by the proposed change ought to be taken respecting it, and this principle extends equally to the case of colonies as of the countries from which they have been educed.

Let it now be assumed that the right to frame a new constitution, or to alter an existing form of government, is conceded to a group of colonies such as those of British America or of Australia, the next question which presents itself for discussion is — "What form of political institutions ought such colonies to adopt?"

This question cannot be answered in a summary manner. Referring the inquirer to the earlier parts of this work for an exposition of the general principles of government which are applicable to all communities, whether metropolitan or colonial, I shall here confine my observations to those points in regard of which a natural distinction exists between the circumstances of a colony and those of its mother country.

We have seen that it is advisable, in the construction of a legislature, that there should be two deliberative assemblies whose concurrence should be required for the enactment of all laws. The reasons for which this form of constitution is considered preferable to one which rests upon a single legislative council, are applicable in the colonies, equally as in the mother country. But special circumstances in many cases prevent the establishment of an entire conformity between the legislative institutions of the mother country and those of her colonial settlements. It may be expedient, for instance, in the case of the imperial legislature of the United Kingdom, to maintain with some modifications an hereditary peerage as a branch of the legislature; but it does not, therefore, follow, as a necessary sequence, that it is desirable in the colonies of Great Britain to invest any class of colonists with an hereditary privilege of legislation. In the colonies there is no class corresponding to the old feudal nobility of Europe, who for centuries have possessed large influence over the government — whose ancestry have by their achievements rendered themselves illustrious in the annals of their country, and who inherit not only their magnificent possessions, their princely castles, their baronies and their armorial bearings, but also that undefinable respect which mankind instinctively pay to the descendants of those who have enjoyed extensive power and world-wide fame. In the colonies there is often found much oligarchical spirit, but the oligarchs are for the most part men of low origin, who, by devoting themselves to the acquisition of gain throughout their whole lives, end by amassing a considerable amount of wealth, and who endeavor to acquire a high social position, by lending themselves as minions to all the most indefensible proceedings of the local Government of the colony. Now, if an aristocracy were to be created in any colony by governmental selection, political privileges would be conferred upon such men as these — the pliant and subservient tools of the executive, rather than upon the most virtuous, and able, and independent men in the community. If such privileges were to be con-

ferred as an hereditary possession, it is possible that a race of independent and high-spirited men might spring from the loins of these servile creatures; but if the legislative privilege were to be conferred only for life, then there would be a perpetual succession of such spurious oligarchs as we have described — appointed, not so much to serve the interests of the colony, as to do the bidding of its executive rulers. To feel the justice of these anticipations, it is only necessary to look at the selections which, in the various colonies, have been made by the colonial Governors of those nominees who have taken part in legislative proceedings. Men of independent minds disdain to accept an appointment which involves, by a tacit understanding, the necessity of giving a blind and undeviating support to the measures of the executive by whom they have been nominated. It is almost impossible that a legislative chamber, so constituted, could possess the respect and confidence of the community at large. To embarrass, not to aid, legislation — to give the executive Government, or to a self-interested oligarchy, the power of thwarting the wishes of the colonists, rather than to develop in its safest form the principle of self-government, would undoubtedly be the result, if not the aim, attained by the adoption of a proposal to constitute a second legislative chamber, composed exclusively of members nominated for life, or for a term of years, by the executive.

These questions possess, at the present moment,* a practical as well as a speculative interest. In several of the British colonies, legislatures consisting of a single council have been established by the British Parliament. This council consists of a number of members, two thirds of whom are elected by colonists possessed of a certain electoral qualification, and one third are nominated by the executive Government. Of the nominees of the Crown a portion are officials, and it is generally felt that the presence of the heads of departments in the legislature is attended with advantage; though it is, perhaps, doubtful whether they ought to be allowed to vote, as well as to take part in the debates of the council. The non-official members are considered mere creatures of the Government, and possess neither the respect nor confidence of the community. Now, this form of legislature is held to be defective, because it tempts the executive to govern through the agency of corrupt influence, rather than in accordance with public opinion;

* Written in 1853.

but still, if the elected members continue faithful to their constituents, they possess such a majority as enables them to check all mischievous legislation that may be suggested by the executive, and if they originate useful measures, they are enabled to carry them by a similar majority. Enactments thus passed by the council can only be negatived by the interposition of a *veto* on the part of the Crown — an obnoxious proceeding, to which few Governors willingly resort.

In some of the colonies, as, for instance, in New South Wales, it has been proposed to substitute for this form of government another which appears to be still more defective, by establishing two councils, one of which shall consist exclusively of nominees of the executive, and the other of representatives elected by the people. Now, it is manifest that if a Governor, appointed by the ministry at home, be disposed to thwart the wishes of the colonists, this proposed form of legislature will afford to him greater facilities for obstruction than exist under the present constitutions of these colonies. He has only to choose as nominees of the Crown, in the second chamber, men whose dispositions and circumstances form them for subserviency to the influence of the executive, and through the agency of such a body he will be enabled to arrest in its progress every proposed enactment which is acceptable to the colonists at large, without incurring the obloquy which belongs, in a free state, to the exercise of the prerogative *veto* of the Crown.

It may be said that the House of Representatives would possess equal power of obstructing all measures suggested by the executive, and might, by exercising such obstructive powers, compel the colonial executive to bring forward measures acceptable to the people. But at best, such a system is only a compromise between antagonistic elements, and it is probable that, under such a system, a contest for ascendency would be perpetually carried on between the people, through their representatives, and the officers of Government delegated from the mother country, and supported by a nominee oligarchy. Such a result is far from being a realization of the boasted principle of self-government, which all free nations are desirous to enjoy. The political theorist and the practical statesman desire that the legislature should consist of two deliberative assemblies rather than of one — not in order that one assembly may check and thwart the other, but in order that the greatest attainable amount of care, wisdom, and experience

may be bestowed upon the enactment of laws — and that such laws may thereby command the respect and willing obedience of the people.

I must again refer the reader to the earlier portion of this work, for an exposition of the principles upon which the two legislative chambers of a free country, disembarrassed from class interests and feudal privileges, should be constituted. I have here only to repeat, that the Senate as well as the House of Representatives ought to consist of persons elected by the community, either directly, or through an intermediate body, but that the term for which the senators should be elected ought to be different from that for which the representatives are elected; so that the whole legislature may not be subjected, by a simultaneous impulse, to the pressure of the popular passions or temporary influences which may happen to preponderate at any particular moment.

It has been suggested by some whose opinions deserve respect that the colonies of an empire such as that of Great Britain ought to be represented in the imperial legislature. However captivating this proposal may be to those who love symmetry in political institutions, it may be doubted whether its adoption would be really beneficial to the colonies. Such representation would not unreasonably be made a pretext for legislative interference, on the part of the Imperial Parliament, with the local concerns of the colonies. Now, it is infinitely more advantageous to remote settlements to enjoy full powers of self-government, than to be subject to perpetual interference on the part of a body whose members, for the most part, must necessarily be ignorant of its local wants and interests. The power and influence of the representatives of a single colony would scarcely be appreciable in a large imperial assembly, such as the House of Commons. Their votes and voices would be overruled by the enormous preponderance of members who would be swayed by influences altogether foreign to the wishes and opinions of the colony.

The adoption of this proposal would also materially change the nature of the constitution of the mother country. Its Parliament would become a federal legislature. Now, although a federal system of legislation may be found extremely beneficial for a country which is divided into a number of separate states — or even for a group of islands lying in proximity to each other, yet it appears to be ill adapted for the government of distant dependencies, whose requirements differ as

much as their geographical position. A representative of New York can scarcely be ignorant of the wants, or indifferent to the interests, of Ohio or of Pennsylvania. He can therefore consult advantageously, in Congress, with the representatives of those states, respecting the common concerns of all; but how few members of the Imperial Parliament are acquainted with the local circumstances of Nova Scotia, or New Brunswick, or Newfoundland, or Van Diemen's Land? The intervention of representatives from these colonies, in the local affairs of the United Kingdom, would generally be prompted rather by motives connected with a desire to please the Government of the day, or to forward the views of a parliamentary faction, than to advance the local interests of the United Kingdom.

It is, perhaps, desirable that each colony should maintain, at the seat of central government, a political agent. Such an agent has been occasionally appointed by some of the British colonies, as in the case of Mr. Roebuck and Mr. Charles Buller, and the appointment has been recognized by the Imperial Government. If this agent happen to enjoy a seat in Parliament, his position naturally gives additional weight to his representations, but the political agent of a colony ought rather to occupy the station of an envoy than that of a legislator; and in general it is more consistent with the dignity, as well as with the interest of a colony, that one of its own children should be delegated as a political agent to the seat of empire than that this important office should be confided to a stranger unconnected with the colony — even though that stranger may be an influential member of the imperial legislature.

The next question which presents itself for solution is the following: "In what manner ought the executive administration of a colony to be constituted?" — "Ought the chief executive officer of the colony to be elected by the colonists, or nominated by the imperial ministry?"

Administrative dependency is supposed to be essential to the maintenance of a connection between the colonies and the mother country; but a much surer bond of connection is that which arises from attachment, veneration, and a common interest. This question, therefore, ought not to be determined by any considerations founded upon the assumed necessity of maintaining superiority or ascendency upon one part, and inferiority or dependency upon the other. The true issue upon which its solution rests is, what form of executive government

conduces most to the welfare and happiness of a colony? Now, in the infancy of a colony, it will often happen that no man is to be found among the settlers who is qualified by political experience to execute, with ability, the functions of Governor. Under such circumstances, it is not unnatural that the colonists should cheerfully acquiesce in the appointment of administrative functionaries by the Imperial Government — provided that such functionaries be made responsible to the community which they are appointed to govern.

It is to be observed, also, as an argument against the appointment of Governors by way of popular election, that, if there be several candidates for the office, the successful candidate must necessarily present himself to the colony in the character of a party chief — the representative of the majority rather than as a disinterested authority nominated to administer the affairs of the colony, without any bias arising from partisanship or favoritism.

On the other hand, it may be contended, that the interests of a Governor elected by the colonists will always be identified with those of the colony, whereas a Governor appointed by the imperial ministry will always feel disposed primarily to consult the wishes and to study the interests of those by whom he is appointed.

It is also to be borne in mind, that Governors selected by the imperial ministry will almost invariably be persons connected with the mother country, whilst natives of the colonies are seldom, if ever, appointed to high offices at home in consideration of the abilities which they may have displayed in the management of colonial affairs. Now, it seems to be in the highest degree unjust to exclude colonists not only from administration of the concerns of the empire, but also from the situations connected with the government of their own native country, to which they may legitimately aspire.

In the United States of America the citizens of each state elect their own Governor. He is not nominated by the President of the United States, and it appears that much greater harmony exists in these states between the administrative officials and the community whose affairs they administer, than has prevailed in the British colonies, where all the highest functionaries have been appointed by the sovereign — that is, by the ministry at home. In several of the states of America, the Governors were habitually elected by the people, during the century which preceded the revolt of the

American colonies, and this arrangement appears to have been satisfactory to the colonists, without necessarily involving separation from the mother country.

But though, upon balancing these arguments, it may appear to be desirable that the selection of a Governor should be left to the colonists themselves rather than to the imperial authorities, this is a point upon which it is not necessary to risk a collision with the central Government, provided that guarantees for the enjoyment of "responsible government" be freely conceded. We have already seen that such guarantees are to be found in the removability and pecuniary dependency of colonial officials of all classes upon the will of the colonists, as expressed through their legitimate representatives. Such guarantees have hitherto been withheld, in the colonies of Great Britain, and the result has been, that there has been a continuous strife between the executive functionaries and the colonists or their representatives. Every intelligent man feels that a new system ought to be universally established throughout the vast colonial empire of Great Britain.

Assuming that the Governor, or the chief executive officer of the colony, ought to be dependent upon the colonists, either by direct election, or by the indirect influences which we have already described as necessary to secure responsible government, it seems to be desirable that he should be authorized to appoint and to remove all the subordinate officers of the administration. Nothing tends more to degrade the character of a legislative assembly, than that it should become a scene of contest for the collisions of personal interest. It is an evil necessarily incidental to the nature of what is called constitutional government, that the discussion of public questions is more or less vitiated by the struggles of party and individual interest. Almost every question is considered, not solely with reference to its own merits, but also with a regard to its bearings upon the relative strength of political parties. Now, this evil would be greatly augmented if every office in a state or colony were to be placed at the immediate disposal of the legislature. Earnestly, therefore, is to be deprecated any proposal for giving the nomination of subordinate officials to either branch of the colonial legislature. Special cases of exception of course will arise — such, for instance, as the election of the Speakers and other officers immediately connected with the legislative bodies, in regard of which any interference on the part of the executive may, for obvious reasons, be considered

intrusive: but in general the administrative officials of executive government ought to be nominated by the Governor — subject to removability by address of both Houses, and subject also to the dependency of their salaries upon the annual vote of the representatives of the people.

If it were to be conceded as an established principle, that the head of the executive could not with safety be intrusted with the nomination of administrative officials, it would be better that (as in the case of some of the United States of America*) they should be directly appointed by the people, rather than by the legislative assembly. The primary duty of a legislature is to make laws, not to execute administrative functions or to dispense patronage.

* The following advertisement, taken from a New York newspaper, will give the reader a clear idea of the mode in which officials are nominated in some of the States of America: —

"STATE OF NEW YORK, SECRETARY'S OFFICE, Albany, August 18th, 1853. To the Sheriff of the County of New York — Sir, Notice is hereby given that at the General Election to be held in this State on the Tuesday succeeding the first Monday of November next, the following officers are to be elected, to wit: —

"A Secretary of State, in the place of Henry S. Randall.
"A Comptroller, in the place of John C. Wright.
"An Attorney General, in the place of Levi S. Chatfield.
"A State Engineer and Surveyor, in the place of William J. M'Alpine.
"A State Treasurer, in the place of Benjamin Welch.
"A Canal Commissioner, in the place of John C. Mather.
"A State Prison Inspector, in the place of William P. Angel.
"Two Judges of the Court of Appeals — one in the place of Charles H. Ruggles, and one in the place of Hiram Denio, appointed to fill the vacancy occasioned by the resignation of Freeborn F. Jewett.
"A Clerk of the Court of Appeals, in the place of Charles S. Benton.
"All whose terms of service will expire on the last day of December next, except that of Freeborn F. Jewett, which will expire on the last day of December, 1854.
"Also a Justice of the Supreme Court for the First Judicial District, in the place of John W. Edmonds, whose term of office will expire on the last day of December next.
"Also four Senators for the Third, Fourth, Fifth, and Sixth Senate Districts, in the places of Wm. M'Murray, Obadiah Newcomb, James W. Beekman, and Edwin D. Morgan, whose terms of office will expire on the last day of December next.

"COUNTY OFFICERS ALSO TO BE ELECTED FOR SAID COUNTY.

"Sixteen Members of Assembly.
"Two Justices of the Superior Court, in the place of John Duer and Robert Emmet.
"A Judge of the Court of Common Pleas, in the place of Charles P. Dolay.
"A District Attorney, in the place of N. Bowditch Blunt.
"Two Governors of the Alms House, in the place of Richard S. Williams and Isaac Townsend.
"All whose terms of office will expire on the last day of December next.
"Yours, respectfully, HENRY S. RANDALL, Secretary of State.

"The above is published pursuant to the notice of the Secretary of State and the requirements of the Statute in such case made and provided.
"JOHN ORSER,
"Sheriff of the City and County of New York.

"All the public newspapers in the county will please publish the above once in each week until the election, and then hand in their bills for advertising the same, so that they may be laid before the Board of Supervisors, and passed for payment.
"See Revised Statutes, vol. i. chap. 6, title 3, article 3d, part 1st, page 140."

The course of this reasoning leads us to inquire whether it is desirable that the principal officers of state should be elected by the people at large. It may be said, that as they are servants acting for the benefit of the community, not for the pleasure or profit of its chief ruler, they ought to be chosen by those whom they are destined to serve. But it may be doubted, whether the people at large are as well qualified to make a judicious selection of public officers, as a chief functionary would be. The Governor of a state acts under a sense of responsibility which cannot be felt by the multitude. For his own sake he must be desirous to obtain efficiency in the officers who are placed in subordination to him, and he will naturally be desirous, in selecting such subordinates, to give satisfaction to the public.

It seems reasonable also to suppose, that subordinate officers chosen by the people would consider themselves as independent of the head of the Government, and that they would thus be often led to thwart, rather than to assist, the administrative operations of the executive. In the general or federal government of the United States, the various functionaries of the state, with the exception of the Vice President, are nominated with the concurrence of the Senate, and are removable by the President. Thus we find simultaneously prevailing in this Republic, two different modes of appointing subordinate functionaries. In the separate states, as for instance in New York, these officials are elected by the people; whilst in the general Government they are nominated by the President.

With reference to colonial judicatures, the same considerations which have induced all political writers in England to insist that judges should be independent of the executive, in regard to their tenure of office, and that they should not be removable at the pleasure of the Crown, but only upon the deliberate address of both Houses of Parliament, apply with equal, if not with greater, force in the case of colonies. In some of the states of America judges are elected by the people; but this mode of appointment appears to be liable to many grave objections. Calmness and impartiality, as well as professional attainment, are among the most essential requisites of judicial qualification. Now, it is scarcely possible for any one to become a candidate for any honor or office conferred by the people, without becoming more or less imbued with the spirit of a partisan. Judges ought, therefore, to be nominated by the executive. But it would, perhaps, be

advisable that this nomination should be subject to confirmation by one or both Houses of the colonial legislature. Such a concurrence of approval would afford a guarantee against the possibility of an injudicious or unworthy selection.

In almost all the colonies of Great Britain, an "executive council" exists. The composition, and probably also the functions of this body vary a good deal in the different colonies. It seems to be formed upon the model of the Privy Council at home. That such a body is not essential to the conduct of administrative government is proved by the circumstance that no analogous institution has been called into existence, either in the federal Government of the United States of America, or in the several local Governments of the separate states. The intervention of such a council tends to diminish the responsibility of the Governor, who, when he wishes to do indirectly that which he dares not do directly, will naturally seek and certainly obtain the concurrence of an executive council, composed of officials dependent upon his will. As he can at all times command the advice of the officers, whether chief or subordinate, of the several departments, it would perhaps be preferable that the responsibility connected with all administrative acts should rest upon the Governor who directs or sanctions them, rather than that it should be shared with an executive council.

The municipal organization of colonies ought to be based upon the principles which have been set forth in the earlier part of this work, as applicable to all countries. To avoid repetition, I shall abstain from retracing the features of that system of municipal institutions which appears to me calculated to realize, in the most complete manner, the advantages of self-government. Subject to such modifications as local circumstances may imperatively require, all the principles and details of municipal organization, which are beneficial in the mother country, are susceptible of adoption in the colonies.

Confederation of Colonies.

When a cluster of colonies, derived from the same parentage, are situated in near proximity to each other, a question naturally arises whether it is not desirable that they should possess a federative organization for the advancement of their common interests, and for the regulation of their intercolonial

policy. We have already observed, that under the circumstances which brought about the establishment of independence in the United States of America, the statesmen of that country showed more wisdom in establishing a federal republic, than they would have evinced if they had either trusted to the loose and uncertain coöperation of a number of independent states, or than if, on the other hand, they had concentrated all the elements of national power in one centralized Government. They endeavored, in framing the Constitution of the United States, to interfere with the principle of self-government only in so far as was necessary to consolidate the resources and capabilities of the several states for maintenance of the common interest of the whole confederation. The question now to be solved is — "Whether the same advantages may not be secured by a group of colonies, without casting off all connection with the mother country?"

This question is at the present moment applicable in regard to the British colonies of North America, of the West Indies, and of Australasia — three several groups which appear to require some organization which shall secure the concurrent action of the members that constitute each group, in regard of all proceedings which demand coöperation.

It is not possible to anticipate every contingency that may require intercolonial discussion and coöperation; but I may adduce as examples a few subjects, which at all times demand a federative superintendence.

I will mention, in the first place, *intercolonial traffic*. It is obviously desirable that the customs duties of each group of colonies should be regulated so that there shall be as little impediment as possible to intercolonial commerce. If, for instance, different rates of duty be imposed upon the same article by the legislatures of Victoria, of New South Wales, and of South Australia, in the Australian group; or by the several legislatures of Canada, New Brunswick, and Nova Scotia, in the North American group of British colonies; it is manifest that either a contraband trade will be generated, or a vexatious and expensive system of preventive regulations must be established; or possibly both of these inconveniences will exist. If there be a duty of one shilling per pound upon tobacco on one side of a frontier, and a duty of two shillings per pound on the other side, it is evident that whoever can smuggle tobacco from the district in which the low duty prevails, to that in which the higher duty is levied, will gain one

shilling per pound above the ordinary profits of trade, and no ingenuity can contrive regulations or establishments which will prevent a contraband trade from flourishing under such circumstances. The evils arising from the maintenance of different rates of duty in the contiguous states of Germany was felt to be so unendurable, that a remedy was sought in a measure which, if applicable as between independent kingdoms, is surely capable of adoption between colonies which derived their origin from the same mother country. A customs treaty (Zoll Verein) was formed is 1833 between Prussia, Bavaria, Wurtemberg, and Hesse, by which uniform laws for duties of import, export, and transit were, with a few specified exceptions, established throughout the whole of these territories; and by which it was agreed that the produce of the customs duties should be distributed ratably, according to population, among the states constituting the commercial league. For the adjustment of all questions arising from the operation of this treaty, it was arranged that an assembly of plenipotentiaries from the several constituent states should be held once a year. Though a treaty of this kind seems to menace some danger to the independence of the minor states, yet it appears, upon the whole, to have given satisfaction, and to have removed many inconveniences which oppressed the traveller and the merchant in their movements and operations throughout central Germany.

Nor is such federative action, as we here contemplate, required merely for the purpose of repressing a contraband trade by the equalization of duties. Even if the duties be equal, it is necessary that intercolonial agreements should be made, with a view to secure to each colony its proper revenue, without incurring the expense of a frontier machinery for the collection of customs. Let us suppose, for example, that all duties upon articles imported into the colonies of New South Wales and Victoria are equalized and assimilated, it will still happen that a portion of the articles which pay duty on import in Victoria will be consumed in New South Wales, so that the duty received upon them will be credited to the revenue of Victoria, through which province they pass, instead of being credited to the revenue of New South Wales, in which the duty is eventually paid by the consumer. All matters of this kind ought evidently to be adjusted in some federative assembly, consisting of representatives from the several colonies whose interests are intermingled with each other.

Arrangements connected with the transmission by post of letters and parcels, also naturally fall within the scope of federative agreement; as also arrangements connected with the coinage of money, the establishment of a common standard of value, and of weights and measures, and arrangements respecting great public works, such as railroads, electric telegraphs, harbors of refuge, lighthouses, &c., in which several colonies are interested, whose coöperation is necessary for their execution.

The extradition of criminals is another subject which requires adjustment by a federative assembly. Though well-founded objections may be raised against extradition treaties formed between independent states, yet no such objections can be urged against the prosecution of offenders who may escape from one colony to another. Every facility should be afforded for bringing to justice such criminals. In the case too of civil actions, every facility ought to be afforded for the enforcement in one colony of obligations which may have been contracted in another. These objects can be effected only by intercolonial agreement, when there is in each colony a separate executive, a separate legislature, and a separate judicature.

Copyright for publications, and designs, as also *patent* privileges, secured for a certain period as an encouragement to invention and discovery, form another branch of topics, which require the combined action of a confederation. It may be argued, indeed, that these are subjects of an imperial nature, and ought to be reserved for imperial legislation. It is certainly desirable that the regulations respecting them should be uniform throughout the empire; but it would be very unreasonable to compel the inventor of a machine in the colonies to traverse half the globe for the purpose of taking out a patent for his discovery, and unless patents granted in the colonies be rendered valid in the mother country — a reciprocity which would probably be denied — the colonists will naturally regard with jealousy the intervention of the imperial legislature in regard of appliances such as these, which tend to foster the industry of the colonies.

The same observation applies to laws relative to the naturalization of foreigners. It may happen that upon this point great difference of feeling may exist between the inhabitants of a colony and those of its mother country. For example, at this moment the introduction of a large body of Germans would be welcomed in Australia, but their presence is not

needed in England. In these colonies, therefore, every facility would naturally be given to their naturalization, whilst in Great Britain or Ireland such facilities would not be tendered with the same alacrity. Is it not reasonable that the colonists should have a voice respecting a question which touches thus immediately their feelings and their interests? On the other hand, it is very desirable that there should be but one uniform law relative to the naturalization of foreigners, throughout a confederated group of colonies. This, then, is a question which ought to be reserved for federal discussion.

In like manner, it is very desirable that there should be one uniform system of professional qualification throughout a group of colonies. The lawyer or medical practitioner who is competent to exercise his function in Victoria, is surely competent to exercise it in Van Diemen's Land, or in South Australia. In the infancy of colonies professional qualification is naturally obtained in the mother country, but when they arrive at maturity, and possess educational institutions adapted for the highest kind of professional training, it would be monstrous injustice to deny to the young colonist an opportunity of acquiring, in his own native country, the right to practise any profession. On these grounds it is desirable that a federal council should consider what qualifications and what diploma ought to entitle a professional man to exercise his vocation throughout the whole confederation.

Nor do I hesitate to place among the topics which deserve discussion, by a federal council, regulations which relate to the sale and occupation of public land. I have already urged reasons which render it advisable that, in the infancy of colonies, the power of framing such regulations should be reserved to the imperial Government. The same reasons render it advisable that, when such colonies arrive at maturity, these regulations should be settled by federative discussion. There ought to be as much uniformity as possible in the mode of dealing with public lands. It is not desirable that one colony should be tempted to outbid another in attracting settlers at a particular moment, by a lavish disposal of the public lands. It may indeed be argued that if such competition be excited, that system which is practically found to be most acceptable to settlers will eventually be adopted by all. But it is by no means certain that a system of regulations which would tempt capitalists to become possessors or occupiers of land, at a particular moment, in a particular colony,

is that which would eventually be the most advantageous to the colonies in general, or even to the colony itself in which these regulations might be established. For example, the encouragement which was afforded at Victoria to the occupation of very large tracts of land, by flockmasters, tended for a time to attract thither capitalists, but it has been since found that the vested or equitable rights which have grown up under these regulations have formed a very serious impediment to the advancement of this colony, in regard to the development of its agricultural resources, and in regard to the profitable occupation of its accumulating capital and industry. This remark applies also, perhaps in a greater degree, to New South Wales.

In the event of a war, it is manifestly essential to the common protection of all, that there should be established some instrumentality for concurrent deliberation and concurrent action. The militia of each colony ought, in ordinary times, to be subject exclusively to the authorities of the colony to which it belongs; but to meet the contingency of a war, it may be necessary to levy forces in the name and behalf of the whole confederation. In such circumstances it becomes imperatively necessary to organize arrangements for the levy of a ratable contribution from each colony in men, money, and munitions of war. For such purposes a federal assembly is indispensably required.

As an example of topics of a temporary and casual nature that may fitly be subjected to federative discussion, we may cite the constitutional questions which at present* occupy public attention in several of the British colonies. By the enactments of the Imperial Parliament, which recently conferred representative government upon the Australian settlements, it is provided that the several legislatures may within certain limits alter the form of their political institutions; for instance, that they may establish two legislative chambers instead of one, or adopt other modifications of the constitutions which were conferred by the imperial statute. Now, for obvious reasons, it is desirable that there should be as much uniformity as possible in the structure of the several legislatures, as well as in the general scope of the legislation of these colonies. The character of the population of all of them is similar. Their circumstances and interests are not dissimilar.

* Written in 1853.

Constitutional enactments, which are advantageous to Victoria, can scarcely be disadvantageous in the adjoining colonies of South Australia or Van Diemen's Land. It is, therefore, highly expedient that the legislatures of each of these colonies should delegate a few of their ablest politicians to a general diet or congress, in which every proposal made with a view to constitutional reform should be discussed. It is possible that such an assembly might err in its ultimate decision, through want of statesmanlike abilities and acquirements on the part of the delegates; it is possible that it might not recommend a scheme of institutions which would deserve general adoption, or be acceptable to the colonists at large; but at least it is certain that no evil could result from deliberation, and that from the united wisdom of all these colonies more satisfactory results might be anticipated, than from the individual caprice which in each may happen for a time to preponderate.

I have said enough to prove that a deliberative council composed of delegates, representing the several colonies which naturally constitute a distinct group, is an institution which may, in certain contingencies, become necessary for their common protection, and which, under all circumstances, must be advantageous; but a further and more difficult question remains to be solved in connection with this discussion respecting federal organization.

It will be said, "What can avail the deliberations of a council, unless means be devised to enforce its decrees?" "Is it proposed that the resolutions of the majority in the federal council shall be enforced against the wishes of a dissenting minority? and if so, by what means?"

Questions of this nature occupied the attention of the great men who founded the Republic of the United States, and gave rise to the gravest deliberation. They had to determine whether they should establish a confederation of independent states, bound together by no executive unity; or whether they should incorporate under one federal organization, executive as well as legislative, the several states which had united in asserting their independence of Great Britain.

They wisely decided in favor of the latter alternative; and if, at any future time, a group of colonies should declare its independence, they will probably be necessitated to follow the example of the United States of America. The establishment of a strong federal executive becomes necessary when a con-

federation has to defend itself against an external foe, or when it is called upon to take an influential position amongst the nations of the earth. It is true, indeed, that the Swiss Confederation has subsisted for several centuries without establishing a central executive government; and also that the Confederation of the Germanic Empire has existed, under various modifications, without the possession of any overruling central authority. But it is impossible to read the history of Switzerland or of Germany — still more is it impossible to read the history of ancient Greece — without feeling that the absence of an effective federal executive has, on many occasions, imperilled the national liberties in encounters with foreign invaders, and has occasioned intestine dissensions which have menaced these confederations with internal disruption.

Nor are the Swiss Confederation and the Germanic Confederation to be regarded as political machines, comparable in their mechanism to the Federal Republic of the United States. Considering the differences which have existed in regard of descent, laws, interests, and feelings, between the northern and the southern states of this Union, it is surprising that they should so long have held together. If the republic had been less wisely constituted — if an attempt had been made, on the one hand, to centralize all the functions of government — or if, on the other hand, the several states had been left unconnected by the bond of a common executive — the northern states of America would probably have exhibited, after their acquisition of independence, as many phases of revolution as have been experienced by the independent states of Central and of Southern America.

It is to be remembered, however, that local self-government is the basis of all civil freedom, and that every infringement of the right of self-government is an evil which is to be accepted only in lieu of greater evils. Now, all centralized institutions invade, to a greater or less extent, the domain of self-government. A group of colonies ought, therefore, to abstain from adopting a federal executive until compelled thereto by an overruling necessity. It is to be expected that such an authority would continually strive to extend its power over the several members of the confederation, and each new acquisition of influence would augment its ability and its desire to override the local independence of each separate colony. Such centralization is always to be deprecated when unnecessary; and the policy of establishing it may be doubtful even

in some cases in which a group of provinces or colonies may have attained an independent existence. The United Provinces of the Netherlands were never so powerful or flourishing as at the time when each member of that confederation possessed a *veto* upon the proceedings of the collective Union. In time of imminent danger, however, such an excess of local independence might be found to be productive of inconvenience and disaster. We may therefore admit that where the common interest of all is at stake, the will of a single colony ought not to be allowed to overrule the general wishes of the whole group; but in ordinary times it is better that great changes should be delayed until a universal conviction is produced in their favor, rather than that a minority of the confederated colonies should be subjected to a coerced adoption of measures against which it protests.

For these reasons, it seems to me expedient that a confederated group of colonies should abstain from creating a federal executive as long as these colonies maintain a connection with the mother country. Until the entire independence of a colony is established, the imperial executive is its natural representative in all transactions with foreign powers. It will scarcely be contended, even by the most zealous advocate of the principle of self-government, that each colony ought to maintain diplomatic intercourse with foreign courts. It is sufficient that the colonists should have it in their power to testify their feelings with respect to the foreign policy of the empire by active support, or by negative indifference; but imperial connection would practically be dissolved if a colony were systematically to adopt a policy, in relation to foreign powers, which is directly at variance with that of the mother country.

So, also, in regard of military organization, as long as the empire at large is protected by the fleets and armies of the mother country, it is unnecessary to establish a strong federal organization for military purposes in the colonies. Each colony ought to provide for itself a defensive force subject to its own executive authorities. On the occurrence of a war, combined action may be concerted by a federal council or diet, but a permanent organization of a central kind is not needed as long as the mother country is capable of protecting her colonies.

I am compelled to admit that such a confederation of colonies, as that which we have here contemplated, is not so

perfect a political machine as that which exists in the United States of America. But it is impossible to obtain, at the same moment, results which are incompatible with each other. It is impossible to enjoy all the advantages which arise from entire independence, concurrently with those which are supposed to belong to imperial connection with the mother country. Those who think that colonies ought, at the earliest possible moment, to establish their entire independence, will perceive that the outline of a confederation which has been here delineated is imperfect. Those, on the other hand, who prefer a servile dependence upon the directing hand of an imperial authority, to local self-government, will be of opinion that under the name of a colonial confederation, we have sketched the outlines of an independent republic. There is reason in both these imputations. The design of the writer has been to consider what form of organization will give to adolescent colonies the greatest possible security against misgovernment, whether local or imperial. He has pointed out several objects of administration, in regard of which it is to be apprehended that colonists may be led into error, unless checked by metropolitan intervention; and at the same time he has brought to mind the manifold evils which have so often resulted from the meddling spirit of imperial functionaries. He believes that, even with a view to the maintenance of imperial connection, it is to be desired that the colonists should possess as much internal power as is necessary to secure respect to their wishes. The weak will always be oppressed. Constituted as human nature is, weakness invites oppression. Oppression generates discontent. Discontent occasions internal commotion, if not actual revolt. Revolt eventually terminates in entire alienation. We may again refer to the relation between child and parent, for analogical comparison with the relations between a colony and its mother country. If a child be treated with insolence, or rigor, he learns to hate parental control. He seizes the first opportunity of escaping from bondage and humiliation: whereas, the youth who is treated with consideration and kindness — who is taught to exercise self-control — affectionately prolongs to the latest period of the filial connection a manly and rational obedience to the suggestions of parental experience, if not to the mandates of parental authority.

There is every reason to believe that the United States of America would long have upheld a connection with Great

Britain, if, through the instrumentality of a powerful confederation, they had possessed opportunities of declaring, in terms which could not have been misunderstood, their determination to resist the encroachments upon their liberties made by the Imperial Parliament — more especially if they had been supported by the means of giving effect to such a declaration. Could a united confederation of the British colonies have brought at once into the field a militia force of 200,000 men, it is not probable that any ministry, however wrong-headed, would have risked a collision between the mother country and these colonies. In like manner, it is probable that the abortive rebellion of Canada would never have occurred, if a confederation of the North American provinces had existed in connection with institutions calculated to give the utmost development to the principle of local self-government.

So, also, in Australia. The attachment of these colonies to the mother country has been greatly weakened, if not irrevocably alienated, by the selfishness displayed by British politicians in regard to the continuance of transportation. Had an organized confederation of the Australian colonies existed while this question was under discussion, their united voice would have pronounced against the introduction into this fine territory of all the convicted felons of the empire, and transportation would have ceased, at least five years before the period at which it was finally abandoned. Indeed its actual termination may, in a great measure, be attributed to the operation of a self-constituted league, which, though not strictly a representative body, yet embraced in its organization a large number of the most influential, the most intelligent, and the most worthy inhabitants of Australia.

By the foregoing reasoning, I have endeavored to prove that it is for the advantage of a group of colonies to possess, by constitutional organization, a common deliberative assembly, in which each colony shall be represented by its delegates, and that no evil is to be apprehended from the establishment of such a consultative council or diet; but that the establishment of a common executive for the whole confederation ought to be deferred until the exigency of circumstances imperatively requires its adoption. We have now to consider whether there ought to be a common court of supreme judicature, erected in connection with a colonial confederation.

Appeals of all kinds ought to be discouraged, as tending to promote litigation, and to give an undue advantage to the liti-

gant who possesses the longest purse; but since appeals are in some cases unavoidable, it seems unreasonable that litigants should be compelled to carry their causes before a tribunal which is situated in an opposite hemisphere, when they could be at least as well adjudicated by a domestic tribunal, easily accessible to every member of the group of colonies for which it may be constituted. It seems advisable, therefore, that a federal court of judicature should be established for the trial of all such questions as are now referred to an appellate tribunal in the mother country; and also of all questions of a legal kind which may be brought into controversy between one or more of the colonies which constitute the confederation. It is not easy to define prospectively all the topics which may fitly be subjected to such an arbitrament, but we may imagine a case by way of exemplification. It has been suggested that, in the financial arrangements of two adjoining colonies, instead of establishing a barrier of custom houses on the common frontier, free intercourse should be permitted, and that an equitable adjustment of the duties payable upon imports should be made, with a view to apportion as justly as possible between such adjoining colonies the revenue arising from this source. Now, if any controversy should arise between these colonies in regard to the terms of such agreements, it would be proper that these controversies should be submitted for arbitration to a federal court of judicature.

A more difficult problem remains to be solved, namely, the question whether it is desirable to establish in the colonies a court for the trial of impeachments, and if so, what ought to be the nature and structure of that court.

Liability to impeachment is a means of restraining public functionaries from a misuse of the power intrusted to them, which is now happily but seldom brought into actual operation, but with which it would not be safe altogether to dispense. There is a class of offences against the public weal, for which the ordinary laws can provide no suitable correction; and for the trial of such high crimes and misdemeanors, it is necessary that a special judicature should be established. Thus, for instance, if a minister induces the sovereign, by his advice, to commit some act which, though strictly within the competency of the royal prerogative, yet evidently tends to bring disgrace upon the nation and its rulers, such a minister deserves to be impeached and punished, even though he may not have committed an offence, distinctly defined by the ordinary laws of

the land. In England, jurisdiction, in cases of impeachment, is given to the House of Lords; in the United States of America, to the Senate. The power of impeaching rests solely with the representatives of the people. Now, many cases have occurred in which the well-being of colonies would have been greatly promoted if their representative assemblies had been invested with the right to impeach the public functionaries appointed to administer their affairs. Colonial Governors, nominated by a ministry at home, which commands a majority in the House of Commons, enjoy practical immunity from the risks of impeachment, even though their proceedings may have been in the highest degree detrimental to the colonies and to the empire. It is certain that their conduct would have been much more circumspect if they had reason to apprehend that the indignation of the colonies would have found vent in prosecutions which would have fixed an historical brand upon their delinquencies and upon their names. It is, therefore, clearly advisable that every colony should be empowered to impeach its functionaries.

In discussing the question whether such impeachments ought to be tried by a colonial or by an imperial tribunal, we may take it for granted that the home Government and legislature would never consent to relinquish jurisdiction over imperial functionaries. We may, therefore, concede that as long as a connection is maintained between the mother country and her colonies, all imperial functionaries should be tried before an imperial tribunal when impeached by the representative assembly of a colony. But, inasmuch as under the plan of colonial government which we have traced, the Governors would be the only functionaries appointed by and directly responsible to the imperial ministry, there seems to be no reason for withdrawing any other colonial officers from the jurisdiction of a colonial tribunal. Suppose, for instance, that a colonial judge, in the exercise of functions which must by their very nature be discretionary, violates the liberty of the subject, or is induced by corrupt or partisan motives to act unjustly in adjudicating controversies between private individuals; it seems reasonable that he should not only be checked in his career, but that he should be subjected to punishment in that community which has suffered by his delinquency. For the trial of such impeachments, a federal court might be established, which, on the one hand, would be exempt from the passions which accompany, and sometimes engender, such

prosecutions, whilst, on the other hand, its connection with the colonies would render it responsible to colonial opinion.

I conclude these observations upon colonial affairs, by submitting to the reader the outlines of a colonial constitution, which I was induced to delineate at a time when the minds of the colonists of Van Diemen's Land were occupied in considering what improvements could be made in the political institutions of that island. It appeared in the *Launceston Examiner* of the 31st August, 1853.

OUTLINES OF A NEW CONSTITUTION,

ADAPTED TO THE CIRCUMSTANCES OF TASMANIA, OR OF ANY OF THE OTHER AUSTRALIAN COLONIES.

EXECUTIVE.

GOVERNOR to be elected for a period of four years by the whole constituency of the colony, to be reëligible after the expiration of this term.

Her Majesty may disallow such election, or subsequently remove Governor so elected, in which case a new election must take place.

Governor to be removed if both Houses of the colonial Parliament concur in a joint address for his removal.

Governor to take the oath of allegiance.

In case the Governor should die, or the office should otherwise become vacant, the President of the Legislative Council shall act *ad interim* as Governor until a new Governor shall be chosen.

Should the British ministry refuse assent to this proposal to render the office of Governor elective, then, if he be appointed by the Home authorities, his salary ought to be provided by the Imperial Parliament. He should still in such case be removable upon the joint address of both Houses of the colonial Parliament, as also by Her Majesty.

Prerogatives and Functions of the Governor.

Governor to be empowered to summon and prorogue the colonial Parliament, and to dissolve the House of Assembly.

To assent or withhold assent to bills which have passed both Houses of the legislature.

To reserve bills for the assent of the Crown.

To send to both Houses of the legislature messages and draught bills.

To suggest amendments on bills passed by both Houses, and to send them back for reconsideration.

To appoint and remove all officers employed in the civil service of the colony, without requiring the sanction of the Home authorities.

To nominate the judges; but their final appointment should be subject to confirmation by both Houses of the colonial Parliament.

Judges not to be removable, except upon address of both Houses of the colonial Parliament.

Governor to have no control over the appointment or removal of ministers of religion, even though salaries be paid to them out of the public funds of the colony.

Governor to be empowered to grant reprieves and pardons.

Governor to issue warrants for the payment of all sums appropriated by the colonial Parliament out of the general revenue of the colony.

Accounts in detail of all such payments to be submitted annually to both Houses of the colonial Parliament, after having been duly audited and countersigned by the Auditor-general, with any remarks which the Auditor may have to make thereupon.

Pensions and allowances to be provided for retired judges, and for other superannuated public officers, upon a fixed scale; such allowances to be determined according to the length of service, and not to depend upon the pleasure of the Governor.

Governor to forward without delay all addresses and remonstrances directed to the Home authorities.

The following Powers and Prerogatives to be reserved to the Crown.

Power of sending and receiving ambassadors, and of making treaties with any foreign state.

Power of making peace and war.

Power of granting letters of marque and reprisal.

Power of confiscating the property of alien enemies, and of laying an embargo on shipping.

The command of all naval and military forces employed in and about the colony.

The command of the militia in time of war.

The power of erecting forts, magazines, arsenals, dock yards, and other buildings for military or naval purposes.

The power of establishing prize courts.

The power of granting titles of nobility.

Her Majesty may vest in the Governor all or any of these reserved prerogatives.

SENATE, OR LEGISLATIVE COUNCIL.

The Senate, or Legislative Council, might be advantageously constituted by deputation from the municipal councils. (See *post*, under the head of "municipal organization.") But if this proposal be thought impracticable under the existing circumstances of the colony, then in such a case the following arrangements might be adopted: —

Legislative Council to consist of members elected by the constituency of the several electoral districts.

For each electoral district one legislative councillor to be chosen.

Legislative councillors to hold their seats for six years; one third of the whole body to be changed every two years.

Legislative councillors to elect a president and other officers required to assist them in the due performance of their legislative duties.

Governor to have no control over officers so appointed.

HOUSE OF ASSEMBLY, OR HOUSE OF REPRESENTATIVES.

After the next census shall have been taken, the colonial Parliament shall revise the existing electoral districts, and allot representatives as nearly as may be in proportion to the free population. Till then two members to be elected for each of the present districts.

Hobart Town to return four members.

Members of the House of Assembly to hold their seats for three years.

Members to elect a Speaker and other officers required to assist them in the due performance of their legislative duties.

Governor to have no control over the officers so appointed.

All money bills must originate in the House of Assembly, but the Legislative Council may amend them.

No vote of money shall be passed, except it be recommended by the Governor. Subject to this condition, grants and salaries for civil services shall be voted from time to time, according to the discretion of the House of Assembly; except the salaries of the judges, which, once granted, ought not to be diminished so long as the judges hold their offices.

PROVISIONS AFFECTING BOTH HOUSES.

The qualification of the electors of members of both Houses shall be as follows: Occupation of a tenement worth £5 per annum, or possession of property (freehold or leasehold) worth £100; but the elector must have resided on such tenement, or have been possessed of such property, during three months previous to the registration of his vote. An annual payment of £10 on a depasturing license. A degree or qualification authorizing a person to practise in any of the learned professions shall entitle him to vote in the district in which he resides.

The following classes of persons shall be disqualified for voting: Persons holding offices of emolument, dependent upon the will of the executive Government. Criminals whose sentences are unexpired, or who have not received conditional pardons. Aliens not naturalized.

The existing laws relative to the registration of voters and to the election of members must be modified to suit the proposed changes in the constitution.

Members to take the oath of allegiance.

No pecuniary qualification shall be required in members of either House, but the following classes of persons shall be ineligible: Aliens not naturalized; felons, &c., whose sentences are not expired, or who have not received a conditional pardon.

Members of both Houses shall forfeit their seats by lunacy, by felony, by bankruptcy and insolvency, by becoming public defaulters, by absenting themselves during a whole session without leave of the House.

In case members of either House take office, or become contractors, or accept any emolument under the executive Government, a writ must issue forthwith for a new election, but such members may be reëlected. Penalty on such members voting until reëlected.

Members may resign.

A new writ shall be issued by the President or the Speaker, upon motion to that effect, as soon as the occurrence of a vacancy shall have been ascertained in the Legislative Council or House of Assembly.

The following public officers shall be at liberty to take part in the debates of either or of both Houses, but not to vote unless duly elected: Colonial Secretary, Colonial Treasurer, Attorney-general, Surveyor-general, and Chief Commissioner of Public Lands.

One third of each House shall constitute a quorum for the transaction of business.

Members of both Houses to be reëligible at a new election.

The tribunal for the trial of controverted elections shall consist of three lawyers appointed by each House, with assent of three-fourths of its members.

Each House to select for itself the persons who shall constitute the tribunal for trial of its controverted elections.

The Chief Justice and puisne judges may so be appointed to try controverted elections.

Such appointments shall be liable to revision within ten days after the commencement of the session, but not subsequently during the session.

The colonial Parliament shall be convened at least once in each year.

Privileges of the Legislative Council and House of Assembly. — Freedom of speech; freedom from arrest for debt; power to send for persons, papers, and records; power to publish or to withhold from publication their proceedings; power to compel the attendance of members; power to appoint and remunerate their own officers; power to remove, by joint address of both Houses, judges, and all other public officers.

Functions of the Legislative Council and House of Assembly. — To enact laws respecting every local matter that affects the well-being of the inhabitants of the colony; the colonial Parliament shall not be empowered to pass laws affecting succession to the Crown of Great Britain and Ireland; to pass any law containing any thing contrary to the law of nations, as administered by the courts of Great Britain; to lay any duty on supplies for Her Majesty's forces, military or naval; to lay any differential duty on exports or imports to or from any port of Her Majesty's dominions, or any duty inconsistent with any treaty made between Her Majesty and any

foreign state; to confer any privilege or immunity on inhabitants of Tasmania that is not equally conferred on other subjects of Her Majesty; to impose any disabilities founded upon differences of opinion on religious questions.

The territorial, casual, and other revenues of the Crown to be surrendered to the control of the colonial Parliament, (subject to a saving for existing engagements.)

Colonial Parliament to have full legislative control over the administration of the customs and of every branch of revenue.

JUDICATURE.

Three judges to administer justice in the colony, viz., one Chief Justice and two puisne judges. Chairmanship of sessions to be abolished. Judges to go on circuit at least four times a year, and hold sittings in all the principal towns of the colony.

MUNICIPAL ORGANIZATION.

Municipal councils to be established in each electoral district. To be elected by the same constituency that elects members of the colonial Parliament. To consist of not less than nine persons, nor more than twenty-one. Electoral districts to be divided into sub-districts, each of which shall elect one or more municipal councillors.

Municipal councillors to hold their seats for three years. One third of the body to be changed annually. Retiring councillors to be reëligible.

Municipal councillors may elect a mayor or warden. Mayor or warden to be chief magistrate of the district. Municipal council may grant an annual salary to the mayor or warden. May also appoint and remunerate other officers.

Municipal council may acquire and hold property — may impose rates not exceeding in the pound by equitable assessment on property, but may not borrow without special sanction of colonial Parliament.

One third of the land revenue arising in any district to be placed at the disposal of the council of such district.

The colonial Parliament may also contribute from time to time from the general revenue sums in aid of the funds of municipal councils.

Accounts of receipt and expenditure to be published annually in the Government Gazette.

Among the functions of the municipal council, the following may be specially enumerated: To provide for, maintain, and superintend roads, bridges, and other public works; police, and prosecution of offenders; education; relief of the poor; sanitary regulations, cemeteries, slaughter houses, &c.; inspection of weights and measures; lighting, watering, and sewerage of towns; registration of births, deaths, and marriages; training of a militia; public amusements.

The municipal corporations at present subsisting in Hobart Town and Launceston to be remodelled in accordance with the above suggestions.

Municipal council to nominate the senator or legislative councillor of the district. Such legislative councillor need not necessarily be a member of the municipal council.

This mode of constituting a Senate or Legislative Council seems to the writer of these suggestions to be preferable to direct election by the constituency at large.

CONFEDERATION OF THE AUSTRALIAN COLONIES.

In case the other colonies of Australia should be disposed to form a confederation, then Legislative Council shall send one delegate, and House of Assembly shall send two delegates to represent Tasmania in such confederation. Colonial Parliament may defray the expenses of such delegates. Members of either House of colonial Parliament may be delegates; such delegation not to create a vacancy of their seats. Delegates may form conventions or agreements with other colonies; such conventions not to take effect unless ratified by both Houses of the colonial Parliament.

Among the subjects which may become matter for discussion and agreement in such a confederation, the following may be specially enumerated: Intercolonial tariffs, postage, electric telegraph, lighthouses and beacons, a penal settlement, extradition of criminals, copyright and patent for inventions, professional qualification, a mint, bankruptcy, and laws for more easy recovery of debt due in one colony by persons residing in another, naturalization, minimum price of public land, defence against a common foe.

Any other matter which can affect the common interest of the colonies may be entertained by such confederation.

FEDERAL JUDICATURE.

In case the confederation should desire to construct a federal Court of Appeal, such court shall be composed of judges, representing each member of the confederation.

In such case the Governor of Tasmania shall nominate a federal judge to represent Tasmania.

This appointment must be confirmed by both Houses of the colonial Parliament.

A suitable salary shall be provided for such federal judge by the colonial Parliament.

All cases now referred to England for trial shall be heard by such Court of Appeal — except those in which the interests of the empire at large are concerned.

Other classes of appeals may, from time to time, be referred to the federal judicature of the colonial Parliament.

All questions arising respecting the interpretation of conventions or agreements between the several colonies shall be referred for decision to the federal judicature.