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JAMES WILSON IN THE PHILADELPHIA CONVENTION.

THE work of James Wilson as a framer of the constitution seems not to have received its just recognition. The more careful historians who have worked over the period testify to his ability and influence; but their praise is general, not particular. No one has attempted to isolate him, to show with some definiteness what were his ideas on the more important problems that presented themselves in the organization of the new government, to discover what were his contributions to the wisdom and the statesmanship of the Philadelphia Convention. While it is true, indeed, that historians have given him passing commendation, his name has generally been linked with the names of other men far less deserving; and this argues lack of full appreciation. We are asked, for example, to admire the work of Gerry and Sherman and Franklin and Robert Morris and Dickinson and Randolph and Mason. Yet some of these men contributed little to the results of the convention; while others of them were at times obstacles in the way to a reasonable conclusion or advocates of the sheerest folly. If Wilson's work be closely examined, its greatness and worth will appear, and will place him above all but one or two men of the convention. Perhaps Madison alone can be called his equal in judgment and far-sighted wisdom. Certainly Wilson was one of the four men who bore the burden in the heat of the day — who fought with desperate and magnificent energy in the greatest co versy of the convention. But for Madison, King, Gouv

Morris and Wilson, narrow, selfish particularism might have won the victory in the long battle that was waged between the friends of nationalism on the one hand, and those of contracted localism on the other. To the keen understanding, the sound judgment, the great debating power and the vigor of these four men do we owe it that a really national government was established. Wilson's part in this contest deserves attention and challenges admiration.

Although Wilson showed sense and judgment with regard to the details of the new government, petty forms and complicated devices seemed to have little attraction for him. His mind seemed by instinct to seize the essential, and to pass over the trivial and unimportant without friction or confusion. Thus it happens that, judging his work in the light of a century's experience, we see little we would find fault with. He took slight interest in mere mechanism, if the fundamental principles were comprehended and applied. For the work of the convention, therefore, the character of his mind especially adapted him. The constitution is not an instrument of detail and particularity, but is wisely general, enumerating powers but not defining them, recognizing the necessary basis of a national government and the suitable rights of the states. From Wilson's career it is plain that he was not one of those statesmen who master details, who work with promptness and decision for the accomplishment of palpable objects. Nor was he one of those statesmen who know men with unerring judgment and work through others keener and subtler than themselves to ends but dimly seen. Nor was he one of those who feel acutely the life of the state, and make a way for its progress because they feel within themselves the pulsation of its higher and better life. Something of this latter power he ındoubtedly had in him; but his greatest talent was of a differnt nature. He was above all a political scientist: he had rasped firmly the teachings of the past so far as they disclosed ıe nature and organization of the state and the safest princi- f judicious government. He was a student of history, 's study had brought him organized knowledge. He

was not a master of the art of politics, but he knew with scientific accuracy the fundamentals of statecraft. He was suited above all else to share in the building of a new state and to labor as the architect of a new government. One who studies his words is deeply impressed with the folly of those who were striving for local advantage or seeking to build a state on the frail foundations of meagre knowledge and narrow experience, and realizes the force and influence of the men who paid reverence to history and contended in and out of season for the recognition of its soundest and deepest teachings. Especially clear, too, becomes the error of the modern commentators who derive the motive ideas of the Philadelphia Convention from foreign text-books on law or politics. The men of the convention, and Wilson above all, were not rote-learners: they did not absorb unquestioningly the lessons of Blackstone or of Montesquieu. They were themselves original seekers after truth, making their own inductions and extorting the principles of their science from the raw materials of history.

To appreciate the value of Wilson's work we need to call to mind the condition of the country and the evils which the convention was called upon to remedy. In one sense there is no need to rehearse the difficulties of the critical period. Every schoolboy is taught the failures of the dismal Confederation, is led to lament the awful spectacle of "a nation without a national government." But the form of such teaching has often obscured the plainest truth. Scholarly books that treat of the period seem to miss the essential and to dwell upon the accidents. The Articles of Confederation are held up to ridicule and abuse, and the finger of scorn is pointed at the impotent Congress as a mere pretense — a charlatan among governments. The main lesson gathered is that the central government ought to have had greater power — the right to collect tariff duties, to enforce treaties, to regulate interstate commerce and the like. Now this is the way that men commonly spoke in the midst of the trials of the time. Only the [illegible] isdom detected the real meaning of the situation. [illegible], as we ought to see, that the Confederation was a

failure simply because actual conditions made a confederation an impossibility. In declaring that each state retained its sovereignty, the Articles of "the league of friendship" spoke the language of arrant falsehood. Legal sovereignty the presuming states might assume, and sovereign they would be on paper; but there remained the fundamental fact — which gave the lie to all fictions of law — that there was, and could be, but one ultimate source of political power in America, and that was a united people. When Daniel Shays and his band arose in Massachusetts to demand new tables and to wreak a surly vengeance on the courts and lawyers, the startled people turned instinctively for help to the nation. For the nation existed, and the need of the time was its recognition by the organization of a national state. Only when political and legal forms tallied with the fundamental fact of society could justice be established or domestic tranquillity ensured. Reformers who saw merely the surface clamored for greater power in Congress. But a congress with greater power, if still the agent of sovereign states, would have continued to be out of joint with the overruling fact. What was needed was, not a juggling with powers and authorities, not an adding of complexity to confusion, but simply the organization of a state on the broadest and most rational basis. It is not strange that men sought to tinker the Confederation. There are always quacks with pet nostrums, and physicians who treat the symptoms, but do not cure the disease. The remarkable thing is that there were in 1787 so many men who saw the need of a bold operation to remove the root of the whole evil.

The great need of the time, then, was the recognition of the fact that there was an American people; that there must be one government rising from them and over them; that this government must come in contact with its own citizens; that state selfishness and greed, the bane of the old order, must be checked by making the new government sufficient unto itself — in short, that there must be provided an organization for a pure, national state, broad in its purposes and broad in its foundation, with an adequate means of expressing its s

will. It was because Wilson saw all this with clearness that his work in the convention was of the highest order. He had no patience with half measures or mild palliatives. In the discussions of every detail he bore the fundamentals in mind.

The work of the convention is easily divisible into three distinct parts. It was necessary to decide: first, what should be the nature and character of the new organization, — whether it should be a *government* or the agent of sovereign states, whether, in fact, there should be one state or another more complex confederation of states; second, what should be the powers confided to the government; third, what should be its mechanism and form. Of these the first is plainly the most important: were the decision on this point wrong, all other wisdom would be folly. In the decision of this first great question Wilson took a keen interest. The principle was practically involved in all discussions on the basis of representation. Were the states equally represented in Congress, the groundwork of the new government would be states and not persons. Only representation proportioned to population would give a just and reasonable foundation for a real national assembly: on any other principle, whatever might be the powers bestowed upon the central authority, it would be inherently weak and defective, because there would be no just recognition of the only pure and safe source of power — the people of the United States.

An examination of the debates in the convention will show what part Wilson took in the solution of this all-important problem. It will be remembered that the basis of the convention's work was a plan introduced by Randolph of Virginia. The day after this plan was presented a fundamental resolution was adopted, declaring "that a *national* government ought to be established consisting of a *supreme* legislative, executive and judiciary." The succeeding day, after it had been resolved that the national legislature ought to consist of two branches, a discussion arose on the method of election. Here there were difficulties. Many feared the people as the source of power; and others seem to have feared encroachments on the power and influence of their respective states,

although as yet the so-called small-state party, bent on preserving the equality among the members of the Union, had not been formed. Wilson was from the outset at once democratic and national:

> He was for raising the federal pyramid to a considerable altitude, and for that reason wished to give it as broad a basis as possible. No government could long subsist without the confidence of the people. In a republican government this confidence was peculiarly essential. He also thought it wrong to increase the weight of the state legislatures by making them the electors of the national legislature. All interference between the general and local governments should be obviated as much as possible. On examination it would be found that the opposition of states to federal measures had proceeded much more from the officers of the states than from the people at large.

Later in this same day he opposed the proposition that "the second branch of the national legislature ought to be chosen by the first branch out of persons nominated by the state legislatures," holding that the second branch ought to be independent of both the first branch and the state legislatures. "He thought both branches of the national legislature ought to be chosen by the people, but was not prepared with a specific proposition." It was characteristic of him to be sure of the principle, but not to take interest in the mechanism.

We have thus in embryo at the very beginning of the convention three ideas which Wilson later elaborated and never abandoned: the national authority must be strong and high, but its source must be the people; the people were to be trusted, and on their confidence the new government must rest; the government was to be over men and to have as few points of contact as possible with the state governments. These propositions, all closely related, are maxims of profoundest wisdom. Because the convention realized their force and embodied them in the constitution, its work was successful.

Bent on building the new government upon the surest foundation, Wilson insisted that the constitution must be ratified by popular conventions, not by the legislatures of the states. So

important did this principle seem to him that he declared, early in the history of the convention, that if a plurality of states were disposed "to confederate anew on better principles," they ought not to allow their purpose "to be defeated by the inconsiderate or selfish opposition of a few states." This hint Madison tells us was "probably meant *in terrorem* to the smaller states of New Jersey and Delaware": it is one of the first indications that a small-state party was forming. This frank, straightforward announcement that the proper principles must be observed, even though complete union be not immediately secured, was typical of Wilson's state of mind. Throughout he was one of the few unbending stalwarts of the assembly.

As the convention continued its work, difficulties increased rather than diminished. At first it had seemed probable that the fact of nationality would be fully recognized, and that a national government would be erected in conformity with this overruling idea; but as the days went by, the jealousies of the small states increased, and their opposition became more keen and bitter. No peace was possible until the great principle involved in the proper basis of representation was irrevocably established. Wilson returned time and again to his main assertion, that the government must be founded on the people, and must not come into contact with state officers. At first he dwelt chiefly on the idea that the government ought to possess the "*force*" and the "*mind* or *sense* of the people at large"—that all antagonism between state governments, on the one hand, and the national government, on the other, must be carefully avoided by making the people the electors, and by drawing the power of the central authority from the real source of political energy. But when the small-state party began to demand from the convention a recognition of the states as the basis of the new government, seeking in fact to build up another confederation, more complicated in its mechanism, but still in essence a "league of friendship," then Wilson's full national spirit was aroused, and in common with Madison and King, and others less powerful in debate, he entered lustily into the contest. Patterson of New Jersey, on June 9, came out flatly in favor of a confederation.

"A confederacy," he declared, "supposes sovereignty in the members composing it, and sovereignty supposes equality. New Jersey will never confederate on the plan before the committee. She would be swallowed up. She had rather submit to a monarch, to a despot, than to such a fate." Wilson, answering him, "entered elaborately," Madison tells us, "into the defense of proportional representation, stating as his first position that as all authority was derived from the people, equal numbers of people ought to have an equal number of representatives, and different numbers of people different numbers of representatives." "If New Jersey will not part with her sovereignty," he exclaimed in closing, "it is vain to talk of government." Time and again this discussion arose; and Wilson was ever ready to battle for the national principle.

On June 29, after the convention had been in session a month, it was finally determined that the rule of suffrage in the first branch of Congress should not recognize the equality of the states. The vote stood six states to four, with one (Maryland) divided. This result was uncomfortably close. Immediately after this decision the small-state men entered upon the attack again, now demanding equal representation in the Senate. Wilson's speech in opposition was a masterpiece of sound and sensible argument. It was one of the strongest speeches delivered in those four months of constant debate. It was not loaded with aphorisms about the nature of man or the evil tendencies of democratic society, or with such other matters as filled many of the speeches of the time. It was plain, practical sense.

> Can we forget [said he] for whom we are forming a government? Is it for *men*, or for the imaginary beings called *states?* Will our constituents be satisfied with metaphysical distinctions? . . . The rule of suffrage ought, on every principle, to be the same in the second as in the first branch. If the government be not laid on this foundation it can be neither solid nor lasting. Any other principle will be local, confined and temporary. This will expand with the expansion, and grow with the growth of the United States. . . . It is all a mere illusion of names. We talk of states till we forget what they are composed of. Is a real and fair majority the natural hot-bed of aristocracy?

But, excited as he was, justice and wisdom did not forsake him. He was not foolish enough to desire the destruction of the states. "He thought the states necessary and valuable parts of a good system."

It must be noticed that the plan of proportional representation in the Senate seemed to accentuate the idea of nationality even more than in the case of the House; for if the Senate was to be a small body, and its members popularly elected, *state boundaries could not be regarded.*[1] Each small state could not have even one member, for that would make the number too large. The people of Delaware must be joined to a part of those of Pennsylvania to form a senatorial district. This points to the conclusion that the nationalists were not simply struggling for the due weight and influence of their respective states, but were seeking the broadest popular basis for the new government.

Wilson was now ready, however, to offer a reasonable compromise.

> If the smallest states be allowed one [senator], and the others in proportion, the Senate will certainly be too numerous. He looked forward to the time when the smallest states will contain a hundred thousand souls at least. Let there be, then, one Senator in each for every hundred thousand souls, and let the states not having that number of inhabitants be allowed one.

King and Madison, who with Wilson were the unyielding advocates of national representation, intimated that they were willing to accept this compromise; but it was not adopted.

After the convention had evenly divided on the question of allowing equal representation in the Senate, a grand committee,

[1] If I understand Curtis's History of the Constitution (vol. ii, pp. 224, 225) aright, he does not interpret as I have done here the arguments and desires of the leading large-state men. They never clearly stated in so many words their desire to disregard state boundaries in the elections. It is barely possible that they did not force themselves to the limit of seeing exactly what their ideas meant. But Madison's footnotes seem to leave no doubt that the situation was as it is stated in the text. — Elliot's Debates, vol. v, pp. 168, 240, footnotes; Wilson's and King's remarks, p. 38; Wilson's remarks, pp. 125, 266; King's remarks, p. 280; Madison's remarks, p. 280. See also Writings of Rufus King, pp. 596, 597.

composed of one member from each state, was selected and directed to consider the whole matter. Wilson opposed this committee, on the ground that a decision would surely be rendered against the large states. The result proved him right. The committee was made up without a single one of the strong and unyielding men from the large-state side. Not King[1] but Gerry, not Madison but Mason, not Wilson but Franklin — who could not forget diplomacy — represented the largest states, from which had come the strongest opposition to localism. One would fain have the history of the choice of that committee. When the advocates of proportional representation were at least equal in number with the particularistic party, how did it happen that such a committee was selected? The large-state men were in some way outgeneraled and outwitted in the choice of this extraordinary body. As one studies these debates, and strives to see through the meagre printed page into the passions and emotions of that great battle where the stake seemed to be a nation's life, he feels strongly drawn to the fearless, uncompromising men who stood forth defiantly as the representatives of generous nationalism, as unwavering opponents of the forces of selfish localism and dissolution. It may be that, without the yielding spirit of men like Franklin, the smaller states would have refused to participate further in the work of the convention. But what would have been the result had there been no men who were thoroughly fearless and consistent, thoroughly appreciative of the greatest of the fundamental facts, thoroughly devoted to America, and not swaddled in provincialism? Morris spoke in his bold, cynical way too near the truth when he said: "The states had many representatives on the floor. Few, he feared, were to be deemed the representatives of America."

[1] It may seem strange that Rufus King is here mentioned and not others. King did not speak much, but, when he spoke, what he said was full of sense. I find few speeches in the debates more sensible than those he delivered on June 30 and July 14. He was close by the side of Wilson in his argument. Hamilton was not present at the time, being absent from June 29 to August 13. Morris, a perfect colossus in debate, left the convention a few days after it began its work, and did not return till July 2. It will be found that these men were the most straightforward, logical and unyielding advocates of nationalism.

The grand committee reported a compromise granting to the lower branch of the national legislature the right to initiate all bills for raising or appropriating money, and conceding to the small states an equal vote with the large states in the Senate. This formed the basis for discussion for some time, but not till the middle of July was the vexed question settled. The vote was five to four. Massachusetts, whose vote would naturally have been with the large states, thus making a tie, was divided. "Lost by the vote of Massachusetts," wrote King mournfully in his minutes.[1] One can picture the disgust and distress of the leaders of the national party. They were angry, combative, but finally, it seems, disheartened. The party considered in caucus what should be done. One faction, in which we feel sure were Wilson and Morris at least, advocated continued opposition to the small-state plans; but a yielding disposition now prevailed with many, and the caucus reached no decision.

We may inquire whether Wilson's opposition was the part of wisdom or of factious obstinacy. It may without hesitation be asserted that the Senate has never stood as the special champion or defender of the small states, for no controversy requiring such an attitude has arisen in our history. The sensible men in the convention showed time and again that a combination of the large against the small states was a mere figment of the imagination. Some saw with rare insight the really dangerous antithesis which lay in the fact that the interests of the North and of the South were different. It is sometimes asserted that the composition of the Senate, as it was finally determined upon, was wise, because it has given prominence to the federal principle, and because states have been protected against encroachments and their rights preserved. The fallacy of this assertion rests in a fancied but unreal dualism. The citizens of the states and the citizens of the United States are the same persons, and no destruction of state privileges is possible

[1] King's exact words are: "This vote was taken, and to my mortification, by the vote of Massachusetts, lost on the 14th of July."—Writings of Rufus King, vol. i, p. 616.

unless the state citizens are acquiescent. It cannot be asserted that the Senate has ever stood specially as a bulwark against the forces of centralization. Again, it has been argued that the fears of the national party were as groundless as those of the localists, inasmuch as neither the equality of representation in the Senate nor the method of election has endangered the national government. To this it may be answered that, had the senators been elected as Wilson proposed, it is doubtful if even John C. Calhoun could have had the temerity to bring forward his treaty theory of the constitution: the really national character of the national government would from the outset have appeared in a clearer and less mistakable light. In the midst of the distress, uncertainty, blind confusion and perplexity of the critical period, Wilson was a wise statesman in advocating the clearest possible announcement that the new government was built on men and for men, not on states or for states.

In Wilson's speech of June 25, he rose to the fullest height of statesmanship in disclosing the argument for proportional representation:

> He was opposed to an election by the state legislatures. In explaining his reasons it was necessary to observe the twofold relations in which the people would stand, — first, as citizens of the general government, and secondly as citizens of their particular state. The general government was meant for them in the first capacity; the state governments in the second. Both governments were derived from the people, both meant for the people; both, therefore, ought to be regulated on the same principles. The same train of ideas which belonged to the relation of the citizens to their state governments were applicable to their relation to the general government; and in forming the latter we ought to proceed by abstracting as much as possible from the idea of the state governments. With respect to the province and object of the general government, they should be considered as having no existence. The election of the second branch by the legislatures will introduce and cherish local interests and local prejudices. The general government is not an assemblage of states, but of individuals, for certain political purposes; it is not meant for the states, but for the individuals composing them. The *individuals*, therefore, not the *states*, ought to be represented in it.

This speech is given an unusually large space in King's minutes of the convention; and there this idea of double citizenship is given with perhaps greater clearness than in the foregoing words quoted from the "Madison Papers." Wilson in these sentences gave the fundamental idea of the federal state; and because it was he who did present these thoughts so conspicuously, he deserves unstinted praise. This double allegiance and double obedience owed by each citizen to two governments, each distinct from the other, and each supreme in its own field, is the most striking and the most important feature of the political organization of our country. Because this principle has been so completely worked out, political scientists of to-day may point to the United States as the model federal state. It is the surest and purest basis for federalism ; and it represents the greatest of our achievements in statecraft. It is wonderful that Wilson should have grasped this principle so firmly and insisted on it so strenuously, when the men around him were striving eagerly for some local advantage or, if wise and generous, were too often lost in the contemplation of the mere mechanism of government. Seventy years later, at another fateful period in our history, statesmen saw but dimly this great fundamental fact in our political system. James Buchanan and Jeremiah C. Black, wrestling in agony of spirit with the problems of secession, begat together the mysteries of that wonderful message, which declared that secession was illegal, but that there was no legal means to prevent it, because the national government could not coerce a state. They apparently did not comprehend these elementary facts which Wilson so clearly stated. Our system does not contemplate antagonism between governments; but the national government is a government over men — can demand obedience from them, and is under obligations to enforce its decrees upon them. Even as late as the Slaughter House cases, Judge Miller found it necessary to elaborate at length this fundamental principle, because it had been beclouded by discussion. "It is quite clear then," said he, "that there is a citizenship of the United States and a citizenship of a state which are distinct from each other, and

which depend upon different characteristics or circumstances in the individual." [1]

The limits of this paper will not allow a minute account of the opinions of Wilson on all the problems that were presented to the convention for solution. As has been said, he was not greatly interested in forms, if fundamental principles were observed; and he did not, therefore, speak at great length when the mechanism of the government was under discussion. Two or three ideas for which he stood, however, deserve special attention.

He had from the outset the clearest and most sensible ideas regarding the executive. He wished to have the chief magistracy confided to a single person. "All know," he said, "that a single magistrate is not a king." With keen insight into practical politics he objected to a council to assist the president. "It oftener serves to cover than prevent malpractices," was his trenchant criticism. Anxious to separate the executive from the congress, he pointed out the fact that legislative tyranny was possible, and that the president must have means of self-defense. He did not seem to see so clearly the desirability of separating the executive and judicial departments: in common with some of the wisest men of the convention, he advocated the union of the judges with the president in the privilege or duty of vetoing laws. In this he and Madison and Gouverneur Morris were at one; and were, as we know, finally overruled — and wisely. On the method of electing the president, Wilson stood for a time almost alone, and had to fight his battle single-handed. It is well known that the manner of choosing the president gave rise to some of the greatest difficulties with which the convention wrestled. Device after device was proposed, and various plans were temporarily adopted. Wilson was from the beginning in favor of popular election. The reactionary undemocratic character of the convention is strikingly illustrated by the hesitancy with which he first gave utterance to this idea. "He was almost unwilling," he said, "to declare the mode which he wished to take place, being

[1] 16 Wallace, 36, 72.

apprehensive that it might appear chimerical." But he stated his preference for an election by the people, and later offered a resolution providing for the division of the states into electoral districts whose voters should choose presidential electors. To the very end he advocated the mediate or immediate election by the people. At one time Pennsylvania alone voted for popular election. Though defeated at first, Wilson returned time and again to his original propositions; and after sifting and tentatively adopting other methods, the convention was finally forced to accept a system which made possible, at least, the mediate election of the president by the people, although the state legislatures might assume the power.

All that Wilson did to establish the government on a safe foundation, or to arrange aright its forms and methods of operation, gave evidence of a wise and catholic spirit; but more significant still was his appreciation of the life and soul of the American state. In this respect he was head and shoulders above his great colleague Morris, and above even Madison himself. Wilson was thoroughly democratic: all that he did for nationalism he did likewise for democracy. The convention was deeply impressed with the extravagances of the populace: what has since been called the Federalistic syllogism — democracy, anarchy, monarchy — seems to have ruled, even then, the thoughts of many. The whole assembly was more or less imbued with reactionary dread of popular fickleness and folly. Not only was this true of natural aristocrats like Morris, and of men, like Hamilton, whose talent was for governing; but even Madison and Gerry, who were later found within the Jeffersonian fold, were now apprehensive of democratic intemperance. "The evils we experience flow from the excess of democracy," was one of Gerry's shallow opinions. Madison wished to guard against the "levelling spirit," symptoms of which he saw already appearing. Wilson, on the contrary, was given over to the democratic faith. He was not patronizing to the populace or condescending, — quite the reverse. Filled with the democracy of the next century, he considered himself the servant of the people, and sought to minister to them. He desired a national

government because the people were ready for it; and he trusted their sense and justice.

He could not persuade himself [said he at one time] that the state governments and sovereignties were so much the idols of the people, or a national government so obnoxious to them, as some suppose. . . . Where do the people look at present for relief from the evils of which they complain? Is it from an internal reform of the governments? No, sir. It is from the national councils that relief is expected. For these reasons he did not fear that the people would not follow us into a national government; and it will be a further recommendation of Mr. Randolph's plan, that it is to be submitted to *them* and not to the *legislatures* for ratification.

He was in his whole spirit at variance with Morris, "who on all occasions," said Madison sharply, "had inculcated the political depravity of men, and the necessity of checking one vice and interest by opposing to them another vice and interest."

Wilson's nationalism and democracy speak continually together, but never more wisely and well than in defense of the Western people. To their growth in political rights and privileges it was gravely proposed to place an impassable boundary, because, forsooth, to quote Morris, "the busy haunts of men, not the remote wilderness, was [*sic*] the proper school of political talents," and because "the back members are always averse to the best measures," [1] and because of other reasons begotten of sectional jealousy and aristocratic myopia. Wilson swept all such narrow dread aside.

Conceiving that all men, wherever placed, have equal rights and are equally entitled to confidence, he viewed without apprehension the period when a few states should contain the superior number of people. The majority of people, wherever found, ought in all questions to govern the minority. If the interior country should acquire this majority, it will not only have the right, but will avail itself of it, whether we will or no.

[1] Remarks of Morris, July 11 (see also those of July 5–10); remarks of Gerry, July 14. It is interesting to notice that this fear of the West actually influenced the committee appointed to consider the numerical basis of representation. — See Gorham's remarks, July 9.

There was perhaps no great danger that the convention would be guilty of such unmitigated folly and narrow sectionalism as Morris and Gerry advocated, but the West owes to Wilson a debt of gratitude for propounding these democratic propositions so clearly. It is a very curious and interesting fact that on the very day, July 13, when Wilson so skilfully attacked this policy of exclusive tide-water statesmanship, the despised Congress of the Confederation immortalized itself by passing the Ordinance of 1787, one of whose chief glories is the recognition of the equality of the Western people with the inhabitants of the old thirteen states.

Wilson's democracy so thoroughly underlay all his actions that it has been impossible to call attention to any considerable portion of his work without showing the domination of this spirit. His words would have seemed natural had they been spoken at the beginning of the nineteenth century or later, for his democracy was precocious. It was Jeffersonian, but it was free from the nonsense with which the great founder of the democratic party and the seer of modern Americanism was then loading his correspondence. Wilson could not

> agree that property was the sole or primary object of government and society. The cultivation and improvement of the human mind was the most noble object. With respect to this object, as well as to other personal rights, numbers were surely the natural and precise measure of representation.

This was sublimated Jeffersonism, the doctrines of the Virginia politician and philosopher in their purest state. Not government, Wilson seems to say, not wealth, not even the peace and safety and well being of the individual are the highest aims and wants of man; but progress, development, growth to higher and better status for each man, who, after all is said, must be the unit of the state and society. Yet he was free from Jeffersonian nonsense. He made use of no aphorisms about a little rebellion being a good thing now and then, or about "refreshing the tree of liberty with the blood of patriots and tyrants, its natural manure." Moreover, he did

not, like Jefferson, confuse state sovereignty and particularism with democracy. He even appreciated the nature of the democratic state more fully than Jefferson; for it is certainly no attack upon the principles of democracy to recognize the homogeneity of the nation, to give to a government, really emanating from the people, power, dignity and vigor, to give to the governmental machinery efficiency in executing the people's will. The broad national democracy of the Jacksonian era was thus foreshadowed by this Scotch philosopher in the Philadelphia Convention; and he contributed not a little to bring it about, that in later years the state was thoroughly imbued with the democratic spirit, and the government acutely sensitive to the popular will.

When Wilson saw so clearly the absolute necessity that the government should spring from the people as the legitimate source of political authority, it may at first seem strange that he did not assert emphatically the doctrine taught by many modern political scientists. Why did he not assert more positively that the constitution was law; that it issued from the authority which is the sole source of law; that the establishing power was the people of the United States, not the people of thirteen separate sovereignties; that union into a single being came before the sanction which gave the constitution the force of law; that the will of the sovereignty of a new state was expressed in the act of ratifying and establishing the constitution, though in performing this act the people were geographically divided? The reason is plain enough: he did not so assert because entirely different conceptions with regard to the origin of law held sway in his mind. In this he was not peculiar: the compact theory of government was dominant everywhere. If government with power could arise from agreement among individuals, so could it spring from agreement between bodies of individuals. The idea that government received its authority from the consent of the governed was a pet idea with Wilson. Not only in the convention did he give utterance to that formula; but, in his law lectures delivered in 1791, he stated the proposition over and over again, and gloried in the fact that

America had realized and adopted it. He attacked Blackstone in a succession of lectures, with intent to disprove the assertion that law is a rule of action laid down by a *superior*. Why this conception of the origin of government in contract was all powerful in America at that time is easy of explanation, but a full discussion would go beyond the limits of this paper. It is sufficient to say that the colonists were the political offspring of the seventeenth century; that to them the Revolution of 1688 meant more by example than it did, perchance, even to the people of England; and that the arguments and facts leading up to the separation from the mother country tended to emphasize the doctrine of natural rights and the theory that society and government had their beginnings in agreement.

In his learned discussion in the case of Chisholm *vs.* Georgia, delivered in 1793, Wilson comes near to a clear enunciation of the doctrine that the people of the United States established the constitution. In fact, he does so state, though the idea of divided sovereignty holds him.

> As a judge of this court [he says], I know and can decide upon the knowledge that the citizens of Georgia, when they acted upon the large scale of the Union, as a part of the "People of the United States," did not surrender the supreme or sovereign power to that state; but as to the purposes of the Union retained to themselves.

The language is not exceedingly clear and explicit, but he comes, at least, to an assertion of the existence of the "People of the United States." This assertion, however, gleams out from pages loaded with arguments on behalf of the contract origin of government. Thus, he says:

> The only reason, I believe, why a free man is bound by human laws is that he binds himself. . . . If one free man, an original sovereign, may do all this, why may not an aggregate of free men, a collection of original sovereigns, do likewise?

Wilson's whole state of mind on this subject is very illuminating. If he, the broad, generous nationalist and democrat, was ruled by these conceptions, need we expect to discover anywhere the assertion that the new government was the

creature of the new state, and that the constitution as law received its sanction from the indivisible will of an indivisible sovereign? A study of his words shows beyond peradventure how impossible it was for such ideas of modern political science to germinate in the soil of 1787.

It may seem strange that a man who did so much has received so little general recognition. Even the men of the convention and the statesmen of the time scarcely mention his name. Madison's correspondence gives no indication of Wilson's greatness. Washington speaks of him only once or twice; but, with his usual fairness and insight, asserts that he was one of the ablest men of the convention. This reticence with regard to a man of such conspicuous ability can, however, be partly explained. He seems not to have won men strongly by his personality. He does not seem to have made and retained personal friends among the men whose correspondence we have. His real kindliness of disposition seems to shine out so clearly from the pages of his lectures on law, that one hesitates to attribute this lack of friends to any inherent unlovableness on his part; but he must have been a curious, angular being, given to repellant learning and possessed of prolix and voluble wisdom. The shortness of his public career after the organization of the new government may account for the partial oblivion that has crept over his name. His career was blighted by financial troubles brought on by speculation in wild lands; and he died almost an outcast, in mortification and sorrow, ten years after the adoption of the constitution, which bears so plainly the marks of his hands.

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FOUR GERMAN JURISTS. III.

BRUNS, WINDSCHEID, JHERING, GNEIST.

VI.

BEFORE Jhering opened his attack upon abstract jurisprudence, he had acquired a reputation that extended far beyond the boundaries of the fatherland by his great work upon the *Spirit of the Roman Law in the Different Stages of its Development.* As a study of the evolution of the Roman law, the work may be regarded as a product of the impulse to historical investigation given by Savigny, and in the catalogues of the booksellers it is usually ranged among the works on Roman legal history; but in its spirit and method this book represented, as we have already noted,[1] a reaction against the purely national view of legal evolution held by Savigny and his school, and it bore little resemblance, in its general plan or in its details, to any previous history of the Roman law.

It emphasized the universal side of legal evolution, and found the significance of the Roman law in the great place which that law occupies in the legal history of the world. It discarded the periods commonly recognized by writers on Roman legal history, and substituted three "stages": the pre-Roman or Indo-European, the national Roman, and the universal Roman.[2] In the first volume (Introduction and Book I), Jhering undertook to show what the Romans brought with them into their separate national life. In the remainder of the work he meant to show what they made of their heritage, and with what rich interest they gave it back to the world. In the three additional volumes which he completed he carried out but a small portion of the original scheme. He did not even finish his second "book" on the "specific Roman system" (*ius civile*). Its first "section" (*Abschnitt*), on the "general characteristics of the

[1] POLITICAL SCIENCE QUARTERLY, X, 669, 675–678.

[2] Geist des römischen Rechts, I, 81–85.

system," extended through the whole of the second and third volumes[1] and nearly through the fourth volume.[2] Its second "section," which was to deal with the special rights recognized in the older private law, was carried only so far as was necessary to complete the discussion of the general conception of a right,[3] and there the work stopped. As we have already seen,[4] the examination of this special question carried him out of legal history into legal philosophy and eventually into sociology. The *Spirit of the Roman Law* was left unfinished that he might write his *Teleology of Law*, and this, in its turn, so grew upon his hands that it was never finished.

The proposed third book of the *Spirit of the Roman Law*, which was to have treated of the development, by the Romans, of a general system of private law for the entire ancient world (*ius gentium*), and in which the characteristics of this universal law were to have been examined, was accordingly never begun — a fact which no admirers of Jhering can more keenly regret than those whose privilege it was to hear his lectures upon Roman legal history at Göttingen, and who therefore know, in part at least, how fresh and suggestive would have been his treatment of this period.

The *Spirit of the Roman Law* is a work so much better known than any of his other writings (except, perhaps, his *Struggle for Law*), and so much has been written about it, that it is hardly needful to do more than indicate in what respects it marked an epoch in legal historiography. It was one of the first important attempts to apply to the study of legal evolution the method of comparison. In describing the "original elements" of the Roman law he thus gave the world a treatise on primitive law in general. In describing the Roman conceptions of liberty and equality, and the way in which these were realized in the national law, the comparison with other systems was so employed as to make this second volume an important contribution to the philosophy of law. The discussion, in the

[1] Designated as Part II, Divs. 1 and 2.
[2] Part III, Div. 1.
[3] *Cf.* POLITICAL SCIENCE QUARTERLY, X, 691, 692.
[4] *Ibid.*, XI, 290.

following volumes, of the technique of the Roman law and the methods of the early Roman jurists broadened, in like manner, into a discussion of the function and the methods of all technical jurisprudence. The problems which he set before himself in his *Teleology* are not more universal, nor are they treated in any broader way, than those which engrossed him in the earlier work.

The point of view from which the work was written and the method employed make it unique among histories of the Roman law. All that is peculiarly national in the Roman law — all that is not found in other systems and cannot be utilized for comparison — had for Jhering but a secondary interest. Numerous facts that are set forth in the briefest compendiums of Roman legal history are therefore not even alluded to in these four volumes. These facts appear in the ordinary compendium because they facilitate the comprehension of the law books of Justinian; they were ignored by Jhering because the matters they illuminate are not matters of universal human interest. The ordinary legal historian, as Jhering himself said, regards history as the handmaid of dogmatics.[1] Jhering's mode of writing legal history, as Windscheid indicated years afterwards in his inaugural address as rector of Leipzig University, takes the subject out of legal science in the strict and usual sense, and makes it culture-history.

It is of interest to compare Jhering's work in primitive law in the first volume of the *Spirit* with the independent and nearly contemporaneous work of Henry Sumner Maine. Both of these men used the comparative method, and both wrote from the point of view of the social historian rather than from that of the legal historian. Both worked with a narrower basis of induction — with less knowledge of primitive law — than their successors in the same field, and the theories of each have been largely modified by later investigations; but both possessed a literary gift, a charm of style, that won for them

[1] Geist des römischen Rechts, I, 59, note. *Cf.* Entwicklungsgeschichte des römischen Rechts (1894), Einleitung, p. 9: legal history is "the Cinderella in the house of the law, tolerated there only because she carries wood and water for the household."

a wider circle of readers than any of their successors have yet obtained.

Of early Roman law Maine knew something, but far less than did Jhering. Of Hindoo law Jhering knew far less than did Maine. Of English law Jhering knew little: I do not think that he read English with any ease. But through the labors of the Germanists Jhering had at his command a knowledge of early Teutonic law, of which the English law is but a transplanted shoot, that far outweighed Maine's advantage in his knowledge of early English law. In reality, then, the only advantage that Maine had over Jhering was his greater knowledge of the laws of India. And it may be seriously questioned whether, for the study of Indo-European beginnings, this was not really a disadvantage. Maine clearly believed that the customs and conceptions revealed in the oldest literature of India were, if not precisely primitive, at least more primitive and closer to the common starting-point of the Indo-European peoples than the earliest known customs and conceptions of the Teutons or Slavs. We are inclined to think to-day that the reverse is true — that the social relations of the Hindoos, at the moment at which their institutions first become clear to us, had developed along lines largely foreign to the oldest Aryan life; and that their civilization had become far more complex and artificial than that of the wandering ancestors of the great European nations. It was the influence of the Hindoo law that led Maine to assert the really primitive character of that household organization which he found in India and also in early Rome — an assertion now questioned by the majority of investigators — and to develop the entire political organization of the Indo-European peoples, the whole sacerdotal system, the administration of criminal and civil justice and the resultant formulation of criminal and civil law, gradually and smoothly, without break or jar of innovation, from the one fact of the household authority of the *paterfamilias*.

Jhering apparently assumed the primitive character of *manus*-marriage, agnatic relationship and *patria potestas*, — certainly, that these institutions were firmly established when the sepa-

rate national existence of the Romans began,[1]— but he ascribed no such wide-reaching results as did Maine to the headship of the primitive house. To Jhering nothing in the earliest Roman state was modeled on the family save the *gens*. The *curiae* were military divisions constructed by the king. Kingship was not an outgrowth of family or clan, but a new thing superimposed upon the *gentes* by stress of foreign war. Kingship had built the new state of the royal period upon the partial wreck of the gentile state. Criminal law, to Jhering, began as lynch law: it was the vengeance taken by the whole people for an injury to the whole people. In its further development king and priests coöperated. The king first punished infractions of military discipline, and became gradually a keeper of the peace, because internal peace was necessary for successful foreign war. The priests slew the wrongdoer or drove him out of the city when his wrong was regarded as a sin. They slew or expelled him because otherwise the wrath of the gods would be visited upon the whole people. Over ordinary private disputes neither king nor priest, in Jhering's opinion, had originally any jurisdiction. The wronged party, or the wronged household, righted itself by self-help. If the wrong was obvious, if the right invaded was clear, self-help was regularly effective, because the wronged party had the sympathy and support of the community. Where the wrong was questionable because the right was unclear, self-help was inadequate. It was necessary, in such cases, that all doubt should be dissipated. At this point the civil jurisdiction of the king or the priest came in, but not at once, nor because of any original right of king or priest to interfere. There were various methods by which the parties settled their own disputes. One of these was arbitration ; and out of the practice of referring disputes to king or priest grew gradually the right of priest and king to exercise jurisdiction over disputants.

This last point is perhaps doubtful; but that Jhering's picture of early society is, as a whole, far truer than Maine's, will hardly

[1] Bernhöft, Staat und Recht der römischen Königszeit (Stuttgart, 1882), believes that these were patrician institutions, not originally shared by the plebeians.

be questioned by any one who has followed the later investigations in this field; and where the conjectures of the one writer or the other have been neither substantiated nor disproved, Jhering's theories seem to me to be at least better working hypotheses than Maine's.

As regards the power of the two writers to attain and formulate generalizations of the widest sort — to grasp and state the laws of legal evolution itself — Jhering was unquestionably superior. Maine's most famous single generalization, that the progress of human society is from status to contract, is but a partial expression of the rule laid down by Jhering, that law begins as a system of one-sided and unlimited powers, and gradually becomes a system of jural relations with limited powers and definite duties on each side.

Jhering's greater success in reconstructing the remote past of European civilization was partly due to the fact that early German customs were really more primitive than those indicated in the oldest literature of India. But it was also due in large part to an extraordinarily quick and sympathetic imagination. He thought himself or *felt* himself back into primitive life until it all became as real to him as the life of a little German university town in the nineteenth century under a wise and kindly bureaucracy. It may be questioned whether the earlier conditions, as they took body in his fancy, did not grow more attractive to him than those by which he was surrounded. It is certain, I think, that if he had never depicted, first to himself and then to his readers, the beauties of self-help as he did in the first volume of his *Spirit*, he would never have written the *Struggle for Law*.

In the *Spirit*, the evolution of law is regarded, primarily at least, as a psychological process. To comprehend it, the student must reconstruct for himself not merely the social environment but also the social mind of the people and period with which he is concerned. And this Jhering continually strove to do. Other students of legal history have made use of myths, language, symbols, *etc.*, to help them in the reconstruction of early institutions, but few have used these aids just as

Jhering did. He has put his method in a sentence. He declares that "the unuttered thoughts" that underlie a legal institution

> have not infrequently obtained a veiled and mysterious but pregnant expression in myths, in etymology or in symbols. *At times the genius of the people makes a confession in the dreaming state that we should never have lured from it in its waking moments.*[1]

In opposition to many legal historians, however, Jhering was not inclined to regard all legal development, even in primitive society, as an unconscious process. Even primitive men may agree, from motives of policy, to establish a novel institution or to observe a new rule. We have seen that in some matters in which Maine assumed evolution without conscious innovation, Jhering assumed changes which, if his explanation be true, must have been in large degree reflective.

It is interesting, again, to compare Jhering's explanation of early Roman institutions with those given by another brilliant and suggestive writer, Fustel de Coulanges. In *The Ancient City*, religion is treated as the creator of the whole legal order. Institutions and customs appear to be produced by religious beliefs. Now Jhering in no wise underrated, I think, the extraordinary influence of religion in early law; but to him religion was obviously a power that sanctions rather than a power that creates. Institutions come into existence, rules are established, because they are of social advantage. Once established, they come to be regarded as divine; and standing under the protection of the gods, they enjoy the tremendous sanction of religious fear. Religious ideas may easily affect the form of legal institutions, but rarely their substance. Religious ideas may modify the operation of a rule, and may often keep it alive after the social reason which justified it has ceased to exist; but religion alone has rarely created important rules of conduct, nor does religion originally endorse such rules without regard to their social utility. The gods are not so unreasonable.[2]

[1] Geist des römischen Rechts, I, 46.

[2] In his Vorgeschichte der Indoeuropäer, Jhering devoted several pages (64–71) to a criticism of the theories of Fustel de Coulanges. It is, of course, in the

In the remaining portions of the *Spirit of the Roman Law*, in which Jhering dealt with the specific national law of Rome as partially formulated in the Twelve Tables and as developed by the older Republican jurists, less use was made of the comparative method. The legal system that he most needed for purposes of comparison, the legal system that bears the closest relation in its spirit and in its methods to the Roman *ius civile*, is the English common law before it was modified by the equitable jurisdiction of the English chancellors. What little Jhering knew of this law had shown him its similarity to the Roman national law — a similarity that is less of substance than of method, and is due to the fact that the two systems represented the same stage of legal evolution. Jhering felt, and was never weary of declaring, that the hard-headed, unimaginative, technical English common-lawyers were far more like the jurists of the Roman republic than are the modern civilians of continental Europe. But he knew too little of the English law to make much use of it. When his work shall be translated into English, it is devoutly to be hoped that the translation may be made by some one familiar with English legal history, and may be copiously annotated with references to the English common law.

When the subject permitted it, however, — when, for example, he was discussing the general problems of legal equality and personal liberty, as a prelude to an examination of the solutions which these problems found in the older Roman law; and when he was considering the value of technical forms of action and rigid forms of contract *etc.*, before describing the forms of the *ius civile*, — Jhering drew constantly upon modern European law; and even in the description of the Roman institutions and forms, modern law, if not directly available for illustrative purposes, was utilized for purposes of contrast.

In speaking of Jhering's change of attitude between 1857 and 1860 — a change which he himself described as an *Um-*

family organization that the connection between religion (ancestor-worship) and law is closest; and even here, according to Jhering, "the *sacra* do not determine the constitution of the family; on the contrary, the latter determines the former."

schwung — and of his new zeal, manifested after 1860, for "practical" jurisprudence, I have already indicated, in a previous paper,[1] that Jhering's earlier work was by no means so unpractical as his own descriptions of his conversion imply. Throughout the *Spirit of the Roman Law*, from the discussion of the "physiology" of law in the first volume to the paragraphs on "juristic economy" in the last,[2] there is constant insistence upon the practical purpose and the practical operation of legal institutions and rules — upon the relation of law to life. What Professor Max Müller has said of Jhering's work in legal history is as true of the first volume of the *Spirit of the Roman Law*, published in 1852, as of the work upon the prehistoric institutions of the Indo-Europeans, published after Jhering's death.

> It was the leading principle of all his brilliant researches to discover in everything that has become formal its original substance, in what seems unmeaning its true purpose, in what is irrational its original *raison d'être*.[3]

And in the later volumes of the *Spirit* there are whole chapters, notably those upon legal forms, that might have been written for the *Teleology of Law*.

When the last installment of the *Spirit* was published, in 1865, Jhering had become engrossed in his polemic against abstract jurisprudence, and for many years he published but one other work upon legal history. This was *The Element of Fault in Roman Private Law*.[4] It is a study of the mode in which society gradually differentiates the malicious from the accidental injury, the willful invasion of a right from the honest interference of the person who believes himself to be in the right. As in the *Spirit*, the method of treatment is comparative: various systems of primitive law are examined to show that early society punishes the overt act without regard to the mental attitude of the actor. It is a study, further, of

[1] POLITICAL SCIENCE QUARTERLY, X, 687, 688.

[2] Geist des römischen Rechts, I, 48–58; IV, 236–301.

[3] *Cosmopolis*, September, 1896.

[4] Das Schuldmoment im römischen Privatrecht (1867). Reprinted in Vermischte Schriften juristischen Inhalts (1879).

the gradual elaboration and refinement, in the Roman law, of the conception of fault, down to the final differentiation of malice from negligence, and of gross from ordinary negligence. Incidentally, it is an important contribution to the history of remedies, showing the priority of actions of tort in many relations that are ultimately regarded as contractual.[1] It should be added, as a supplement, to any translation that may be made of the *Spirit*. It is, in fact, a chapter of the unfinished third part of that work.

In the *Chats of a Romanist*, published in 1880, Jhering returned, as we have already noted,[2] to the field of Roman legal history; and in his *Possessory Intention* (1889) there are two chapters, the seventh and the eighth, that are purely historical[3] and that rank with the best parts of the *Spirit*. But through all the later years of his life it was the completion of the *Teleology* rather than the continuation of his historical work that Jhering had really at heart.[4] He had undertaken, however, to write the history of the Roman law for Binding's *Systematic Handbook of German Jurisprudence*,[5] and after the completion of his *Possessory Intention* he addressed himself, at the age of seventy-one, to the fulfillment of this promise. It was his intention to begin, as in the *Spirit of the Roman Law*, with a description of the Indo-European institutions which the ancestors of the Romans brought with them into Italy, but this was to be a mere sketch, much briefer than the first book of the *Spirit*. Like every other task that Jhering took in hand, this grew rapidly to unforeseen proportions. Nearly forty years had elapsed since the first volume of the *Spirit* was written, more than twenty since the last edition of that volume was printed. Philological research had thrown much new light upon the civilization of the primitive Aryans. The common heritage of the Indo-Europeans had shrunk under investigation: the

[1] Vermischte Schriften, pp. 187 *et seq.*

[2] POLITICAL SCIENCE QUARTERLY, XI, 306, 307.

[3] *Ibid.*, pp. 285, 286.

[4] Vorgeschichte der Indoeuropäer, Vorwort des Herausgebers.

[5] "Systematic Library" would be a more descriptive title, since the plan provides for forty-seven volumes by twenty-eight different jurists.

Aryans had been thrown back upon a lower plane of social development than had been previously assigned them. Many institutions and customs that seem common to all the European members of the family were obviously developed after their separation from the original stock. What then were the conditions under which these changes were wrought — changes that have differentiated the European man from his Asiatic kinsman? Such was the question that primarily forced itself upon Jhering's mind. But then came further questions. What were the influences that differentiated the Greeks from the Romans? What were the influences that differentiated these nations from the other peoples of the European branch, and gave them a lead of more than a thousand years in the march of civilization? Was it simply the different character of the countries in which each people settled — the influence of topography, climate, *etc.?* Or was it the earlier contact of the Greeks and Italians with the civilized peoples whom they found on the other side of the Mediterranean — the Egyptians and the Phœnicians? What was the origin and what the character of the Semitic civilization? The result of all these queries, which it was impossible for a scholar of Jhering's temperament to brush aside, was, as his literary executor, Victor Ehrenberg, tells us,[1] that he devoted the last two years of his life (1890–92) to the study of the Babylonian civilization, and that the very last thing that he wrote was a criticism of Renan's explanation of the difference between the Aryan and the Semite.[2]

Of the promised history of Roman law there were found among Jhering's papers only the beginnings — an introduction on the task and method of legal historiography, and a chapter on the organization of the early Roman household. These were published under the title which Jhering had selected, *History of the Evolution of the Roman Law.*[3] In his description of the Roman household, as in all his writings upon Roman history, there is something new. In this case it is his identification of

[1] Vorgeschichte der Indoeuropäer, Vorwort des Herausgebers.
[2] *Ibid.*, pp. 288–305.
[3] Entwicklungsgeschichte des römischen Rechts (1894).

familia, in the oldest texts, with *res mancipi*, and *pecunia* with *res nec mancipi*. The introduction is of special interest: it gives Jhering's latest views not only as regards the way in which legal history should be written, but as regards the way in which law itself is evolved. Legal history, he says, should not be merely descriptive; it should not content itself with telling what happened, what changes occurred; it should discover the reason, the "why," of the facts described, and the forces that underlie and determine the changes. Nor should legal history content itself with this alone: it should show the causal relation between antecedent and subsequent facts, how changes begot other changes, — it should be a history of the evolution of law. As such, legal history has a right to exist for itself, as an independent science. It should emancipate itself from the idea of practical utility to the lawyer.

In seeking to discover the influences which make and modify law, the historian should turn his attention first to the facts of social life. He will find that all law is begotten by social necessities. These necessities are first perceived by the most enlightened members of the community, and it is through their influence upon the mass that new institutions are established, new rules recognized. Law is made, even in early society, by the conscious action of the natural leaders among men, as a path is broken through the wilderness. The line of conduct which they have laid out is followed by the mass and becomes customary, as the path opened by the pioneer becomes a trodden way.

The theory of Savigny and his followers that law is an emanation of the popular mind, an expression of the popular sense of right,[1] is no explanation of the genesis of law. It is an abandonment of the attempt to discover any explanation. Moreover, the theory has no warrant in history. The popular sense of right is not anterior to law: it is begotten of law. Even the most advanced thinkers regularly regard that which

[1] Sense of right (*Rechtsgefühl*) should not be confounded by the English reader with moral sense (*das sittliche Gefühl*). It is the sense of right in those matters with which law has to do; it is the sense of justice or of equity, the jural instinct.

is legal in their day as rightful, — Plato himself so regarded slavery, — and the masses are incapable of any other view. If at any time the popular sense of right seems to emancipate itself from law and to produce changes in the law, — which only happens when civilization and law have reached a relatively high stage of development, — what occurs is usually this: a few men, who stand above their fellows, have discerned social needs or interests to which the people are blind. These few gradually open the eyes of a majority of the people, or at least of a number sufficient to secure a change in the law; but it is not until the change has been made and the new law has long been established that the feeling of its justice becomes universal. This is the history, for example, of the abolition of slavery, of the abandonment of torture in criminal procedure, of the disappearance from the statute books of laws against witchcraft.

When this is not true, when a new sense of right appears to develop and a change of the law is demanded on grounds of right, we notice that the demand comes from a special class, — that the cause of the demand is an interest, an injury to be avoided or an advantage to be secured; and that the feeling that the demand is just is really derived from the existing law. When the peasant demanded protection against animals preserved for the chase, he asked only that the protection which the law already gave to property should not be withheld from his property. When inventors and authors demanded protection, they asked only that the right of the laborer to the product of his labor, already recognized in the case of others, should be recognized in theirs also.

If, then, the popular sense of justice is derived from the established legal order, it is absurd, Jhering argues, to make that sense the creator of the legal order.

Against the doctrine of the unconscious growth of law, I for my part assert, to express it for the nonce in all bluntness, the doctrine of its conscious making. The law is not an efflux of the sense of right, discharging its creative function naïvely under obscure impulse — that mysterious process which would cut off (and deliver the legal historian from) further investigation ; it is, on the contrary, the work

of human purpose and calculation, exerting themselves in every stage of social development to find what is suitable. The history of law is the history of human thought in reference to the practical realization of the conditions of existence of the human community. In this sense all the law on earth has been *made*, and if it seems to have grown of itself, it is because in many instances insight into the making is denied us.[1]

In examining Jhering's first historical work we noted the beginning of a reaction against Savigny's theory of the unconscious development of legal custom,[2] and here we have the opposite theory set forth, as Jhering himself says, "in all bluntness." It will be observed that there are open links in the chain of argument. We may admit that the general sense of justice is commonly in accord with the law, that a different and more advanced sense of justice is rarely to be found even among the best and wisest men, that law influences through education the sense of justice, that the child "inhales," as Jhering says, the spirit of the law; but after making all these concessions we are not obliged to admit that the sense of justice is altogether the product of the law. With an equally careful choice of illustrations it would be easy to construct an equally plausible argument for the opposite contention. The truth seems to be that the sense of justice and the law, developing side by side, exercise a reflex influence each upon the other, that each is partly the product and partly the producer of the other; and this truth Jhering himself has set forth in his *Teleology*. In the development of the sense of justice, he says, "the objective and the subjective, the internal and the external, stand in the closest relation of reflex influence, each reciprocally conditioning and furthering the other."[3]

It will be noted also that in asserting that law is not the product of the general sense of justice, but the product of social interests, Jhering has treated the latter supposition as necessarily excluding the former, and has assumed that if law be the

[1] Entwicklungsgeschichte des römischen Rechts, Einleitung, p. 28.

[2] Above, p. 27. Also in Zweck im Recht. See POLITICAL SCIENCE QUARTERLY, XI, 305, 306.

[3] Zweck im Recht, I, 379.

product of social interests it must be the product of conscious purpose, of calculation. But it is possible to maintain that the general sense of justice is itself the product of social interests, keenly felt without being consciously formulated. And in fact this is a theory of the evolution of the sense of right which Jhering himself held, and which he constantly applied both in his historical and philosophical writings. In his *Teleology* it is not only the sense of right in jural relations that is thus accounted for, but also the sense of right in matters of morality, and even the sense of propriety in social intercourse.[1]

Such self-contradictions are not infrequent with Jhering, and he himself in a characteristic passage of his *Jest and Earnest* explains and, we may almost say, justifies them:

> But, you ask, do I seriously mean this? Honestly, no. When it is a question of doing justice to the different sides of one and the same institution, it is my habit to think myself into the side which I am at the moment treating with a complete, deliberate and conscious one-sidedness — to fall in love with it, I might say, as if it were the only side worth considering. When the other sides have their turn, I act in the same way; their predecessor is then wholly forgotten, as is not uncommon when it is a question of falling in love; and so I am sure that none of them will receive less than its due.[2]

The self-imposed task which had drawn Jhering away from his promised history of Roman law, the examination of the beginnings of Indo-European and Semitic civilization, had been brought, at the moment of his death, much nearer to completion; and the *Prehistoric Development of the Indo-Europeans*,[3] which his executor published before the fragment of the *History of the Evolution of the Roman Law* was given to the world, makes a good-sized volume. The first book treats of the Aryans in their original home and of the grade of civilization which they had attained; the third, fourth and fifth books deal respectively with their exodus, their wanderings and their "second home." These books are either completed or so far

[1] POLITICAL SCIENCE QUARTERLY, XI, 291 *et seq.*
[2] Scherz und Ernst in der Jurisprudenz, p. 187.
[3] Vorgeschichte der Indoeuropäer, Leipzig, 1894.

completed as clearly to indicate the author's conclusions. The second book, which describes the civilization developed at Babylon and its transmission to the Mediterranean peoples, is also practically completed, and is nearly as long as all the others. Only the last section of this book, which was to set forth and compare the racial characteristics of the Aryans and the Semites, is unfinished. The sixth and seventh books, which were to explain the origin of and the differences between the European nations, are entirely wanting.

What are Jhering's conclusions — or hypotheses — on all these matters, and how were they reached? To me, at least, the first question is the less interesting of the two. Jhering regards the Aryans as a purely pastoral people, without knowledge of agriculture, of architecture or of the working of metals. As they were an inland people — Jhering holds to the theory that they lived on the northern slopes of the Himalayas in the modern Hindoo-Koosh — and as they were secluded by high mountain ranges from intercourse with other peoples, they were also ignorant of navigation and had developed no commerce. The Babylonians, on the other hand, had developed agriculture, architecture and manufactures some 3500 years before the Christian era. They had ships not only upon their great rivers, but on the Indian Ocean.

The Aryans had the patriarchal type of household : if at any very early period they had lived under the system of mother-right, they had outgrown it before the beginning of the migrations. They had reached no political organization higher than that of the tribe. The Babylonians, however, owing to their invention of bricks and to the consequent development of architecture and of city life, had reached a high stage of political organization.

The Aryan law was extremely rudimentary. From the juristic point of view the Aryans had no law, for with them law, morals and religion were wholly undifferentiated. The Babylonians, on the other hand, had a highly developed law, particularly as regarded commercial transactions. Of their law merchant, Jhering says:

The Babylonian legal documents enable us to construct a clear

picture of their commercial and monetary transactions. It yields in no respect to that displayed to us by the Roman law at its highest point of development in the first centuries of the Empire. I know no legal concept, no legal act of that system that does not find its counterpart among the Babylonians. In addition to those that are a matter of course, — sale, in which we find the Roman rule that the risk passes to the vendee with the conclusion of the contract, and hiring, in which subhiring also appears, and loan at interest, — there are found in the Babylonian law interest for default, conventional penalty, assignment of claims and assumption of liability, the order to pay, set-off, releases, commission on purchase, the contract of partnership, the contract recognizing debt and the abstract[1] promise to pay, suretyship and pledge, *antichresis* even and the pledging of pledges; and there occur transactions of a subtlety that would do credit to the trickiest modern usurer.[2]

Through its commerce the influence of Babylon extended eastward to India and westward to the Mediterranean. It was from Babylon that the Egyptians and the Phœnicians derived their civilization.

Increase of population drove repeated swarms of Aryans from their Asiatic home. In their wanderings they developed the type of military organization with which all the European nations started, and the military leadership which grew into the later European kingship. On the march was also developed that peculiar type of priesthood which we find in ancient Rome — priests who are experts in certain matters of especial moment to the migrating hordes. A further result of the migration was the development of monogamy. The chief result, however, was a gradual metamorphosis of racial character. Each exodus implied the selection of the most enterprising and courageous: centuries of migration secured the survival of the

[1] "Abstract," because the reason (*causa*) for the promise is disregarded and the defenses admissible in the case of ordinary contracts are excluded. The abstract contract of the Roman law was the *stipulatio*. The abstract contract of the English common law was the promise under seal. The chief abstract promises of modern law occur in the case of negotiable instruments.

[2] Vorgeschichte der Indoeuropäer, pp. 257, 258. Jhering also ascribes to the Babylonians the invention of *foenus nauticum*, the maritime loan ("bottomry bond") in which the claim of the lender perishes with the ship, and in which the rate of interest is correspondingly high (*pretium periculi*). — *Ibid.*, pp. 242 *et seq.*

fittest, and transformed the indolent and unpractical Aryan into the energetic and matter-of-fact European.

The repeated migrations left no Aryans between the original home and the plains of modern Russia. If any tarried, they were unable to maintain themselves. The first resting-place, the "second home" of the wanderers, was in southern Russia and Bessarabia. Here they lived for centuries, and here they learned from the earlier inhabitants the art of tilling the soil. The conquered aborigines were not reduced to slavery; serfdom was invented. The use of manure was not yet known, and therefore in the course of centuries new exoduses became necessary. Then the work of natural selection began afresh, with the result of differentiating Greeks, Latins, Celts, Germans, *etc.*, from the Slavs, who remained in the "second home," and of whom, as compared with the other European nations, Jhering had a very poor opinion. What were the influences that differentiated these other European nations, was to have been set forth in the unwritten sixth book. We have hints that the explanation was to have been found partly in the position, soil and climate of their final abodes, partly in their earlier or later contact with the Semitic civilization of the Mediterranean. It was Jhering's theory that all differences in national type are due, in the last analysis, to external conditions and influences. This he termed the theory of "historical causality."

What are the data on which Jhering based this daring reconstruction of the forgotten beginnings of civilization? As regards Babylon, we have the bricks with their inscriptions.[1] In that city the brick took the place of wood, metal, parchment or papyrus as writing material. Myths, legends and history were made eternal by fire; contracts were made binding by burning them. The permanence and the comparative worthlessness of the material have preserved the inscriptions. These Jhering used with a certain independence. He could not control the translations given by the Assyriologists, but he could interpret them. A historical document is open to the interpretation of

[1] The collection of which Jhering makes most use is that of Oppert et Ménant, Documents juridiques de l'Assyrie et de Chaldée (Paris, 1877).

every historian. A legal document is more easily interpreted by a jurist than by a philologist; and if the jurist be also a legal historian, familiar with the various stages of legal evolution, his interpretation carries greater weight than that of the philologist. But Jhering went behind the Babylonian civilization at the period of the inscriptions, and endeavored to explain its genesis. His starting-point was the character of the country. Its great alluvial plains were destitute of stone and scantly furnished with wood. The Aryans, who had plenty of wood, never got beyond it. With the Babylonians, necessity was the mother of an all-important invention, that of the brick. The great navigable rivers led to another invention, that of the ship. From the brick and the ship Jhering deduced the entire Babylonian civilization. His construction is, of course, wholly hypothetical. His hypotheses are sometimes fanciful, usually plausible, often almost convincing. In every case he ended by convincing himself at least. It may have been so; it must have been so; it was so — is a sequence that fairly represents his mental process. That it all was as he had pictured it, he was at the last so thoroughly assured as to declare that Babylonian history — by which term he designated his own hypothetical reconstruction of that history — was of especial interest and value because it so perfectly exemplified the theory of "historical causality,"[1] — this theory being the initial hypothesis upon which the whole reconstruction was based.

In the rest of his journey into *Vorgeschichte* — in visiting the first and second homes of the ancestors of the Europeans and in following their migrations — Jhering has nothing beneath his feet that is nearly so solid as the bricks of Babylon. The data are words, symbols, rites, customs, institutions; the evidence, as lawyers say, is circumstantial, that is, the proof is inferential. As in the *Spirit of the Roman Law*, he utilizes the results attained by the philologists; and Professor Max Müller tells us that the authorities upon which Jhering has chiefly relied are good authorities.[2] As in the *Spirit*, he has

[1] Vorgeschichte der Indoeuropäer, pp. 270, 271.

[2] Article cited above (*Cosmopolis*, September, 1896).

utilized institutional material to corroborate, interpret, qualify and supplement the material furnished by the philologists. He has made far more use than in the earlier work of religious institutions, rites and symbols. A large part of the book is devoted to a study of Roman religious antiquities, in which he finds reminiscences of the exodus from the Asiatic home and reproductions of the customs of the migratory period. In none of his writings has he made more fascinating use of the historical imagination than in his explanation of the *ver sacrum*,[1] of the priestly colleges and of the auspices.[2] He explains what seems inexplicable; he accounts for things that all other students of Roman antiquities have dismissed as irrational superstitions; and as he accounts for them, they become in their origin completely rational.

Far more clearly than in his earlier books is here revealed his theory of the relation of religion to custom. Religious faith does not create customs: these are originally expressions of social utilities. But old customs become hallowed by time, and they are preserved as religious observances long after their reason for existence has disappeared. They are "superstitions" in what is perhaps the strict etymological meaning of the word, that is, things left over. For the historian of civilization religious forms have thus the same worth that fossils possess for the biologist.

Whatever opinion be held of the value of Jhering's *Indo-Europeans*, no one will deny that it is an extraordinary work for a septuagenarian to conceive and so nearly to execute. That a man of so advanced an age should have attacked such problems, that he should have brought to their solution such quickness and fecundity of imagination, that, at the very last, he should have thrown himself with such energy into a field of investigation so remote from all his previous studies as Assyriology — all this bears witness to an exceptional intellectual vitality. Jhering was of those whom the gods love, for, though full of years, he yet died young.

[1] Vorgeschichte der Indoeuropäer, pp. 309 *et seq.*
[2] *Ibid.*, pp. 425 *et seq.*

In our review of Jhering's life work we have seen him dropping one task after another, and leaving each unfinished; hurrying from legal history into legal philosophy, and from legal philosophy into sociology; taking up legal history again at the close of his life, only again to abandon it and to devote his last energies to the history of civilization. And yet there was a single impulse behind all his efforts and a continuity in all his work. What interested him above all things, what occupied him always, from whatever side the problem was approached, was the evolution of law as an integral part of civilization. And his work is in no proper sense unfinished; he has found a solution for his problem; law is explained from its crudest beginnings to its latest and most refined development as the expression of social utilities. The thought is, for our time, one of fundamental importance. Developed as Jhering developed it, particularly in his *Teleology*, it contains the corrective for the aberrations of socialistic theory; for it derives from socialistic premises the justification of individualism.

VII.

The legal reader (if any legal reader has had the patience to follow me thus far) may begin to wonder whether, in Germany, jurisprudence means simply legal history and legal philosophy; and whether, because of the national yearning to get to the bottom of every subject, however abysmal its depths may be, the tendency of German legal history and philosophy is to eliminate the legal element and to become mere subdivisions of universal history and of pure philosophy. If any such impression has been created, it is doubtless because, in these essays, I have thus far emphasized the more general tendencies of German legal science, and have dwelt especially upon that side of the work of our four jurists which seems to me of most general interest. It is of Jhering, too, that I have thus far had most to say; and Jhering made more frequent and more extended excursions into neighboring fields than any of his fellow jurists. Jhering himself, however, was primarily a jurist, and devoted

the greater part of his restless energy to labors which even an American lawyer would recognize as legal. The work of Windscheid and of Bruns was wholly legal. That of Gneist, as we shall see, was partly political, but in the main legal. All these men — apart from their work as instructors, of which I shall speak later — made important contributions to the better comprehension of existing law, and each of them influenced, in greater or less measure, the development of the new law which German imperial legislation has produced during the past thirty years.

To vindicate Jhering's character as a practical lawyer, it should first be noted that he was consulted in sundry cases of great importance, and wrote admirable opinions.[1] His *Year Books* were established for the scientific discussion of modern legal problems; and to this journal, during the thirty-five years of his editorship, he made constant and important contributions. In its pages first appeared, as we have already noted, his treatise on the protection of possession. Among the topics that he discussed were *periculum rei* in sale, joint obligations, limitations on property rights in the interest of neighbors, and protection against the malicious invasion of rights — all of them sufficiently practical themes. These and other contributions to the *Year Books* are reprinted in his three volumes of *Collected Essays*.

In these essays it was his constant effort to find the principles that underlie the positive rules of the law. In the heat of the battle against abstract jurisprudence he often spoke as if principles were the bane of the law; and at the close of his life, in the introduction to his unfinished *History of the Evolution of the Roman Law*, he wrote:

> A rude age has one priceless advantage over an age of higher development: *it is not yet acquainted with any principles.*[2]

But in this instance, as in so many others, Jhering's utterances must be read in the light of his immediate purpose.

[1] Some of the more important will be found in his Vermischte Schriften (1879) and Gesammelte Aufsätze (1881–86).

[2] Entwicklungsgeschichte des römischen Rechts, p. 17. The italics are Jhering's.

Like all good preachers, he had most to say about the sins to which his hearers were prone, and to enhance their blackness he was capable of blanching those opposite sins to which they had no leaning. Had he lived in a land where the average lawyer cared only for the rule, and not for the reason; where fictions and presumptions were commonly accepted as final legal truths and estoppel stopped all scientific inquiry, he would have denounced such disregard of principles as vehemently as he denounced the ideolatry of the Germans. In his *Possessory Intention* he remarks that "the nature of the case is invoked only by him who does not really know how to justify his views";[1] and in another passage he declares that the establishment of a legal presumption, in order to escape the objectionable results of a recognized principle,

> is, in my eyes, simply escaping from an *impasse* into which we have strayed by our own fault by climbing over roofs or walls. When we find ourselves in an *impasse*, it proves that we have missed the right road, and the moral is that we must turn back and try to find it.[2]

Jhering's real quarrel was with that purely deductive jurisprudence which treats as absolute and final truths the principles heretofore commonly recognized. "Principles," he said, "are not written in the stars, nor have they fallen from the skies; man makes them for himself."[3] If they do not correspond to the existing rules of positive law, or if rules deduced from them do not subserve the interests of society, the principles, he held, must be remade; and Jhering was in no wise disposed to shirk this task. Among his contributions to constructive jurisprudence, that which has obtained most general recognition is his theory of the "negative interest of contract."[4]

The problem is this: A person supposes, and under the circumstances is entitled to suppose, that he has a contract. Under this supposition he incurs expenses, or he neglects or refuses to make another contract, and in consequence of this

[1] Besitzwille, p. 206, note. [2] *Ibid.*, pp. 17, 18. [3] *Ibid.*, p. 504.

[4] Culpa in contrahendo, oder Schadensersatz bei nichtigen oder nicht zur Perfektion gelangten Verträgen. — *Jahrbücher für die Dogmatik*, IV, 1–112. The essay is reprinted in Gesammelte Aufsätze.

neglect or refusal he suffers loss or lets an assured profit escape him. It turns out that, owing to circumstances for which he is in no wise responsible, of which he was not aware and could not be expected to be aware, he has no contract. What remedy can the law give him?

The problem arises, as Jhering pointed out, in many different classes of cases. The contract may be invalid because the other party is by law incapable of binding himself. It may be invalid because the thing which the other party has undertaken to do is impossible. Or it may be that the other party to the contract has made a mistake such as the law permits him to plead — a mistake that is excusable and of such importance that but for the mistake he would not have made the declaration, whether of offer or acceptance, which he has made. Or a mistake has occurred in the transmission of the declaration, whether by messenger or by telegraph.[1] In some of these cases[2] the Roman law treats the contract as void, while the English law makes it voidable only; but under either view the party who has taken at its face value the declaration made or sent to him, who was justified in so taking it, and who has suffered damage by reason of his confidence, seems to have no remedy on the contract.

Has he any other remedy? In one case he undoubtedly has, namely, in the case of fraud or misrepresentation on the part of his antagonist. If, however, no fraud or misrepresentation can be shown, — and in some of the cases above set forth this is excluded by hypothesis, — the dominant German theory, before Jhering's essay was published, gave him no claim for damages.[3] In some modern decisions, however, and in some of the modern codes, Jhering found a claim for damages sporadi-

[1] In the case of telegraphic mistakes the German jurists are forced to decide whether the resultant damage shall fall upon the sender or the addressee, because the telegraphs are governmental, and the government will not pay.

[2] Other cases discussed by Jhering are here omitted, either because they are peculiar to the Roman law, or because they are of minor importance.

[3] After Jhering had elaborated his theory, he discovered that it had been substantially anticipated by Richelmann, Der Einfluss des Irrthums auf Verträge (Hanover, 1837). Richelmann, however, had not so presented it as to make any impression on his contemporaries.

cally recognized — recognized, that is, in some of the cases in which he believed it should be recognized. Damages, when allowed, were sometimes measured by the interest which the party had in securing the performance of the contract. This, Jhering maintained, was going too far. In other cases only such damages were allowed as the party suffered by reason of his justifiable belief that he had a contract. This Jhering declared to be the correct solution. The party in question should have no claim either for the performance of the contract or for damages for non-performance; for to allow either claim would be to recognize the invalid contract as valid. What should be accorded him is a claim to be put in as good a position as if he had never been led to suppose that he had a contract. This, as contrasted with the "positive interest" in performance, Jhering termed "negative interest." [1]

In one class of cases Jhering was able to show that this claim for negative interest was recognized by the Roman jurists, namely, in cases where a contract of sale was void because its performance was objectively impossible. Where, for example, a person unwittingly bought land that was sacred, or religious, or the property of the people, Modestinus declared that "although the purchase does not hold, yet the purchaser will have an action on the purchase against the vendor to recover damages for being misled"—"*quod interfuit eius ne deciperetur.*" [2]

Neither in the *Digest*, nor in the modern codes in which Jhering found the rule for which he is pleading practically recognized, was the reason for the rule set forth; nor did he find it satisfactorily enunciated in any of the modern decisions. According to his theory, the claim for negative interest is based upon the negligence (*culpa*) of the antagonist. In the cases mentioned in the *Digest*, as he urges,

[1] "Interest"—*quod actoris interest*, the difference it makes to the plaintiff — is the older European term for damages, including both *damnum emergens*, positive loss, and *lucrum cessans*, failure to gain. In the French law we have the phrase *dommages-intérêts*. In the new German code, *Interesse* designates the measure of damages; damages recovered are *Schadensersatz*.

[2] Digest, 18, 1, fr. 62, § 1. *Cf.* Inst. 3, 23, § 5. See also Digest, 11, 7, fr. 8, § 1, and 18, 4, frs. 8, 9. The passages cited, as Jhering shows, cannot be explained on the supposition that the vendor knew and concealed the impossibility.

the vendor contracts without being personally able to furnish the requisites of the validity of the contract, and through the false semblance of contract he misleads the other party.[1]

It is true that there is usually, at Roman as at English law, no liability for negligence except in contractual relations. The contractual duty to exercise proper care does not, however, begin with the *conclusion*, but with the *concluding* of the contract. In contracting,

the first and most general obligation assumed is this: to exercise in the act of contracting itself the requisite *diligentia*. Not merely existing contractual relations, but such also as are coming into existence, must be brought under the protection of the rules regarding negligence.[2]

This point of view gave the essay its title, "*Culpa in contrahendo*." In the essay itself, however, there are indications that this construction was not wholly satisfactory to its author. In some of the cases in which he desired to hold a party liable for negative interest, it is impossible to show any real negligence; and Jhering, admitting this, fell back upon a presumption of negligence.[3] This, according to his own declaration,[4] is tantamount to abandoning the search for "the right road."

That he should have clung to this theory is the more singular because in other passages of the original essay he clearly develops a different and more tenable construction. He tells us that the party to whom an apparently good declaration comes should not be required, in order to protect himself,

to exact an express warranty of the absence of negligence or, more particularly, of the existence of the legal requisites of contract. The law can and should spare him this trouble by reading into the act of contracting itself *the tacit assumption of such a warranty* [*die stillschweigende Uebernahme dieser Garantie*]. In extra-contractual relations no one can demand from another the warranty of the trustworthiness and truth of his utterances and communications. . . . In contractual intercourse, on the contrary, in which just these utterances are intended to acquire binding force, he can look to the other party to determine whether they are well founded; he himself, as a

[1] *Jahrbücher für Dogmatik*, IV, 41
[2] *Ibid.*, p. 42.
[3] *Ibid.*, p. 36.
[4] *Supra*, p. 43.

rule, is not in a position to make any such investigation. In concluding the contract with him, the other party *warrants* [*garantirt*] to him the satisfactory result of such an investigation. . . . Whether he assures him in words or by his act that he is in a position to conclude this particular contract, can make no difference: *this assurance* [*Versicherung*] *lies in the act of contracting itself.*[1]

Jhering's rule of negative interest has found very general acceptance,[2] both among German writers and in German legislation. It has found a place in almost every compendium of modern Roman law. The new German civil code recognizes it in the cases where contracts are voidable because of the mistake of the other party or because of mistake in the transmission of a declaration, and in the cases where contracts are void because their object is impossible or illegal.[3] Many of his colleagues,

[1] *Jahrbücher*, *loc. cit.*, pp. 42, 43. The italics are mine.

[2] Except in the case where the invalidity of the contract is due to the lack of capacity of the other party. Jhering himself was not quite sure of this case. — *Ibid.*, pp. 57 *et seq.*

[3] The German code also recognizes the negative interest of contract in one case in which Jhering declared that it should not be recognized. § 93 reads: "A declaration not seriously intended, which is made in the expectation that the lack of serious intention will not fail to be perceived, is void;" and § 97 gives to the other party, if he failed to perceive, and under the circumstances could not be expected to perceive, the lack of serious intention, a claim for negative interest. Jhering, in his essay (p. 74), took the very sensible ground that when a declaration is made jocosely, the joke, under the circumstances, must either be one that other persons are bound to see, or one that they are not bound to see. In the former case, no one ought to have any claim, even for negative interest; in the latter case, the joker should not be allowed to plead his humorous intention.

The sections of the code which refer to negative interest are the following:

"§ 97. If a declaration of will is null according to § 93 [lack of serious intention], or is avoided on the basis of §§ 94, 95 [mistake as to the content of the declaration, absence of intention to make a declaration of such content, mistake as to essential qualities of the person or the thing, mistake in the transmission of a declaration], he who made the declaration is liable, in case it was addressed to a particular person, to this person, in other cases to every third person, for the damages which such person suffers by reason of his reliance on the validity of the declaration; but not beyond the amount of the interest which such person has in the validity of the declaration.

"The liability for damages does not arise if the person who suffers damage knew the cause of the nullity or voidability, or failed to know it in consequence of negligence (was bound to know it). In the case of § 95, the liability for damages is also excluded if the incorrectness of the transmission is owing to an unavoidable cause [*höhere Gewalt*]."

however, have chosen to base the rule on the theory of implied warranty, and not on the theory of *culpa in contrahendo*.[1] In Jhering's view the action for negative interest is contractual; the contract, though invalid for every other purpose, is upheld for this.[2] On the theory of implied warranty, the action is not on the contract, but on the separate warranty involved in the act of contracting.

Another portion of the new civil code reveals the influence of Jhering's theories. The first draft of that code appeared in 1888, while he was writing his *Possessory Intention*, and he subjected the section on possession (§§ 797–825) to a searching criticism.[3] The codifiers had maintained, formally at least, the Roman distinction between purely physical control or detention (*Inhabung*) and possession (*Besitz*); and in accordance with

"§ 259. A contract looking to an impossible performance is null.

"If in concluding the contract the one party knew or was bound to know the impossibility of performance, he is liable for the damages which the other party suffers by reason of his reliance on the validity of the contract, but not beyond the amount of the interest which such party has in the validity of the contract. The liability for damages does not arise if the other party knew or was bound to know the impossibility.

"The provisions of clause 2 will have suitable application in case the promised performance is only partially impossible, and the contract is valid as regards its possible part, or in case one of several performances alternatively [*wahlweise*] promised is impossible."

"§ 261. If a contract is in conflict with a legal prohibition, the provisions of § 259, clauses 2, 3, . . . will have suitable application."

The limitation, in the above paragraphs, of the negative interest to the amount that might be claimed, were the contract valid, for its non-performance, is reasonable and necessary. Suppose, for example, that a vendor, thinking himself bound, refuses a better offer; is he to claim the profit which the acceptance of such offer would have given him? Without the limitation in the above paragraphs he would be entitled to do so.

The above citations are from the revised draft — Entwurf, Zweite Lesung. The text of the code as adopted is not before me, but it is understood that few changes were made.

[1] *Cf.* Windscheid, Pandekten, II, § 307, n. 5. *Contra* Vangerow, Pandekten, I, § 109, and Dernburg, Pandekten, II, § 10, n. 10, who are satisfied with the theory of negligence. In the first draft of the German civil code, §§ 97, 345, liability was expressly based on negligence (*Fahrlässigkeit*), but this is not the case in § 97 of the revised draft, cited above.

[2] This appears to have been the view taken by Modestinus, in Dig. 18, 1, fr. 62, § 1, *ex empto experietur;* but compare Ulpian's *quasi ex empto*, Dig. 11, 7, fr. 8, § 1.

[3] Besitzwille, ch. xix, pp. 470–534.

the dominant theory,[1] the distinctive element in possession was declared to be "the intention of the holder to hold the thing as his own." Possession was therefore excluded, and only detention recognized, in three cases: (1) Where one cannot hold the thing as his own, because it is incapable of being owned; (2) Where one cannot hold the thing as his own, because it is a part of another thing and incapable of separate ownership; and (3) Where the thing is held for another. With the first of these cases Jhering made merry:

> Things in which no ownership is possible — of what things are we here to think? I know of none, and I have sought in vain for any in the motives accompanying the draft. For the Roman law, the rule, . . . where there is no ownership, there there is no possession, had practical reality, for the Romans recognized things in which ownership was not possible (*res extra commercium*); but what has the rule to do with us? It might be reversed without making the least difference. The Roman category is retained, but there is nothing to put in it. It is an empty druggist's jar, left standing after a change in the official pharmacopœia, although the article for which the label calls is no longer kept in stock.[2]

As regards the second and third cases Jhering pointed out that, according to §§ 814 *et seq.* of the draft, the detentor was to have all the rights of a possessor except as against the possessor of the entire thing (*e.g.*, a building) of which he holds a part (*e.g.*, a suite of rooms), or the possessor for whom and in whose name he holds. Why then, Jhering urged, is he not called possessor? Why keep up the distinction of names when the possessor and the detentor have been substantially assimilated?

In the second draft this suggestion was followed. The detentor (*Inhaber*) has disappeared, and with him has disappeared the requirement of the *animus rem sibi habendi* for the possessor (*Besitzer*). Of the Roman possessor but one trace is left. The last paragraph of the section (§ 793) declares that "he who possesses a thing as belonging to him, is *Eigenbesitzer*." This old friend with a new face, who thus makes his

[1] POLITICAL SCIENCE QUARTERLY, XI, 282, 283, 285.

[2] Besitzwille, pp. 472, 473.

entrance just as the curtain drops upon possession, reappears later when the stage is set for prescription ; and in this scene he plays the leading part.

Another and more practical criticism upon this section of the code turned upon the protection which it gave to the detentor who holds for another against the person for whom he holds. He was authorized to meet arbitrary disturbance or an attempted ouster with force. He was authorized, if forcibly deprived of a movable, to employ force for its immediate recovery ; if forcibly ejected from real property or ousted in his absence, to resume control by force (§ 815). This protection, said Jhering, is all very well in the case of the person who has borrowed or hired from me a horse, or has leased from me a house or an apartment ; but how about household servants and other employees ? How about agents ? If I wish to turn my butler out of the room he occupies in my house, or if I wish to prevent a messenger whom I have hired from making off with a parcel instead of delivering it, must I appeal to the courts ? If I lend an opera glass to a person sitting by me in the theatre, and he refuses to give it back, may I not take it ? And if I take it from him by force, is he to be permitted to use force for its immediate recovery ? [1]

Here again the second draft puts things straight. After defining possession as "actual power" (*thatsächliche Gewalt*) over the thing, without any allusion to the intention with which this power is exercised, the code continues :

§ 778. If any one exercises the actual power over a thing for another person in that person's household or business affairs, or in any other relation by virtue of which he has to follow that person's instructions in reference to the thing, that person only is possessor.

Here then the Roman "natural possession" reappears, and in very much the same relations in which Jhering asserted, by virtue of his reconstructive imagination, that it originated.[2] This natural possessor of § 778 has only those natural rights of self-defense and self-help which are requisite to protect the

[1] Besitzwille, pp. 503 *et seq.*

[2] *Ibid.*, ch. viii. *Cf.* POLITICAL SCIENCE QUARTERLY, XI, 285, 286.

property entrusted to him against third persons (§ 782). On the other hand, all those who hold for or in the name of another, but in relations other than those indicated in § 778, are possessors, with full possessory rights even against those for whom or in whose names they hold. If they are to be deprived of possession, it must be by process of law. In this class we find, as at Roman law, the usufructuary and the pledgee, and also the lessee, to whom the Roman law was so unfair (§ 790).[1]

Considering the attention which German writers have devoted to this subject,[2] and the care with which the first draft of the code was worked out, the section on possession was surprisingly bad. In the second draft, the same section is admirable, both in substance and in expression. The credit for the improvement is largely due to Jhering.[3]

Windscheid's chief contributions to constructive jurisprudence were his theories of the "claim" and of the "presupposition." Claim (*Anspruch*) he defined as the personal incidence of the right.[4] Real rights, that is, rights in things, are, he explained, primarily powers over the things themselves; but they have personal incidence also. They run against every one, carrying with them a claim for non-interference. When a claim of this character is infringed, when some one interferes with the dominion of him to whom the right pertains, the claim assumes the form of a right of action. Personal rights, on the other hand, have for their primary

[1] Those also for whom possession is held have possessory rights against third persons: they have "mediate" or constructive possession.

[2] *Cf.* POLITICAL SCIENCE QUARTERLY, XI, 278.

[3] Credit for inducing a more practical consideration of the whole subject is also due to Count Piniński, Der Thatbestand des Sachbesitzerwerbs (Leipzig, 1885). Great credit — as much, perhaps, as can be claimed for Jhering — is due, as regards the improvement of the section in the code, to Gierke, who had anticipated in Schmoller's *Jahrbuch für Gesetzgebung, etc.*, XII, 3, pp. 74 *et seq.*, many of Jhering's criticisms. Credit is doubtless due to others; but when there was such a deluge of criticism as was poured upon every part of the first draft, it is not possible to do justice to all the critics.

[4] "Die persönliche Richtung des Rechts." — Die Actio des römischen Civilrechts vom Standpunkte des heutigen Rechts (Düsseldorf, 1856). See also Pandekten, I, § 43.

object the acts or forbearances of particular persons. They exist only in their personal incidence : they are simply claims. If what is claimed be an act, the claim is, from the start, a right of action. If what is claimed be a forbearance, there is no right of action until he whose duty it is to forbear violates this duty.

The Romans used the word *actio* to describe, not merely the appeal to the courts, nor merely the power of appealing to the courts, but the right itself in its personal incidence. They often used *actio* and *ius* as equivalent terms. The distinction between actions *in personam* and actions *in rem* is really a distinction between personal and real rights according to their primary or immediate incidence. In the concrete sense all actions are against persons. Windscheid found in German law no term to express the personal incidence of the right, whether immediate or mediate, and he proposed to use *Anspruch* in this sense.

So far the matter is one of terminology merely, but Windscheid went further. Because of failure to discriminate between the different meanings of *actio*, courts and legislatures, he maintained, have come to treat as merely procedural, as connected with remedial law only, rules and institutions that in reality belong to substantive law. The most important case of this sort is the *praescriptio temporis* in its application to actions. According to Windscheid, it is not the suit merely, but the claim, that is prescribed ; and the whole subject should be treated under the caption "prescription of claims," not under that of "prescription of suits." According to his construction, prescription begins to run as soon as the claim exists and is "unsatisfied." Prescription is interrupted, not only by bringing suit, but by any distinct exercise of the right against the person of incidence. The prescription of the "real claim" (*actio in rem*) leaves the right intact, because the prescribed claim is but an expression or manifestation of the right; but the prescription of a personal claim (*actio in personam*) destroys the right, because the right is nothing but claim. To translate this latter conclusion into the terms of English law : the

limitation of an action for the recovery of debt, or of an action for damages for breach of contract, does not merely bar the remedy, but destroys the right.

Windscheid's theory has not obtained general or unqualified acceptance among his colleagues. Brinz[1] declared that he could not think of a claim without a particular person against whom the claim was directed. Thon[2] pronounced the theory of a claim against the world to be as idle as it is misleading. Their criticism touches Windscheid's "real claim" which runs against everybody, and is, I think, sound. According to Windscheid's own definition no "real claim" should be recognized until the right has found a really personal incidence. It is, however, mere juggling with words to say in the same breath that my right to be paid one hundred dollars on B's note has "personal incidence" against B, and that my right to the control and enjoyment of my back yard in New York has "personal incidence" against every citizen of the United States. Accordingly, the majority of the German jurists who have accepted Windscheid's word, give to the *Anspruch* a narrower and more definite meaning, and recognize no "real claim" except against the person who has interfered with the control and enjoyment of the thing.[3] Thus construed, the "claim" becomes practically equivalent to the English "right of action" in its broader sense.[4]

Windscheid's conclusions touching prescription of actions are unaffected by this question of the construction of his own definition. In fact, they harmonize better with the construction which makes his claim equivalent to the English right of action than with his own construction; for his "real claim" is not subject to prescription until it is "unsatisfied," and it

[1] Pandekten, I, 252; cited by Dernburg, Pandekten, I, § 39, n. 5.

[2] Rechtsnorm, p. 159; cited by Dernburg, *Ibid.*

[3] Windscheid himself is inconsistent in his own construction. If the "claim" of an owner for forbearance runs against all the world, and if limitation of the action is destruction of the "claim," then the limitation of an action on trespass extinguishes the owner's claim against all the world, and he can bring no action on anybody's trespass.

[4] For a criticism of Windscheid's theory on other grounds, see Jhering, Besitzwille, p. 520, and Dernburg, Pandekten, I, § 39 *in fine* (pp. 87, 88).

is perfectly satisfied so long as there is no interference with the substantive right. As soon as this interference comes, however, there is a right of action. His theory of limitation may accordingly be stated as follows: It is not actions that are limited, but rights of action. If the English courts accepted this theory, they would be obliged to hold, as he does, that when an action for the recovery of debt is barred, the debt is extinguished. Their contrary decisions are based upon the theory that statutes of limitation operate only as a bar to suits. In this matter, again, there is, among German jurists, no general and complete acceptance of Windscheid's views.[1]

In the new German code the term *Anspruch* is very freely used. It is defined in § 161 as "the right to require from another an act or forbearance" — "*ein Thun oder Unterlassen.*" It is everywhere employed in this broad sense: it is practically the substantive form of the verb "require" (*verlangen*). In the law of things it is not always a claim against a particular person.[2] In the law of obligations it plays a subsidiary part: the primary claim is termed *Forderung*, while other claims are commonly described as *Ansprüche*. *Forderung* is clearly a species of the genus *Anspruch*.[3] The section on prescription[4] speaks throughout of the prescription of *Ansprüche;* the German word for action, *Klage*, occurs only in the paragraphs relating to the interruption of prescription by bringing suit. The whole section is drafted in substantial harmony with Windscheid's theory.

In his doctrine of "presupposition"[5] Windscheid endeavored to show that several distinct institutions of the Roman law were merely different expressions of one idea, and that numerous rules, not previously brought into relation with each other, were all corollaries of one general principle. The character and range of these rules may be indicated by a few examples. A man buys a brass vase supposing it to be of gold, or clothes

[1] See Dernburg, Pandekten, I, § 145, pp. 335, 336; § 150, p. 346.

[2] See §§ 803 *et seq.*

[3] So Windscheid, Pandekten, II, § 250.

[4] Verjährung, §§ 161–190.

[5] Die Lehre des römischen Rechts von der Voraussetzung (Düsseldorf, 1850), and Pandekten, I, §§ 97–100; II, § 423; III, §§ 556, 636.

that have been renovated, supposing them to be new; the vendor labors under the same mistake; the sale may be rescinded, or the difference in value recovered.[1] A testator has named as his heir a person whom he supposed to be his son; it is shown that this person is not his son; the testament may be overturned.[2] A person has paid what he supposed to be money owed; it turns out that nothing was owed, or not so much; he recovers the money paid, or the excess, with the *condictio indebiti*.[3] A person has paid money which he supposes that he will owe; and it turns out that he does not owe it — *e.g.*, he has paid rent in advance, and the house he has leased burns down; he recovers the money.[4] A person pays money that a slave may be manumitted; the slave is not freed; he recovers on the *condictio ob causam dati*.[5] A man gives presents to the girl to whom he is betrothed; the engagement is broken by her or her parents; he recovers the presents on the *condictio ob causam dati*.[6] A testator makes a bequest of land to a municipality, with the request that the annual income be expended upon public games; no games are celebrated for four consecutive years; the testator's heirs can recover the mesne profits.[7] In cases analogous to this last, the Roman jurists also recognized a right to obtain performance. They held that a legacy with such a charge annexed could be held back until the legatee gave security for performance of the charge; and that, where a gift was made *inter vivos* with such a charge annexed, the donor or his heir could sue for its fulfillment.

According to Windscheid, the principle that underlies these and other analogous cases is as follows: He who has made a declaration of will (done a legal act)[8] in the belief that a certain state of things, actual or legal, existed in the past or exists in the present, or in the expectation that a certain state of things,

[1] *Dig.*, 18, 1, fr. 45. As to the question of a warranty, see Windscheid, Voraussetzung, p. 116. He assumes that there was no warranty.

[2] Cod., 6, 23, c. 5; *Dig.*, 37, 10, fr. 1, § 11.

[3] *Dig.*, 12, 6 *passim*.

[4] *Dig.*, 19, 2, fr. 19, § 6.

[5] *Dig.*, 12, 4, fr. 3, § 2.

[6] Cod., 5, 3, c. 15.

[7] *Dig.*, 33, 2, fr. 17.

[8] This and the following parentheses are inserted to aid the English reader in translating Windscheid's formula from the realm of will to the realm of its external manifestation in conduct, with which alone the law has to do.

actual or legal, will exist in the future, and who would not have willed (acted) as he did but for such belief or expectation, has willed (acted) under a "presupposition," and has imposed upon the operation of his will (act) a limitation that is analogous to a condition.[1] The presupposition is "an undeveloped condition." In case of the failure of the presupposition — in case the belief was erroneous; in case the assumption, although originally correct, becomes incorrect; in case the expectation is not realized — the person who has assumed obligation has a defense, and the person who has parted with anything has an action for recovery; or if the person is dead, the same defense and the same action pertain to his representative (heir or executor). If the presupposition was that the party benefited by the act was to do anything, there is also a claim for specific performance. In the case of acts *mortis causa*, the above rules are unqualified. In the case of acts *inter vivos*, they obtain only when the presupposition was indicated, expressly or by implication, to the other party — only when, in other words, he perceived or should have perceived that the act would not have been done but for the belief or expectation in which it was done.

On its face this construction has merits. The separate doctrines of mistake in motive[2] and of charge (*modus*), and at least a large part of the doctrine of unjust enrichment, are brought under one cover. On more careful examination, however, the question arises whether anything is gained by this achievement. Does Windscheid's rather cumbrous theory make the application of the rules more easy? Does it make their application more certain? The Roman doctrines are clear cut; there is little difficulty in applying them. In contemplating Windscheid's doctrine, on the contrary, we are conscious of a vagueness of outline, and we are not sure how it would work out in

[1] The presupposition, according to Windscheid, may also be negative — that a certain fact or legal relation did not, does not, or will not exist.

[2] Savigny's distinction between mistake that excludes consent ("fundamental mistake," Pollock terms it) and mistake in the motive is generally accepted by German jurists, and Pollock (Principles of Contract, p. 393) pronounces it applicable to English law.

practice. If we concede its merits as a bit of legal science, can we call it a good piece of legal art?[1] On all these points there is much difference of opinion among German jurists. Not a few of Windscheid's colleagues have accepted it,[2] and it has obtained some recognition in the courts.[3] Other jurists have rejected it.[4] In the first draft of the German code it found partial recognition.[5] In the second draft it has completely vanished.

The effect produced by these special doctrines, claim and presupposition, was trifling compared with the influence which Windscheid exercised upon theory, practice and legislation at large, through his great work on *Pandects*.[6] The title, it may be well to explain, signifies a detailed presentation of the rules of modern Roman law. As the Roman law, in the absence of contrary custom or legislation, is the general law of Germany,

[1] To the distinction between the two Jhering has given classic expression. — Geist des römischen Rechts, 3d ed., part ii, div. ii, pp. 323, 324.

[2] Rudorff, Bähr, Unger, Brinz and others; cited by Windscheid, Pandekten, I, § 97, note 1.

[3] Citations from Seuffert's Archiv für Entscheidungen, in Windscheid, *Ibid.*

[4] Voigt, Die Condictiones ob Causam (1862), pp. 515–523, cited by Windscheid, *Ibid.* Dernburg, Pandekten, I, § 116, finds that really heterogeneous matters are brought by Windscheid under one category, and that his presupposition cannot take the place of the concrete and definite constructions of the Romans.

[5] In the first draft the commissioners put the *condictio ob causam* under the heading *Voraussetzung* (§§ 742 *et seq.*), and stated the rules of the Roman law in accordance with Windscheid's theory. They declared also that testamentary dispositions and inheritance contracts might be attacked because of failure of presupposition (§§ 1781 *et seq.*, 1948 *et seq.*); and they based the claim for recovery of gifts after dissolution of an engagement to marry on the presumption of a presupposition (§ 1229). In all these cases, however, they limited the term to the expectation of future events or future legal results; and in connection with the *condictio ob causam* they declined to admit recovery on the ground of an erroneous supposition as to past or present circumstances, because this would open the door to numerous attacks upon contracts because of mistake in motive (Motive zu dem Entwurfe, II, 843). In other portions of the draft, however, they used the term presupposition for a determinant supposition as to past or present circumstances: *cf.* § 290, cl. 4; § 667, cl. 2; § 684, cl. 2. In treating of *modus* or charge (*Auflage*) (§§ 448, 1757, 1886 *et seq.*), they avoided the term presupposition entirely; and in Motive, I, 249, they explained that the doctrine of presupposition as a general category of the self-limitation of the operation of legal acts was not sufficiently developed to make its employment safe (*unbedenklich*) in legislation.

[6] Lehrbuch des Pandektenrechts. Three vols., 1862–70. Seventh ed., 1891.

and as the newer codes, for the most part, are based upon Roman law, the German who lectures or writes upon Pandects lectures or writes upon the private law of Germany as a whole. The Germanist, who describes those institutions of Teutonic law that survived the reception of the Roman law and notes the modifications introduced by modern German legislation, simply adds a number of details to the picture drawn by the Pandectist.

In every German university there are regularly two Pandectists, and many of these publish their Pandects. Of all these Pandectists Windscheid was for a generation the most popular. In his lectures he counted his hearers by hundreds where the majority of his colleagues counted theirs by tens, and his book enjoyed a corresponding vogue. It was the book which must be studied, whatever other books were read or left unread. It was the *vade mecum* of the referendary and of the assessor. It was constantly cited by the advocate and consulted by the judge.

The book has, of course, striking merits, or it could have had no such success. It has proportion : the space alloted to the various subjects is determined by a sound sense of their relative importance. Each section is carefully thought out, and — a rarer excellence — the bearing of each section upon the others is thought out with equal care. Each institution is regarded in its relation to other institutions. The whole book hangs together : it is really systematic. The style is concise and clear. The vocabulary is German. Windscheid was a purist, and coined many German expressions to take the place of the customary Latin terms.

The most remarkable and most admirable part of the book is the footnotes. They constitute by far its greater part : they fill, at a rough estimate, two-thirds of the space, and contain more than four-fifths of the matter. In them, as I can testify from long use, every significant passage of the *Corpus Iuris* — every passage, at least, that has any relevancy to modern life — is somewhere cited. If there is serious doubt as to its interpretation, the doubt is noted and Windscheid's interpretation

is briefly indicated. Wherever it seems necessary, reference is made to books, brochures or articles in which the passage is more fully discussed. Modern German decisions are not neglected; they are at least more frequently cited than in any other German work of the same kind. The notes serve also as an index to the German literature, from Savigny down, including not a little of the periodical literature. They are, however, much more than an index: it is hardly saying too much to call them a digest. All important controversies are noted; the chief arguments on all sides are stated (it is a poor controversy in Germany that has only two sides); and the prevalent opinion is fairly indicated, whether it happens to be the author's opinion or not. For the German literature of the Roman law in this century — barring the purely historical writings — Windscheid has done what Accursius did for the glossators. It is no wonder that his book became a new "standard gloss" in the German administration of civil justice.

The faults of the book — the extremely abstract statement of principles and even of rules, the over-valuation of deductive results, the undue stress laid upon the psychical processes of the individual and the useless subtlety displayed in their analysis — these faults, I think, rather increased than diminished the influence of the work; for in his defects as in his excellences Windscheid fairly represented the jurisprudence of Germany in the nineteenth century. A few very practical young men, most of them Jhering's converts, accused Windscheid of being a "post-glossator," which meant that, in their opinion, he represented the scholastic tendencies of European jurisprudence in the fourteenth and fifteenth centuries; but the great majority of his contemporaries were in full sympathy with his views and methods.

The first draft of the German civil code gave striking evidence of the hold which Windscheid's *Pandects* had gained in German practice. The great majority of the commissioners were not theorists, but practitioners; not pupils of Windscheid, but his contemporaries; and yet, when the code was published in 1888, the remark that was most often heard — I speak as

a witness on the spot — was, "It is pure Windscheid."[1] In this remark there was, of course, no little exaggeration. Much that was designated as Windscheid was simply Roman; much was really Savigny-Puchta-Windscheid, or modern Romanistic theory. Uttered by a Germanist, the remark usually meant that the code contained too little German law. As the code was studied, moreover, it was found that in employing Windscheid's terms the codifiers had not always followed Windscheid's construction. But, allowing for all exaggeration, the remark remains an extraordinary tribute to Windscheid.

In the second draft the amount of pure Roman law was appreciably diminished, and the quantity of "pure Windscheid" was lessened in more than the same proportion; but in spite of these changes, the civil law of Germany will bear, possibly for centuries, as legible an impress of the labors of the Leipzig professor as that which the work of Pothier, professor at Orléans, has left upon the civil code of France.

Bruns was a less prolific writer than Jhering or Gneist, and he published no work of such importance as Windscheid's *Pandects*. His earliest and his latest writings, like Jhering's, were historical.[2] The line of research which he opened in his *Law of Possession in the Middle Ages* was carried further in an essay on prior possession[3] and in a book on *The Possessory Actions of the Roman and the Modern Law*.[4] The fact that he deplored many of the changes in the law of possession which were effected in mediæval practice, and that, like Savigny, he preferred the Roman rules, did not neutralize the weightier fact

[1] Windscheid was himself a member of the commission — one of the two "theorists" — but his direct and personal influence cannot have been decisive. Apart from the fact that he was but one among eleven, it should be noted that he was not charged with the preliminary draft of any part of the code; and that in the general discussion which continued from October, 1881, through December, 1887, Windscheid participated for the first two years only. In October, 1883, he was recalled by the Saxon government to his professorial duties at Leipzig, and was obliged to resign from the commission.

[2] He was also, for many years, an editor of the *Zeitschrift für Rechtsgeschichte*.

[3] Der ältere Besitz und das Possessorium Ordinarium, in *Jahrbuch des gemeinen deutschen Rechts*, IV, 1 (1860).

[4] Die Besitzklagen des römischen und des heutigen Rechts (1874).

that he showed these changes to be steps in a process of development and not a mere series of misconceptions. His bias did not prevent him from interpreting the Roman rules in a sense more liberal than Savigny's; nor did it prevent others from using the data furnished by him as a basis for conclusions divergent from his own. It was thus that his *Law of Possession*, as has been noted in a previous article,[1] helped to produce a reaction against Savigny's revival of pure Roman law. It should be added that the book was characterized by a freer employment of the comparative method than was at all usual in the middle of the century. In 1880, the year of Bruns's death, appeared his *Syrian-Roman Law Book of the Fifth Century*. This work was the product of philological and juristic collaboration: in the establishment of the text and in the translation Bruns obtained the assistance of Eduard Sachau. The commentary, however, in which the significance of this provincial compilation of Roman law was for the first time clearly brought out, was Bruns's own. The importance of the *Syrian Law Book* lies, as he showed, in the evidence it gives of the variety of provincial systems that existed in the Roman empire,[2] of the resistance which they oppposed to codification, and of the connection between the legislation of Justinian, in the sixth century, and the older customs.

Bruns's historical investigations, unlike Jhering's, were prosecuted solely for the purpose of making the existing law more intelligible. Legal history, in his opinion, ought to be "the handmaid of dogmatics." Like Windscheid, moreover, he devoted the greater part of his energy to the direct study of modern Roman law. Had he lived a few years longer in that vigorous health which was his till within a few days of his death, he also would have published his Pandects. He had begun the book.[3] As it is, the only permanent record of this portion of

[1] POLITICAL SCIENCE QUARTERLY, X, 681.

[2] Mitteis, Reichsrecht und Volksrecht in den östlichen Provinzen des römischen Kaiserreichs (1892), p. 30, declares that Bruns underrated the importance of the non-Roman elements in the Syrian Law Book.

[3] Degenkolb, Karl Georg Bruns (1881), p. 6.

his life-work, apart from his minor essays, is found in the article on "The Roman Law of To-day," which he contributed to Holtzendorff's *Encyclopædia of Jurisprudence;* and it is by this and the preceding article on "The History and Sources of the Roman Law"[1] that Bruns is best known to the "cultured public" of Germany — including in the phrase that class of lawyers, numerous even in Germany, who lack the time or the energy to follow such minute researches as those by which Bruns won his scientific reputation. These are not such articles as the title "encyclopædia" naturally suggests to English readers. They are of such length that, printed as we print law books, the systematic article alone would make a volume of the same size as Maine's *Ancient Law*, and the two articles, a volume nearly as large as Holland's *Jurisprudence*. They are not mere statements of the dominant views and theories: they present, in compact form, the results of original research by an investigator of exceptional insight and the conclusions of a singularly sane and well-balanced judgment. I know no better sketch of the development of Roman law than that which is given in the first of these articles. It is legal history in the strict sense, not culture history; but it is planned and written on broad lines. The second and longer article, on the modern Roman law, was greatly admired by Bruns's colleagues. Windscheid always urged his hearers to study it; Goldschmidt pronounced it "classic."[2] It is the universal side of Roman law that is emphasized throughout, and the article is more truly a book on general jurisprudence than many larger works that bear this title. I know no better exposition of private law from the Hegelian point of view.

MUNROE SMITH.

[1] Geschichte und Quellen des römischen Rechts, Encyclopädie der Rechtswissenschaft, 3d ed. (1877), pp. 77–129; Das heutige römische Recht, *Ibid.*, pp. 333–477. In later editions the historical article is revised by Professor Pernice and the systematic article by Professor Eck, both of the Berlin University.

[2] *Zeitschrift für Handelsrecht*, XXVI, 338.

THE PROCESS OF SOCIAL CHANGE.

THE phrases "natural selection," "the survival of the fittest" and "the struggle for existence," with others that come from the *Origin of Species* and the *Synthetic Philosophy*, are now applied to social phenomena and circulate very generally as descriptions of what goes on among mankind. Some people would question, however, whether they do not, as is alleged of our silver dollars, pass rather on the credit of their authors than on the value of any definite ideas commonly associated with them.

In the use of such phrases there does, indeed, appear to be a great deal of vagueness ; and it is one object of this paper to do something toward clearing it up — to find out, if possible, whether these dubious tokens are in any way exchangeable for standard coin of the realm of thought and fact. With this end in view I purpose first to inquire how far natural selection of the primary, animal sort taught by Darwin is a process of social change ; and then, if it appears that there is another process, I shall go on to consider its nature and operation. The inquiry falls conveniently into three divisions :

I. Natural selection as a process of social change.
II. Social change, proper.
III. The influence of communication upon social change.

I.

So far as concerns the different race elements in the population of the earth, the Darwinian idea of change by survival — the idea that what exists does so because it has prevailed at some time or other in a struggle for existence — is not at all a speculation, but the most verifiable thing in the world. There may be doubt about other species, but in the case of *homo* the process has gone on in the light of history and continues in full

vigor at the present time. It would be difficult to find any large region where one race, nation or tribe is not increasing in numbers at the expense of the diminution of some other. Mr. Galton finds that "there are probably hardly any spots on the earth that have not, within the last few thousand years, been tenanted by very different races";[1] and "that on the average at least three different races are to be found in every moderately sized district on the earth's surface." His impression of the races in South Africa "was one of a continual state of ferment and change, of the rapid development of some clan here and of the complete or almost complete suppression of another clan there." We are ourselves a part of this process. We are in the midst of a rapid and complicated movement of which the general direction is sufficiently clear, though the details are concealed. The European races are almost everywhere on the increase: within the present century they have nearly trebled in number, and with the Teutonic peoples in the lead, and the English at the head of these, have spread and multiplied over a great part of the earth.[2] In the United States we have seen the Indian go and the negro stay; while in our cities and our newer farming regions there is active competition among recent immigrants from all the European stocks, and between these and the descendants of immigrants of earlier date.

If the student turns, however, from the competition of races to inquire what is going on within any particular race, he does not find it so easy to learn what natural selection is doing: indeed, it is not easy to show that it is making any change that is of moment. Suppose, for example, that he were to inquire what alterations, aside from those due to intermixture with other

[1] Inquiries into Human Faculty, pp. 310 *et seq.*

[2] According to Hübner's Tables the population of Europe in 1895 was about 366 millions. In 1801 it was 175 millions. Levasseur calculates the number of Europeans out of Europe to have been 9½ millions in 1800 and 91½ in 1890. — La Population Française, vol. iii, ch. ix. Professor Brinton states that the white race two centuries ago numbered 100 millions, or about 10 per cent of the population of the earth; while at the present time the European branches alone number 500 millions, or one-third of the population of the earth. — See his Races and Peoples, page 298.

races, the English stock has undergone within historic time. To understand the nature of this question one must remember that great changes may come to pass in the institutions, manners, morals, and even in the outward appearance of a people, which do not necessarily imply that any organic change has taken place in the stock, either through natural selection or otherwise. If an English couple settles in this country, the children will contract from our climate and society peculiarities of appearance and behavior that will mark them as Americans to the eyes of all the world; but these changes have little to do with natural selection, and it is uncertain whether they can in any degree be transmitted by heredity. So, also, those transformations which make up the rise and fall of nations are chiefly, if not altogether, of the same quality. They take place far too rapidly to be due to natural selection or to any organic change in the race. Decadence seems to be a social deterioration that drags down the individual by subjecting him to unwholesome influences. Thus, there is no evidence that the Chinamen or Spaniards of to-day are congenitally much different from their ancestors in the proudest days of those nations: their degeneracy is apparently of the same character as that observed in the behavior of a group of boys who have fallen into bad ways.[1] It is a decline of tone, of *morale*, of institutions, not of natural capacity.

The decisive illustration of the possible divergence between natural selection and social change is the fact that institutions hostile to survival, like the monastic system, can spread and flourish for centuries in defiance of animal heredity.

[1] "The Spanish-American of pure white blood, whose ancestors have lived for three centuries in tropical America, the citizen of the United States who traces his genealogy to the passengers in the *Mayflower* or the *Welcome*, have departed extremely little from the standard of the Andalusian or the Englishman of to-day though the contrary is often asserted by those who have not personally studied the variants in the countries compared. Conditions of climate and food materially impress the individual, but not the race. The Greeks of Nubia are as dark as Nubians, but let their children return to Greece and the Nubian hue is lost. This is a general truth and holds good of all the slight impressions made upon pure races by unaccustomed environments." — Brinton, Races and Peoples, pp. 44, 45.

The scientific test of organic difference would be to take new-born infants typical of the stocks to be compared and note what unlikenesses they developed when brought up under the same social influences. Rude comparisons of this sort are possible between contemporary peoples, but they are, of course, impracticable between different periods in the history of the same race. In the case of the Jews the matter has been studied as thoroughly as the nature of the inquiry permits, and it is thought doubtful whether that race has undergone any noteworthy change since the time of Moses.[1] As regards our own and kindred peoples — always leaving aside the mixture of races — I imagine that few anthropologists would venture to say anything positive. If they did, it is quite certain that there would be no agreement among them as to what the direction of change is. Many suppose, for example, that physical vigor is declining by disuse, by the growing preponderance of intellect as a factor in success, by the preservation of weakly children and by the support through charity of pauperism and vice.[2] There is, however, no direct proof of a decline; and it is quite possible that the forces mentioned are more than counterbalanced by others which may be held to have an opposite tendency, such as better and more regular nourishment, the more general practice of systematic exercise, congenial marriages and the improvement of a great variety of degrading social conditions. Either side of this argument may be maintained by plausible *a priori* arguments, and in the present insufficiency of direct evidence there is no way to reach a definite conclusion.

It is even possible to question whether the thinking faculties are now stronger than they used to be. There has certainly been a great deal of mental work of various kinds among the Teutonic peoples since the revival of learning; but even if we suppose that the effect of such exercise can be inherited, we have still to consider that only a small fraction of the race has taken part in it. Moreover, when we see that the

[1] See papers by Neubauer and Jacobs in vol. xv of the Journal of the Anthropological Institute.

[2] For an admirable discussion of the influence of charity upon survival, see Warner, American Charities, ch. v.

men who lead in letters, science and statesmanship often spring from a peasant class whose forefathers have not shared appreciably in the intellectual activities of the past, it is clear that ancestral culture is not essential in producing eminence of this sort. It is significant, too, that one of the most noteworthy intellectual influences now at work comes from the Russians, a people new to civilization. In short, if we could transplant a few thousand babies out of our remote ancestry and give them modern nurture and training, they might, for aught we know, turn out their share of Congressmen, novelists and electrical engineers, and be little distinguishable in any way from the rest of the population. The statue called "The Dying Gladiator" represents a possible ancestor of more than two thousand years ago; yet he appears to me quite modern and familiar — a little wild perhaps, as we might expect from his mode of life, but otherwise such a man as we might come across almost anywhere at the present time.

Natural selection, apart from the conflict of races, is apparently much more active in preserving than in changing types, for it discourages wide deviation in any direction. Out-and-out criminals and those sunk in self-destructive vices are not, as a class, prolific; but no more are the people of conspicuous intellectual or moral power. It is the intermediate and undistinguished multitude that keeps up the population.

Some entertain the notion that the most degraded classes are the most prolific; but I know of no support for this. Among the conditions of a rapid natural increase are physical vigor and a fairly stable family life. In both of these respects the pauper and criminal classes are decidedly inferior to the rest of the population. On the other hand, many suppose that success and survival go together — that what we call competition is only a more or less mitigated form of the struggle for existence; and that as a rule and in the long run those who gain wealth, power, and other things for which men strive, are enabled to leave more children than others and so to perpetuate those characteristics to which they owe their success. It is often assumed that this is too clearly the case to require special

investigation; but this assumption will appear rash to any one at all familiar with statistics, and seems to have arisen, not from the direct study of mankind, but by a hasty inference from the results of biology. Men of unusual success are not unusually prolific: so far as can be made out from statistics they are as a class below the average in this respect. Indeed, a very plausible argument, backed by figures *ad libitum*, might be prepared to show that the successful do not survive and are therefore the unfit. Certainly nature's standard of success — that is, survival — is quite distinct from the social standard; and to a great degree the two are opposed. To marry early and raise a large family is by no means favorable to the gratification of personal ambition. It seems, therefore, that conspicuous failure and conspicuous success are about equally unfavorable to survival, and that those paths which diverge very widely from the main-traveled road of ordinary humanity lead to extinction.

This conservatism in the conditions of survival is well illustrated by the case of educated women. They seem to be, on the whole, a very beneficent class of persons, and one whose progressive spirit it would be well to transmit in every possible manner; yet we cannot expect that the women who belong to it will leave as many children as those whose entire energy goes into reproduction. In fact, a large part of college women do not marry at all; and the remainder are likely to marry later and to have children at less frequent intervals than other women.[1]

It is, accordingly, not at all clear that natural selection, aside from the prevalence of races, acts definitely or rapidly as a cause of social change. No doubt the races of men, and especially those whose history is eventful, undergo more or less organic transformation: this must have been so in the past, since otherwise new types could not have originated; and it is not likely that the process has altogether ceased. This

[1] See the Report of the Mass. Labor Bureau for 1885 on "The Health Statistics of Female College Graduates"; also "The Marriage Rate of College Women," *The Century*, Oct. 1895.

transformation, however, is probably slow, and its character and direction are difficult to make out: the whole matter, involving as it does the laws of heredity, requires and will no doubt receive the most thorough study. In the meantime, it is apparent that natural selection of this simple, animal sort is not the ordinary process of social change. It has little to do with the rise, spread and decay of architecture, music, painting or poetry, or of the great religious systems; it is not the process by which governments become milder, popular education advances and manners meliorate; nor is it that by which new views prevail about childhood and the status of women.

II.

The process which generates opinions, moral standards and institutions, and which results in progress or decadence, is especially characteristic of human life, though it is thought to be operative in some measure among all the social animals. It rests upon the imitative, sympathetic and intellectual faculties, and is related to natural selection through the probability that these faculties have an evolutionary history in which natural selection plays a part.

It would not be difficult to show that the higher faculties of man are not, as some suppose, elements quite apart from and inconsistent with the struggle for existence, but are decisive factors in it while it endures, though tending to supplant it by rational and sympathetic coöperation. Imitation and sympathy, as well as intellect, are conditions of social power; and the evidence that they have arisen by the aid of natural selection is similar to, though much less tangible than, that which indicates that our bodily frame has thus arisen. It is not, however, important that I should discuss this question: it is sufficient to note the fact that our ascendency over the other creatures is associated with a flexibility of nature that comes from imitation and sympathy, and makes us apt for social change.

A man is not so much strong in himself as formed to make part of a strong whole. If reared from his birth by some wild

creature and so cut off from those communicated arts and actions for which alone he is well fitted, he would make a poor struggle for existence, and might have to fall back upon his primitive skill in climbing trees. But in society he is strong; and the chief element of his strength is the fact that he is so far dominated by imitative and sympathetic faculties, that he adapts himself to an infinite variety of activities. He is, on the whole, a docile, conforming animal, and owes his power to his amenability.

The trend of psychological and sociological studies is distinctly toward the conclusion that the social factor in individual conduct is greater than has been perceived.[1] Every thought and every act guided by thought bears some relation to the social environment, past or present, and could not be the same if that were altogether different. A man is born with energies and tendencies, strong but vague, which, being incited and nourished by the world into which he comes, mingle indistinguishably with it to form a new organic whole, a character and a career. Imitativeness, which controls so many of our actions without our knowing it; the fear of disapproval, which leads to conformity, not only in dress and manners, but in the gravest parts of conduct; the hope of approbation, inciting aggressive spirits to perform daring deeds in the sight of mankind; hero-worship, patriotism, sympathy and love — all these give to society control over its members. The passion to be something in the minds and hearts of men is the very life of life, the fire which fuses individual energies into social power. Where our faculties touch this stream of human interest they glow at a white heat, like a piece of ore where it touches the streaming flame of the blow-pipe; the rest of us remains cold, inactive and unnoticed.

This need of approval is often called weakness and is con-

[1] It is hardly necessary to support this statement by references: the studies in "imitation," by Tarde, Baldwin and others, and Professor Giddings's theory of the "consciousness of kind" are familiar examples of the fact stated. The Proceedings of the National Conference of Charities and Corrections for 1896 contain (page 399) a paper by the present writer on "'Nature versus Nurture' in the Making of Social Careers" which treats briefly one phase of the matter.

trasted with the supposed strength of self-sufficiency; but in fact no man with any humanity in him is self-sufficient, and the love of approbation is weakness only when it leads to inconstant behavior. It is likely to be strongest in the finest organizations, and can hardly be extirpated: to try to get rid of it is to act like a man immersed in water, who should try to thrust the water from him with his hand. The most that men can do — and this is all-important — is to choose their approvers, perhaps substituting remote or even imaginary persons for those at hand, reading great books, observing wise persons, and thus cultivating a sense of heroic opinion. Since all must be hero-worshippers, it is a great thing to have the right sort of hero.

Human nature is hard to change, but its most inveterate quality is a susceptibility to social influences. We need to distinguish sharply between nature and conduct: one is the stable basis for infinite variety in the other. Association may not change nature, but it usually controls conduct. It will hardly make an irascible man patient or a dull one clever, but it may easily make one clever man an engineer and another an ingenious burglar. A career never comes by nature alone; the same nature will result in any one of a hundred careers, according to the influences that act upon it. We are bound to our fellows by heredity as to what is relatively permanent, and by influence as to what is plastic: human nature is transmitted by the one, institutions, conduct and opinion by the other.

It is this plasticity which makes each of us not so much strong in himself as fit to make part of a strong whole. Our thinking and feeling are not, like the animal instincts, predetermined to work for a single object, but are unspecialized, working according to principles of general utility toward ends set before us by the society in which we live. We are so happily contrived that humanity can progress without a change in human nature, through the peculiar constitution of the nature we already have. A due measure of conformity is, accordingly, one of the conditions of social prog-

ress. The conforming influences are often deplored, as by Emerson, where he says that "society is in a conspiracy against the independence of each of its members," and that "to be a man is to be a non-conformist." This is true, in a way, and helpful; but it is also true that conformity is a social discipline from which no one can or ought to be entirely free. It levels up as well as down, prevents crime and anarchy as well as hinders genius, and knits men together into a strong yet tractable whole. A party of explorers who are on a difficult march must keep together, even if they cannot agree upon the best route; and most men are necessarily so constituted that they have no inclination to leave the ranks.

Human evolution, then, like animal evolution, rests primarily upon power; but power rests upon coöperation, and coöperation involves social discipline and individual amenability. Mankind is strong through good understanding, through the timely abnegation of strife, through institutions that symbolize and confirm social unity — above all through a human nature that is not only intellectual but imitative, conforming, sympathetic and capable of congregate enthusiasms.

This imitative and sympathetic human nature, which is a means to social power, implies the process of social change. Working and worked upon through the marvelous mechanism of language, it is capable of fusing men together into a fluid whole, every part of which in some way feels and responds to the motion of every other part. In this fluid are propagated an infinite number of movements of thought and action, among which — by the law of chances, if for no better reason, — opportune variations from time to time occur. Their opportuneness being in some measure perceived, these innovations tend to be preserved and accumulated, rooting themselves in tradition and tendency, and getting themselves set forth to the mind and eye in laws, creeds and architecture. It is of such movements that historical change chiefly consists. The process is one of survival, in which the conscious selection of men is an important factor; but the consciousness is mostly limited to the immediate detail. It is only recently

that the general trend of social movements is beginning to be in some degree a matter of knowledge and of choice. In describing the process of social change it is suggestive to liken it to a wave or a combination of waves; but, as commonly happens in attempting to set forth social facts as analogous to physical phenomena, this figure falls hopelessly short of the truth. A reasonably clear perception of the matter can come only by a study of the process of communication — a study which is the key to the translation of the facts of social change from the language of psychology to that of history. The two things that must always coöperate are human nature and the mechanism of communication. The first is a relatively permanent factor; but the second is highly variable, and is for that reason of peculiar interest and importance. Its variations have generally been in the direction of greater efficiency, and it is largely because of this fact that the history of the past two thousand years is a record of rapid and accelerating social change.

III.

We know that man is a sympathetic, communicating animal; and I have urged that this is what makes him amenable, plastic, fit to be formed by a social environment. But what forms the environment? The evolution of environment is the most momentous change in history.

A man's social environment embraces all persons with whom he has intelligence or sympathy, all influences that reach him. If I read Aristotle, my environment extends back two thousand years; if I read the dispatches from Japan, it takes in the antipodes. That I can be influenced by the Iliad, the New Testament and other utterances of men distant from me in time and place, is due to the arts of writing, printing and transportation, just as the fact that I can receive a complex thought from my neighbor is due to the art of speech. In other words, the social influences act through a mechanism; and the character of their action depends upon the character of the mechanism. The existing system of communication

determines the reach of the environment. Society is a matter of the incidence of men upon one another; and since this incidence is a matter of communication, the history of the latter is the foundation of all history. It is perhaps worth while to recall some of the more obvious facts of this history, and to make some suggestions as to what they mean.

The mechanism of communication includes, of course, gesture, speech, writing, printing, mails, telephones, telegraphs, photography, the technique of the arts and sciences — all the ways through which thought and feeling can pass from man to man.

Speech no doubt knit prehistoric men into groups and enabled them to emerge into history with a social nature and social institutions. But as an instrument of social organization speech has great defects; it lacks range in both time and place. It can go only where the man goes; and though it can pass from man to man, and so from generation to generation, it flows in a slender and wandering stream, limited in capacity, and diverted in direction by every mind through which it passes. What would the New Testament or the works of Plato now be if they had come down to us by this route?

For the precarious strand of oral tradition writing substitutes strong bonds, numerous and indestructible, reaching all times and countries where the art is practiced and binding history firmly together. It makes possible wide political sway, which cannot well be organized and maintained without recorded laws and precise instructions;[1] it permits the advance of science, which is a cumulative achievement that implies the hoarding of knowledge in dusty manuscripts; it is the condition of a diversified literature, for tradition, which cannot carry much, limits itself to what is most prized, chiefly stories: writing, in short, may without much exaggeration be said to underly all social enlargement and individual specialization. It extends immeasurably the environment of all persons who can read and can get

[1] I believe there is no instance of a people which has attained a definite, extended and stable political organization without the use of some form of writing. Compare Gibbon's observations in the Decline and Fall, vol. i, p. 354 (Milman-Smith edition).

hold of the manuscripts; and it permits one to form his own environment by retaining what suits him from a variety of materials, and by opening communication with congenial minds in remote times and places. In so doing each individual, of course, becomes a center for the distribution of what he receives, and extends the environment of many others. Mankind thus attains coöperation, continuity and the capacity for rational and enduring progress.

The particular function of printing is to make communication general or democratic. So long as handwriting was the only means of record, books were costly, newspapers were not to be thought of and direct access to the stores of thought and feeling was the privilege of a few. Under such conditions opportunity was like the early sun: it lit up a hilltop here and there, but left the plain in shadow. Printing, to put it otherwise, may not make the stream of knowledge deeper or improve the taste of the water, but it does open a path along the margin and give every one a cup from which to drink. With popular education, which is its natural complement, it forms the principal free institution, without which no other sort of freedom could long endure, and by the aid of which we may hope to gain more freedom than we have.

It is well worth while to reflect what these changes mean to the individual man, born with the aptitude for indefinite development through an imitative and sympathetic nature. Consider, for instance, a group of our ancestors of several thousand years ago, comparatively small, without the art of writing and with little knowledge of other groups. Primitive life is a field fertile in controversy and one not likely to be exhausted; but most students will admit the probability that our distant forefathers lived in small societies, were unlettered and had the vaguest notions about the rest of mankind. Such groups carried on with one another a true struggle for existence; but within each of them — that is, within the range of possible good understanding — there was an active social life. Mothers loved their children and men fought for their chiefs; the thoughts and acts of all were bound together by imitation, the need of approbation

and the communicative motives in general. In this social medium were propagated such movements of change as its dimensions permitted. But think of the narrowness of those dimensions, of the paucity of models for imitation, of the extreme vagueness of knowledge regarding the great men of the past and of the total ignorance regarding those of other societies! A meagre environment limited the development of innate tendencies and capacities, and the comparative sameness of thought and action reflected the narrowness of the general life.

In such a state of things all the wider social relations must be either hostile or authoritative. Since communication is the precise measure of the possibility of social organization, of good understanding among men, relations that are beyond its range are not truly social, but mechanical. In justice to the past we must recognize that before the rise of printing and telegraphy it was impossible for the mass of people in any large state to have a free and conscious relation to the social whole. The basis for a social consciousness did not exist. People in general could not comprehend what was going on, and their actions were necessarily regulated by authority. The peasant, the common soldier, could not coöperate in the larger social movements except as a truck horse coöperates in movements of trade.

If two persons who cannot understand each other come in contact, three things are possible: they can separate, they can fight or one can enslave the other. In the same way, the social groups of the ancient world could ignore one another, wage war or be bound by coercion into a mechanical whole. As the first was usually impracticable, and as mechanical union proved stronger than none, it was the third course that commonly prevailed. This was especially the case after communication was advanced to such a point that the organization of extensive military despotisms became practicable. In antiquity a large free state could not be formed, and a small one could not maintain itself.

If we put together these things, this poverty of influences and this habit of war that could be replaced only by something

in the way of servitude, we have gone far in explaining the known differences between our remote forefathers and ourselves. They may have been very unlike us, but it is not necessary to suppose that they were, in order to explain their leading unlike lives.

To the man of to-day society, tending now to become a coöperating whole through that extension of knowledge and sympathy which has come with the rise of communication, offers a selection among many environments. In the relation between himself and the rest of mankind he takes more and more an active part, accumulating the elements of a characteristic environment by the working of elective affinity. One may be an imitator — as indeed all must be — and yet unfold, through imitation, a character different from that of every one else. The breadth and diversity of life, dependent upon communication and daily widening before our eyes, tends, in short, to set man free by opening to his sympathetic and conforming nature a "proud choice of influences." He is not merely, as in primitive times, a member of a social group which tends to shape his thought and action; he is the point of intersection of many groups, each of which, though dispersed in time and place, has a real and definite influence upon him. Nowadays one is not less dependent upon social influences than formerly, but he is less dependent upon the particular ones that happen to be nearest him. Every book, every newspaper, every work of sculpture, painting or music to which one has access, every person or place brought within his reach by the facility of travel, is a shop which he may enter to examine the goods and buy if he will. A million environments solicit him; there is eager competition in place of monopoly.

It is upon this multiplicity of accessible influences, and not upon any radical change in human nature, that the present variety and comparative freedom of individual development chiefly rest. If one looks at the circle of his acquaintances he sees nothing of the sameness that prevails among savages; each man has distinctive opinions and modes of action, and so appears to stand by himself. This deceptive appearance is due to the fact that social relations are no longer con-

trolled by mere contiguity. Through the arts of intercourse association is throwing off the gross and oppressive bonds of time and place, and substituting congenial relations of sympathy and choice. So, if a man seems to stand alone, it is mostly because he stands with those who are not visible ; if he seems not to keep step with the procession, it is probably because, as Thoreau said, he hears a different drummer. We know little of the influences that formed his early imaginations, or of those persons whose approval he now desires and to whose examples and opinions he tries to conform his actions. They are often far distant — his parents and early friends, perhaps, or the leaders of his profession, or book-people — but the fact remains that character and conduct are nourished upon social influences. A reading of autobiographies, or a perusal of those private records which people carry in their memories, would show that men are still imitators and hero-worshippers. This is particularly true of children, who spend much of their mental life in imagining scenes wherein by glorious actions they gain the applause of some persons they admire. And of course the modes of thinking and acting that originate in sympathy and admiration tend, like everything else we do, to become habit, and to persist amid circumstances very different from those in which they began, seeming then to come from self-sufficient personality.

The same conditions favor also the more conspicuous forms of individuality — that is, originality and genius. Originality is not something independent of surroundings, but rather a characteristic way of reacting upon them. Let a man be as original as you please, he can unfold and express his originality only through such influences and materials as are accessible, and the number and variety of these are matters of communication. "We are indeed born with faculties," said Goethe, who gave lifelong study to this matter, "but we owe our development to a thousand influences of the great world, from which we appropriate to ourselves what we can and what is suitable to us." In order to have genius it is essential that a remarkable child shall be born into the world; but an outfit of natural

faculties, however remarkable, is only one of two sets of factors whose product is a career. A gifted child, like an acorn, has indeed the capacity of marvelous growth, but can come to nothing unless it finds fit nutriment. The idea of a necessary antagonism between individuality and association is an illusion. The two are mutually dependent : they have always developed, and always must develop, side by side. As a rule, it is not too much association that cramps us, but the wrong kind.

Finally, it is not hard to see how this enlargement of intercourse has affected the processes of social change. Let us go back to the comparison with waves, which, after all, is better than none. As regards the transmission of influences, primitive societies may be likened to narrow strips of water. They extended more in time than in place, but even in the former direction were liable to be cut off by conquest or decay ; they were connected with one another by the shallows and marshes of occasional intercourse and by quickly subsiding freshets of federation. Social change was necessarily local, like the waves on such small waters. Modern society, on the other hand, is more like the uninterrupted ocean, upon which the waves of change meet with no obstacles except one another, and roll as high and as far as the propagating impulse can carry them. Thus, to take a conspicuous instance, certain movements in art, letters and philosophy, originating we scarcely know how or where, but attaining great height among the Greeks, rolled on over the unconscious Middle Ages till they struck the contemporaries of Petrarch and thence were propagated in widening circles to the present time. The invention of writing opened the world to the competition of social institutions very much as maritime navigation opened it to the competition of races. The field was enlarged, and all movements proceeded on a great scale.[1]

This extension of the medium of change is accompanied by

[1] There is no better illustration of this than the rise of vast religious systems based upon the recorded lives and maxims of their founders. It is quite possible that individuals of transcendent character appeared in prehistoric times; but the imitation of them could not be organized into extensive and enduring systems without the aid of authentic records.

an equally remarkable differentiation within it, implied in what I have already said about the growth of individuality. There are as many social media as there are specialized groups of sympathetic and communicating individuals, and in choosing his environment a man chooses what groups he will belong to. Each of these groups or media is subject to movements more or less peculiar to itself; it has in some measure its own opinions, institutions and traditions. So, if one wishes to liken modern social movements to waves, he must conceive an indefinite number of wave-transmitting fluids, interpenetrating one another as the light-bearing ether interpenetrates the sound-bearing air; each of these transmitting most readily undulations originating in itself, yet feeling the influence of those originating in the others; each fluid by itself, as well as the united whole, traversed continually by a multitude of waves having every imaginable difference in force, period and direction. Even when so stated the comparison is still inadequate in various ways, chiefly in that it does not suggest the active part that may be taken by individuals. It represents what would happen if each one were in equilibrium, with every congenial relation established; when in fact each of us is continually stirring about more or less in search of the congenial — resisting, refracting or augmenting the social impulse in a way peculiar to himself. Yet, so far as men have like natures that come into sympathy through communication, they really form a sort of a fluid in which impulses are propagated by simple suggestion or contact. If two persons of like feeling for form and color stand before a painting, they and the artist are one through the picture.

The freer development of individuals involves, of course, a freer development of the social order; inasmuch as relations of choice — relations that suit the feelings of men — tend to spread and to prevail over those of hostility or coercion. It is the tendency of communication to give human nature a fair chance, levelling before it the barriers of ignorance, blind hostility and constraint of place, and permitting man to organize his higher sympathetic and æsthetic impulses.

Within the past fifty years there have been developed new means of communication, — fast mails, telegraphs, telephones, photography and the marvels of the daily newspaper, — all tending to hasten and diversify the flow of thought and feeling and to multiply the possibilities of social relation. The working of these agencies is too important to be discussed hastily, and to discuss it fully would carry me too far; I shall therefore only point out that they make all influences quicker in transmission and more general in their incidence, accessible at a greater distance and to a larger proportion of the people. So far as concerns the general character of social change, the effect may be described as a more perfect liquefaction of the social medium. A thick, inelastic liquid, like tar or molasses, will transmit only comparatively large waves; but in water the large waves bear upon their surface countless wavelets and ripples of all sizes and directions. So if we were to compare the society of to-day with that of fifty years ago, we should find that great changes are somewhat facilitated, and that there is added to them a multitude of small changes which in former times could not have extended beyond the reach of personal contact. Light ripples now run far: the latest fashion in coats or books permeates the back counties and encircles the earth.

The process of change that I have described involves selection, and is perhaps as natural as anything else. Hence we may, if we choose, call it natural selection. It comes about through the competition of influences and the propagation of opportune innovations in thought and action. The selective principle, the arbiter of competition, is ever human nature — but human nature conditioned in its choices by the state of communication, which determines what influences are accessible, as well as by the constraining momentum of its own past.

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SOME PROBLEMS OF CLASSIFICATION IN PUBLIC FINANCE.

UNDER the extreme influence of the historical movement in political and economic science, it frequently happens in original work that more attention is paid to the collection and mere presentation of material than to careful, thoughtful analysis. In certain quarters the notion seems to prevail that originality consists solely in digging out of some obscure hole a certain number of facts. Investigation of the sources is, no doubt, valuable and necessary, but it is a mere preliminary step; and the new facts learned are useful only when properly analyzed and explained, or when applied to the explanation of already known principles. One of the unfortunate consequences of the mistaken notion has been a tendency to belittle the importance of correct, logical, scientific classification. Careful analysis and correct classification are, however, the only means of turning any mass of knowledge into a science. It is therefore gratifying that attention has recently been directed to some of the difficult problems of classification in public finance.

In the *Quarterly Journal of Economics* for April, 1893, Professor Seligman published an article on "The Classification of Public Revenues," in which he argued strongly for a division of public revenues into four main classes: (1) prices, (2) fees, (3) special assessments and (4) taxes in the narrower sense of the term.[1] Two years later he saw fit to modify the original scheme by the division of the first category into two parts, distinguishing quasi-private prices from public prices. In his recently published *Essays in Taxation*[2] the views expressed in

[1] The principles upon which these divisions are made are somewhat the same as those suggested by Professor Cohn in his Finanzwissenschaft, pp. 118–126, on the basis of a previous analysis of expenditures, pp. 104–118; see especially the summary, pp. 117, 118.

[2] New York and London, 1895.

the second article[1] were restated and may now be regarded as his settled opinion.

The definitions proposed for these classes are as follows :

A quasi-private price is a voluntary payment made by an individual for a service or commodity sold by the government in the same way as a private individual would sell.

A public price is a payment made by an individual for a service or commodity sold by the government primarily for the special benefit of the individual, but secondarily in the interest of the community.

A fee is a payment to defray the cost of each recurring service undertaken by the government primarily in the public interest, but conferring a measurable special advantage on the fee-payer.

A special assessment is a payment made once and for all to defray the cost of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the particular benefit accruing to the property-owner.

A tax is a compulsory contribution from the person to the government to defray the expenses incurred in the common interest of all, without reference to special benefits conferred.

The main features of this proposed classification seem to be so simple and logical, and seem to recognize so clearly the operation of great historical tendencies, that their general usefulness to the student of public finance for all scientific purposes cannot be disputed. It would, therefore, be extremely desirable if they could be universally accepted.

Professor Bastable, however, in the second edition of his *Public Finance*,[2] refuses to accept the suggestion, and among other things denies (1) that there can be only one correct classification, and (2) that there is any necessity for distinguishing between fees and taxes.[3] Professor Bastable's first

[1] *Quarterly Journal of Economics*, April, 1895.

[2] See pp. 153–156.

[3] The points omitted are (*a*) the discussion of fines and (*b*) the objection to special assessments. The former is omitted because of the insignificance of the revenue from fines and penalties, which, while not warranting their omission from a larger work, permits us to omit them in a short article. The latter is omitted because Professor Bastable's criticism seems to be partly valid, as will be seen, and partly based on an entire misconception of the nature of these charges, which it would take too much space to explain here.

objection is to the assumption — which, although not definitely made by Professor Seligman, is yet implied in the criticism of older classifications — that there is but one correct or natural classification. Professor Bastable claims that the sole consideration in the choice of a classification in such subjects as "grammar, jurisprudence, legislation and finance" is convenience for the immediate purpose in hand. It does not seem that this objection is altogether valid. For some subordinate purpose, it is true, temporary convenience may warrant abandoning the strictly logical classification; but there is a scientific or logical necessity for recognizing, whenever present, a direct line of development. In the study of organic life it is unscientific to intermingle the recent with the older species: it is equally unscientific in the study of legal institutions or economic life to confuse the old and the new, or to classify in such a way as to hide the connecting links between them. Comparative philology, historical jurisprudence and the science of finance have succeeded in establishing certain general principles of development, which are for them what the development of the species is for natural science. Any classification which ignores the sequence of this development, or which omits important and characteristic steps, cannot claim to be thorough and scientific; and temporary convenience will not excuse the refusal to accept the results of a truly scientific analysis. When Professor Bastable claims that it would be inconvenient to split the complex revenues from such public enterprises as the post-office into prices, fees and taxes, because the parts would be distributed over several different parts of his work, he is making a plea which, if valid, denies the value of most scientific analysis. It has never been regarded as impracticable, for any such reason, to analyze the revenues of an agriculturist who is the recipient of rent, interest and wages in one income. In fact, scientific thought demands such analysis.

Professor Bastable makes an equally untenable contention when he urges as an objection to the term "fee" that it is not commonly used in the sense given it by Professor Seligman. Does not economic science abound with terms which have a

strictly scientific meaning, different from that in common use? Take, for example, the fundamental terms value, rent, wages — in fact, almost any of the economic terms. A word adopted from daily life by science must be deprived of some of its "extension" for the purpose of giving it a perfectly clear "intension." Even if we concede to Professor Bastable that this term is not altogether satisfactory for expressing the idea intended to be conveyed, we must insist that classification is something more than terminology. What concerns us is the idea as defined.

Let us, then, inquire whether the conception of fees, as defined by Professor Seligman, is of such a character that the failure to recognize it in a scientific analysis is open to severe criticism? There are three distinct phases in the development of the attitude of men toward any public function. At first, when the function is new, they do not recognize the existence of any common benefit. The charge made — that is, the revenue collected — is governed by the consideration of the special benefit, just as in the case of a private enterprise. Later, men awaken to the fact that this activity, instead of benefiting special individuals alone, benefits society as a whole; and they remove a part of the special charge, collecting the balance of the revenues needed to carry on the function in some other way. Still later, they cease to regard the special benefit as a proper measure of any special charge, but rather collect the whole of the money needed in some other way — usually by a general levy on the resources of the whole of society. This development may be traced in the charges made for almost all of the functions now performed by the state, where it was possible to conceive of beginning with a price. Such is, for example, the history of the revenues for maintaining the courts,[1] roads, canals, educational institutions and the administrative supervision of industry and commerce. Moreover, in spite of the comparatively recent growth of large cities and the newness of many municipal enterprises, the charges for services rendered by such enterprises already show

[1] As Bastable correctly shows, 2d ed., pp. 72, 73.

the same tendency. In short, in every case where it is possible in the beginning to assume that there is a special benefit conferred, the special benefit is at first made the ground for a special charge. As time goes on, however, that special charge is lessened and finally removed. Professor Bastable himself recognizes and decries this tendency, and uses it as an argument against state ownership of industrial enterprises.[1] Whatever we may think of the desirability of such a development, still the fact remains. Governments do from time to time assume new functions; and when they do, these functions all become subject to the same tendency in development. Scientific analysis must take cognizance of each step in the evolution. The difficulties encountered by the courts in deciding upon the validity of the Wright irrigation act in California are illustrative of the difference in the attitude of men toward old and new functions. The decision of the lower court was practically that the cost of performing this new function (irrigation) must be borne solely by those benefited. This is essentially the attitude usually assumed toward all new functions. But the decision of the supreme court, reversing that of the lower court, passes over any preliminary period, and makes this function at once of sufficient common benefit to justify the collection of charges not measured by the particular benefit.[2]

Not only can it be proved that this development has actually taken place, and that all of these different sorts of revenues are present to-day, as Professor Seligman so well shows, but it can be shown that the tendency to the same development will necessarily appear in the case of every new function, on account of the character which these functions assume in public hands. If any new function or industrial enterprise, when first assumed by the government, is not already a monopoly, it soon becomes one. The same reasons of public policy which led the government to enter upon the new field necessitate the reservation of the whole field as soon as the government is able to fill it.

[1] See p. 190.

[2] In this brief illustration nothing is considered but the question of taxation. The case also involved intricate questions as to the ability of the legislature to create new districts endowed with legislative and taxing power.

The principles which govern the adjustment of charges in the case of monopolies are more akin to those of taxation than are those governing competing enterprises. The transition from charges fixed by "what the traffic will bear" to taxes is easy. To take a concrete example, let us suppose that a city sets up an electric-lighting plant. At first it may submit to the competition of private companies or divide the field with them. But sooner or later it will regard this competition as an infringement upon public rights and will abolish it. A private corporation, other things being equal, cannot compete with the state, for the fact that the government can, if necessary, supply any deficit by taxation makes it an unconquerable competitor.[1] Having acquired the monopoly, there is no other way of regulating the rates than by distributing the total costs according to the well-known principle of "charging what the traffic will bear." The plant in question passed into public hands in order to bring about lower rates or better service, and that very purpose brings the revenues down to costs. In estimating the costs there is, as Professor Bastable himself shows,[2] a natural tendency for public officers to ignore certain elements which a private person would recognize as important. Thus, interest upon public moneys actually invested, but not represented by outstanding bonds, is generally ignored.[3] The charge thus made, being below cost, is what we call a fee. As Professor Seligman shows, such a charge differs materially from a tax, for there is a definite counter-service. It differs from a price in that it is permanently set below cost. It is not an "economic receipt," as Professor Bastable would call it, because it is not governed by ordinary economic principles. Further, to call by the name "casual revenues" a category of public income which is so large, and which renders possible some of the most important new functions now per-

[1] *Cf.* Hadley, *Yale Review*, February, 1896, pp. 399, 400.

[2] See p. 212.

[3] My attention was recently directed to one case, that of the city of Alameda, California, where the allowance made for the cost of the street-lighting system, paid from general taxes, is so large that the charges for house lighting are very much below cost.

formed by states and municipalities, is to belittle the importance of these revenues; for this name denies that they have any peculiar common characteristics.

A proposal to free consumers from such special burdens by adding all the costs to the general taxes will not yet be seriously entertained. But if such a proposition were made, it would not seem more unreasonable to the citizen of to-day than the present method of paying all the costs of building and maintaining roads at the general expense must have seemed to the citizen at the time when the roads were first taken out of the hands of turnpike trusts and companies. The tendency to change from the fee principle to the tax principle has a further justification. As soon as these enterprises become monopolies in public hands, the principle of adjusting the charges among the different users is that known as "charging what the traffic will bear" — a principle nearly akin to that by which taxes are distributed. According to this well-known principle, which underlies the classification of goods by railroad companies in fixing freight rates and of mail matter in fixing postal charges,[1] a burden is practically distributed among those who are to bear it in accordance with their abilities, which may be indicated in various ways. It must not be forgotten that the very reason for the maintenance of this principle is that, by virtue of reducing the charges made upon those of the least ability, the charge to those of most ability is less than the cost of the service to them would be if a uniform charge were made which those of less ability would be unable to meet.[2]

The feasibility of fixing the tariff of rates according to the costs of the particular services becomes less as the proportion of the costs consumed by the fixed charges grows larger. For example, in the case of a monopoly furnishing the water supply of a city almost all costs (provided the supply be adequate) are

[1] See Hadley, Railroad Transportation, ch. vi; Seligman, "Railway Tariffs and the Interstate Commerce Law," POLITICAL SCIENCE QUARTERLY, vol. ii, nos. 2 and 3.

[2] It would seem that a justification of progressive taxation might be developed from this principle.

fixed. The costs to the monopoly consist of: (1) interest on the purchase price of the supply; (2) interest on the cost of the reservoirs, both collecting and distributing, of the mains and distributing pipes and, if needed, of the pumping-stations and engines; (3) repairs. In the case of a pumping system there is a small item of cost which varies somewhat with the consumption; but in the case of a gravity system no item — except, perhaps, that of wages for clerical hire — varies with the consumption. In the case of water rates, then, there is no necessary connection between the amount consumed and the charge; and rates can be justly fixed only by an apportionment which disregards the exact amount consumed and recognizes some measure of the relative ability of the various consumers. It costs the monopoly no more to furnish one man with five hundred gallons a day than it does to furnish another with four hundred gallons. If the consumers increase fifty per cent, but are supplied from mains already constructed, the costs certainly do not increase five per cent, and the classified rates may be reduced nearly one-half. Each person benefited by the system should be made to pay on a different basis from that by which he pays for (say) milk, where the cost varies almost directly with the amount consumed. Practically the costs should be distributed among the various users according to some test of their respective abilities. This is, then, very much like a special tax upon a certain class of persons; and if the monopoly is in public hands, it is a simple step from a special to a general tax.

It seems, therefore, that the three stages represented by prices, fees and taxes are historical facts, and must in the nature of things be found in every case where, at the outset, a price is possible. Of course the government may assume new duties in line with the older functions, without at first charging a price. In that case one or more stages may be passed over. The three main features of Professor Seligman's classification are, however, established.

But how about special assessments? Do they form a class coördinate with fees and taxes? Do they form a necessary

step in the evolution of public revenues? Does history show that the charges for any functions pass from fees through special assessments to taxes, or from prices through special assessments to fees? Or do these charges not stand, as do all other fees, between prices and taxes?

It seems incontestable that special assessments are simply one kind of fees. To be sure, they form an independent class of fees, but they are logically fees. Professor Seligman, after admitting that they might be so classified, urges, as the main reason for distinguishing them from fees, that they are of so much importance — in the United States, at least — that they are worthy of special prominence in the classification. This abandonment of the strict logic of the analysis for the sake of calling attention to a special category is as open to criticism as Professor Bastable's refusal to recognize a scientific classification.

In pointing out "in what respects special assessments differ from fees," Professor Seligman says: "In the first place, special assessments are levied only for specific local improvements; fees may be levied for any services."[1] But any one fee is levied only for one service: the field of operation of any one fee is always restricted.

"Secondly, special assessments are paid once and for all; fees are paid periodically according to each successive service." But a great many other fees as well as special assessments are paid once and for all. So far as a particular case is concerned, all court fees are so paid. The special assessment is paid for a particular improvement; if another be made, another assessment is laid.

"Thirdly, a fee is levied on an individual as such; a special assessment is levied on an individual as a member of a class." But even if there are no other fees assessed upon a class (which is not true), this is at best a characteristic showing a difference in species, but not a difference in genus. It is a reason for making this a special class of fees, but not for separating it from fees.

[1] Essays in Taxation, pp. 289, 290.

"Fourthly, a special assessment must always involve a benefit to real estate; a fee is paid for a service which may benefit other elements than real estate, such as personal property, or other attributes of the individual without any reference to property." This is simply begging the question, for the very wording admits that some fees may benefit real estate only — for example, the fee for recording titles to land.

There is, then, no good reason for raising special assessments to the same plane as the other three great natural classes. There is between fees and special assessments no such clear line of distinction as there is between fees and taxes, or between prices and fees. Although special assessments differ from other fees, they do not differ sufficiently to warrant putting them into a special category.

Professor Schwab, in reviewing[1] *An Introduction to Public Finance*, by the present writer, criticises the subordination of special assessments to fees on the ground that the former "offer the only cases in which the 'benefit theory' is applicable." This sweeping statement hardly holds true, for it is the very essence of every price and of every fee that the charge is made upon the person specially benefited. Benefit is always the justification of the tax or of any public charge; but benefit is the exact measure of the charge only in the case of prices, the partial measure in the case of fees, and ceases to be a just or feasible measure in the case of taxes.[2]

In the main — that is, with the exception of his treatment of special assessments — Professor Seligman's classification seems to stand; and it is extremely desirable that it should be widely accepted and applied. It reveals the essential characteristics of public revenues, and in its general usefulness resembles the well-worn division of individual economic receipts into rent, interest and wages. There is, moreover, another peculiar advantage in adopting this classification. What we have obtained is more than a mere classification of revenues: it is an analysis

[1] *Yale Review*, November, 1896, p. 339.

[2] In the opinion of the writer the distinction between the justification of any charge and the measure of that charge cannot be too often restated.

of all the fiscal activities of the state. Hence it applies to every part of the science of public finance — to public expenditures, to fiscal administration and partly even to public debts.

Public expenditures fall so easily into the same three classes that it is sufficient merely to state them: (1) those which are regarded as conferring only special benefit on the individual, and are undertaken solely in his interest; (2) those which are regarded as conferring a measurable special benefit on the individual, but which at the same time benefit all society; (3) those which are regarded as conferring only common benefit, or special benefit treated as such.

The activities of the fiscal administrative bureaus fall naturally into place in the same way.

The application of this principle to the analysis of public debts, while equally simple and logical, requires more explanation. The analysis of public debts should reveal the kind of credit upon which each important category rests. Public credit, far more than private credit, is dependent upon the trust the would-be lender reposes in the ability and willingness of the debtor (state) to pay. Such ability and willingness are attested by the relation between the creditor's claim and the revenues. In the case of those debts which create a direct claim upon specified revenues the classification will simply follow that of the revenue in question. The only difficulty arises when the claim is not upon specified revenues, but upon all revenues. Here it may be necessary to follow some other principle. Possibly the best method will be to divide these debts according to the nature of the promises — that is, whether for principal only, or for principal and interest, or for interest only. This is the only case to which the proposed system of analysis is found to be inapplicable.

The fact that Professor Seligman's classification of public revenues is based upon a principle which can be logically applied to the analysis of all parts of the science of public finance is further confirmation of its correctness and usefulness. This strengthens the hope that it may be very generally adopted.

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AN ANALYSIS OF AGRICULTURAL DISCONTENT IN THE UNITED STATES. III.

V. Four Remedies for the Agricultural Depression Considered (*continued*).

3. *An export bounty upon agricultural staples.* — Whatever acquaintance the public may have with this proposition is due very largely to the energy, enthusiasm and time devoted to its advocacy by one man, Mr. David Lubin of Sacramento, California. According to Mr. Lubin, our protective tariff system is mainly responsible for the economic difficulties of the American farmer. The producer of agricultural staples, he contends, receives free-trade prices for what he sells, but for what he buys is compelled to pay prices enhanced by a protective tariff. For example, Mr. Lubin has said: "The producers of agricultural staples under the present system must foot the entire cost of protection, which, at a conservative estimate, must foot up to $1,000,000,000 a year." The object, then, of a system of bounties upon exports of agricultural staples, Mr. Lubin tells us, is to restore to the farmer that of which protection unjustly deprives him.

The determination of the truth or falsity of Mr. Lubin's statement as to the effect of the tariff on the farmer does not concern our present purpose. Admitting it to be correct, however, what is to be said of his remedy? Were it to accomplish all that Mr. Lubin claims, it would simply restore to the farmer $1,000,000,000 of which he is annually deprived by protection. When this has been done, who is the gainer by the transaction? To ask the question is to answer it. Mr. Lubin's argument resolves itself into this: Society is to bear the expense of the administrative machinery necessary to a process by which one class collects money from another only in turn to pay it back. It is clear, therefore, that whether an export bounty upon

agricultural staples be wise or foolish, the argument used by Mr. Lubin in its support may be dismissed without further comment.

It is worth while, however, to consider the proposition itself, not only from the farmer's point of view, but also in its political and financial aspects, and in reference to its bearing upon economic and social progress and upon the wisest adjustment of the wealth-producing energy of the nation.

The manner in which an export bounty is expected to benefit the farmer is as follows: The bounty is to be paid directly to the exporters of farm products; competition among the exporters will raise the price of the quantity exported to the extent of the bounty; the quantity bought to supply the home market will command the same price; consequently, the value of the entire product will be artificially enhanced, and the profits of the farmer correspondingly increased.

It is a serious question, however, whether this can be accomplished without so stimulating production as to defeat the avowed object. The experience of European governments with bounties upon the exportation of beet sugar clearly indicates the probability of such a result. The insidious origin of this policy in Germany is an interesting episode in economic history.[1] Other nations of Europe, such as France, partly to keep their own sugar producers from being at a competitive disadvantage and partly through national jealousy, inaugurated a similar policy, until most of the nations of the Continent have vied with each other in favoring the sugar industry.[2] The result has been an enormous increase in the beet-sugar product, from 2,223,000 tons in 1885–86 to 4,975,000 in 1894–95, accompanied by such a reduction in price that the industry is seriously depressed. Producers complain that the prices received do not cover the cost of production,[3] and it has even been proposed to establish a sugar bank to relieve distressed refiners and beet-root growers.[4] In addition to the loss sustained by the pro-

[1] *Quarterly Journal of Economics*, vol. vi, 1891–92, pp. 96, 97.
[2] *The Nation*, vol. xlii, 1886, p. 421; vol. xlv, 1887, p. 165.
[3] Wells, Recent Economic Changes, p. 302.
[4] *Public Opinion*, September 26, 1895, p. 396.

ducer, the bounty system upon sugar costs the taxpayers of Europe about $25,000,000 per annum.[1] Consequently, as a reward for this expenditure of the public treasure, the sugar producers of Europe have been led to do business at a loss, while the other nations of the world have had the benefit of cheap sugar. In addition to the economic evils which the policy entails, the fact that one nation cannot abandon it independently of the others, without leaving its own producers at a competitive disadvantage, is a matter that should not be overlooked. The overthrow of the system is thus subject to all the delay and uncertainties of international agreement.[2] This experience of European nations certainly indicates that a policy of export bounties upon agricultural staples in the United States would stimulate production in our own country; but it also indicates that other food-exporting nations would be led to adopt a similar policy and that in consequence no advantage would accrue to the American farmer.

As regards cotton, it is almost certain that an export bounty would not permanently enhance the price. The proof of this proposition lies in the fact that the United States is the most important single factor in producing the world's cotton supply. Her annual product is fifty per cent of that of the entire world.[3] Of England's cotton importations, 1890–93 inclusive, seventy-six per cent came from the United States;[4] and during the same period sixty-nine per cent of all importations into Europe had the same origin.[5] These facts not only reflect the extent to which the world is dependent upon the United States for its cotton supply, but also indicate that the low prices of recent years are to be attributed to the enormous scale upon which she has been engaged in the production of this commodity. The cotton famine during the Civil War, when production in the United States was largely suspended, conclusively shows that the size of the American crop is the principal factor in

[1] Consular Report, April, 1895, vol. xlvii, No. 175, pp. 610, 611.

[2] *Saturday Review*, vol. lxiv, 1887, pp. 725, 726, 847, 848.

[3] Senate Report 986, 3d Session, 53d Congress, Committee on Agriculture and Forestry on the "Condition of Cotton Growers in the United States," *etc.*, part i, p. 506. [4] *Ibid.*, part ii, p. 156. [5] *Ibid.*, part ii, p. 163.

determining the price. In 1864 cotton sold for $1.00 a pound; but after the war planting was resumed, and the European supply increased to such an extent that stocks began to accumulate in the ports, and prices declined with the annually increasing crop in this country.[1]

The plea cannot be made that an export bounty is necessary to give us a commercial advantage over competitors in the growth of cotton, for we are already easily supreme in this regard. Moreover, the enhancement of the price of cotton by means of an export bounty will not increase the world's demand to the extent of a single pound, save as it cheapens the price. Its only influence will be to augment the production of a commodity of which there is already too great an abundance, to depress its price still further and to defeat the very object for which the bounty is proposed. It is even probable that, with the world's markets overstocked and the home market dull, because of the enormous crops in the United States, those engaged in the export trade would underbid each other in a struggle for its control, and the bounty would thus be handed over as a gift to foreign buyers of cotton. From the point of view of European importers, manufacturers and consumers of cotton, such a policy will doubtless be regarded with unconcealed favor; but from the standpoint of an American, the policy of expending the public treasure in the interest of a class of producers, only to leave them in no better plight than they were and to furnish the other nations of the world with a raw material at less than its normal price, can hardly be regarded with favor.

What has been said concerning cotton also applies very largely to corn. To even a greater extent than in the case of cotton, the volume of the American crop fixes the price. As to competition with other countries, there is none worthy of serious consideration. Less than four per cent of the yearly crop of corn is exported,[2] while something like eighty per cent is yearly consumed in the very county where it is grown.[3]

[1] Bulletin No. 9, 1895, Miscellaneous Series, Statistical Division, Department of Agriculture, "Production and Price of Cotton for One Hundred Years," pp. 14, 15.

[2] Statistical Abstract, 1894, p. 266.

[3] George William Hill, *The Chautauquan*, vol. xvi, 1892–93, pp. 293–298.

The price is, consequently, dependent not only upon the American supply, but also chiefly upon the American demand. Furthermore, the export demand for corn is not increasing. Notwithstanding special efforts made to introduce corn in various forms as a food product among European peoples,[1] the average annual exports for the ten years preceding 1895 were less by 7,400,000 bushels than for the ten years preceding 1885.[2] During these two decades the greatest export movements have occurred as frequently in years of moderate as in years of exceptionally large crops.[3] Under such circumstances, in the competition among exporters to supply the foreign demand, an export bounty upon corn would be quite as likely to go to the foreign consumer as to the American producer. Such a result is indicated by the experience of Nebraska farmers in 1884, 1886 and 1890. In those years railway rates upon corn from points in Nebraska were reduced in deference to the demands of farmers, with the effect, however, not of increasing the price to the producer, but of lowering it to the consumer.[4] Even if exporters were induced by the bounty to offer a higher price for the supply of the export trade, that trade seems relatively too insignificant to affect materially the *farm* price of corn in the United States. Assuming that the price might be momentarily enhanced by the bounty, the mere fact that the area devoted to corn cultivation is capable of indefinite extension leaves little reason to suppose that such an advance would be permanent.

The cases of hay and oats are in nearly all particulars analogous to that of corn. An analysis of the probable effect of an export bounty upon wheat and meats, also, would lead to similar conclusions.

From the political point of view, a system of bounties on the exportation of agricultural staples is clearly impracticable in the United States. Even if such a scheme were once in operation, there would be no hope of its permanence. It would be

[1] George William Hill, *The Chautauquan*, vol. xvi, 1892–93, p. 294.

[2] Statistical Abstract, 1894, p. 266. [3] *Ibid.*

[4] Report of Nebraska Railway Commissioners, 1886, pp. 83, 84, 96. *Railway Age*, vol. xv, pp. 88, 103, 193, 710.

denounced as embodying class legislation. Many farmers, disappointed at the small benefits accruing to them from the measure, would give it but indifferent support. If it raised prices, the hostility of the non-agricultural portion of the population would be aroused against it. The short life of the sugar-bounty clause of the McKinley tariff act of 1890 illustrates how such measures fare under a popular government. Under a despotism a policy of bounties on exports might be feasible; but with a government that so quickly reflects a change in public sentiment as our own, there would be no assurance that such a measure would endure for any considerable length of time.

Nor does the policy we are considering present a more favorable aspect from the financial point of view. Under existing circumstances, when the national revenue is inadequate to meet the needs of the government, the inauguration of a bounty policy would seriously embarrass the treasury and necessitate a reconstruction of our whole fiscal system. To make good the increased deficit it would be necessary to enlarge the excise, to place imposts upon sugar, tea and coffee, and probably to increase the protective features of the tariff; though the last device, according to Mr. Lubin, would take from one pocket of the farmer what the export bounty had lodged in the other. To tighten thus the screws of the machinery of taxation in the interest of a class would run counter to the prejudices of the people and would thereby violate a fundamental principle of finance.[1] Nor is this all. The volume of agricultural exports varies from year to year with the foreign demand and other conditions beyond the power of government officials to control or forecast. The exportation of wheat in the fiscal year 1892, for example, was more than three times that of the year preceding.[2] There was also an enormous and unforeseen increase in the exports of farm staples during the calendar year 1896, as compared with those of 1895.[3] The impossi-

[1] J. R. McCulloch, Taxation and Funding, p. 18.
[2] Statistical Abstract of the United States, 1895, p. 169.
[3] *Public Opinion*, December 31, 1896, p. 855.

bility of adjusting appropriations to the actual requirements of an export bounty upon agricultural staples is therefore apparent. Such a bounty is thus open to the further serious objection that it would greatly increase the difficulty of maintaining a proper balance between the annual income and the expenditure of the nation.

The principle which lies at the basis of a bounty upon agricultural exports is, furthermore, antagonistic to economic and social progress. It looks with disfavor upon the introduction of improvements, whereby production is cheapened and human wants are more easily satisfied, and places the interest of a class above that of society in general. Carried to its logical conclusion, the principle would justify some kind of state aid to those in every industry, who, through being undersold, are subjected to financial loss. Within the past fifty years the machinery employed in the iron, cotton and woolen industries has several times been rendered worthless, save for use as old iron, by the introduction of cheapening appliances in production. Nor has the process stopped. The owners of machinery that is, so to speak, invented out of existence suffer loss; but society, being enabled to satisfy its wants more easily, gains. That the advantage to the mass warrants disregard of the detriment to the few, is a familiar idea in respect to other industries than agriculture. Society welcomes cheaper transportation, cheaper clothing and lower prices for all of the products of city life; and when such changes occur the public looks on with unconcern and even with some degree of pleasure — especially if those upon whom such economic progress entails financial loss are the stockholders in some corporation. Certainly, then, the process which cheapens food — a prime necessity of life — is not to be judged by a different standard.

Finally, we have to consider the policy of bounties in its bearing on the fact that, considering their efficiency,[1] too large a percentage of the people of the United States are engaged in

[1] "An ordinary farm hand in the United States raises as much grain as three in England, four in France, five in Germany or six in Austria." — See Mulhall, *North American Review*, vol. clx, 1895, p. 643.

the production of food. Bounties upon agricultural exports would simply be an inducement to men to engage in an industry that is already overdone. Nearly forty per cent of those ten years of age and over employed in various occupations in the United States are engaged in farming pursuits,[1] while in the highest development of agriculture twenty to twenty-five per cent at most could furnish food for all.[2]

At the present time the rapid increase of city populations, the development of manufacturing industries and the larger expenditure of energy in the production of such articles as eggs, butter, small fruits, *etc.*, are tending to reduce the plethora of those engaged in the production of the staple products of the farm, and to bring about a more healthy balance of industries. It is difficult to realize the rapidity with which the people of the United States are passing industrially from agriculture to manufacturing. Between 1850 and 1890 the capital invested in manufactures increased from $533,000,000 to $6,180,000,000, and the wages annually paid from $237,000,000 to $2,000,000,000. The manufactures of the United States "exceed those of the mother country in the proportion of seven to four, and are increasing at a rate which, if maintained for a quarter of a century, will make the United States as important a source of supply for manufactured articles as it now is of agricultural products."[3] The United States is going into the business of manufacturing for export at a rate which is causing grave apprehensions to English and other European manufacturers, and "will probably in the near future dominate all the markets of the world in the production of manufactured goods."[4] American steel, dry goods, paper and carpets are successfully competing in the markets of the world, even in those of England herself. Only recently a press dispatch announced the shipment of a cargo of twenty locomotives on a single vessel to Russia.

All this is indicative of the direction in which the highest

[1] Abstract of Eleventh Census, p. 78.

[2] Report of Department of Agriculture, 1885, p. 392.

[3] Gannett, Building of a Nation, p. 176.

[4] T. A. Eddy and Carl Schurz, *Engineering Magazine*, vol. ix, 1895, p. 413.

economic interests of the nation lie. However much relief legislative remedies may afford the farmer, his prosperity is largely dependent upon such a spontaneous redistribution of the working energy of the people as will secure the wisest adjustment of economic force. A fiscal policy like the export bounty, which would counteract this tendency, would strike at a process from the further progress of which the farmer has much to gain, and would prevent the most effective application of the wealth-producing power of the nation.

To summarize: In considering the proposal to establish a system of bounties upon exports of agricultural staples, we have found that Mr. Lubin's argument in its behalf is without logical foundation; that such a system probably would not permanently maintain the prices of agricultural staples at a higher level; that under our form of popular government this policy could not be carried out with any steadfastness of purpose; that it is contrary to the financial interests of the treasury; that it is opposed to economic and social progress; and that it is hostile to the most economic expenditure of the wealth-producing energy of the nation.

4. *The importance of thrift as a remedy for agricultural depression.*—Those whose knowledge of the subject is a product of imagination rather than of actual experience are prone to dwell upon the attractiveness of farm life. The pleasures of agriculture have long been a favorite topic with poets; and even hard-headed business men are frequently convinced, by the familiar pictures of nature's coöperation with the farmer — of the growth of his crops and livestock in value while he is asleep — that the life of the farmer is one of comparative ease. In marked contrast with such an impression are the stern realities: nature frequently defeats the efforts of the farmer, and his life is spent in persistent physical toil. In this routine the women of his household coöperate. They begin with the early dawn a busy round of toil that scarcely ends with darkness. On many farms they not only cook, wash, bake and care for the house, but also supply the table with vegetables,

milk, butter, eggs and poultry, besides paying for the necessary groceries of the family and for their own clothing out of the products of the garden, dairy and hennery, which they care for with their own hands. Probably among no class of equal social standing do the women so generally work as hard or contribute as much to economic success.[1]

The conditions of success upon the farm are probably as well supplied as anywhere among those religious sects known as Dunkards and Mennonites, and nowhere else are the evidences of agricultural prosperity more apparent. But among the mass of our country people, as President Jordan has observed, "a notion has been spreading . . . that the dwellers in towns do 'not have to work to make a living, or do not have to work hard'; and the farmer is coming to think that 'the day of hard labor has passed, or ought to pass.'"[2] The economic future of all who act on this principle is without hope.

It is not enough, however, for the farmer to work hard: he must also exercise good business judgment. The farmer, at the present time much more than formerly, sells what he produces and buys what he consumes. His business relationships have greatly enlarged, and it follows that a knowledge of business methods counts more in his favor. A man may be highly industrious and yet, owing to a deficiency in business tact, may fail in the struggle of life.

Success in farming depends, finally, upon supplementing hard work and sound judgment with frugal living. The farmer who would woo prosperity with any hope of winning her must live within his means. It is impossible to state in general

[1] This is, of course, due to the fact that on the farm there is a very great opportunity for women to lend a helping hand — an opportunity which the state has in no wise curtailed, and is not likely to curtail, by legislation. The above remarks are likewise applicable to the boys and girls who grow to manhood and womanhood in the country. From this statement follow two corollaries: (1) children of farmers are more likely to be trained to habits of industry than those of other classes; (2) the burden of rearing a family is less for the farmer than for those in many other pursuits. The latter fact, in connection with the economic importance of the wife in rural affairs, tends to cause earlier marriages and a larger birthrate among the rural than among the urban population.

[2] *The Forum*, vol. xii, 1891–92, p. 241.

terms a rule of justifiable expenditure : this is a matter each must determine for himself. Some who are struggling to pay for a farm find it necessary to limit their expenses to the simplest necessaries of life. As Booker T. Washington has said : "Art and music for people who live in rented houses and have no bank account are not the most important subjects to which attention can be given. Such education creates wants without a corresponding ability to supply these increased wants." [1] Social philosophers will probably criticise the standard of living involved in this view. It is not necessary, however, for all farmers to be equally saving. Some have ample means for books, magazines, music, travel, the higher education of their children, modern and well-furnished houses and commodious barns. Some who could well afford these things are lacking in taste for them, while others have found the struggle of life so severe that they have never cultivated the habit of spending money sufficiently to find it a pleasure. In general, however, even those farmers who are fairly well-to-do find it necessary to refrain from anything approaching luxury or ostentation.

The suggestion that the solution for the farmer's economic difficulties depends upon limiting expenditure to income meets with various objections. It is argued, for example, that were the doctrine of saving herein enjoined to be generally carried out, industrial paralysis would follow because of the meagreness of consumption. In reply to this, it is to be observed that *thrift* and not *parsimony* is the quality commended. The former inculcates saving in the present, with reference to spending in the future ; some material comfort is sacrificed now, but only for the purpose of having it with greater certainty in time to come. The latter plans to avoid expenditure everywhere and always. Thrift is not content with securing "unto the end a meagre subsistence without improvement of conditions of life and surroundings";[2] parsimony is content with this. Thrift is, therefore, economically sound, while parsimony is not. Looked at in its true light, the

[1] *Religious Telescope*, Dayton, Ohio, August 19, 1896, p. 535.
[2] *Public Opinion*, August 27, 1896, p. 272.

doctrine of saving is complementary to that of spending. The latter is conditioned by the former and *vice versa*. But under the conditions of American life, society need give itself no concern lest the disposition to spend should fail to keep pace with the ability to do so. We may at least be assured that no man of sense, who is struggling to win economic independence on the farm, will spend in order to make times good. Prosperity based upon extravagance cannot be permanent.

It may be urged, again, that farmers should live as well as the members of any other social class; and that, if they are to adjust expenditures to incomes, they will not be able to share in the good things of life to the same degree as the members of some other classes in society. In this observation there is much force; and it may be remarked in passing that the writer yields to no one in his desire that farmers should have as many of the material comforts of life as the members of any other class. But the incontestable fact is that they cannot; nor is this peculiar to the occupation of the farmer. The standard of comfort enjoyed by those who live in towns and cities also varies widely. How far the present system of distribution falls short of giving each his due, it is impossible to say. It is probable, however, that any system that did not recognize differences in skill, executive talent, *etc.*, as a basis upon which to assign to some more and to others less, not only would be doomed to failure, but would so curtail production as to be highly injurious from a social point of view.[1] In other words, differences in the standard of comfort must be accepted as permanent facts in social arrangements.

Something more than criticism of the present order of things is necessary for the American farmer. He stands confronted with certain conditions which are, for the most part, unalterable. What, then, is he to do? There is but one reply. Face the conditions as they are, and pay for success the price which they require. At the present time, side by side with those who fail are others who, by their industry, sound judgment and frugality, are going on to a competency. These are the qualities

[1] Graham, Socialism New and Old, pp. 200–204.

through which tenants are rising to the ownership of the farms which they occupy, while owners are in turn descending to the station of tenants.[1] In the present industrial struggle the fittest are destined to survive, and the test of fitness for each individual lies in the adjustment of expenditure to income. This has ever been the method by which the American farmer has achieved success, even during times of the greatest agricultural prosperity, and especially during every period of low prices for the products of the farm. The conclusion is not hastily drawn, therefore, that those qualities which are best summed up in the word *thrift*, and which have served the farmers of the United States so well in the past, are their main reliance during the present period of agricultural depression.

VI. Conclusion.

For the purpose of continuing the consideration of the farmer's economic condition, it is intended, in this concluding part, to make a comparative study of prices, of wages of farm labor, of taxes, of rural wealth, of standards of living in agricultural communities and of the farmer's situation in contrast with his fellows.

1. *Prices.* — In addition to the light thrown upon this subject in the preceding pages, it is important to hold in mind the following considerations.

The farmer's interest does not lie exclusively in receiving remunerative prices for the commodities he may have to sell. His well-being is quite as much dependent upon the prices he in turn must pay for articles which either enter into the personal consumption of himself and family or are used in the process of production. A comparative study of the fluctuations in the prices of agricultural products and of commodities

[1] "If German, Polish, Bohemian and Swedish agriculturists were to invade the South in large numbers, they would dispossess the plantation owners by their industry and economy. They were born to work and to save. Already the process has begun in Texas, where large plantations are passing piecemeal into the hands of these people, and where in a few years the purchasers are entirely out of debt."— G. K. Holmes, *Annals of the American Academy of Political and Social Science*, vol. iv, 1893–94, p. 73.

in general between 1840 and 1891 reveals several important facts :

First, there have been three periods during which the average of agricultural prices has ruled lower than that of general prices : 1840–53, 1876–80, 1883–90. During the intervening periods agricultural prices ranged relatively high. From 1840 to 1853 the general average of agricultural prices ranged lower than at any other time in fifty-two years. In Ohio three-year-old ox teams, well matched and well broken, sold in 1842–46 for $24 to $30 ; in 1850, nice lambs weighing forty pounds sold for 56 cents per head, four-year-old steers for $15, dressed pork at $1.50 per cwt., cheese at 4 to 4½ cents per pound,[1] wheat at 25 to 30 cents and oats at 10 to 15 cents per bushel.[2]

Second, with the exception of 1860–65, a sympathetic relationship is found to exist between general and agricultural prices. As a rule, when the farmer received low prices for his produce, he paid low prices in turn for the articles he bought. This is well illustrated by the tendency of prices of farm machinery to move downward in company with the price of farm produce. Thus, it has been shown that the number of bushels of wheat, corn or oats required to pay for a list of ordinary farm implements, including a binder, a mower, a two-horse cultivator and a wagon, was less in 1889 than in 1873.[3] The report of the Pennsylvania Bureau of Industrial Statistics for 1890 shows that in Chester County the average decline of wheat from 1880–81 to 1889–90 was 29.1 per cent, of corn 16.9 per cent, of oats 15.4 per cent. "During the same time the decline in the more costly farm machinery . . . was 33.9 per cent, in the lesser farm implements, such as shovels, rakes, hoes, scythes and pitchforks, 26 per cent, and the average rate of decline in ten selected articles of staple use, such as sugars, tea, coffee, salt, and standard cottons, calicoes, ginghams and coarse boots, was 15.3 per cent." [4]

[1] Ohio Agricultural Report, 1890, p. 397. [2] *Ibid.*, 1892, p. 528.
[3] Prof. E. W. Bemis, *Journal of Political Economy*, vol. i, 1892–93, p. 208.
[4] *Ibid.*, p. 209.

Third, the economic condition of any particular farmer depends largely upon the kinds of commodities he produces, and upon the proportions in which he puts them upon the market. For example, in the seven years ending with 1891, the average price of wheat was 24 per cent lower than in 1860, that of corn 25 per cent, that of hogs for live weight 22 per cent; while during the same period tobacco averaged 20 per cent higher than in 1860, mutton sheep 29 per cent and fat cattle 28 per cent.[1]

Likewise, the farmer's condition depends very greatly upon what articles he buys, and in what ratio various commodities enter into the budget of his expenditure. Thus, during the seven years ending with 1891, cloths and clothing were 16 per cent lower than in 1860, metals and implements 24 per cent and house-furnishing goods 30 per cent. The conditions have therefore been favorable for those families with a liking for good clothes and for a house furnished in an attractive manner. On the other hand, the farmer who built a new house or barn in 1891 had to pay 24 per cent more for lumber and building materials than in 1860.[2]

No comparative study of farm prices, however, should fail to take account of the low price level for farm products which has prevailed since 1891.[3] The effect of this upon the burden of mortgage indebtedness has already been pointed out.[4] But the farmer has also suffered in consequence as a consumer. Owing to his inability to reduce adequately the cost of production, the simultaneous decline in prices of commodities which he buys has afforded him no compensation commensurate with the fall in the prices of his own products.

2. *Farm wages.* — In regard to the cost of labor, the farmer has been placed at a disadvantage by the recent fall in prices. Wages of hired labor have declined somewhat during recent years, but not to such an extent as adequately to offset the

[1] Aldrich Report, part i, pp. 99, 102–108.

[2] *Ibid.*

[3] See Part IV of this essay, POLITICAL SCIENCE QUARTERLY, December, 1896, p. 606.

[4] *Ibid.*, p. 607.

downward movement in the price of farm commodities. To-day wages of farm labor are almost double what they were fifty years ago.[1] This increase in the cost of labor, together with the uncertainty about securing any help at all during critical periods, such as harvest time, has doubtless hastened the introduction of labor-saving machines upon the farm as a matter of economy, convenience and necessity. Specialization in farming has also quickened the introduction of agricultural machinery. This is illustrated in the development of wheat production in the Northwest, which could not have taken place on such a grand scale without the aid of the binder.[2] But to whatever extent machines may have been substituted for manual labor, there has been since 1891 no reduction in their cost sufficient to lessen materially the farmer's outlay in production. Nor was the fall in prices of farm products beginning with 1892 due in any marked degree to the introduction of machinery prior to that date. Successive improvements in a machine and reductions in its price always precede its general use; and these features were not especially characteristic of the several years preceding 1892. There was, however, a noticeable increase in the export value of agricultural implements during these years,[3] and of this increase harvesting machinery contributed an important item[4] — a fact probably related to the enlarged wheat production of Russia and Argentina in recent years.

[1] Wages of Farm Labor in the United States, Division of Statistics, Miscellaneous Reports, No. 4, 1892, pp. 13–15 and 54–69. Prof. James H. Hyslop makes the interesting suggestion that one cause of high wages for farm labor is the liberality with which outdoor relief is given to the poor. "The pauper feels secure in his expectation of care from the county, and will not work for reduced wages. He demands terms that are above what poor-law relief gives him; and he might naturally be expected to do this, since the law will give him a living without any work at all, and hence if he works he can well expect additional wages." Professor Hyslop suggests as a remedy "an alteration of the law so that every form of public relief shall be refused outside the almshouse, and given there only in return for work done." — *The Independent*, October 15, 1896.

[2] From another point of view inventions have promoted specialization. Thus, the tobacco planter rendered possible the planting of a larger acreage, and led communities accustomed to the industry to expend more productive energy in the growth of tobacco.

[3] Statistical Abstract of United States, 1895, p. 168.

[4] *Ibid.*

3. *Farm taxes.* — The relation of the farmer to taxation has already been considered.[1] It is merely desired to remark here that taxes are a fixed charge which have tended to increase, while the prices of farm produce have been on the decline.

4. *Rural wealth.* — During the forty years ending with 1890, rural wealth increased fourfold. Even during the decade 1880–90, notwithstanding the marked depreciation of farm lands in certain states, there was for the country at large a substantial advance in the sum total of rural wealth. The source of this increase, however, has not been confined to the ordinary profits of the farmer's business. Part of it is to be credited to soil exploitation, and part to the "unearned increment" incidental to the growth of land values. An increase within a generation of more than $25 per acre in the value of farm lands in many states roughly measures the influence of the latter factor; that of the former is indicated by the cost of purchased fertility. It has been demonstrated that, though "the wheat crops of Ohio have been slightly increased by the use of commercial fertilizers, . . . the average cost of this increase has equaled its market value."[2] These conditions have unquestionably attracted energy from other pursuits into the business of food production, with the effect of depressing agricultural profits proper below their natural level.

5. *Standard of living.* — The present condition of the American farmer in respect to his standard of living is vastly superior

[1] See Part V, Section 2, of this essay, POLITICAL SCIENCE QUARTERLY, December, 1896, pp. 632–639. One item which unduly swells the sum total required for taxes and of which farmers complain is the salary account of county officials. The complaint is that the pay of this body of men has in many cases never been reduced from the point which it reached in the period of inflation during and following the Civil War. Furthermore, a system of fees which yielded the recipient a moderate income at the time they were fixed has frequently resulted, with growth of population, in pay out of proportion to services rendered, and has become a corruption fund which candidates are compelled to hand over to party managers as a price for office. That the cases are numerous in which a reduction of salaries and fees would not lessen the efficiency with which the public is served admits of but little doubt. Legislation having this in view, however, usually encounters the combined opposition of the office-holding class in both parties — an opposition that is generally successful.

[2] Chas. E. Thorne, *Science*, vol. xix, 1892, p. 49.

to that of forty to fifty years ago. In contrasting the two, J. R. Dodge says:

> The farmer of those days dressed in homespun, or in the coarse and dear fabrics of the few rough looms so recently started in the new factories. His furniture was generally of the plainest, meagre in variety, the clumsy workmanship of the local cabinet maker, or the result of his own unskilled labor. . . . The clothing now used by the farmer's wife and children could not then have been obtained at any cost. Present social and educational facilities required by farmers, the furnishing and adornment of their homes, the equipment in horses and carriages and other comforts of life, such as are now common to the best class of farmers, were scarcely dreamed of in 1840. . . . Throughout the Ohio Valley, the farms . . . are now . . . improved with commodious and substantial buildings, furnished with convenient and often elegant furniture, carpets, sewing machines, libraries and musical instruments. There are indeed poorer establishments, occupied by younger or less enterprising farmers, but improvement has been general if not universal.[1]

Again, "farm machinery now gives the farmer an amount of leisure unknown in the old days of hand labor,"[2] relieves his mind of much of the anxiety and turmoil of securing hired help, and lightens his work by abolishing many of its more laborious processes.

6. *The farmer in contrast with his fellows.* — Let us now compare the farmer's well-being with that of his fellows in other walks of life. In addition to the economic and social forces favoring the accumulation of urban rather than rural wealth that were considered in Part II of this essay, certain further disadvantages of the farmer deserve attention.

First, the discriminations practiced by railway corporations between persons, places and commodities have more seriously injured the farmer than any other class. Competition between carriers at trade centers has frequently depressed rates ruinously low. At intermediate points, however, the railway is thoroughly monopolistic in character. Railway patrons at such places, having no alternative, have frequently been compelled

[1] *The American Agriculturist*, vol. li, 1892, pp. 3, 4.
[2] E. V. Smalley, *The Forum*, vol. xvii, 1894, p. 248.

to pay monopoly charges for the service. Consequently, the chiefly agricultural regions have always been singled out by railway managers for recouping the losses sustained by perilous competition at large centers. Delivering his grain for the most part, not at the great trade centers, but at the smaller way stations, the farmer has been made to feel the oppressive power of railway favoritism. Scattered over the broad area of the United States, railway discrimination has in many instances not only lessened the price of what he sells, but has increased the cost of what he buys. Moreover, the farmer's investment being largely in an immovable species of property (land), he has not been able to transfer the field of his operations to the great cities, as producers in many other industries have done in order to profit by lower railway rates.[1]

Again, the farmer is at a disadvantage in the fact that "he deals altogether with a raw material."[2] In explanation of this statement, President James H. Canfield writes:

> It seems to me that as civilization advances, and as invention and ingenuity carry the final product, in a certain sense, further from the initial point at which the work of transmutation is taken up, the greater part of the returns will go to reward the ingenuity and intelligence of the latter processes; and a much less proportionate part will be returned to the one who practically handles the raw material. I cannot believe that the man who mines iron and coal will ever be as well paid as the man who makes watch springs. Perhaps a better illustration would be that the men who construct the different portions of a fine carriage and assemble these into one finished product will always be better paid than the men who cut the timber and hauled it to mill.[3]

The farmer is at a further disadvantage in that the products of his labor are especially subject to instability of price. This is due to the fact that he is largely engaged in the production

[1] Prof. H. C. Adams, *The Century*, vol. xxi, 1891–92, p. 780.

[2] Pres. James H. Canfield, *The Forum*, vol. xviii, 1894–95, p. 456.

[3] Personal letter, June 19, 1896. Here lies one of the difficulties with which agricultural colleges have had to contend: "For a given amount of time spent in study, and of pecuniary sacrifice made for the sake of the study, more money can usually be gained in the years immediately succeeding graduation by the students of other branches than agriculture." — *The Nation*, vol. xxx, 1880, p. 133.

of commodities which have in general no utility save in satisfying the demand for food; and for such products the demand is relatively inelastic. Hence a sudden increase or decrease in the supply of farm products causes a relatively great fluctuation in price.

As an offset to the disadvantages under which the farmer labors as compared with those who are engaged in urban industries, there are certain particulars in which his condition is better than theirs. In the first place, he has more generally succeeded in securing for himself a home and a small capital than the men of other industrial classes. Of farm proprietors under twenty-five years of age, thirty-two per cent are owners, and the percentage increases with age up to eighty-three per cent for owners of sixty years of age and over. Of home proprietors less than twenty-five years of age, only thirteen per cent own their homes, and the percentage increases without interruption to fifty-seven per cent for owners of sixty years of age and over. Of all farm families sixty-five per cent own their homes, while but thirty-six per cent of the homes in towns and cities are owned by the occupants.[1] It is true that the opportunities to acquire a vast fortune are greater in the cities than in the country, but it should not be overlooked that these opportunities are relatively few, and that rural wealth is not marked by that inequality of distribution so characteristic of urban wealth. Notwithstanding the more rapid increase of the latter, it is probable that on an average the farmer of the United States ends his days in a better financial condition than he would have attained had he begun his industrial career in the city rather than in the country.

Home ownership, however, is not always a trustworthy criterion of the relative well-being of classes. There is in the cities a considerable class who do not generally own their homes, but who are far above the farmers in material prosperity. It is not, however, with this class that the farmers are naturally compared, but with that great majority who work for wages or for small salaries. Here again the test of home

[1] Eleventh Census, volume on Farms and Homes, p. 227.

ownership is illusory, for, owing to the uncertainty of tenure in employment among the wage-earning class, the inducement to home ownership is far weaker than among farmers. But in this very fact appears the more desirable position of the latter; since they have — what the wages class lacks — a controlling voice in determining the conditions under which they labor.[1]

Again, the farmer is less disastrously affected than others by panics and commercial depressions. Three reasons may be assigned in explanation of this. In the first place, the products of the farm are largely articles of absolute necessity. However much the masses of the people, in times of economic pressure, may dispense with the comforts of life, the demand for food remains relatively constant. Consequently, during times of economic disturbance, the prices which farm products command are less unfavorably affected than those of many other classes of commodities.[2] In the second place, in the words of a high authority,

> farmers deal on a cash basis to a larger extent than most producers. The main trouble in panic times is that those who have relied largely upon credit find their credit withdrawn or largely curtailed. Naturally such a state of things does not affect so seriously the class that, more than any other, is accustomed to pay and receive cash.[3]

Finally, the farmer sells less of what he produces and buys less of what he consumes than many other classes in industrial society. No part of the services of the laborer, for example, is capable of ministering to his material well-being till sold, and the commodities that are adapted to his wants are bought in

[1] The farmer, it is true, is to some extent a capitalist — to some extent, also, by coördinating capital and labor, he acts as entrepreneur. But the farmer is by distinction a laboring man. In a large number of cases he employs little or no help, but does all or nearly all the work with his own hands. Moreover, the successful employer of labor on the farm generally eats at the same table and works alongside of his hired help. There is not in rural economy that sharp differentiation into capitalists, employers and workers which is so prominent a feature of the modern industrial system. While, therefore, the farmer differs from the industrial employee by being to some extent a capitalist and an entrepreneur, he is pre-eminently a laboring man who employs himself.

[2] Walker, Money, Trade and Industry, pp. 126–133.

[3] Personal letter from the New York *Journal of Commerce*, November 4, 1895.

exchange. The farmer is also less under the necessity of realizing immediately on his labor than is the worker in cities. The efforts of the former crystallize to a large extent into non-perishable products, while the services of the latter must be sold day by day or be lost forever. The well-being of the farmer is thus not so dependent upon general economic conditions, and he therefore feels less keenly the disturbance which a panic or commercial depression creates in industrial society.

The economic basis for the existing discontent among the agricultural classes may now be summarized as follows :

1. Cheapened transportation has deprived a number of states of their natural advantage of location, and has forced them into competition with the constantly increasing volume of food products not only of the great West, but of remoter sections of the world, thereby seriously diminishing the income-yielding power and value of their farm lands. Complementary to this are the unremunerative prices received by those farmers whom distance from the consumer places beyond the margin of profitable cultivation — that is, by those located so far from the seat of consumption as not to have sufficient compensation for their toil after the cost of transporting their products to market has been met. Consequently, as occasionally happens in the case of California fruits, crops are sometimes a source of loss to the grower, partly because of their distance from market, as well as because of their unusual size or perishable nature.

2. The industry of the farmer, especially in some of the western states, has in many cases been overcome by crop disasters, and those ambitious to acquire homes have been defeated by unfavorable weather.

3. The sharp and unexpected fall in prices of many farm staples since 1891, which it has been impossible to meet by lowering the cost of production, have inflicted serious losses upon the producer.

4. These conditions have made more difficult the payment of interest charges and mortgage debts, have increased the relative number of mortgage foreclosures, have prolonged the

period required for tenants to rise to land ownership, have caused the expense for hired labor to be a greater drain upon the resources of the farm, have made the inequitable burden imposed upon the farmer by the general property tax more difficult to carry, have increased the strain of maintaining a higher standard of living and have rendered less endurable the tyranny of railway discriminations and the exactions of trusts. Furthermore, since the great mass of farmers, after starting in life with no other resources than an abundance of energy and a willingness to work, have attained only very modest incomes, any losses to which they have been subjected have been more keenly felt than if they had been possessed of more abundant means.

Our study has thus far been occupied with the economic basis of the farmer's discontent. A satisfactory result, however, requires an appreciation of the far more subtle influences that produce the general condition of restlessness in nineteenth century society. On final analysis much of the social unrest of the age springs from a longing in the human breast for development, from dissatisfaction with any condition or station in life, however comfortable or luxurious, that offers no chance to rise, no opportunity to progress. "Man is by nature a discontented animal. Satisfy one of his desires and forthwith he feels the sting of another." [1] In short, the ideal of a progressive society, which so thoroughly possesses the Western mind, is in no small degree responsible for social discontent. This ideal has been strengthened by the enormous strides society has taken, within the memory of men now living, through the modern development of transportation and communication.

The civilizations of the Orient, which rest satisfied with the institutions handed down by tradition, whose ideal is that of a static social condition equally good for all time, do not have social agitations.[2] The difference between the static civilizations of the Orient and the dynamic society of the Occident is,

[1] Alfred H. Peters, *Public Opinion*, vol. xvi, 1894, p. 480.
[2] Gunton, Social Economics, part i, chs. iii, iv, *passim*.

it is true, the difference between social contentment and social unrest; but in the former the masses are content with a degraded state of equality, while in the latter unrest is the mainspring of their progress. Professor Gunton has said:

> If the English in India could make the Hindoo laborer want more things, they could soon civilize him up to their own standard. If the Russian peasants were not content with so little, the development of Russia might run on at equal speed with that of the United States. If our Indians could only be made to want houses and steam machinery and good clothes enough to work for them, the Indian problem would solve itself in a single decade.[1]

The contented state of the Oriental mind is what renders any amelioration of Eastern civilizations such a hopeless task.

> The Hindoo having, as he generally has, sufficient for the day, is happy, content to sleep, and is hardly to be urged to greater work by the offer of greater earnings. "I have enough; why should I work for more?" is not an unusual answer, and the offer of a higher place is often refused lest it should involve more effort.[2]

If progress is better than stagnation, so is Western unrest better than Eastern contentment.

The idea of a progressive society is reënforced by other forces productive of discontent. Among these is the belief in the unequal distribution of wealth. It is said that 4047 millionaires of the United States own twenty per cent of the wealth; that nine per cent of the families, including the millionaires, own seventy-one per cent; and that "as little as five per cent of the nation's wealth is owned by fifty-two per cent of the families."[3] Few contemplate with entire satisfaction such statements as these, and, whatever may be their import, they create a feeling of uneasiness among the masses of the people. The spirit of modern times is prone to inquire whether society has a sufficient guarantee that the concentrated ownership of the nation's wealth will be used in such

[1] Social Economics, p. 440.
[2] *Fortnightly Review*, vol. lx, Old Series, 1893, p. 209.
[3] G. K. Holmes, POLITICAL SCIENCE QUARTERLY, vol. viii, 1893, p. 593.

a way as to minister to the well-being of the people; and the frequency with which the interests of the public are disregarded by trusts and corporations keeps alive the fires of the social discontent.

This attitude of mind is doubtless somewhat tinged with the "complaint that every man who is compelled to walk has against the man who rides, . . . the complaint of him who has nothing against him who has something and of him who has something against him who has more."[1] Moreover, "it is no difficult thing to make the world believe it has been misused;"[2] and there is consequently a great deal of unrest inspired by a feeling of social injustice that either has no foundation or rests upon a misinterpretation of events. The willful distortion of facts and the diffusion of misinformation among the people by newspapers intent only on partisan ends, and by politicians who value their reputations for veracity less than they do their loyalty to party and their claims to office, are in large part responsible for this. But propositions which rest upon falsehood are none the less potent in arousing the indignation of those who believe them than are those which rest upon truth.

The spirit of democracy also lies at the basis of much of the unrest of our age. By democracy is here meant "the natural wish of a people to have a hand, if need be a controlling hand, in the management of their own affairs";[3] an attitude of the public mind which makes "itself generally disagreeable by asking the Powers that Be at the most inconvenient moment whether they are the powers that ought to be."[4] "Formerly the immense majority of men — our brothers — knew only their sufferings, their wants and their desires. They are beginning now to know their opportunity and their power."[5] A people looking upon itself as the source of authority, conscious of its power and confident in its own wisdom, is a fertile soil for the seed of social uneasiness to grow in. Such a spirit is especially characteristic of the United States, where territorial

[1] Judge P. S. Grosscup, Chicago *Tribune*, October 31, 1896.
[2] *Ibid.*
[3] James Russell Lowell, Democracy and Other Addresses, p. 16.
[4] *Ibid.*, p. 20. [5] *Ibid.*, p. 13.

expansion and marvelous social and material development have favored the feeling of national self-sufficiency. "Men are even more eager than in Europe to hasten to the ends they desire, even more impatient of the delays which a reliance on natural forces involves, even more sensitive to the wretchedness of their fellows and to the mischiefs which vice and ignorance breed."[1]

A fundamental change in the attitude of men's minds towards life is another primary fact in the restlessness of modern times. For centuries a spirit of *other*-worldliness gave character to all mental activity, and controlled the conduct of society.

> Humanity . . . passed . . . intent on the terrors of sin, death and judgment, along the highways of the world, and scarcely knew that they were sightworthy, or that life is a blessing. Beauty is a snare, pleasure a sin, the world a fleeting show, man fallen and lost, death the only certainty, . . . abstinence and mortification the only safe rules of life.[2]

To men living in the gloomy presence of such thoughts, the conditions of life here were of little importance. "For the poor there was no physician; for the dying, the monk and his crucifix. The aim was to smooth the sufferer's passage to the next world, not to save him for this."[3] In marked contrast is the attitude of the thinker of to-day. How to render existence in this world more tolerable, how to realize an ideal social state, is the aim of the modern reformer. "The general appearance of comfort and well-being almost everywhere . . . indicates a disposition to live for the present rather than to sacrifice the present to the future."[4] The masses are seized with a passion for the enjoyment of the material comforts of life, and it no longer suffices simply to commend to them the virtues of patience and forbearance. This revolution in the thinking and conduct of men has undoubtedly contributed greatly to the disquietude of the age.

[1] Bryce, The American Commonwealth (ed. of 1888), vol. ii, p. 409.
[2] Pearson, The Renaissance in Italy, pp. 5, 6.
[3] Draper, The Intellectual Development of Europe, vol. ii, p. 231.
[4] G. K. Holmes, POLITICAL SCIENCE QUARTERLY, vol. viii, 1893, p. 598.

Hand in hand with the growth of democracy and a spirit of *this*-worldliness, the rationalistic tendencies of mankind have become stronger. The spirit of inquiry is being scrupulously applied to every phase of life. "Truth for authority and not authority for truth," is the spirit of the age. The tendency is to discard that which will not stand the test of reason, and with the growing intelligence of man this tendency has become more and more marked. Obviously, a society permeated with this spirit is destined to be in a continual state of ferment.

Nor should the important rôle played by modern means of communication be overlooked. Never before were all the various facilities for interchange of thought so efficient and abundant. But for this fact the democratic and rationalistic spirits and all the factors productive of discontent would be largely stripped of their power. No one who has an idea to express need lack a vehicle in which to convey it to the world. Every phase and condition of life is reflected daily in the press. Much of modern discontent is due to a desire for improvement, and without a knowledge of present conditions this desire can have no intelligent basis. The explanation of much of the unrest of the age, therefore, is not that social conditions are inferior to what they formerly were, but that the public, through the medium of the telephone, the telegraph and the printing press, is made acquainted with the terms of existence which everywhere obtain.

As to American life in particular, the unrest so characteristic of it is in part due to the very wholesomeness of social and economic conditions. Probably in no other country is society in so much of a flux, or the mobility of the individual units so marked. There is a constant movement going on from below upward and from above downward. Each man, no matter into how humble a condition born, has a chance, and knows he has a chance, of rising; and where he will be found later on in life cannot be predicted from the status of his birth. These conditions, however, give rise to hopes, involve the possibility of disappointment and, therefore, contain within themselves the germs of discontent.

Moreover, the energies of the nation have been absorbed for more than a generation in industrial expansion. Material development has been so sudden, the industrial activities and relationships of men have so greatly enlarged, that problems of an economic character have arisen more rapidly than they have been solved. The process of redefining the rights of individuals in their new relationships, of adjusting the legal framework of society to corporations, trusts and all the complex phenomena of modern life, is necessarily slow. Meanwhile, the issues which in times past occupied the public mind have disappeared. Political and religious freedom have been largely attained. The question of slavery was settled a generation ago by an appeal to arms. Men's minds are left free to deal with problems of social and economic import. At the same time the rapid increase of population and a rising standard of living intensify the competitive struggle of life; and whatever influence the public domain may have exercised in lessening the intensity of this struggle is now largely a matter of the past.

The farmer's discontent is in part a manifestation of these general conditions so prevalent in the nineteenth century in all Western civilizations. The wants of the rural population, in common with those of nearly all classes of society, have developed more rapidly than the means of satisfying them. The social requirements and customs of the times demand a larger outlay for dress, amusement, jewelry, travel, education and even funeral expenses.[1] Owing to the great variety which such classes of wants assume when they are once indulged, the higher standard of living in agricultural communities, far from contributing to contentment of mind, has probably had just the opposite effect.[2] And the more luxurious style of life found in cities, especially the ostentatious display of those who have risen suddenly to wealth, makes the farmer feel that he is getting less than his share of the good things of life. As Professor Giddings says:

[1] Clarence Deming, *Yale Review*, vol. i, 1892–93, p. 297.
[2] *The Nation*, vol. xlvi, 1888, p. 502.

The isolated farmer and his family have begun to be affected by the strain of modern life in a deplorable way. They are no longer ignorant of the luxuries of the towns and a simple manner of life no longer satisfies them. The house must be remodeled and refurnished; the table must be varied; clothing must be in style; and the horses, carriages and harnesses must be costly. The impossibility of maintaining this scale of expense under existing agricultural conditions embitters life, and finally, in many cases, destroys the mental balance.[1]

In addition to economic grievances and the disturbing influence of general social development, the nature of the farmer's occupation is such as to contribute to a discontented frame of mind. However much intelligence or skill he may bring to his work, results after all depend largely upon nature. Not infrequently, when every possible precaution has been taken, his hopes are suddenly blasted by an unpropitious change in the weather. It is true that the adverse influence of unfavorable weather is likely to be exaggerated at the time, but it is none the less depressing in its psychological effect. The excessive rainfall or the unwelcome drought of summer, the cutting winds of a rigorous winter, the late frosts of spring or the early frosts of autumn — these are the product of natural forces with which the farmer is largely powerless to cope. In the presence of such phenomena, the most hopeful minds are apt to become depressed and to give expression to feelings of discontent.

In conclusion it is necessary to notice certain facts that have contributed to the special development of discontent among American farmers in recent years:

1. The period during and immediately following the Civil War was one of very great prosperity to the farmer. In the fifty-six years since 1840, there has been no other time when the farmer so easily paid his debts, when his labors relative to those in other occupations were so liberally rewarded. Though this prosperity was too great to last, the memory of it still abides; and there are those in most farm communities who measure the

[1] Principles of Sociology, p. 349.

condition of the agriculturist at present by that of what may be termed the golden age of American agriculture. Without doubt the recollections of that halcyon period contribute to the dissatisfied frame of mind of the American farmer at the present time.

That prosperity was due in large part to the withdrawal of productive energy from agricultural pursuits by the necessities of war, and to the waste and destruction of food supplies occasioned by military operations. In part, also, it was due to successive inflations of the currency, which gave the farmer an artificial leverage in the payment of mortgage debt, and imparted an upward movement to the value of farm lands: the temporary advantage thus secured has much to do with the groundless belief at the present time in the potency of an irredeemable currency to ensure permanent agricultural prosperity. It is true, of course, that, as a consumer of commodities produced by others, the farmer reaped no ultimate advantage from the large prices which the war and a depreciated currency enabled him to get for his produce. But many fail to make allowance for this; and thus the disparity between present prices and those that formerly prevailed is rendered greater, and dissatisfaction is still further intensified.

2. During the thirty years from 1860 to 1890 occurred the construction of the greater part of the vast systems of railway throughout the West, the opening up of new lands for settlement and a tremendous movement of migration to the Western states. Since 1860, 2,520,564 farms have been created, and 217,006,091 acres thereby brought under cultivation.[1] The throng of settlers who participated in this wholesale process of making homes possessed on the average at the beginning a meagre allowance of capital, but they represented the very flower of the nation in enthusiasm, hopefulness and energy.

It is the most enterprising and unsettled Americans that come West; and when they have left their old homes, broken their old ties, resigned the comforts and pleasures of their former homes, they are

[1] Tenth Census, Statistics of Agriculture, p. 25, in connection with Eleventh Census, volume on agriculture, pp. 1, 3.

resolved to obtain the wealth and success for which they have come. They throw themselves into work with a feverish yet sustained intensity. They rise early, they work all day, they have few pleasures, few opportunities for relaxation. . . . All the passionate eagerness, all the strenuous effort of the Westerns is directed towards the material development of the country. To open the greatest number of mines and extract the greatest quantity of ore, to scatter cattle over a thousand hills, to turn the flower-spangled prairies of the Northwest into wheat fields, to cover the sunny slopes of the Southwest with vines and olives, — this is the end and aim of their lives, this is their daily and nightly thought. The passion is so absorbing, and so covers the horizon of public as well as private life, that it almost ceases to be selfish — it takes from its very vastness a tinge of ideality.[1]

It is difficult to imagine conditions more favorable to disappointment and discontent than those which inhere in such a social population as has just been described.

In the pursuit of wealth some, by reason of extraordinary diligence, extraordinary shrewdness or good fortune have been more successful than others. With the unsuccessful, even though they have done more than fairly well, the sense of not being as far along in the race as those with whom they made the start is irritating.[2]

Those who are "outstripped by others in the race for ownership are apt to overlook their own advance from the conditions of the past."[3] The farmers of the Western states, feeling that there ought to be a great deal in life for them, have not always withheld their complaints till they were deprived of the necessaries of life. Breathing an atmosphere of free speech from childhood, they have become accustomed quickly to give utterance to their feelings, and to express their disappointment when the horn of plenty has ceased to overflow.

3. The growing lack of social opportunity in farm communities has been another cause fruitful of rural discontent during the past thirty-six years.

[1] Bryce, The American Commonwealth, edition of 1888, vol. ii, pp. 681, 684.

[2] Pres. James H. Canfield, *The Forum*, vol. xviii, 1894–95, p. 460.

[3] Judge P. S. Grosscup, Commencement Address at Wittenberg College, Springfield, Ohio. — Chicago *Inter-Ocean*, June 5, 1896.

Education, religion, art, science and literature are all dependent on a certain density of population. Schools, universities, churches, the daily newspaper, great publishing houses, libraries and museums come only when the population per square mile is expressed by more than one unit.[1]

During the last decade, rural population declined upon 16.25 per cent of the total area of the United States, upon 21.1 per cent of the total area of the North Central states, and upon 58.96 per cent of the total area of the North Atlantic states. During the same period, 43.26 per cent of the total area of Iowa lost in rural population; 47.39 per cent in Indiana; 61.39 per cent in Ohio; 65.73 per cent in Illinois; and 82.66 per cent in New York.[2] This decline in rural population, by lessening the social, educational and religious advantages of country life, has undoubtedly aggravated the feeling of agricultural discontent.[3] That the social life in many of the older farm communities is inferior to what it formerly was is a fact which few will deny. "The gathering together of all the neighbors for haymaking and houseraising, the apple-paring parties and the corn-husking bees are all experiences of the past."[4] The social opportunities of city life also have become increasingly attractive with the multiplication of centers of population, both in size and number; and, as a consequence, country life has become relatively still less desirable.

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[1] Giddings, Principles of Sociology, p. 367.

[2] Eleventh Census, volume on Population, part i, p. lxx.

[3] The fact that the trolley car is at the present time rendering country life less uninviting is of sufficient importance to deserve mention. "Much of the old isolation of farm life disappears when the farmhouse is within sight of an electric line. The young people find a new diversion in trolley rides. The farmers and their wives and children can go into the nearest towns to church, to amusements and to social gatherings with expedition and comfort." — E. V. Smalley, Chicago *Times-Herald*, July 23, 1896.

[4] Jane Addams, *American Journal of Sociology*, March, 1896, p. 549.

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JOURNEYMEN'S CLUBS.

A LITTLE work by Dr. Bruno Schoenlank, entitled *Social Conflicts Three Centuries Ago*,[1] and published in 1894, deserves attention as being a good deal better than its title, and as making a real addition to our knowledge of the sixteenth century. It is especially interesting in that it suggests some necessary criticism of certain other and more recent works that are likely to receive more notice in America and England.

The book deals with the *Gesellenvereinigungen*, or journeymen's associations, of Nuremberg in the fifteenth and sixteenth centuries ; and, so far as the nature of such organizations is concerned, it adds nothing to what Schanz had said seventeen years before in his *Gesellenverbände*, except some additional and not altogether well-placed emphasis. The opening chapters suffer no little from bad rhetoric; and they are so vague just where definiteness is most called for that it is impossible to make out what the development of Nuremberg industry really was. Dr. Schoenlank tells us, for instance, that *Hausindustrie* and the *Verleger* were encroaching on the old *Handwerk* organization; he does not tell us in which crafts in particular that was taking place; nor does he seem to realize that the picture of poverty-stricken master-craftsmen, dependent on merchants, is hard to reconcile with that other picture of rich and haughty master-craftsmen exploiting their journeymen. Probably some crafts were entirely transformed; probably some quite new occupations, organized from the first on the "domestic system," sprang up during the same period; and probably some *Handwerke* survived, with but gradual and imperceptible changes of organization as time went on. It is this presence side by side of the domestic and the gild systems which adds so greatly to the difficulties of economic history in the period between the

[1] Sociale Kämpfe vor dreihundert Jahren: Altnürnbergische Studien. Von Bruno Schoenlank. Leipzig, Duncker und Humblot, 1894. — 212 pp.

Reformation and the great inventions; and before we can judge of the position of affairs in any particular town or district we want some quantitative notion of the relative importance there of each system.

I have used "gild system" in default of any better term in English, although the name "gild" was seldom applied to an organized craft in the England of the later Middle Ages. In somewhat the same way modern German writers are apt to speak of *Zunftsystem*, even where, in the language of the particular time and place, no *Zünfte* existed; though they have hardly so good an excuse, since they have another term, *Handwerk*, ready to their hand. As Dr. Schoenlank shows, the term *Zunft* was abhorred by the town-council of Nuremberg, and its use was carefully avoided, until circumstances had altered and the city-fathers could afford to be careless in the eighteenth century. The council kept the several crafts under a very tight control, and regarded any unauthorized gathering of their members, or any independent decision by them in matters of trade policy, as *zünftisch*, and therefore as worthy of severe punishment. In 1592 the purse-makers of Nuremberg had to tell the purse-makers of Magdeburg that they could not as a rule communicate directly with them "because here there are no *Zünfte*." Still, it is evident that the *economic* significance of the *Handwerk* was much the same all over Germany, whether it had the *constitutional* powers of a *Zunft* or not. Dr. Schoenlank hardly brings this out with sufficient clearness. On the other hand, when he is speaking of the efforts of the journeymen to obtain some "jurisdiction" over their fellows, and connects these efforts with "differences of class interests" and the like, he seems sometimes to forget how little jurisdiction the *Handwerke* themselves enjoyed, even over the master-craftsmen.

In spite of the author's two chapters on "the beginnings of the organization" and "the progress of the *Gesellenverbände* in the fifteenth century," there is hardly any firm ground to stand on until we reach the *Gesellenordnung* of the purse-makers of 1530. Most of the religious fraternities of earlier times, of which he gives any account, were composed either of masters

or of masters and journeymen; and all alike were dissolved at the Reformation (1524). By the end of the fifteenth century, however, in those crafts in which "wandering" became the rule, the customs had already grown up which were associated with the *Schenke;* and it is for the new light it sheds on the history of this peculiar institution that the book of Dr. Schoenlank is chiefly welcome. The *Schenke* was originally, perhaps, the cup of ale or wine given from the doorstep to a passing traveler; out of this grew the meaning afterwards attached to it in artisan circles, namely, the sustenance provided by his fellows for a traveling journeyman when he had reached a new town and was looking for work; and those crafts in which there was a regular system of such aid ultimately came to be distinguished as *geschenkte Handwerke.* In the sixteenth century, however, the term had come to include a good deal more: it meant primarily the periodical meetings of the journeymen, with all the festivity there enjoyed and the business transacted, as in the ordinance of 1530, "Item, every four weeks they shall have and hold *eine Schenke*";[1] and it meant also the tavern at which the meetings were held, and which served as the temporary residence of newly arrived journeymen until work was found for them. In modern German, of course, it simply denotes, in the straightforward language of Whitney's *Dictionary,* "a retail liquor-shop" — but the word has come down in the world.

In 1530 the imperial authorities and the *Reichstag* began an attempt, which we may provisionally describe, in contemporary language, as designed for "putting an end to" *Schenken.* The *Polizei-Ordnung* of 1530 remained, however, without effect — even after it was renewed in 1548. In March, 1551, the town magistrates of Augsburg and Ulm began to remonstrate with those of Nuremberg upon their laxity, and to urge common action; and in October, 1551, the authorities of Nuremberg ventured to call the craftsmen before them and to declare the *Schenken* abolished. But the free and imperial cities were alone in their action: most of the princes, and especially those

[1] Page 58.

of the house of Austria itself, continued to disregard the ordinance; and the journeymen of those towns in which the *Schenken* were undisturbed put the craftsmen of Nuremberg who continued to work in their own town under so severe a boycott that the masters of Nuremberg were reduced to desperation, and persuaded the council, in October, 1553, to revoke its resolution. There were fresh imperial Recesses in 1551 and 1559 — all printed by Dr. Schoenlank — but nothing was done at Nuremberg, though the magistrates of Strassburg were so indignant with the sister city for its inaction that for a time they actually excluded Nuremberg men from their fair. The rulers of Nuremberg had learned that they were helpless unless the surrounding powers backed them up; and they waited until in 1567 they had induced the three circles of Franconia, Swabia and Bavaria to agree to common action. Then they made a fresh attempt; again the princes thought only of the immediate advantage of their own territories and deserted them; again there was a general boycott of Nuremberg and the cities acting with it; and at last in 1573 the magistrates were forced to make terms, and to consent to what Dr. Schoenlank calls "a compromise." With this the journeymen were content, and came back to work; and henceforth throughout the seventeenth and eighteenth centuries, in some cases well into the nineteenth, the journeymen retained their *Schenken* — or *Herbergen*, as they were soon more commonly called.

It is more difficult to judge of the inner significance of all this than to set forth its outward course. Dr. Schoenlank describes it as a struggle on the part of the journeymen for "the right of coalition" — and that to some extent it clearly was. The journeymen clung to their meetings in the *Schenke* or *Herberge*, and to their custom of fining absentees; they jealously guarded the right of *Umbfrag*, that is, the exclusive right of finding work for newcomers. A newly arrived journeyman had to make his way to the *Herberge*, where he was given bed and food till he could be provided for; and then, if he was accepted as *redlich* (honorable), that is, as bearing a good reputation, the journeymen officers regularly appointed for this

purpose (*Wirthe*, later *Wirthengesellen*) went round with him to look for work (*um Arbeit schauen*). When the Strassburg authorities in 1563 sent to those of Nuremberg what we should now call a "black list" of six journeymen who had been fomenters of strife, and asked that it should be shown to the Nuremberg Girdlers, "so that they should give no work to them," the latter replied that masters had nothing to do with the finding of work: that was the journeymen's affair. This was the general custom, they went on, in all *geschenkte Handwerke* in the chief German towns; and whomsoever the journeymen might favor or hinder, the masters had to put up with it. If a journeyman hired himself directly to an employer, the journeymen fined him and held him *unredlich*. This right of the journeymen obviously gave them some advantages in determining the conditions of labor, and the masters would probably have been glad enough to destroy it. It is evidently the same right externally as that claimed by modern organized labor — the exclusion of non-union men from employment. But before we decide that the relations of the two parties to the labor contract were the same as in modern times, we have to remember: (1) that these journeymen were almost all unmarried; (2) that when employed they lived in the master's house; (3) that the masters had themselves usually been journeymen;[1] (4) that the numbers of masters and of journeymen were much the same — in one of the crafts of which we hear most there were 90 masters to 100 journeymen, and in another 50 to 70 or 80;[2] (5) that the Nuremberg masters certainly displayed no burning anxiety to put an end to the system; (6) that in spite of what Dr. Schoenlank says of the frequency of disputes about wages, he can produce but one example, that of 1601; and (7) that the journeymen submitted to a fifteen-hour day and that their efforts for "the limitation of the hours of labor" were limited to securing "blue Monday." Dr. Schoenlank quotes Schanz to the effect that their desire for a long rest after excessive toil was natural enough, and the remark is just: he is perhaps

[1] *Cf.* pp. 139, 141.

[2] Page 91; *cf.* smaller number given on pp. 62, 89.

too much occupied with the economic aspects of the holiday to have a word to say about its moral aspects.[1]

This brings us to another feature of the *Schenke* which may be clearly seen in the documents which Dr. Schoenlank faithfully reprints, but of which he says nothing. It is over and over again charged against the *Schenke* that excessive drinking went on there, especially when newcomers were welcomed or old comrades parted with on setting out for their journeys; that unduly large fines were demanded from absentees, which those who attended used for their own refreshment; that the 'prentices (*Buben*) were allowed to come and given too much to drink. The text of the imperial *Polizei-Ordnung* of 1531 does not give us the impression that it was directed against a class separated from the masters by a social chasm: it deals with the "masters' sons, journeymen, servants and apprentices"[2] all alike. It complains of their "running around in idleness, their guzzling and gorging;"[3] and lays down that when a newcomer arrives in a town, he is to go to the bedel of his gild (*Zunft-* oder *Stubenknecht*), and where there is no *Zunft*, as in Nuremberg, to the journeymen's *Wirth* or *Vatter* (the keeper of the journeymen's tavern), or to some other trusty individual appointed by the authorities, and this person is to find him work. The journeymen are not to elect officers of their own for the purpose; and, whatever is done, "the whole business of drinking and eating on arrival and departure" is no longer to be permitted.[4] In the final town ordinance of 1573, while the journeymen are to have their *Herberge* where newcomers are to be put up, and the officers of the journeymen (*Zuschickmeister*) are to look round for work for them, it is insisted that this shall not be made the occasion of a drinking.[5] In this *Herberge* the *Gesellen* can have a room, and they can meet there once a month, to

[1] On this, see the language of the ordinance of 1550, p. 132.

[2] "Von handwerks-söhnen [or in the body of the ordinance, meister-söhn], gesellen, knechten und lehrknaben."

[3] "Wegen des müssigen umgehens, schenkens und zehrens" (pp. 188, 192).

[4] "Doch soll in und nach dem allen das sämtlich schenken und zehren zum an- und abzug oder sonst in andere weiss keineswegs hinfüro gestattet werden" (p. 189).

[5] "Doch soll keine schenke oder zeche deswegen gehalten werden" (p. 109).

discuss their affairs; though care is taken to insist on the presence of one of the elected officers of the *Handwerk* itself and on the extremely small powers the assembly is to exercise in the way of imposing fines without special authorization. But equal care is taken to restrict the amount of drinking, to prohibit indecent songs and gaming, and to prevent brawls.

The evidence is too large and too consistent through more than a century to allow us to suppose that these moral dangers in the *Schenken* were pure inventions on the part of the masters. They may, of course, have been unduly emphasized by the latter, to conceal their own economic purpose; but they ought at least to be mentioned by modern writers, if we are to have a complete view of the situation. One knows with what lofty contempt Marxists regard those who venture such remarks: such things are all bound up with "the standard of living," they tell us, or are "economically conditioned." But the practice of writing social history with practically no mention of some of its important ethical aspects goes far toward creating from the socialist side an "economic man" almost as unreal as that of the economist.

It will be remembered that in the recent work of Mr. and Mrs. Sidney Webb on English trade-unionism, the authors declare that they cannot trace beyond the eighteenth century any "continuous organizations of wage-earners for maintaining or improving the conditions of their employment." They have waved aside the examples of mediæval yeomen's or bachelors' companies in England; and though it might still be maintained that some of these are best explained as "*continuous* organizations of *wage-earners*," Mr. and Mrs. Webb have certainly cast some doubt upon the interpretation given to one such case — the Bachelors' Company of the London Tailors in the sixteenth century. The question of mediæval journeymen's associations in England must be left open for the production of further evidence;[1] and meantime those who are interested in it may be referred to Professor Brentano's article — interesting, among other reasons, for the glimpse of autobiography it contains — in

[1] For a fresh example, see *Quarterly Journal of Economics*, XI, 214.

Braun's *Archiv für Soziale Gesetzgebung* (vol. viii). But Mr. and Mrs. Webb's book also contains some information which, looked at from the standpoint now reached, receives a new significance. They call attention to "the existence" in the eighteenth century "of journeymen's associations in most of the skilled trades." They point out that "the earliest trade unions arose among journeymen whose skill and standard of life had been for centuries encouraged and protected by legal or customary regulations," and again that

> the typical "trade club" of the town artisan of this time was an isolated ring of highly skilled journeymen, who were even more decisively marked off from the mass of manual workers than from the small class of capitalist employers. The customary enforcement of the apprenticeship prescribed by the Elizabethan statutes and the high premiums usually exacted from parents long maintained a virtual monopoly of the better-paid handicrafts in the hands of an almost hereditary caste of "tradesmen," in whose ranks the employers themselves had for the most part served their apprenticeship. Enjoying, as they did, this legal or customary protection, they found their trade clubs of use mainly for the provision of friendly benefits, and for "higgling" with their masters for better terms.[1]

Such trade clubs are regarded by Mr. and Mrs. Webb as altogether new, and as "due to something peculiar to the century;" and they are described as "springing not from any particular institution, but from every opportunity for the meeting together of wage-earners of the same trade."[2]

The more we look into these trade clubs, however, the more we are struck by the resemblances between them and those German institutions of an earlier century which Dr. Schoenlank and others have described. That the gatherings were usually monthly in each case might be a mere coincidence. But when we find that "the relief of traveling journeymen was a prominent object of the early unions"[3] in some English industries, the resemblance seems to go to the essence of the institution. And when we are told by Mr. and Mrs. Webb that in some instances

[1] History of Trade Unionism, p. 38.
[2] *Ibid.*, p. 21. [3] *Ibid.*, p. 24.

"the journeymen of a particular trade frequented certain public houses, at which they heard of situations vacant, and the 'house of call' became thus the nucleus of an organization,"[1] the inference seems natural that in these "houses of call" we have an institution like the German *Schenke* or *Herberge*, with probably a similar past history.

The "houses of call" are mentioned in certain documents referring to the tailoring trade in London; and these Mr. F. W. Galton, Mr. Webb's assistant in the preparation of material for the *History of Trade Unionism*, has since published under the auspices of the new London School of Economics.[2] Mr. Galton quotes a description of the houses of call given by a contemporary in 1747, from which we learn that "masters go there to enquire when they want hands," and "custom has established it into a kind of law that the house of call gives them credit for victuals and drink when they are unemployed."[3] As to the character of some of the proceedings at the monthly meetings, we may form some idea from what Samuel Bamford tells us of his visit to the trade clubs of London in 1815: "They would generally be found in a large room, an elevated seat being placed for the chairman. On first opening the door, the place seemed dimmed by a suffocating vapor of tobacco. . . . Every man would have his half pint of porter before him."[4]

But one need not stop at the eighteenth century. Let any one read, in the last chapter of the *History of Trade Unionism*, the vivid account of English trade-union life of to-day from the pen of one who has shared it. In the account of "going on tramp," we hear of the footsore traveler making his way to the public house at which the local lodge is held, and refreshing himself before starting off to find the secretary; of the secretary writing an order "to the publican" to provide the full relief of sixpence and a bed, and telling the tramp to repair to any suitable situation he may know of in the morning; and of many like details. Let any one remember how the "Non-

[1] History of Trade Unionism, p. 22.

[2] Select Documents Illustrating the History of Trade-Unionism. I. The Tailoring Trade, 1896.

[3] *Ibid.*, p. 4, n.

[4] Passages in the Life of a Radical (ed. of 1893), II, 25.

conformist conscience" of the chapel-going and teetotal workman of the generation now passing away used to look on the lodge-night and its dangers. One will, I think, begin to doubt whether there has not been for centuries more continuity than is commonly supposed in the life of the skilled artisan class in the older trades.

Apropos of certain trade societies of 1721, Mr. Galton himself remarks that "we may infer from the subsequent events that the origin of the organization was not so recent as the employers supposed," or rather stated.[1] My own impression is that we shall by and by find that, like the usages of the German journeymen in the eighteenth century that centered in the *Herberge*, the trade clubs of eighteenth-century England were broken-down survivals from an earlier period, undergoing, with the advent of the *married* journeyman and other causes, the slow transformation from which they emerged in the nineteenth century as the nuclei of the modern trade unions.

The point is of so little importance in reference to the problems of this century that one is almost afraid to call attention to it, lest it should be supposed that more significance is attached to it than is really intended by the present writer. The conditions of this century are new in so real a sense that, as has already been pointed out in the foregoing criticism of Dr. Schoenlank, they have called forth substantially new institutions. Even if it could be proved that any trade society of to-day is historically a continuation of some definitely constituted society of a much earlier date, the fact would have but slight significance; and for the present even that much is not maintained. What is suggested is only that the habit of acting together in certain ways, which we find to characterize the journeymen of the eighteenth century, had been formed in a much earlier period.

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Since the above was written, I have received from a London artisan a very interesting account of his experiences when

[1] The Tailoring Trade, p. xv.

he came up from the country to work as a silk-hat finisher in 1856. It describes conditions that have already passed away, and will soon be forgotten; and these conditions present features closely resembling in many respects the usages of the journeymen's societies of earlier centuries, as set forth by Dr. Schoenlank.

There were then four distinct societies in London, *viz.*, the Blue society (composed of Christy's workmen), the Bull society, the Nelson society and the Fair Trade. . . . In February, 1858, the Blue society was reorganized, and I was asked to be secretary. I was so for three months, until the rules were passed. We sat at the "Anchor and Eight Bells," Bermondsey Street, to take contributions. While passing the rules, and at all quarterly and general meetings, we were crowded into the large room over the tap-room and bar. Smoking went on, at least eighty per cent smoking. From 90 to 120 would be present, and some would pay a sixpenny fine and stay away. The President, Committee, and Secretary would sit at one end of the room. . . . Pint pots were very plentiful on the different tables, and at intervals there was a pause, the pot-man coming into the room crying out: "Give your orders, gentlemen." These meetings were held at 8.30 (no matter what time work ceased at the factory), to give members at Christy's retail shops a chance to be present. I mention this because many of the men would go into the "turn-house" an hour or two early, as it would be too far for them to go home and return. There was therefore a great amount of drinking before the meeting, and a good few would stay after the meeting until closing time. . . . It was the landlord of the turn-house in Bermondsey Street who was treasurer.

Now that all the societies have been united, the trade turn-house is still at a public-house; but all delegate and general meetings are held in the large room of the Southwark Radical Club; and there is no drinking during the meetings. Indeed, the leading spirits in the last great strike were lifelong abstainers.

Of the drinking usages in the workshops themselves my informant also gives some particulars. On the day he began to work, he tells me:

I found it was necessary to pay "a maiden garnish" of five shillings, it being my first shop in London. On this floor there were 66 finishers in three "shops" or "batteries": 12 men in one, 22 in

another and 32 in the one in which I worked. To this "garnish" 28 men paid twopence each (there being three apprentices and myself, making the 32); so to drink my health and wish me well nine shillings and eightpence was spent in beer, on that account alone, on that day in that battery. I was very anxious about my work, — coming, as I had, from a country shop, — and if it had not "served turn" (*i.e.*, been passed by the foreman), I should have been "off"; and the 28 men who had partaken of my "maiden garnish" would have paid twopence each as "treatings off"; and all I should get would be the right to drink from the four and eightpence worth of beer. I won't moralize, but I must say I thought this a cruel wrong, and I determined to make a dead set against that custom as soon as I got "the hop of the cage"; and in three months I carried in that shop a resolution that any man "off" from that battery should receive the twopences in money, which was called "dry garnish."

There were all kinds of other dues. If there was a vacant plank, and a man wished to move to it, he had to pay "a plank gallon." If a man had never before put on a silk "under," if it was known, there was "a fancy gallon" to pay, and many others of a like kind. Moreover, the two publicans, one each side of the factory gates, had the free run of the place; and they and their potmen came in frequently for orders. There was never much ready money with the men, but there was a man in each shop empowered by a publican to write tickets for beer, to be paid from their wages, with usurious interest, at the end of the week.

This is, however, almost all a thing of the past. The present "Rules of the Journeymen Hatters' Fair Trade Union of Great Britain and Ireland" enact that

All dues, such as marriage beer, garnishes, maiden garnishes, plank beer, fancy gallons and wager beer, are done away with.

My informant tells me that the publican's agent has also been abolished.

There was and is still, though it is evidently decaying, a curious system of shop jurisdiction, which presents many apparently archaic features. The procedure preserves several terms on which modern dictionaries give no help.

When workman A called B by an opprobrious name, which the latter resented, B could "weigh out the caulker," by declaring, "If

your name is A, a man of this shop and a shopmate of mine, I caulk you: prove me (to be so and so) before you hat, or pay sixteen pence for larking."

At this the "constable" of the shop called out, "Gentlemen, the caulker is out." Every man in that battery had ceased work. Now A could either "call his words in again" or "give the wrong insist." If he did the latter, the constable at once said, "a garrett in ten minutes." The garrett was formed by the men of the battery; and if they decided that A deserved the reproach, he was fined four shillings, which was spent in beer in that battery. The case could, however, have been taken to the higher court — "the dozening," the men for which would have been selected from a dozen shops.

The present rules of the amalgamated society still enter with some detail into "caulkers," "wrong insists," "garretts," and "dozenings"; but their purpose is "to prevent them as much as possible." The fines now go to the general funds, and drunken men are disqualified from voting or "insisting."

There is one other term used in the hatters' trade, which is so odd and apparently so completely unknown to philologists, that it may be well to mention it here. An apprentice put under a journeyman for a period of six months' instruction is called his "whimsey," or said to be "under whimsey"; the instructor is called the "whimsey-master," and the occupation of the boy is called "whimseying."

It is certainly surprising to come across so many quaint usages in an industry which would seem to have passed through the "domestic" or "sub-contract" stage in the eighteenth century;[1] and which one would have supposed to have been altogether transformed by the substitution of silk for beaver at the beginning of the present century. This account suggests the desirability of securing trustworthy records of old trade customs, before they are destroyed (in many cases very properly destroyed) by temperance, book-learning, the newspaper and increasing freedom of intercourse.

W. J. A.

[1] Howell, Conflicts of Labour and Capital, ch. ii, § 55.

REVIEWS.

Economics: An Account of the Relations between Private Property and Public Welfare. By ARTHUR TWINING HADLEY. New York, G. P. Putnam's Sons, 1896. — 496 pp.

Professor Hadley has felt himself compelled to abandon the time-honored division of the science into the departments of production, distribution, exchange and consumption. The successive chapters of his book are accordingly headed as follows: "Public and Private Wealth," "Economic Responsibility," "Competition," "Speculation," "Investment of Capital," "Combination of Capital," "Money," "Credit," "Profits," "Wages," "Machinery and Labor," "Coöperation," "Protective Legislation," "Government Revenue." It is difficult to exaggerate the wealth of thought and the keenness of analysis contained in these chapters. Each one is crammed full of matter, presented in a most attractive manner, illustrated by references to history and to contemporary business methods, and often summed up in some phrase or some statement of likeness or unlikeness that is pregnant with suggestiveness. The distribution of topics under the particular chapter is always suggestive, if sometimes surprising. Under "Economic Responsibility," for example, we find slavery, property, the theory of population, poverty and poor-relief; under "Investment of Capital" we find the wage system, private land-ownership, payment of interest and limited liability; under "Profits" is found the rate of interest, economic rent and commercial crises; under "Coöperation," governmental management of industrial enterprises.

Although the reader is sometimes surprised by this distribution of subjects, he finds each topic discussed exhaustively and with unity of purpose. Thus, the chapter on "Money" is altogether admirable, treating both the theory and practical questions, such as the free coinage of silver; the chapter on "Speculation" introduces material that is new in most English treatises and of absorbing interest; the formula that wages depend on maximum economy of consumption throws a flood of light on the various theories of wages; and the thoroughly practical treatment of usury laws, of the unearned increment, of the regulation of monopoly profits, of the

single tax and of progressive taxation, admitting the force of the theoretical arguments but emphasizing the practical difficulties, will command attention from every one.

When a book is so very good, it seems ungracious to criticise it because it is not better. Economists, however, whether of the closet or of the market-place, and especially teachers of economics, will involuntarily ask themselves whether Professor Hadley, in his *Economics*, does for "the readers of to-day that which Mill did with such signal success for those of half a century ago" (Preface). As regards his treatment of practical problems, this question can undoubtedly be answered in the affirmative; but in respect to his development of a system, which should carry conviction as a logical whole, I am afraid that it must be answered in the negative.

The reason for this is the arrangement of the book itself: the breaking away from the traditional arrangement is unfortunate in two respects. In the first place, a division of the subject into departments, even if not strictly logical, makes it easier for the student to master the subject. Professor Hadley has been unfortunate, I think, in over-estimating the capacity of students, whether "engaged in the business of the world or preparing themselves to do it," to follow his fundamental idea through the mazes of practical discussion.

In a second respect the arrangement of the book is unfortunate. It puts forward as the central idea the notion of the speculator or undertaker. Wages are an investment of capital; interest is but commuted profits; property exists because society chooses to commit the control of productive power to a few leaders; even the mistakes of the speculator benefit society because they are made on a small scale. All this will strike the superficial reader as a mere apotheosis of Walker's or Mallock's "captain of industry." This leadership is certainly one of the salient points of the modern industrial organization, and the tendency is to emphasize it in treatises on political economy. Even Marshall, towards the end of his first volume, declares that "in the modern world the employer or undertaker . . . acts as the boss of the great industrial wheel. The interests of owners of capital and of workers radiate towards him and from him; and he holds them all together in a firm grip" (*Principles*, p. 617).

This truth is demonstrated in an overwhelming way by Professor Hadley. But the emphasis given to it by the arrangement of the book seems to exalt that which is the method of industrial organization to a position as the end and goal of social organization. This gives to

the whole book a tone of finality and of harshness, which recalls some of the old charges against political economy as the dismal science. Adam Smith avoided such an effect (and could avoid it) by emphasizing the interests of the nation as against the mistaken notions held by those who controlled governmental power. Mill avoided it by the attention he paid to peasant proprietorship and to the "probable future of the labouring class," and by his evident sympathy with the aims of socialism. Marshall avoids it by a display of pure sentiment, as in the statement in his first chapter that "the question of the abolition of poverty is that which lends its chief interest to economics." With Professor Hadley, admiration for the framework of society seems to overshadow consideration of the fate of the mass of human beings in that society. This is not really the case, for the author firmly believes that private wealth means public welfare. That an erroneous impression may be gained from the book is, however, a great misfortune; for the work is otherwise likely to do much good among the people who think that poverty can be abolished.

Economists will feel great interest in learning Professor Hadley's views in regard to the theory of distribution. In accordance with his attempt to keep theory and application together, they are scattered through the book. In his chapter on "Profits," however, he writes as follows:

The distributive process, whose workings have been described in this chapter, may be summed up as follows:

The competition of capitalists with one another leads them to advance to the laborers a sum equal to the expected price of the product, less a compensation for waiting and the risks attendant upon it, sufficient to induce the proprietors to hazard the required amount of capital. The advances constitute wages; the excess of the product above such advances constitutes profits.

By a somewhat similar process, the competition of the more active capitalists with one another leads them to guarantee to those who will lend them capital a fixed rate of income for the use of such capital. This income, guaranteed but not advanced, is known as interest; the remaining profit is known either as net profit for skill in management, or economic rent for foresight in investment. The separation of interest from net profit or rent results in a separation of the reward for waiting from the rewards for risk and foresight.

Wages are, in all ordinary cases, guaranteed and advanced by capitalists as a body. Interest is guaranteed, but not advanced, by one group of capitalists to another. The justice of the charge made for such guarantees and advances is to be defended, not because the enjoyment of interest

corresponds to the sacrifice of waiting or because the amount of profit corresponds to the risk of loss, but because society finds itself best served by the system of guarantees and advances which the institutions of wages and interest serve to encourage [p. 299].

This statement may be interpreted in a variety of ways; and in whatever way it is interpreted, it will be apt to do injustice to the rest of the book and to the fundamental thought of the author. That is to say, the statement is of such a nature that, if one says it is too narrow, he can be answered that the rest of the book is an amplification of it; and if one says that it is too broad, he can be answered that it is limited by what is said in the rest of the book.

In the first place, the statement is too narrow. It merely describes what is going on (for the most part) in the modern industrial world, namely, the process by which the employer pays wages and interest on borrowed capital, and gets the full product. This, however, is not a complete statement of the facts, for it does not include the method of remunerating the thousands of independent artisans and farmers. Even if it were so inclusive, it would not answer the real problem of distribution by telling what determines the shares of the employers, of the capitalists and especially of the laborers. Professor Hadley may answer that this summary applies only to profit and interest; and that it explains only the outward *process* of distribution, but is not a theory of distribution. The impression will, however, remain that the controlling force in the whole process of distribution is the employer — that the only influence is competition of capitalists with one another.

The real process of distribution is a much more complicated matter than would appear from this statement. It involves competition on both sides, and is influenced by the environment and by social institutions. This idea is developed in later parts of the book, notably in the discussion of minimum wages (p. 305) and of the residual theory of wages (pp. 317, 318), where it is made very clear that the process of distribution described above is not broad enough to be considered a theory of distribution. I think that it would have been helpful for his readers if Professor Hadley had gathered together the principles developed under "Wages" and "Machinery and Labor," and, adding them to the theory of profits, had formulated a comprehensive theory of distribution. That he does not attempt to do this seems to be due (1) to a repugnance to certain theories which in his opinion explain too much, and

(2) to a desire to reintroduce the "historical" explanation which in the abstract analysis is often lost sight of, and which thus (as the Germans would say) comes to its rights.

Professor Hadley characterizes certain modern theories of natural value as a "curious aftermath of the old theories of natural rights" (p. 148, n.). They assume, according to him, "a certain normal degree of intelligence in the investment of capital and development of land," and this we have "no right to assume." The criticism does not seem to me to be just. The reason why rewards are imputed to land, labor and capital is not because they or their owners have any "natural right" to it," but because society wishes to employ land, labor and capital in the most economical way, and (under the system of private property and free competition) offers a reward for their use in proportion to their efficiency. The normal degree of intelligence is no greater and no less than that assumed for the speculator in advancing wages and guaranteeing interests. Again, the theory "that the price paid for an article is distributed among laborers and capitalists on the basis of the marginal utility of the labor and capital which have contributed to its production" is criticised by Professor Hadley on the ground that it does not take into account the mistakes of the speculator and that we do not know the relative values of products at two different periods. This does not seem to me to be a full answer to the theories. According to von Wieser, at least, experience and tradition would be our guides in this matter; and, although these are fallible guides, they must approximate a true result in the mass of cases, or else society would starve to death through not knowing how to make use of its resources.

Rejecting all these theories, Professor Hadley returns to the historical explanation in the words already quoted above:

> The justice of the charge made for such guarantees and advances is to be defended, not because the enjoyment of interest corresponds to the sacrifice of waiting or because the amount of profit corresponds to the risk of loss, but because society finds itself best served by the system of guarantees and advances which the institutions of wages and interest serve to encourage.

This is certainly fundamental, but it makes the statement too broad. Social expediency is, indeed, the basis of the institution of private property and of the principle of economic freedom. As Professor Hadley himself says so epigrammatically:

We may fairly grant the claim of the socialist that capital originated in robbery. In like manner, labor originated in slavery. Neither fact has any appreciable bearing on present issues. Neither fact tends in the least to prove either that the capitalist is a thief or the laborer an inferior.

Private property and economic freedom are, however, relative terms, and either may be modified at the pleasure of society. Both are limited in a great variety of ways in the modern industrial organization. It is not sufficient simply to allege social expediency as the ground for the toleration of the modern distributive process. The reasons for it must be shown fully, and emphasis must be laid upon the limitations of the abstract principle which are found in actual practice. Quantitative measurements of the result of this distributive process should also be sought. The whole question is one largely of emphasis; and I should say that the limitations, as in the case of Irish land tenure, are not sufficiently emphasized, while the doings and the sufferings of the speculator are unduly magnified.

These are, however, but slight criticisms of a book which is certainly very notable, even if it is not destined to leave a mark on economic thought.

RICHMOND MAYO-SMITH.

Wages and Capital; an Examination of the Wages Fund Doctrine. By F. W. TAUSSIG, Professor of Political Economy in Harvard University. New York, D. Appleton & Co., 1896. — xviii, 329 pp.

This book consists of two main parts — a historical resumé of the wages-fund controversy, and a presentation of the author's own conclusions on the subject. The historical portion is by no means unimportant: in fact, it cannot fail to receive commendation from all quarters for impartiality of treatment, acuteness of criticism, fullness of knowledge and clearness of style. This review, however, must be confined to the author's "positive theory" as contained in the first 125 pages of the volume.

Among the limitations which Professor Taussig places on the problem he is investigating is one that deserves a special word of comment. He limits the problem to the determination of "the total that goes to laborers as a whole." "It is only with the total," he says, "that the wages fund, or the discussion of wages and capital, has to do" (p. 109). "The causes which determine the share which a particular set of laborers shall have are different," and present a

different set of questions. This distinction, to be sure, is made with practical unanimity by the adherents of the wages-fund doctrine in any of its forms: it may almost be considered their shibboleth. The author accepts it without question. May we venture to suggest that it is the fundamental source of what seems to be the error in the view he presents? "Total wages" is an abstraction — and, moreover, a useless and misleading abstraction. To suppose that one set of forces determines the total going to laborers, and that another set of forces then distributes this among the different classes and individuals, is to reverse the true order of fact and of thought. Total wages are merely the arithmetical sum of individual wages. The latter are in a sense the dynamic element; the total is a passive result. To view the matter otherwise is to go astray at the earliest stage, and to set one's self seeking for a shadowy and uncertain explanation of a vague and shadowy thing.

Professor Taussig's first chapter, entitled "Present Work and Present Wages," is devoted to a very lucid description of the leading features of the modern industrial process. In the case of the great multitude of products, as he shows, a long series of acts extending over a considerable period is necessary before the finishing touches are put upon them. The conclusion is clearly drawn that "present labor produces chiefly unfinished things, but the reward of present labor is finished things." In the sense that "the current yield of industry" (p. 22) is always having put to it the finishing touches, wages may, indeed, be said to be paid from current product; but in a truer sense "real wages are virtually to their full extent the product of past labor" (p. 17).

The main conclusion of chapter two, entitled "Capital and Wages," is as follows: Taking wages to "mean all the income of all laborers" (p. 43), and capital to mean "that supply of inchoate goods, in all stages toward completion, from which the steady flow of real income is derived" (p. 44), "we may lay it down broadly," says Professor Taussig, "that wages are derived from capital" (p. 43). This proposition "has nothing to do with money or money wages" (p. 45). "The relation of wages to capital," here expressed, "would be the same under any social organization" (p. 45). Real capital, under any rational conception, consists of "things tangible and usable"; real wages, of "the enjoyable commodities which the laborer gets" (p. 46).

The author perceives, however, that this proposition is entirely too general to be used to support a doctrine of a wages fund. He admits that

this reasoning, while directed to wages, applies equally to every other form of income. . . . [What] is true of wages is true of interest and rent and business profits. All are derived from capital in the same sense. . . . If any law of wages has been reached . . . it is but a statement of the fact that all the enjoyment of to-day comes from commodities which are the product of past labor [p. 48].

The result thus reached would appear very neatly and conclusively to dispose of the concept and phrase "wages fund," except as a literary curio. In the same sense and with equal scientific significance can it be said that there is a profit fund, an interest fund, a rent fund — a possibility which earlier in the book (p. 16) does not escape the author's notice. Yet he would not have the reader draw a conclusion which his own conservatism hesitates to accept. The reader's judgment is therefore suspended by various expressions: "if any law of wages has been reached" (p. 48); "and yet there is something more to be said of wages and capital than this general proposition;" "the unmistakable differences in the mode in which the various members of the social body get their share of the general income bring some important consequences, both as to distribution at large and as to wages and the *wages fund.*" These expressions indicate that the author intends to retain the expression "wages fund," and to show that there are good reasons for looking upon such a fund as differing in some points worth the noting from the part of the social income going for rent, for profits and for interest.

In carrying out this purpose the author may fairly be expected to conform to certain minimum requirements. First, we are justified in expecting that real wages, and not mere money wages, shall be the subject of his discussion. Professor Taussig keenly appreciates the proneness of other writers to err at this point. "The obvious distinction between real wages and money wages," says he, "makes its appearance in every book on the elements of economics, but it is too often forgotten when the causes determining wages come to be examined" (p. 15). As he elsewhere expresses it (p. 231), this is a convenient short cut which breeds confusion in the mind of the reader while veiling the real question. (See also pp. 17, 19, 45, 46, 47, 231, 245, 247, 297 *et passim.*)

Secondly, we may expect that he will avoid the error, to which he so frequently refers, of considering that the "capital" — the "fund," whatever it be called, that constitutes real wages — is "necessarily owned by the individual who pays wages." "Such reasoning," as he says, "does not touch real capital or real wages" (p. 46).

The capitalists who directly employ laborers have usually no ownership of the commodities which make real wages. If these real wages come from capital, the capital is certainly not in the hands of the employers [p. 20. See also p. 258 among others].

Thirdly, we may justly require of the author a comprehensible explanation of the way in which the "wages fund" is marked off from, or carved out of, the total income of the community; and we may expect that in some important respects this shall be shown to differ from the process which apportions the shares of the other factors in distribution. This "total income," elucidated by the author in the first two chapters, is essentially the "subsistence fund" of Böhm-Bawerk. Yet the author says: "There is an obvious difficulty in the fact that the general subsistence contains the income not only of laborers, but of the whole community" (p. 316). Indeed, he thinks the Austrian writer has gone "but a very little way toward explaining just how the total subsistence fund and its ripening installments are diverted to one and another class in the community" (p. 317). When Professor Taussig further adds that "an investigation of the machinery of distribution . . . is the essential part of the wages-fund problem" (p. 317), he seems to imply a promise to make an examination of these "essential" questions before quitting the subject. Moreover, the promise is made distinctly (p. 16) where the author says that the question "whether there can be any possibility of separation of this net income into parts destined for any one set of persons, or appropriated to them," will engage his attention "at a later stage."

Every one of these minimum requirements the author fails to meet. First, instead of striking straight at the fundamentals and refusing to consider the mere "machinery by which laborers are enabled to get their real wages" (p. 15), he makes this machinery, that is, money wages, a central object of his attention. Having devoted some discussion to "real income and real wages," he begins a fresh chapter with the announcement: "In the present chapter money and money income play a vital part" (p. 51). The suddenness of this change of face comes as a surprise and a disappointment to the reader. Moreover, throughout the chapter the discussion blooms with that perennial error, emphasis of the superficial monetary aspects of the problem. Money income and money payments, flowing first into the hands of the immediate employers, absorb all the author's attention. Further, repeated use is made of "funds" in the sense of money funds in the hands of the employers. Among numerous instances one of the most noteworthy is the following:

The hired laborer gets his wages from capital in a sense in which the independent workman does not. His money income . . . is turned over to him by capitalists. It comes from *funds* in the possession of a body of which his immediate employer is a member. . . . In this sense his earnings depend on a wages fund — on the sums which the employers judge it expedient to turn to the hire of labor [p. 75]. . . . [With the same connotation he says :] In an important sense hired laborers are primarily dependent for their wages on the *funds* which the whole body of active capitalists can and will turn over to them [p. 78].

It is unnecessary and, indeed, impossible here to follow out all the details of the reasoning on these points. The author himself in his criticism of others has most satisfactorily shown that such a treatment but skims over the surface of the question. It ends in what seems little more than a mere verbal quibble.

The second requirement is met no more satisfactorily. The capital or funds that are discussed are throughout looked upon as in the hands of the employing class, except where the conception is widened to include the great body of money-lenders "whose business it is to make advances to the more immediate directors of business affairs" (p. 63). Throughout the chapter the concept of capital, or funds, fails to include all the sources of the real income that the laborers enjoy — for example, stores of goods in the hands of independent producers, and even a portion of labor itself, so far as personal services make up that real income. There is no hint that such elements may play a part in determining the remuneration of labor.

Nor is the third requirement fulfilled in the author's discussion. He practically brushes aside, when he reaches it, the problem of the fixing of the shares in distribution. Nowhere does he show that there is anything peculiar about the part going to labor that can entitle it, in distinction from the other parts, to be called a fund. He summarizes his own results in these words:

In fact the wages-fund doctrine, or what there is of truth in it, . . . can tell us little . . . as to the fundamental causes which . . . determine the share of that real income which in the long run shall go to wages or interest or rent (p. 322).

Moreover, Professor Taussig does not show what the fundamental causes are which determine the different shares at any given time. Once he confesses that his examination of "the immediate source of the money wages of hired laborers is at best incomplete; the inquiry as to the source of real wages remains the important one in the background" (p. 64). But with the remark that "the questions as to the

machinery of immediate money wages are important enough" (p. 65), he returns to their consideration. The reader looks in vain for any further light upon this question in the remaining chapters.

The "main conclusions" reached by the author appear to be that there is more than one tenable sense in which a wages fund may be spoken of — that, indeed, there are *two* wages-fund doctrines. Neither is quite like the doctrine as held by the older economists. The one is broader than theirs — so broad, in fact, that it seems to the reviewer nothing more than a statement that what the laborers enjoy is a part of the total income of society. In this it is hard to recognize more than a bald truism. The second doctrine which the author presents is the one wherein the superficial monetary aspects alone are kept in view. This is impressed upon the reader with much emphasis; yet, as my italics show, the author's faith fails him when he comes to state it for the last time:

> Hired laborers are dependent on a wages fund (*if one chooses so to call it*), which is in the hands of the capitalist class. Their money income is derived from what the capitalists find it profitable to turn over to them [p. 321].

No further citation is needed to indicate that the author has, without intending it, given the *coup de grâce* to what was left of the old wages-fund doctrine. He intends to be conservative, and he shrinks from the logical conclusions of his own reasoning; yet no one, so effectively as he, has shown that the wages-fund doctrine, in any tenable form, is *nominis magni umbra.*

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Uebersichten der Weltwirtschaft. Begründet von Dr. F. X. VON NEUMANN-SPALLART. Jahrgang 1885–89, mit Ergänzungen teilweise bis 1895, von DR. FRANZ VON JURASCHEK. Berlin, Verlag für Sprach- und Handelswissenschaft, 1896. — cxx. 766 pp.

The appearance of a new edition of this well-known manual of economic statistics deserves more than a passing notice. Dr. von Juraschek has worthily continued the labors of his predecessor, and we have here the most trustworthy statistics gathered from official sources and arranged with scientific care. They include, first, the statistics of the production, exports and imports of grain, and of the production of live stock, sugar, coffee, tea, tobacco, wine, beer,

coal, iron, cotton, wool, silk and other textiles; and, secondly, the statistics of gold and silver, of bank notes and credit papers, of post offices, telegraphs, railroads, shipping and of commerce in general. No one who has occasion to make international comparisons in connection with any one of these subjects will fail to make use of the data here given and of the references to the official authorities. All that can be accomplished with this enormous and unwieldy mass of material has been successfully accomplished here.

Dr. von Juraschek, like his predecessor, has not been content to compile a mere manual of economic statistics. The real object in collecting these statistics is to throw light on the condition and the progress of the world economy. He points out how, notwithstanding the revival of protectionism since 1879, international economic relations become more and more important and receive further recognition. The most important factor in this respect has been the development of the means of transportation and communication. By individual agreement the railroads and shipping lines have in many cases united to facilitate international transportation. Official recognition has been given to the International Postal Union; and the telegraph lines are included within a similar union. Efforts are being made to establish systems of weights and measures, and even of money, over complexes of states. More and more effectively private capital and enterprise are bringing different countries closer together in economic relations. The author sees in all this the development of a "world economy," which appears as the highest "organism" whose mission it is, not to obliterate the individual states, but to bring them to the highest manifestation of their powers. We may not agree with him in desiring to use the name organism for these international relations, but we must own that it is an important service to bring out the importance of these relations.

The second object in collecting these statistics is to study the course of development. The author finds that during the last twenty years national wealth has greatly increased in all the countries of Europe and in the United States. Fluctuations in the annual production and consumption of the chief commodities show us the depression which followed the crisis of 1873, the recovery towards 1879, the second crisis in 1884 and the recent panic of 1893. The author points out that while the United States is yet suffering from the effects of 1893, England and Germany, at least, began to recover in 1894. These primary symptoms are confirmed by the study of

secondary phenomena, such as imports and exports, prices, discounts, wages, bankruptcies, strikes and migrations. The whole forms a brilliant example of the scientific use of economic statistics.

RICHMOND MAYO-SMITH.

Introduction to Public Finance. By CARL C. PLEHN. New York, The Macmillan Co., 1896. — xii, 364 pp.

The first American work covering the whole field of finance cannot fail to be of interest to students of the subject, although it is only a small elementary text-book. One scarcely looks for great originality of thought in a work of this character, but demands only that the result of more elaborate investigations be summed up faithfully and clearly, and combined in a logical order. This is what Professor Plehn has attempted to do; and, so far as the subject admits of condensed or cursory treatment, he has succeeded. The book will doubtless be welcomed by many teachers who feel the need of a text-book of finance more elementary than Bastable.

The general order of treatment is the same as Bastable's. The work is divided into four parts, dealing respectively with public expenditures, public revenues, public indebtedness and financial administration. Perhaps the least satisfactory of these parts is the first. The treatment of expenditure in works on finance is nearly always inadequate; and when it is confined to fifty pages, such a result is perhaps inevitable. Almost no general principles having been as yet developed in this part of the science, a brief treatment of the subject, unless strikingly original, must almost perforce consist chiefly of classification and platitudes. Dr. Plehn has adopted throughout a consistent classification based upon the distinction between common and individual benefit; but he has some difficulty in making certain public expenditures fit into the classification. Assistance of private industry and commerce, for example, is placed under "expenditure exclusively for the common benefit"; and although bounties and "protection" are at first assigned to this head (p. 51), they are treated more at length under "expenditure for the benefit of individuals" (pp. 59 *et seq.*). The confusion arises chiefly, perhaps, from the attempt to classify expenditures according to the ways in which they have been popularly regarded or officially treated, instead of according to the essentially general or special nature of the resulting benefit. Another faulty classification is not so easily explained: if "a charge for a special benefit that exceeds

the cost is best regarded as consisting of two parts, one a fee, the other a special tax" (p. 78), why is not a surplus-yielding postal charge partly a tax? The character of a tax is denied to it on the wholly irrelevant ground that the postal service is not by nature a public service (p. 270).

In discussing the "benefit" and "faculty" theories of taxation, the author makes a useful distinction between the justification and the measure of taxation. He regards benefit conferred as the justification of taxation, but impracticable as its measure — not primarily because of the difficulty of measuring benefit, though that is not entirely overlooked (p. 114); but because he considers that on the whole "the common benefit is, strictly speaking, equal, while the taxed citizens are unequal in wealth" (p. 83). Some exception may be taken to his statement that benefit is the "universally accepted justification of taxation."

It may puzzle the beginner to discover what Dr. Plehn really thinks of particular kinds of taxes. The income tax, for example, is represented as an ideal in which "the hopes of reformers all center" (p. 232), the practical objections to which apply only to the single progressive income tax proposed by the socialists, and do not militate in the least against its use with other taxes (p. 107); yet in England "the assessment of wages, business profits, and the like, is said to be very lax" (p. 242), while "not even the general excellence of Prussia's administration has been preventive of under-assessment" (p. 157). As for the general property tax, "no words are too strong to express the iniquities of this tax" (p. 219): it falls with undue severity upon the farmer (p. 255), and the experience of all nations shows emphatically that it cannot be made to reach personal property; yet its universal condemnation is "not due to any defects in the tax itself, but mainly to the fact that it is not properly supplemented by other taxes," and so "there may be room for such a tax as a subordinate part of a larger system" (pp. 209, 210). The author has great faith in the inherent virtues of systems.

There are two mutually contradictory accounts of the imperial taxation of the German Empire (pp. 173, 198). A list of the free-trade nations of the world is given in two places (pp. 60, 187), but the author seems not to have heard of the adoption of free trade in New South Wales. He ignores the Australasian colonies altogether, rich as they are in material for the student of finance, and purposely confines his illustrations and historical treatment to the financial systems of England, Germany, France and the United States.

MAX WEST.

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Finanztheoretische Untersuchungen nebst Darstellung und Kritik des Steuerwesens Schwedens. VON DR. KNUT WICKSELL. Jena, 1896. — xiv, 352 pp.

This interesting book comprises three almost entirely distinct parts. The first two of these, which occupy about half the book, are purely theoretical. The third part is historical and critical, and gives a most valuable and interesting outline of the tax system of Sweden. As this is the first systematic treatment of the entire field of taxation in Sweden, it will be read with interest by every student of finance.

Possibly, however, the greatest interest will center in the first of the three parts, which deals with the extremely difficult problem of the incidence of taxation. Dr. Wicksell is an adherent of the so-called Austrian school of economists. He frequently quotes with approval from Walras, Böhm-Bawerk and others, whose work he has previously attempted to expand in a monograph entitled *Ueber Wert, Kapital und Renten* (Jena, 1893). True to the tenets of this school, Dr. Wicksell uses its famous theory of value to solve the problems of tax incidence. The result is certainly interesting, and even brilliant. Even one who fails to see in the so-called "new theory of value" anything more than a clear statement, in technical and unequivocal terms, of the real thought of Adam Smith, and who cannot overcome a suspicion of reasoning that is certainly more "viciously abstract" than that of which Comte complained, will be interested by Dr. Wicksell's clear, logical argument. But the Swedish writer is not so entirely enslaved by his theory and his method as to claim that his conclusions are final. Indeed, he frankly admits that his work is partially intended to serve as a guide or plan for the statistical investigations by which alone the question of incidence can finally be solved.

If there is any one thing to criticise, it is the author's tendency to oversimplify the conditions of the problems with which he deals. For instance, he generally assumes that each of the different taxes which he discusses is actually collected from all of the persons, incomes, commodities or properties upon which it is nominally levied. Thus simplified, the problems of incidence are not difficult to solve, even without the help of the "new key to all economic problems." But how little light such a treatment would throw on the problem, for example, of the incidence of the personal property tax in America!

Dr. Wicksell takes exception to Professor Seligman's analysis of the incidence of a tax upon monopoly products, on the ground that

the tax may so reduce the net earnings at the old price as to induce the monopolist to raise the price, thus shifting the tax, in part at least. He argues that a higher price, even if it result in a decrease in the sales, may leave a larger net return after the tax has been paid. He also points out that if the tax result in raising the price, it curtails consumption and production, and causes a loss to the community without a corresponding benefit to any one.

The second part of the book deals with a "new principle as to justice in taxation," which is a novel application of the theory of final utility. Justice in taxation is attained, according to the author, when the marginal utility of the particular expenditures for which the tax is collected is greater than that of any other use of the money. That is to say, justice is attained only when a tax is collected which the individual would have paid without compulsion rather than do without the privileges which the payment of the tax ensures him. Practically all this means is that no taxes are just unless the public expenditures are for purposes which really benefit the taxpayers.

Although one may be unable to agree with many of the author's conclusions, it cannot be denied that the book is a scholarly piece of work.

CARL C. PLEHN.

UNIVERSITY OF CALIFORNIA.

The Labour Question in Britain. By PAUL DE ROUSIERS. With a preface by Henri de Tourville. Translated by F. L. D. Herbertson. London and New York, The Macmillan Co., 1896. — 393 pp.

La Question Ouvrière en Angleterre. Par PAUL DE ROUSIERS. Avec une préface de Henri de Tourville. Paris, Firmin-Didot, 1885. — 532 pp.

Le Trade-Unionisme en Angleterre. Par PAUL DE ROUSIERS, avec la collaboration de MM. de Carbonnel, Festy, Fleury et Wilhelm. Bibliothèque du Musée Social. Paris, Armand Colin & Cie., 1897. — 356 pp.

England has long been the chosen land of foreign students in quest of materials and lessons on various phases of economic life. The labor problem especially has been the favorite field of investigation by Germans, Frenchmen, Italians and the rest for the past fifty years. Many admirable works have resulted; but few, if any, have equaled in value or in interest the book by M. de Rousiers, which, a

few months after its publication in France, appeared in English dress, under the title, *The Labour Question in Britain.*

M. de Rousiers starts out on a novel plan. He recognizes the fact that machinery has revolutionized the industrial system, but he is equally conscious of the further fact that all branches of industry have not advanced to the same point in this evolution. There are important survivals of the old domestic system and small workshop, which must not be neglected in any investigation of the actual problem. M. de Rousiers has, therefore, divided his inquiry into three parts. The first deals with the labor question in small workshops, representing trades of the old type, like the tool-makers, glass-workers, cutlers, typographers, plumbers and others, who are menaced in various degrees by the industrial revolution. In a second class he includes the mining industry, a trade which is organized on the modern system, and which owes its success to scientific methods of business and to international trade on a large scale; but in which the workman himself is still one of the old type, working with about the same tools and in the same way as in former centuries. Part III deals with the trades in which the evolution of the modern factory system has been completed, such as the iron and textile industries.

It will be seen at a glance that this is a new and fruitful way of dealing with the subject. It shows us that there is not a single labor problem, but several problems, according to the conditions which confront the workman. M. de Rousiers, moreover, enhances the value of his treatment by using a kind of family monograph method. He starts in each case with the workman himself — studies him in the workshop and at home, and gives an account of his family life and of the ideals that actuate him. We thus get a series of typical histories, based on original investigation, and presented in a skillful and interesting manner. The dramatic story of the supplanting of the older system by the new one is brought before us in a fresh way, and with an admirable regard for perspective; for M. de Rousiers is an eminently sane man, who is thoroughly alive to the socializing influences of the factory system, without closing his eyes to the evils, which can and will be lopped off.

It would be impossible to mention all the good features of the book. A typical example of the author's mode of treatment may be found in his account of the sweating system. This, as he well shows, is primarily due to the existence of penniless employers — a class brought into existence by the facilities for starting in business that

are afforded by the modern division of labor and the increase of popular demand. When M. de Rousiers tells us that the sweating system can be ended only by the greater development of machinery, he is stating a fact to the truth of which any one intimately acquainted with the clothing trade in a large city like New York can testify.

Taking it all in all, M. de Rousiers's book contains far and away the best statement of the fundamental conditions of the labor problem in England that has yet been published. It fully deserved the honor accorded to it — that of being crowned by the *Académie des Sciences Morales et Politiques*. There is no other work which gives so vivid and, on the whole, so sane a view of the relations of the modern workman to his industrial environment. And he is to be congratulated for having in Mr. Herbertson so good and careful a translator.

A short time after the appearance of this volume, the *Musée Social* was founded, and M. de Rousiers was sent to England with a band of young men on a mission to make a more detailed study of trade-unionism. The results of this investigation have just appeared in French dress. M. de Rousiers studies the system of collective bargaining in the same way as in the previous volume he studied the laborer himself. He begins with what might be called the antiquated systems, as in the building trades; he next proceeds to the intermediate types, represented by the agricultural laborers, the dockers and the miners; and he finally devotes most of his space to the unions in the shipbuilding, engineering and textile industries. The work is not quite equal to its predecessor, partly, perhaps, because the particular subject has been more exploited in England. But M. de Rousiers will be found instructive by those who do not agree with the analysis of Sidney and Beatrice Webb in their account of the relation between the New Unionism and the Old.

E. R. A. SELIGMAN.

The Theory of the Divine Right of Kings. By J. NEVILLE FIGGIS, Lecturer on History in St. Catharine's College, Cambridge. University Press, 1896. — 304 pp.

This work was the Prince Consort Dissertation for 1892. In a somewhat amplified form it is now published as one of the series of Cambridge Historical Essays. As tracing with much greater detail than has been before attempted the history of that theory which ascribes a sacrosanct character to political authority, the book is a

distinct contribution to historical science. The author devotes his attention chiefly to the manifestation of this theory in English politics, and within this field he gives evidence of a full acquaintance with the sources as well as with secondary authorities. Upon the continental side, the sketch is extremely meagre; and it would appear that the author has not even made use of those standard works wherein his subject has already been treated. Thus, no reference is made to the works of Gierke, Baudrillart, Eicken or Friedberg, or even Janet. It is probable, however, though not so noted on the titlepage or in the preface, that it was not the purpose of the work to deal, except incidentally, with the history of the theory outside of England.

Within the field particularly covered, the aim of the essay is twofold: first, to determine the content and development of the divine-right theory; and second, to interpret, by its light, the confused and confusing politics of England during the sixteenth and seventeenth centuries. The essential merit of the work consists in the manner in which the first purpose is fulfilled. Not only is the real significance of the theory carefully and fully stated, but its logical relations to such other political dogmas as papal supremacy, legal sovereignty and popular rights are adequately and philosophically explained. An excellent example of the manner in which the author penetrates to the real significance of a particular system as a step in the development of the main theory is exhibited in his treatment of Filmer's *Patriarcha.* Ridiculous as Filmer's theory appears from the modern point of view, it represented a distinct advance in the political thought of the time, and paved the way for still greater developments in the future. This advance consisted in defending the sacred character of kingship, not, as hitherto, chiefly by arguments based upon a medley of scriptural texts, but by the contention that kingship is in consonance with man's nature and with the natural constitution of society — that is, with human nature as formed by the Creator.

> It is an easy transition [says Mr. Figgis] from the conception of government as directly established by divine command to the notion that, since God is the author of nature, whatever is natural has His sanction. Yet the change is great. For direct divine right has been substituted a constructive theory of divine approval. The theological conception of politics is giving way before what may be termed the naturalistic.

The way was thus prepared for Sydney, Locke and Rousseau. "For the whole question of what constitutes the law of nature is involved,

and it is easy to argue, as did Locke, for the principle of utility — the instinct of self-preservation, as of natural and therefore divine origin."

There is one point made by Mr. Figgis, however, from which I should dissent. He holds that in Filmer's work the conception that existing kings are legitimate descendants of Adam is not an essential element in the argument as to the impiety of resistance to ruling monarchs. But the fact is that it is only the theory of an hereditary right which nothing can defeat or destroy that prevents the divine theory from being made to mean simply the sacred character of any *de facto* ruler, and thus to imply a divine sanction for every successful rebellion. And, of course, no then reigning monarch could claim this absolute hereditary right, except through an unbroken line of royal ancestors running back to primeval time.

The most serious criticism to be made on Mr. Figgis's work, and one which applies throughout the book, is that he tends to become rather the apologist than the historian of the royalist faction which clung to the notion of divine right. This tendency is especially pronounced in his estimate of the motives which led to the maintenance of the theory in England long after the disappearance of that danger of papal domination which has been mainly instrumental in causing its original formulation. Here we find the author paying but little attention to the selfish and despotic ends to which the divine theory was devoted by the English church and crown, or to the resulting oppression of the people; while the utmost stress is laid upon the merit of the theory as affording a basis for preserving the unity of the state in a time of social and political unrest. In this respect the theory doubtless had a certain value, or else its influence would not so long have continued; but that it was a recognition of this value which led to its acceptance by the Royalists and its enunciation as a dogma by the church, cannot be admitted. Nor can we believe, as the author believes, that the benefits were, in the aggregate, greater than the evils which flowed from it. In fine, then, the work, while a valuable contribution to the history of political philosophy, is one to be used with caution so far as regards its interpretation of English history.

JOHNS HOPKINS UNIVERSITY W. W. WILLOUGHBY.

Government and Parties in Continental Europe. By A. LAWRENCE LOWELL. Boston and New York, Houghton, Mifflin & Co., 1896. — 2 vols.; viii, 377, viii, 455 pp.

This is a much needed book and a book of much merit. The style in which it is written is lucid and attractive, and the substance does not transcend popular comprehension. It is a book for the general reader rather than for the professional student of the subject it treats. The author has evidently had at his command the best modern literature upon the topics brought together in his volumes; and in most cases he has used it with correct appreciation. In a few instances, however, he has, I think, failed to do so — as, for example, when he interprets Professor Goodnow's work on *Comparative Administrative Law* as an argument for the wholesale substitution of Continental for Anglo-Saxon methods and principles.

For the purposes of criticism the contents of Mr. Lowell's book may be distinguished under four heads: First, a brief history of the establishment of the present governmental systems of France, Italy, Germany, Austria and Switzerland; second, an analysis of the governmental structure in each of these several systems; third, a representation of the manner in which these respective governments are operated; and fourth, an account of the constitution, relations and movements of political parties in these states. The historical sketches are, of course, necessarily brief, and should not be too severely criticised for lack of thoroughness. In one or two cases, however, they are too superficial to escape criticism entirely. For example, in the account of the movements of the seventh decade of the century leading to the establishment, first of the North German Union, and then of the German Empire, no mention whatever is made of the memorial of the Prussian ministry of September 15, 1863, which announced that the Prussian government favored the establishment of a national popular chamber in the Confederate Diet; nor of the proposition made by the Prussian government to the Confederate Diet on April 9, 1866, that a plan for the revision of the existing Articles of Confederation be laid before a national popular convention, elected by universal suffrage for deliberation and ratification; nor of the demand made by the Prussian government, June 15, 1866, upon the governments of Saxony, Hanover and Electoral Hesse, that they should demobilize their armies and assent to the summoning of the national popular convention; nor of the manifesto issued by the Prussian government, June 16, 1866, declaring that the unity of the German nation remained after the dissolution of the Confederation,

and that it was the duty of the governments and of the people to find for that unity a new and vigorous expression. Mr. Lowell thus misses entirely the true spirit of the German revolution of 1866, and falls, consequently, into an excessively particularistic view of the present political system of the German Empire.

The part of the work devoted to the analysis of governmental structure is more satisfactory. In the main it is correct, although it contains many inaccuracies upon minor points. An instance of this kind is to be found on page 297 of the first volume, where the author translates the words of the Prussian constitution, "sonst dauernd verhindert ist, selbst zu regieren," by "insane." Again, in describing the method of amending the Swiss constitution by popular initiative, he says:

> The petitioners can either present their amendment in its final shape, ready to be immediately submitted to popular vote, or they can describe it in general terms. In the latter case, the people must be asked whether they approve of the suggestion, and if they vote yes, the amendment must be drawn up by the existing legislature [vol. ii, p. 191].

In reality the constitution provides that when the petitioners demand an amendment expressed in general terms, the legislature may, *if it approves the same, proceed at once to formulate the amendment and submit it for ratification;* but that if the existing legislature does not approve the same, then the question whether the amendment shall be undertaken or not must be submitted to popular vote, and if the majority of those voting on the question approve, then the existing legislature must proceed. Such a lack of exactness may be pardoned, perhaps, in a popular work, but it makes the work rather an unsafe guide for professional students.

In those parts of the treatise devoted to the working of governments and to the constitutions, creeds and movements of parties, the author is at his best. In regard to these matters he has made a very important contribution to the literature of political science, and has placed all students of that science under obligations which no one of them should hesitate to recognize.

Finally, a general criticism to be made upon the book is that it lacks any consistent and scientific nomenclature. To the ordinary reader the indiscriminate use of terms must be exceedingly confusing. The significant titles of political science, namely, sovereignty, state, government, rights and liberty, are each employed in more than one sense, sometimes even in connection with a single topic. A professional political scientist would be able, perhaps, to distinguish

the different meanings by the connections, but the untrained reader will fail to gain all of the profit which he might otherwise win from this, in many respects, excellent treatise.

J. W. BURGESS.

A History of Political Parties in the United States. Vol. I. By J. P. GORDY, Ph.D., Professor of Pedagogy in Ohio University. Athens, Ohio, 1895. — 512 pp.

In order rightly to consider this book it must be kept in mind that the author, himself a teacher of pedagogy, designs it primarily for teachers who have not had the advantages of higher education and for business men. It is in no sense an original historical investigation into party origins and party organization and development. In this respect the title and the extensive plan of the work create expectations that will not be fulfilled. There is certainly room for a three-volume study of the history of political parties in the United States. Such a work should be definitely devoted to the institutional history of political parties and to the main lines of party action, as well as to the personality and influence of party leaders. It should be based upon extensive historical investigation and well-defined power of political analysis. The author should explore the political history of the various colonies for evidence of party divisions in each. He should investigate the geographical and social distribution of these colonial party divisions with a view to disclosing intercolonial areas or classes with common political sympathies, affording material for fusion into parties on a national scale. This evolution of national parties should be traced through the period of the Revolution and the Confederation. Until this historical foundation is exposed, no well-grounded history of parties in this country can be written. Nor can later party history be rightly presented without more attention to the history of party politics in the various states, to the sectional groupings revealed in congressional votes and presidential elections, and to the formation of the machinery of party action. In brief, a scientific history of political parties must find its basis in demographic facts, and must include a study of the evolution of the organs of party action. The general political history of the nation affects this development of parties, and parties contribute powerfully to the political history of the nation; but it is an error to think that party history and political history are identical.

This is the mistake made by the author of the work before us. The volume is, in fact, a compendium of the political history of the United

States from 1781 to the close of Jefferson's administration. The author has real pedagogical power, and presents the results of his historical reading in a clear and instructive way, but without particular originality in his views or power of literary expression. The chapters dealing with the period of Jefferson's presidency, for example, derive what is valuable in them from the work of Henry Adams. If, as Mr. Gordy implies, the teacher of American history is to be for the most part self-taught, and is not likely to use such extensive works as that of Mr. Adams, it is certainly fortunate that he has no worse a compendium than this to fall back on. But one may question whether a teacher of this description will accomplish much for the cause of American history in any case.

On the whole, the judgments of the author are well based; while some of his work is particularly effective. His defense of Madison's consistency in deserting the Federalists for the Republicans is well presented; as is also his analysis of the sources of Hamilton's strength and weakness.

On the other hand, he gives his reader no adequate information respecting concrete facts of the economic and social life of the American people, so important to enable us to understand this formative period in party history. There is disproportionate attention paid to the utterances of political leaders and to the analysis of their motives. The attitude of the political scientist sometimes dominates that of the historian. This is illustrated by Mr. Gordy's contention that the congress of the Confederation was not a government; and by this interesting observation: "The Convention framed a constitution by the adoption of which thirteen peoples, imagining themselves independent and sovereign, really acknowledged themselves to be but parts of a single political whole. But they did it unconsciously." His assertion that the Anti-Federalists were not a sectional party fails to recognize that there are other sections besides the North and South. He notes Maclay's use of the word "Republican" as a party epithet without, it would seem, knowing that it was not uncommon in state usage before that. A tendency to absoluteness of statement when the facts do not justify it may also be noted, as when he declares that "with any other man as president, he [Genet] would in all probability have succeeded" in overthrowing the constituted authorities in favor of the revolution.

With the author's purpose in mind, one may say that, on the whole, he has performed his task with much success.

UNIVERSITY OF WISCONSIN. FREDERICK J. TURNER.

History of the Impeachment of Andrew Johnson, President of the United States. By EDMUND G. ROSS. Santa Fé, New Mexican Printing Co., 1896. — 180 pp.

Those of the generation which has come to manhood since the era of Reconstruction find it exceedingly difficult to realize the intensity of party feeling which was expressed in the attacks on President Johnson. The great majority of those who demanded Johnson's impeachment were firmly convinced that, if circumstances should ever permit, the South would be ready to resume its former attitude upon the slavery question, and that Johnson was deliberately endeavoring to assist the South to a position where it could defy the North. Such a president, they reasoned, had forfeited all his claims to confidence, and should speedily be removed from a position where he might work so much injury. There was an honest belief in an undoubted majority of the Republican Party, that the safety of the United States demanded Johnson's conviction.

The Republicans in the Senate, however, were by no means a unit in their attitude towards the impeachment. They represented many shades of opinion; but their majority was so overwhelming that party discipline was confidently counted upon to secure a two-thirds majority for conviction. Yet in spite of all kinds of pressure, abuse, attempted coercion, and even, it was rumored, contemplated assassination, seven of the forty-two Republican senators voted "not guilty." These men knew that they were committing political suicide — that by their home constituencies they would be considered traitors even more odious than the much-reviled Copperheads; but, on the other hand, they clearly perceived the dangers that were involved in conviction, and they appreciated the fact that partisan fury, not judicial fairness, was determining the action of their colleagues. As more light is thrown upon the subject, it will become more and more evident that the incident is not one to which our historians can point with pride. Many excuses can be made for the morbid state of public feeling, but we shall scarcely be able to excuse those leaders of the Republican party in the Senate who lost sight of their judicial character, conducted themselves with notorious lack of dignity, and became violent partisans.

In the introductory chapters Senator Ross shows why the Republican Party, coming to power under exceptional circumstances and having a peculiar mission to fulfill during the war, was poorly equipped for the work of restoration. Lincoln clearly saw the necessities of

the case, and with his great reputation would have been able, Senator Ross believes, to draw to him the majority of his party. His assassination, however, put an end to such possibilities. Passions which had scarcely been governed before then became doubly intense; and Johnson, with his impetuous, headstrong nature, was utterly unfitted for the position which now imposed such unusual duties.

After tracing briefly the Lincoln and Johnson plans of restoration, and showing that Johnson was consistently following the path laid out by his predecessor, Senator Ross proceeds to a discussion of the impeachment charges. He might have added somewhat to the effectiveness of the book if he had shown more clearly the extreme tactlessness of President Johnson's public speeches during 1866, and its effect in alienating many who might otherwise have been his supporters. In discussing Johnson's career too much emphasis can scarcely be placed upon his peculiar personality, and upon his utter failure to realize the limitations which his office placed upon him.

The special value of the main chapters of the book — those devoted to the discussion of the trial — consists in the light which is thrown upon the motives of many senators, and upon the total lack of scruples as to the means employed to secure conviction. Deliberate attempts were made to corrupt those whom party discipline failed to control, and no stone was left unturned in the effort to secure the necessary majority. The weakness of the testimony brought against Johnson is clearly shown, and lengthy citations from the stenographic report of the examination of witnesses are introduced into the text. To the special student this selected evidence is of great convenience.

In his effort to make his work perfectly accurate, Senator Ross has, however, quoted from the official report of the trial so freely that the literary qualities of the book are seriously impaired. The average reader will be strongly tempted to omit many of the lengthy citations, and will therefore lose many of the most significant and important facts, which could have been clearly set forth in much less space. For the student who desires a convenient handbook of the proceedings, which will also supply information that otherwise must be obtained from government reports, the book will have genuine value.

Moreover, all writers discussing the questions involved in Reconstruction will find in portions of this monograph valuable aid.

CHARLES ERNEST CHADSEY.

DURANGO, COLORADO.

The Trent Affair, including a Review of English and American Relations at the Beginning of the Civil War. By THOMAS L. HARRIS, A.M. Indianapolis and Kansas City, The Bowen-Merrill Company, 1896. — 288 pp.

In prefacing his account of the *Trent* affair with a review of Anglo-American relations at the beginning of the Civil War in the United States, the author's purpose may be assumed to have been to place the principal topic in a proper historical perspective. It is therefore somewhat disappointing to find in his narrative various statements into which he seems to have been betrayed by a feeling of resentment. For example, he declares that, "with rare exceptions, the press, the people and the government [of Great Britain] were heart and soul with the South in its efforts for the dismemberment of the American commonwealth." This is a very sweeping assertion. It may be quite true that Lord Palmerston's course in the case of the *Trent* is open to grave censure, and it may be equally true that other acts of the British government during the Civil War afforded just cause of complaint; but in attempting to indict a whole people and its government, it is proper to exercise circumspection. The author's feelings have not always permitted him to do so.

He devotes a chapter to "The Question of Confederate Independence," and concludes it with the declaration that nothing but the thought that it was "inexpedient," and "perhaps not quite safe," "prevented an early recognition [of the independence] of the Confederacy by England." His proofs of this are (1) that British sympathy was with the Confederacy; (2) that Earl Russell said in April, 1861, that the matter was "not ripe for decision one way or the other"; and (3) that "efforts" were made in England "to have the independence of the Confederacy immediately recognized." It is obvious that of these proofs the last is the only one that promises anything tangible. But the only "effort" mentioned is the action of Mr. Gregory, a member of Parliament, who, early in 1861, gave notice in the Commons of a motion looking to the recognition of Confederate independence, and published a letter in the London *Times* in support of it. In reality Mr. Gregory's motion was, as we are told, "finally postponed indefinitely." But we are assured that this was done "because the Commons thought it inexpedient to act upon it at that time." Perhaps so; perhaps not. Since we are reduced, however, to mere assumption, it might be fair to admit that the action of the Commons may have been to some extent influenced

by the circumstance that the independence of the Confederacy was not actually established.

In treating of the Queen's proclamation of neutrality of May 13, 1861, by which the Confederate states were recognized as a belligerent, the author declares that, if the views he has expressed of the case be correct, "there can be no defense whatever for the action of the British government"; and that it "must," in the opinion of "every unprejudiced mind," "ever be classed with the long catalogue of unjust acts and international wrongs for which England has been noted in her relations with weaker nations or with stronger countries in distress." It therefore becomes material to inquire what are the author's "views of the case." Briefly stated, he holds that the recognition of Confederate belligerency, if it had been extended after August 1, 1861, would have been "entirely in accordance with the principles of strict fairness and neutrality." His reason for this statement is, that the war was in the beginning "only a personal war, an effort on the part of the Federal government to suppress rebellion on the part of individuals;" and that a state of war, in the international sense, "did not exist until after President Lincoln's proclamation to that effect, issued August 16, 1861, in pursuance of the act of Congress of July 13, 1861." The Supreme Court of the United States has held precisely the reverse. In the Prize Cases (2 Black, 635), involving two vessels that were seized in May, 1861, that tribunal declared that the "proclamation of blockade [issued in April, 1861] is itself official and conclusive evidence that a state of war existed," and that in "organizing" the rebellion the insurgents "acted as states." There is thus ample room for a different view of the law from that expressed by the author, whatever may be thought of the lack of consideration for the United States government shown in the particular manner in which the Queen's proclamation was issued.

As to the case of the *Trent* itself, Mr. Harris maintains that the seizure of Mason and Slidell by Captain Wilkes was wrong in point of law; and he thinks that Mr. Seward should have placed the release of the captives on a broader ground than that of the omission of the captor to bring the vessel into port. His argument on this point is clear and forcible, and well worthy of consideration.

J. B. MOORE.

The Province of Quebec and the Early American Revolution. A Study in English-American Colonial History. By VICTOR COFFIN, Ph.D., Assistant Professor of European History in the University of Wisconsin. Bulletin of the University of Wisconsin, Economics, Political Science and History Series, Vol. I, No. 3, Madison, Wis., 1896. — xvii, 288 pp.

The specific subject of this monograph is the Quebec Act of 1774, its origin and its immediate and ultimate results. This is a topic which till now has scarcely received adequate attention. Opinions concerning it which were based on hearsay, or adopted after insufficient investigation, have passed for history. It does not lie directly in the path of the historian of the American Revolution, and hence has been slurred over. The romantic period of Canadian history, to which Parkman and most of the Catholic historians exclusively devoted themselves, had passed before the Quebec Act became law. It was a statute, too, which had manifold bearings and which, to be understood, demands study from several points of view. Only within recent years have the materials for such an investigation been placed within the easy reach of American students, and that breadth of view attained which makes it possible to use such materials properly. Professor Coffin has studied the sources with great thoroughness, and has made strong and independent use of the material which they afford. As a specimen of historical reasoning, of the proper marshalling of evidence, this work merits high praise.

The argument of the author is briefly as follows: During the interval between the establishment of English government in Canada under the proclamation of October, 1763 and the passage of the Quebec Act, the governors took the French *noblesse* under their protection; and, believing that the peasantry was largely under the influence of this class, they insisted that the granting of favors to it and the maintenance, so far as possible, of the system of French law intact, was the safe course of policy to be pursued. Of this they convinced the home government, at the same time prejudicing it against the English-speaking element of the population, which, though small, had protested against the performance of jury service by Catholics, and against the collection of the old French customs duties without distinct appropriation by an assembly, and which had, moreover, insisted upon the establishment of a legislature. The officials of the home government, though meaning to be just and humane, were not qualified to deal with the situation intelligently, and accordingly they acted upon

the representations of the governors as if they had been true. But in the belief of the author the *noblesse* really possessed little influence over the peasantry. The chief desires of the peasantry were to get free from the judicial control of the seigneurs, and also from the compulsory obligation to pay tithes to the priesthood. Could these favors have been secured, the peasants would have submitted to the English system of law without a murmur. Their natural political leaders, the officials and merchants, had mostly returned to France, while the clergy were quiescent. Hence the opportunity was favorable for introducing English law at once into the province, and subjecting the French to its influence. But this was not done. Instead, as one of the favors extended to the Catholics in the Quebec Act, the system of compulsory tithes was restored, while, owing to the retention of the French land law, the peasants were led to fear the return of the oppressive conditions of the feudal *régime*.

The English residents, deeply disappointed because the act contained no provision for an assembly, at once sought to arouse the discontent of the French. In this they were quite successful, and hence it was that when, in 1775, the revolting colonists from the south invaded Canada, they found there widespread opposition to the English government. The author sees in this fact little evidence of sympathy with the cause of the invaders, but rather a strong proof of dissatisfaction with the Quebec Act. Within a year, however, the outrages committed by the undisciplined invaders so far reconciled the inhabitants to English rule, that they could not be tempted to turn against it even after the alliance between France and the revolting colonies had been formed. Though the author finds no evidence that the English government, in the passage of the Quebec Act, was moved by sinister intent toward the other colonies, he sees how natural it was that the colonists should interpret the measure unfavorably. In his criticism of the act he goes still further, and holds that by perpetuating French institutions in Lower Canada, it has been a serious obstacle to the growth of political unity. It is his belief that the proper course for the government to have pursued at the outset was to set the province "firmly and definitely upon an English instead of a French path of development."

Not the least interesting part of the monograph is the passage in which Professor Coffin, adopting fully the view advanced by Lord Mansfield in Campbell *vs.* Hall, argues that all the legislative ordinances issued by the Canadian government from 1763 to 1774 were illegal. Lareau reaches practically the same conclusion, though by a

different path. Apparently, however, some of the ordinances to which Professor Coffin refers (p. 341) were administrative rather than legislative in character. If so, their issue was legal, and can be justified by reference to the commissions and instructions of governors in other royal provinces in America, where English law existed and assemblies had long been established.

HERBERT L. OSGOOD.

Select Cases from the Coroner's Rolls, A.D. 1215–1413, with a Brief Account of the History of the Office of Coroner. Edited for the Selden Society by CHARLES GROSS, PH.D., Assistant Professor of History at Harvard University. London, 1895. — xliv, 159 pp.

Dr. Gross has not edited the original *rotuli coronatorum*, but rather some contemporary or almost contemporary transcripts and abstracts therefrom. The originals, drawn up by the coroners for the use of the itinerant justices, seem to have been destroyed or lost, while the abstracts have been preserved. From these rolls and from the other material which he has so diligently exploited, Dr. Gross has — by exercising the same skill and accuracy that he displayed in connection with his work on the merchant gild — been able to describe the coroner of the thirteenth and fourteenth centuries. He has thrown a flood of light upon local legal institutions of the time of John, Henry III and Edward I; and has produced a work which cannot be characterized better than by saying that it maintains the high standard hitherto set by the publications of the Selden Society and hitherto attained in all the work that Dr. Gross has done.

The essay introducing the text of the rolls is an expansion of the article on the coroner printed by Dr. Gross in the POLITICAL SCIENCE QUARTERLY for 1892 (vol. vi, p. 656). It contains a number of important changes in detail, but none whatever in the conclusions regarding the importance of the coroner in English constitutional history as a link between the itinerant justices and the local administration — between the manorial and royal jurisdictions. There are a few omissions, but so much new material is added that the essay is nearly doubled in length. The printed extracts which follow date from 1215 to 1413, and relate to some seventeen of the English counties, chiefly in the center and north. Accompanying the texts are translations, admirable for their clearness and excellent literary form. A glossary and various indices complete the volume.

Attention is naturally first attracted to the friendly controversy

between Dr. Gross and Professor Maitland, in which the latter took exception to Dr. Gross's statement that the chapter (20) of the Articles of the Eyre of 1194, to which has usually been traced the institution of the coroner's office, was simply a declaratory act. Dr. Gross had quoted from the charters granted to London before 1135 and to Colchester in 1189 to prove the existence of persons not only guarding the pleas of the crown but also holding them. Professor Maitland replied that such a person was a *justiciarius* and not a *coronator;* that the coroner owed his existence to the separation of the duty of guarding the pleas from that of holding them; and that, unless Dr. Gross could find before 1194 an officer who guarded the pleas but did not hold them, he must still regard the article of 1194 as an originating act. As a study of the texts discloses no such officer, Dr. Gross now answers that the famous clause (24) of Magna Carta, which denies to coroners the right to hold the pleas of the crown, implies that before 1215 coroners had been accustomed to hold as well as to guard — else why forbid them to hold after 1215? He further defends his conclusion by referring to traces of judicial functions found in the later history of the coroner, when that officer had become only the custodian of the pleas. The question is important, for Dr. Gross ascribes to the early coroner more importance than Professor Maitland will allow.

The description that Dr. Gross gives of the functions of the coroner, and of the procedure before and at the inquest, can be supplemented at every point by reference to the rolls themselves. It is unnecessary to follow here the various steps from the finding of the body to the final presentation of the case to the royal justices. A word may, however, be said regarding the composition of the coroner's jury; for it has been through a study of the work of this body that Dr. Gross has been enabled to make a suggestive addition to the history of trial by jury. We know from the rolls, as well as from the law writers, that the coroner's jury consisted of two distinct parts: the twelve *juratores* of the hundred, and the reeve and four men from each of the four vills — that in which the death occurred and the three next adjoining. The twelve, taking oath, testified as to whether the deed were a felony or a misadventure, giving such detail as seemed necessary in order to make the matter clear to the coroner. Then the "four vills" bore witness, generally, though not always, agreeing with the twelve. It would seem that the statement of the villagers was generally regarded as the more important, on account of their acquaintance with the circumstances of the death.

What has this to do with the origin of the petty jury? Final conclusions are, of course, not to be had until masses of unprinted records are examined. Something may, however, be said. At the coroner's inquest the jurors did no more than give evidence, though on their oath a man might have been arrested and put in jail: they did not try the man, because the coroner merely guarded the pleas and did not hold them. Then the twelve jurors of each of the hundreds in the county went up to the court of the itinerant justices. There they acted not merely as a jury of presentment but also as a trial jury. The twenty villagers from each group of vills likewise went up. In Henry III's time the custom was to submit the question of guilt or innocence first to the presenting jury. If this jury found the accused guilty, then the villagers were sworn; and if they too found him guilty, then sentence was passed. But as it seemed unfair to the accused that the indicting jury should also give the final verdict, — whether it was so or not is another question, — it evidently had become the practice by the end of Henry III's reign for the justices, before passing sentence, to turn to a second hundred jury for an opinion. The result of this was that in time it became a right of the accused to demand the opinion of a second jury before sentence was given. During the reign of Edward I the practice of swearing the "four vills" seems to have been abandoned. It has been a question whether the second hundred jury or the "four vills" is to be considered the germ of the modern petty jury. At present the evidence seems to point to the former, but Dr. Gross contends that the custom of employing a second jury to traverse the judgment of the hundred jury apparently began with those cases — appeals of felony — in which the "four vills" were asked to give their testimony. The fact that the vills were asked to give testimony in such cases, and that their declaration was generally accepted by the court as a decisive verdict was probably due, says Dr. Gross, to the belief that the villagers were more familiar than any one else with the felony in question, because they had already "made a careful investigation of the offense in connection with the coroner's inquest." Thus we may well believe that the work of the "four vills" was "at least a stage in the development of procedure which the future historian of trial by jury cannot safely ignore."

Among other interesting subjects touched upon in the text of the rolls and referred to in the introduction may be mentioned the following: the right of a woman to prosecute an appeal (pp. 65, 71, 72, 77) under the limitation imposed by chapter 54 of Magna Carta, to

which reference is made on page 35; the custom of abjuring the realm (*abjuratio regni*), of which the rolls give some excellent examples (pp. 37, 69, 76); responsibility for harboring strangers, which looks back to Anglo-Saxon law (pp. 74, 77); proceedings on appeal before the county court, of which many interesting instances are given (pp. 19, 20, 22, 23, 26, 34–35, 62–63, 65, *etc.*); writs to the sheriff authorizing appeal to the justices from the county court, *quia appellum predictum in minori curia quam coram justiciariis nostris terminari non potest per legem et consuetudinem regni nostri* (p. 72).

The study of the coroner and his jury naturally suggests inquiry as to the status of the persons composing the jury. Dr. Gross says: "The twelve of the hundred seem to have been freeholders; the men of the vills were *villani*"; but he does not tell us anything of the manner in which they were selected for service at the inquest. So far as I have observed, the cartularies do not mention the obligation to be present at the coroner's inquest. In default, then, of definite information, I should conjecture that the inquest was attended by the same men who owed suit at the hundred and county courts. We know that the inquest jurors from the "four vills" went up to the court of the justices. In the Ramsey cartulary we are clearly told who went up to the eyre courts:

> Et unum de homagio ipsius [a freeholder] respondeat in omnibus cum villata coram justiciariis [I, 283].
>
> Item idem [a freeholder] tenet ij virgatas et defendit pro eis villatam ad comitatum et hundredum et ad summonitionem justiciarorum erit loco prepositi [I, 382].
>
> Ad ecclesiam pertinent v virgatae terrae. Pro quibus persona debet esse quartus homo coram justiciis cum custamento suo [III, 307].

In these cases the vill was acquitted, not by persons as such, but by holders of certain lands upon which the burden of suit fell. Such lands might be in the hands of freeholders as well as of villeins, as was the case in the second extract quoted. Apparently the persons mentioned in the quotations were not of the hundred jury, because they defended the *villata* and not the hundred. On this point the references to the reeve and the *quartus homo* seem to be conclusive. From this I should infer that the obligation to serve on the coroner's jury of the "four vills" fell upon those holding virgates that owed suit at the higher courts; and, furthermore, that, although the reeve was always a villein and the majority of the other members were generally of that class, the jury not infrequently contained small freeholders.

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The Development of the French Monarchy under Louis VI. By JAMES WESTFALL THOMPSON, A.B. University of Chicago, 1895.— xii, 113 pp.

This monograph was the author's doctoral dissertation at the University of Chicago. Like all other investigations in the field of mediæval European history by American students forced to rely upon the material accessible here, it was conducted under great difficulties. Mr. Thompson deserves praise for his careful study of this material; but, as was to be expected, Luchaire had left little for him to glean. This monograph adds nothing to our knowledge of the subject; yet, with the exception of Walker's notable dissertation on *Philip Augustus*, it is the only work of any value in the English language on the history of the French state during the later Middle Ages. It is true that in some instances Mr. Thompson advances new propositions; but in all cases, as it seems to us, these have no scientific basis. He has not avoided the snare that lies in wait for every investigator of a special period — the tendency to overestimate the relative importance of the subject treated. Mr. Thompson has a decided tendency to attribute to Louis VI many advances in the royal power that took place in the next century.

One instance of this tendency is his attribution to Louis VI of that great innovation in feudal law, by which appeals ran to the king's court. Mr. Thompson's account of the appellate jurisdiction of the royal court in the time of Louis VI is very misleading. He says (p. 39):

> The practice of appeal as instituted by Louis VI was an entire interpolation in the feudal law of the land. . . . Hitherto the dukes of Normandy and Aquitaine, the counts of Brittany, Flanders, Champagne and Toulouse had enjoyed the privilege of final decision.

The unwary reader is thus led to infer that this privilege ceased in the reign of Louis VI. This, however, is by no means true. In fact, the *curia regis* of Louis VI had absolutely no appellate jurisdiction, except in certain cases when it reversed the decision rendered by the court of an ecclesiastical vassal.[1] This was so because of the close relations always existing between church and crown, and because the king appointed these bishops and abbots. For instance, in the case of the appeal of the bishop of Arras, which Mr. Thompson cites to support his assertion, Louis had a direct interest in interfering, be-

[1] *Cf.* Luchaire, Institutions Monarchiques, I, 301, and Manuel, p. 556; Langlois, Philippe III, p. 276.

cause, as he says, "*advocati et patroni Atrebatensis sumus ecclesie.*"[1] The only other case that Mr. Thompson cites is that of some nobles who complained of the tyranny of their lord, Humbaud of Sainte-Sévère, and begged Louis "*aut ad exequendum justiciam cogere, aut jure pro injuria castrum lege salica amittere.*"[2] In this there is absolutely no trace of appellate jurisdiction: possibly it might be construed as an instance of the feudally legal interference of the suzerain in the case of *defectus justitiae*, but that has only a superficial resemblance to appellate jurisdiction.

Then Mr. Thompson claims (p. 57) that in 1137 Louis instituted a general tax, not feudal in nature, the first levied by any Capetian. This assertion is based on a passage from the *Chronicon Morigniacensis monasterii*, relating Louis VI's preparations for the marriage of his son to Eleanor of Aquitaine. It reads: "*Imperialis itaque edicti taxatione ubique publicata, militum agmina non parva properanter conveniunt. . . .*"[3] Mr. Thompson translates *taxatio* as taxation. From the context, however, this rendering seems to us not legitimate. *Taxatio* is evidently used here in the sense of *aestimatio*, that is, estimate of the *talia* or number of men the vassals and subjects were bound to furnish for the marital expedition. It is true that, so far as we know, there is no other instance of the use of *taxatio* in exactly this sense; but, on the other hand, its synonym, *taxa*, in the phrase *taxa gentium*, was used as the equivalent of *talia*.[4] Even admitting the correctness of Mr. Thompson's version of this passage, it seems at any rate a poor foundation on which to make so dogmatic and revolutionary a statement. In the first place, no manuscript copy of this chronicle is extant,[5] and consequently we cannot tell how much has been interpolated in later years. Then Suger, who was the king's chief adviser, would surely have mentioned so novel a step in his *Life of Louis VI*. We find, however, that Suger's account[6] makes no mention of it, and that his version agrees with our interpretation of the passage given above.

Mr. Thompson has an unfortunate tendency to make dogmatic assertions in the text, and then to qualify them in the notes. For instance, he asserts in the text that Louis VI first enunciated the

[1] Langlois, Textes relatifs à l'Histoire du Parlement, p. 12; Recueil des Historiens des Gaules et de la France, XV, 342 n.

[2] Sugeri Vita Lud. Crassi, ed. Molinier, pp. 36, 37, 137, 138.

[3] Recueil des Historiens, XII, 83.

[4] See Du Cange, "taxa" and "talia."

[5] Potthast's Bibliotheca Historica, I, 279.

[6] Ed. Molinier, p. 128.

doctrine that the king *ipso facto* can render homage to no one, though this honor has usually been assigned to Philip Augustus.[1] This contention is based on a passage from one of Suger's works,[2] the genuineness of which, as Mr. Thompson himself admits in the notes, has been very much disputed. Consequently, this passage is no scientific basis for so positive an assertion.

Exception can also be taken to Mr. Thompson's definition of liege-homage, and to his statement that Louis VI instituted this peculiar form of homage. Then, again, Mr. Thompson criticises Lothair (p. 3) with undue severity for attempting to recover Lotharingia. In reality it was a very statesmanlike act on the part of Lothair, for he needed some territorial basis to neutralize the preponderating power of the Capetians.[3]

Thus, though his monograph contains much that is sound and valuable, it should be used with caution by one not acquainted with French mediæval history. In spite of the opinion we have of Mr. Thompson's method of using the sources, his careful study of them leads us to expect better work from his pen when he has overcome his enthusiasm for novelties.

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[1] Brussel, Usage des Fiefs, I, 152; Walker, Philip-Augustus, p. 9.
[2] Recueil des Historiens, XII, 50 n.
[3] *Cf.* Monod, Annuaire de l'École Pratique des Hautes Études, 1896, p. 15.

BOOK NOTES.

In a prefatory note to *International Law: a Simple Statement of its Principles* (New York, G. P. Putnam's Sons, 1896), the author, Mr. Herbert Wolcott Bowen, says that the work is "to a great degree but an amplification of notes taken on treaties, municipal laws and the works of publicists, especially Wheaton, Woolsey and Wharton." This candid, modest statement indicates the character and scope of the work, besides disclosing on the part of the author, who is a consular officer of the United States, a commendable employment of his spare moments. There is nothing, however, that requires a more comprehensive knowledge of a science than the making of a concise statement of its principles; and this requirement is not lessened by the attempt to blend the views of other writers. Many of Mr. Bowen's statements of principle are sufficiently accurate; but some of them he would on further investigation probably desire to modify. Of the latter we may cite as an example the section on domicil (s. 143), in which it is stated that the native-born and naturalized citizens of a country, and "persons that have their domicil therein," are "entitled to claim the protection of the nation both at home and abroad, and international law gives them the same nationality." If this be so, what is the meaning of our naturalization treaties? And why is it that the statutes of the United States do not authorize the issuance of, and that the Department of State refuses to issue, passports to merely domiciled inhabitants of the United States? The statement in question is obviously based on the passage from Marcy's Koszta note, given in Wharton's *Digest*, s. 198 — a passage which, being torn from the context, presents, like many other passages in the same work, an utterly insufficient and misleading view of the case to which it relates, and of what was actually maintained in it.

Mr. F. J. Stimson has followed his *Labor in its Relation to Law* (which was noticed in this Quarterly, vol. xi, p. 196) by a bulkier work entitled *Handbook to the Labor Law of the United States* (Scribners, 1896). This is a readable and successful attempt to set forth the law of labor disputes, and the methods of regulating industrial affairs and protecting employees. It rests on a careful collation, not only of the commonwealth statutes, but of the numerous court decisions on each branch of the subject. It is not only a handbook, but a handy book, and meets an undoubted want.

Under the title *La Funzione pratica della Filosofia del Diritto, considerata in sè ed in rapporto al Socialismo contemporaneo* (Bologna, Zanichelli), Sig. Icilio Vanni reprints the first of a series of lectures upon legal philosophy delivered by him in 1894 at the University of Bologna. The philosophy of law, he contends, is not a branch of jurisprudence; its task is not to set forth in systematic form the most general and abstract principles of law; it is a branch of philosophy, and its function is to consider law "in its relation to life, to its needs and its ends." Such a consideration is practically forced upon modern society by the socialistic criticism of existing law; and to the examination of socialistic theories Sig. Vanni devotes a large part of his pamphlet. The premises on which these theories are based are, as he shows, individualistic, consisting in assumptions regarding "natural rights"; but the realization of the socialistic program would involve the suppression of individualism and "a return to that social state in which the individual belongs to the community as its mere organ, deprived of independence, of free will, of personal liberty." With the substance and tendency of Sig. Vanni's legal philosophy we have no quarrel; but from the point of view of system and nomenclature it would be of interest to learn how he distinguishes philosophy from sociology.

A clear and convenient critical summary of many different views will be found in *Théories Modernes sur les Origines de la Famille, de la Société et de l'État*, by Adolphe Posada, professor of public law in the University of Oviedo. The Spanish original was published at Madrid in 1892, and the present translation is included in the Bibliothèque Sociologique Internationale (Paris, V. Giard et E. Brière). No other book that we have seen presents so compactly and on the whole so well the theories of the original writers on social origins. The reader who takes up these questions for the first time will find here the gist of the arguments and conclusions of Maine, Morgan, McLennan, Bachofen, Girard-Tenlon, Lubbock, Spencer, Letourneau, Dargun, Post, Starcke, Jhering and Westermarck. Dr. Posada thinks independently; his criticisms are able and his own conclusions are judicial. He does not admit that primitive society was a primitive family only: it was also, he believes, a primitive state.

An interesting analysis of the concepts "society," "state," "law" and "government," an examination of the relations of the state to society, and some sound conclusions upon the relations of law and political science to sociology, are contained in *L'État comme Organisation Coercitative de la Société Politique*, by Sigismond Balicki (Paris,

Giard et Brière). The dominating thought in Dr. Balicki's study of these topics is a conception of society as the spontaneous or voluntary organization of men living in communities, and of the state as a coercive organization of the same associated men by a dominant group. He accordingly regards sociology as the general social science, and public law and the theory of the state as special social sciences; and he would require a preliminary study of sociology as a preparation for the study of law. In the bibliography at the end of the volume there is no mention of Burgess, towards whose analysis of sovereignty and liberty Dr. Balicki seems to have been independently, but rather haltingly, feeling his way.

A much needed history of anarchism has appeared, by E. V. Zenker, under the title of *Der Anarchismus: Kritik und Geschichte der Anarchistischen Theorie* (Jena, Fischer, 1895). The first part deals with the older anarchists, especially Proudhon and Stirner, with their followers; a second part treats of the modern movement. Here, of course, the Russians gave the impetus; and accordingly, considerable space is devoted to Bakunin, Kropotkin and his followers. Of the other countries, France is treated most fully with Réclus, Grave, Saurin, Michel, Hamon, Malato and the rest; while Italy, Germany, England and America are handled more briefly. Unfortunately, the author could procure none of Tucker's publications, and the account of American anarchism is therefore very fragmentary. Warren, Andrews and Spooner are barely mentioned. The third and concluding part deals with more familiar material — the recent political fortunes of practical anarchism. In the appendix is printed a German translation of Proudhon's *Political Catechism*.

Several years ago, Mr. Josef Stammhammer announced his intention of publishing a series of bibliographies on the various divisions of political economy. His *Bibliographie des Sozialismus und des Communismus* appeared in 1893, and was noticed in this QUARTERLY, vol. ix, p. 182. This is now followed by the second volume of the series, entitled *Bibliographie der Social-Politik* (Jena, Fischer), which is the counterpart of its predecessor in form, arrangement and general appearance, differing only in its greater bulk — 648 pages. The subject-index occupies seventy pages, and is admirably arranged to facilitate reference. The English and American scientific periodicals appear to have been thoroughly exploited. The succeeding volumes on finance, on practical political economy and on economic theory will be awaited with impatience.

The Clarendon Press has again earned the gratitude of scholars

by its new edition of the *Utopia* of Sir Thomas More (Macmillan). Mr. J. H. Lupton, the editor, furnishes an interesting introduction, giving an account of More's early life, of the circumstances that gave rise to the *Utopia* and of the framework of the story, and concluding with a comparison of the *Utopia* with other ideal commonwealths. The chief value of the edition, however, lies in the facts that both the Latin original and the English translation are given page by page, and that a series of annotations, occupying about a third of the whole book, is added. The work contains the well-known letters of Erasmus, of Bude and of Giles, and closes with a glossary and an index. It deserves to become the standard edition of this famous classic.

Schäffle's great work on the *Bau und Leben des socialen Körpers*, which was originally published in four large volumes in 1875–78, has been compressed in the second edition (Tübingen, H. Laupp) into two volumes. There has been little actual condensation, however; and by means of smaller type and a larger page the two new volumes are made to hold about as much as the original four. In its intellectual substance also the work is substantially unchanged. Dr. Schäffle has not greatly modified his description of society in terms of a minutely drawn biological analogy.

The second congress of the Institut International de Sociologie, held at Paris in September and October, 1895, brought out a large number of important papers, which are published in full in the second volume of the *Annals* of the Institute. Among these papers are discussions of sociological concepts and methods by Kovalevsky, René Worms, Steinmetz and Combes de Lestrade; of primitive society and social origins by Abrikossoff, Westermarck, Gumplowicz and Kovalevsky; of political origins and forces by Lilienfeld, Raoul de la Grasserie, Krauz and Golberg; and of crime by Tœnnies, Ferri, Garofalo and Tavares de Medeiros. These yearly volumes are indispensable to students of sociology.

The first volume of Rudolf Stolzmann's *Die sociale Kategorie in der Volkswirthschaftslehre* (Berlin, Puttkammer & Mühlbrecht, 1896) contains the introductory portion of what promises to be an important contribution to economic thought. It is not a study in sociology, but is a presentation of the imperfections in economic science that result from a failure to make the facts of society and the laws of its action a part of itself. It is in the affiliated science of economic politics that an ampler recognition of society, as an active power in practical life, has been accorded. The present volume is largely

critical. It examines such fundamental doctrines as those of value, capital, labor, interest, wages and profits.

The second volume of Professor Pareto's *Cours d'Économie Politique* (Lausanne, 1897) discusses social evolution, production, commerce, distribution and consumption. In the treatment of these subjects the author shows an ample acquaintance with the facts of industrial life, and a special aptitude for formulating theories and stating them in mathematical terms. An exceptional interest attaches to the chapter on commerce, in which speculation and producers' coalitions are discussed, and to the chapter on economic crises. The author classifies the causes of commercial crises as subjective and objective, and thinks the chief among them is that state of the public imagination which has been rated rather as an effect of an outward commercial state. It is a delusion concerning the future that, according to Professor Pareto, acts powerfully in producing economic disorders.

If there is a case in which a student absolutely needs the aid of expository and critical studies in mastering the theoretical system of an economist of the past, it is the case afforded by the reading of Proudhon. Such criticism of Proudhon's theories was offered in the earlier volumes of Dr. Diehl's work, *P. J. Proudhon, seine Lehre und sein Leben.* The third part of the work, just issued (Jena, Gustav Fischer, 1896), completes the study by presenting an extended sketch of Proudhon's life.

In *The Problem of the Unemployed* (London, Methuen & Co., 1896), Mr. John A. Hobson comes back to an old theory which he has been pushing with energy for several years. The real cause of unemployment and of commercial crises is to him general overproduction, or underconsumption; and he thus puts himself in line with the upholders of what Bergmann in his recent *History of the Theory of Crises* calls the "naïve overproduction theory." Mr. Hobson is careful, however, to point out — and here he differs from many of his predecessors — that he does not repudiate the usefulness of individual thrift, and that he sees no remedy, as Malthus did, in the decreased consumption of luxuries by the rich. His practical conclusion differs little from that of those economists who maintain the desirability of raising the standard of life, and of thus increasing the consuming powers of the workman. Whether such a change would solve the problem of the unemployed is an open question; and we much fear that few will be converted by the author's reasoning.

An old idea has been treated without great originality by Mr. James

Lewis Cowles, in a recent number of Putnam's "Questions of the Day," entitled *A General Freight and Passenger Post.* Starting with the assumption that the principles of railway management are essentially like those which govern the operations of the post office, the author concludes that the whole railway business should be pooled under the control of the post office, with a uniform rate irrespective of distance for each of a few classes of freight. For the last five decades, this idea has cropped out every few years, with a depressing disregard of the obvious difficulties of the scheme. Mr. Cowles, even more than his predecessors, has made no real effort to consider these difficulties.

The admirable work of Dr. Schulze-Gävernitz on *Der Grossbetrieb*, which was reviewed in this QUARTERLY, vol. vii, p. 747, has met with deserved success. It has been translated into French; and recently an English translation has appeared under the title of *The Cotton Trade in England and on the Continent* (London, Simpkin-Marshall). The translation is by Oscar S. Hall, himself an expert in cotton machinery, and first appeared in the columns of *The Textile Mercury*, where it attracted much attention. In its present form it will appeal to a wide circle of readers.

Mr. M. L. Muhleman, the deputy assistant-treasurer at New York, has compiled a volume under the title, *Monetary Systems of the World* (New York, C. H. Nicoll). It includes the important features of his earlier work on *The Money of the United States*, but adds similar statistics for other countries. Although not without minor errors in detail, — which seem almost unavoidable in a work of such range, — the book is among the best of the kind that have recently appeared, and will be found very serviceable for ready reference.

The editors of the *Handwörterbuch der Staatswissenschaften* have issued the *Erster Supplementsband* (Jena, G. Fischer, 1895). It contains many important articles. The statistics of *Aktiengesellschaften* are given, for Germany by Professor Lexis, for other countries by Dr. von Juraschek. Bank statistics are brought down to the latest date by Dr. Lexis. Universities receive extended notice by various authors. Among the more important articles are those on "Marginal Utility" and "Money Standards," by Lexis, and that on the "Colonization of Prussian Poland," by Dr. Sering. The volume is a monument of German industry and thoroughness.

The long-expected second volume of Palgrave's *Dictionary of Political Economy* has just been published by Macmillan. It includes the titles from F to M, and makes a portly volume of 848

pages. The list of contributors includes almost all the prominent English and American economists, with a good selection from the Continent. To pick out the noteworthy articles would be well-nigh impossible, for every one will find something to his taste. To the general reader the articles on the French, German, Italian and historical schools of economics will be welcome; while the student will be especially attracted by the admirable sketches of the life and works of the major and minor English writers from the Middle Ages to the present time. It is to be regretted that a long time seems to have intervened between the writing and the publication of some of the articles. The statistics are not infrequently three or four years old, or even more; so that for practical purposes the dictionary is sometimes out of date. We must, however, be thankful for the many good things that we get.

In August, 1895, the First International Coöperative Congress was held in London. The *Report of the Proceedings*, which has recently been published, will be interesting to all students of the social problems. The subjects treated include not only coöperation, as applied to production, to distribution, to banking and to agriculture, but also profit-sharing in all its phases. The volume contains, in addition to an account of the proceedings, a valuable series of reports on the history and present state of coöperation in the ten principal countries of the civilized world. Photographs of a large number of the leading coöperators are interspersed throughout the volume.

The seventh volume of *Life and Labor of the People of London*, by Charles Booth (Macmillan, 1896), continues "Population classified by Trades," the salient features of which we have already noticed in our review of the fifth and sixth volumes. The occupations dealt with in this volume come under the general headings, "Dress," "Food and Drink," "Dealers and Clerks," "Locomotion," and "Labor." The method remains the same, and is much to be commended. Some of the trades are of peculiar interest, and afford opportunity for picturesque and graphic details — as, for instance, the butchering trade, and the uncertain but (apparently) attractive trade of the coster and street-vender. Under "Locomotion" are discussed railway employees, cab and omnibus drivers, carmen and merchant seamen. Mr. Booth himself deals with the 20,000 dockers, who have played such a striking part in the warfare of labor during the last few years.

It was a happy thought of the London Economic Club to study family life in Great Britain by investigating the details of family

expenditure. The committee, composed of Messrs. Charles Booth, Ernest Aves and Henry Higgs, have published the result of several years' study in a monograph entitled *Family Budgets, being the Income and Expenses of 28 British Households, 1891–1894.* The tables themselves occupy only seven pages, but the introduction and the separate essays on each budget fill the remainder of the 76 pages. This marks the first attempt in England to introduce the methods of Le Play, and throws an interesting light on the real life of the working and middle classes. The committee itself frankly recognizes the obvious limitations of such an investigation, but seeks — and with success — to point out some of the lessons to be drawn from the tables.

The Massachusetts Census for 1895 contains, in vol. i, the usual population and social statistics. Among the novelties is an analysis of families according to size and composition by sex. Out of 100 families four consisted of single individuals; 16.77, of two persons; 19.45, of three; 18.12, of four; 14.28, of five; 10.26, of six; and 6.79, of seven persons to a family. Very curious is the symmetrical distribution of the sexes. Thus, of families of six persons, the largest number (20,428) is composed of three males and three females, a smaller number (14,293) of two males and four females, or (13,243) of four males and two females; a still smaller number (4367) of one male and five females, or (3410) five males and one female; and finally, there are 109 families of six males and 310 families of six females.

The Report on Indians (Washington, Census Office) is one of the volumes which suffer least from the delay in publishing the results of the eleventh census. It consists of a series of essays on the various estimates of the number of Indians (471,417 in 1822, down to 248,253 in 1890), on the policy and administration of Indian affairs, on the educational, vital and criminal statistics of the Indians; and includes detailed descriptions of the condition of the Indians in each of the states and territories. The statistical part is of necessity extremely slight and imperfect; the colored plates are many of them very bad; and the whole volume would have come more properly from the bureau of ethnology than from the census office.

The Report on Statistics of Churches in the United States at the Eleventh Census (Washington, Census Office) is a very elaborate volume, with numerous maps and diagrams showing the distribution of the members of the 143 different religious denominations in this

country. To a limited extent the maps probably show the real condition of things — for example, that the Episcopalians congregate on the Atlantic seaboard, the Lutherans in Pennsylvania and the Northwest, the Baptists in the South, *etc.* But it is doubtful if it is advisable to rear such an elaborate superstructure upon the very weak basis of the returns made by denominational officers in regard to the number of communicants, the value of church property and other details. There is absolutely no guarantee of the correctness of such estimates, while there is every temptation to exaggerate; and the reader's sense of information gained is entirely illusory.

The *Supplement to the Fifty-fifth Annual Report of the Registrar General of England*, part i (1895), contains the regular decennial review of vital statistics for the years 1881–90. The death-rate during the decennium was 19.08 per thousand, or more than two less than in 1871–80. The expectation of life, which was, for males, 39.91 in 1838–54 and 41.35 in 1871–80, had increased to 43.66 years in 1881–90: that is, the average length of life had increased more in the ten years than in the previous period of thirty-five years. The decrease in mortality is especially marked in cases of smallpox, scarlet fever, phthisis, diseases of the respiratory system, diarrhœal diseases and enteric fever. The analysis of deaths is carried out elaborately for different diseases and localities, and by sex and age. The whole furnishes most remarkable testimony to the improvements in sanitary conditions in England.

One of the most sumptuous books of the decade is the *Revenue Laws of Ptolemy Philadelphus*, which has recently been issued by the Clarendon Press (Macmillan). During the winter of 1893–94, Professor Flinders Petrie bought from a local dealer a papyrus which turned out to be only the first of two rolls; and the second, containing the remainder of the document, was secured a year later by the editor, Mr. B. P. Grenfell, fellow of Queen's College, Oxford. Together they form a most unique exposition of Egyptian tax methods in the year 259 B.C. While the work will be of chief value to philologists and Egyptologists, it is not without great interest for the economic historian. The editor publishes the Greek text, and provides a translation, commentary and appendixes; while the introduction is written by Professor Mahaffy. Heretofore our knowledge has been limited to the salt tax, the grazing tax, the police tax and the "benevolences"; but the present documents treat primarily of the land tax, as managed by the tax-farmers, and of the oil monopoly. Some of the provisions to guard the interest of the treasury

are ingenious, as, for example, the one mentioned on page 101. By this regulation the property-owner was to assess himself; but in case the tax-farmer objected, the latter might sell the crop and, after paying the assessed value to the owner and handing over the amount of the tax to the proper official, might keep the surplus himself. In case the proceeds of the sale did not equal the assessed valuation, the tax-farmer was still responsible for the tax to the state. It is to be hoped that he was also responsible to the unfortunate landowner. Many other interesting details might be pointed out in the work, which will be of value to historians of fiscal expedients.

A short and readable popular history of labor organizations, without pretense of originality but carefully written, is *Les syndicats professionnels*, by Ernest Mahaim (Bruxelles, Charles Rozez). The account covers the Roman colleges of artisans, the trade gilds of the Middle Ages, the trade unions of England and the various labor unions of France, Belgium and other countries. The volume contains a good general bibliography.

In the third edition of his *Land Laws* (Macmillan, 1896), Sir Frederick Pollock has tried to keep pace with the growth of legislation and the progress of historical research. The changes of most interest to students are those contained in his chapter on "Old English Customary Law" and in the appendix. A new note on "The Origins of the Manor" contains an admirable summary of the various theories about the origin of manorial tenures, *etc.* Admitting that the markmoot "is a creature of ingenious but unwarranted conjecture," the author denies that the origin of the English mediæval land system has been proved to be "to any considerable extent" Roman.

The lack of a general history of commerce in a brief and convenient form has long been felt by teachers of economic history, who have not been entirely satisfied with the little book by Mr. Gibbins. This want has now been filled for readers of French by Henri Cons, Professor at the University of Lille, in his *Précis d'Histoire du Commerce* which forms one of the works of the Bibliothèque d'Enseignement Commercial, edited by Georges Paulet (Paris, Berger-Levrault, 1896). Beginning with a sketch of the origin of commerce, the author takes up in successive divisions ancient, mediæval and modern commerce, the first volume closing with an account of the colonial system. The second volume is devoted chiefly to the present century, and gives a wide survey of existing commercial relations throughout the world. The work is clearly written and well arranged; and not the least

valuable feature is the fifteen-page bibliography arranged by chapters. It is to be hoped that we may soon see an English translation.

Two monographs by Annah May Soule, M.L., on the boundaries of Michigan present certain facts of national importance not hitherto available for the general reader. The first, on *The International Boundary of Michigan* (reprinted from Michigan Pioneer and Historical Collections, vol. xxvi), gives a plain statement of the questions relative to the boundary between Michigan and the British possessions and of the negotiations bearing upon the definite settlement thereof. The pamphlet is amply supplied with reproductions of early maps, of which the interpretation and usefulness seem to depend entirely upon the undirected reader. In the second study, *The Southern and Western Boundaries of Michigan* (Publications of the Michigan Political Science Association, vol. ii, no. 2, May, 1896), the maps are far more helpful and instructive, and the text shows equal improvement. The involved problems are handled in a clear and adequate manner, and the work is a creditable piece of local history. The so-called "Bibliography," however, like the list of authorities in the preceding work, is crude.

To the investigator in the field of Texan history the work of Judge C. W. Raines, *A Bibliography of Texas* (Austin, Gammel Book Co., 1896), will be of inestimable value. Hitherto there has been no reliable guide for this but partially explored field. The body of the book is taken up with an enumeration in alphabetical order of at least the chief sources of Texan history, together with much other matter written in Texas, about Texas, or by Texan authors. There are three valuable appendixes: the first is descriptive of collections of laws, law books, decrees, constitutions, journals of conventions and legislatures, and other matter of a similar nature; the second is descriptive of maps, archives, private collections, *etc.;* the third is devoted to the Texas Veterans and the Daughters of the Republic. The work has many defects: errors are abundant; titles are frequently quoted incorrectly, particularly in the case of French and Spanish works; and, in many instances, the author has allowed sectional prejudice to crop out in his criticisms. These deficiencies, however, are atoned for by the good qualities of the work, which is, on the whole, perhaps the most important contribution that has yet been made to the history of Texas.

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THE FINANCIAL RECORD OF THE SECOND CLEVELAND ADMINISTRATION. I.

IT is a maxim of politics that the administration in power during a period of hard times goes down to history with a heavy charge against it. For this there are several causes. Industrial distress, in the first place, is a sure breeder of both social and political unrest. Under a despotism such unrest finds voice in insurrection; with suffrage in the hands of the people, a change of administration is demanded. In neither case is it essential that adopted public policies shall be proved to have been influential in the trade disturbance; it is not even necessary that the plans of the existing government shall have passed into law. It is enough that the administration and the unfavorable times are coexistent; the *post hoc* argument is nowhere used with such assurance and success as on the stump. Certain legislation has been enacted or proposed; a period of financial distress has followed — the average citizen reasons no further.

If such reasoning involved as a consequence only the expression of contemporary criticism, government would pursue its course and intelligent history would straighten the matter out. But the success of an administration depends on the support of a united party; and such support depends in turn on popular endorsement at the polls. This is supposed to be peculiarly true of the British governmental system, where the administration holds office so long as it commands majorities, and no longer. In point of fact, however, the net result of the Ameri-

can system is substantially the same. The president and his cabinet do not, indeed, on the development of hostile legislative and popular majorities, directly surrender office to the opposition. Nominally, they hold power until their term is ended. But with the disappearance of their party's majority in Congress, or — worse than this — with disintegration and revolt within that party, the policies of an administration are distinctly blocked. Constructive legislation becomes at once impracticable; even remedial legislation is obtained only by favorable chance. An administration high in favor with the people finds willing adjutants on the floor of Congress; but when a president has lost his hold upon the public, his recognized Congressional supporters may be counted on the fingers of one hand. Every administration that has passed through a period of hard times has had to face this experience. So far from reckoning on loyal support for administration measures, the president at such a time has to devote his influence and authority chiefly to curbing the excesses of his party. The more severe the pressure of industrial distress, the more urgent, in many sections of the country, grows the demand for radical legislation. The whole administrative term becomes a chapter of blind moves and checkmates; there is no coherent policy; eventually and inevitably the party which the administration nominally represents is hurled out of power by a large adverse majority at the polls. To those who read from the surface only, the work of such an administration seems to be a humiliating failure; its promises stand unredeemed, and it retires from office with the seal of uncompromising public disapproval.

In this general sketch it is not difficult to read the story of the late administration. What people are apt to forget, however, is that the picture equally portrays every administration unfortunate enough to have fallen upon a similar financial period. To this day the very able and conservative Van Buren administration is commonly regarded as a failure; and so it was, if distinct executive achievement is the test. But the panic of 1837, like the panic of 1893, burst on the country two months after inauguration day. On March 4, Van Buren entered office;

on May 10, the first great bank failure in New York occurred; thenceforward public affairs consisted largely in repeated deadlocks between an unpopular executive and a discontented Congress. In the fall of 1837 the great pivotal states, which a year before had given the Democratic Party 170 electoral votes against 73 for the leading opposition party, went overwhelmingly against the administration. When Van Buren in 1840 stood for reëlection, 234 electoral votes out of a total of 294 were cast against him. Precisely similar results followed the panic of 1857. The industrial unrest was then so completely overshadowed by the crisis of secession that it is hard for history to trace its influence; yet it is altogether reasonable to suppose, in the light of political experience, that the bank suspensions in the fall of 1857, the fifty-cent decline in wheat during the next six months and the seven-cent fall in cotton, with the virtual state of barter to which interior communities were reduced, played a part in the overwhelming anti-administration majorities of 1858 which was second only to that played by the Kansas-Nebraska scandal. These commercial incidents alone would have created, in 1858 and 1860, majorities for the Republican opposition; political outrage only emphasized the situation. The pro-slavery clique controlling the Buchanan administration knew perfectly well what was before their party. As history sufficiently attests, it was the certainty of defeat in the coming national campaign of 1860 which brought to a head the demand for disunion.

In 1872 — to come down now to recent times — the Republican presidential ticket was elected by a popular plurality of 763,007, with a new House of Representatives Republican by a clear majority of 105. Hard times began, however, with the collapse of November, 1873; and the Congressional elections of 1874 so completely overturned the huge Republican majority as to give control of the House to the opposition party by a majority of 67. Strife and repeated deadlocks ensued as usual between the executive and Congress, and within the ranks of the administration party; and in the presidential vote of 1876, although the Republican candidate was counted in, the 763,007

plurality of 1872 was changed to a Democratic popular plurality of 252,224.

These illustrations from our own history are useful as proving unmistakably that an administration unlucky enough to enter office on the eve of financial trouble is a victim of circumstances beyond its own control. Nor is this rule by any means restricted to American politics. The industrial distress beginning in 1873 reversed party majorities in England exactly as it reversed them in the United States. The famous Gladstone ministry, which had for six successive years held almost unprecedented power over Parliament and the people, entered then on six months of party disintegration, followed, in the general elections of 1874, by overwhelming political defeat. After the London panic of 1866, three British ministries were successively overthrown within the compass of three years; and exactly similar results followed the hard times of both 1857 and 1884. At the very time when the second Cleveland administration was confronted with a disloyal party and with adverse popular majorities, a British ministry was losing all semblance of control in Parliament. In the middle of 1895 the opposition was at length returned with one of the largest majorities in Parliamentary history. When, indeed, it is capable of proof that nearly every great popular insurrection against established government — for example, the revolt of the British Commons in 1642,[1] the French Revolution of 1789[2] and the general European uprising in 1848[3] — has been brought to an immediate head by the pressure of hard times, the troubles of Mr. Cleveland's second administration will be recognized as only a later illustration of perhaps the most familiar phenomenon in history.

An administration which goes out of office, after such an experience, with all its public undertakings acknowledged failures, has an excuse which history at least must recognize. An administration which achieves under these circumstances any

[1] Thorold Rogers, Economic Interpretation of History, p. 266.

[2] Taine, La Révolution, ch. i, pt. i.

[3] Juglar, Crises Commerciales, Introduction, 2d ed., p. xvii.

distinct and permanent public policy has accomplished a marvel in parliamentary government. It is precisely this remarkable achievement which history will place to President Cleveland's credit. The late administration had indeed to labor under a double handicap. Disordered private trade will of itself, as we have seen, obstruct the path of any government; but disordered public credit and an embarrassed exchequer bring governments close to the bounds of anarchy. Both of these formidable evils confronted Mr. Cleveland when he entered office. Before proceeding further, it will be useful to show exactly how much of this treasury demoralization was inherited from the preceding administration.

Prior to 1890 the national revenue had largely exceeded annual expenditures. In the first place, the productiveness of import duties under the tariff act of 1883 had exceeded all expectations; between 1885 and 1890 the annual customs revenue increased $48,000,000.[1] At the same time a second and equally important factor had been at work in the shape of decreased annual expenditures. Pension and miscellaneous appropriations had, it is true, been rising with the automatic rise in revenue; but so large had been the simultaneous redemption of the government's funded debt that the annual interest charges, which in the fiscal year 1879 were $105,327,949, and in 1882 were $71,077,206, had fallen in 1890 to only $36,099,284.[2] In these two sets of figures lies the key to what many people still regard as mystery, — the fact that the government's annual surplus revenue rose from $63,463,771 in 1885 to $119,612,116 in 1888, and that in spite of lavish expenditure for bond redemptions, the treasury seemed, in 1888, to be rapidly absorbing into its own vaults the entire circulating medium of the nation.

[1] The total customs revenue for the fiscal year 1885 was $181,471,939; for the fiscal year 1890 it was $229,668,584, the maximum in the country's history. The value of dutiable imports entered at our custom houses for consumption was in 1885 $386,667,820, in 1890 $507,571,764. — Report of United States Bureau of Statistics, 1892, p. lxxvii. The average rate of duty annually collected within this period ranged from 44.41 per cent to 47.10.

[2] See the comparative classified table of the annual governmental expenditures appended to the annual reports of the secretaries of the treasury.

This process of absorption had its good side and its bad side. Contraction of the currency, through the heaping up in the treasury, by August, 1888, of $330,763,985 idle money, undoubtedly prevented the worst effects of compulsory silver coinage. In 1884 the annual charging of the currency with $24,000,000 overvalued silver dollars threatened the treasury with serious disaster;[1] four years later this was apparently a factor of little moment.[2] On the other hand, no business man could look with equanimity on a system which removed each year from the circulating medium, with the regularity of an automaton, some fifty million dollars. When such accumulations result from the sale of government bonds, the new bonds, used as a basis for national bank currency, provide the means of filling any actual void in circulation. But in 1888 and 1889 precisely opposite results were witnessed. The overflowing treasury reserve was thrown back on the markets through redemption, at a heavy premium and by public purchase, of the very bonds used as collateral for existing bank-note issues. Between July 1, 1888, and July 1, 1890, during which period the government was rapidly calling in its debt, the treasury's total surplus did indeed decrease $63,174,373.[3] But the total bank-note circulation simultaneously decreased $66,397,546.[4] In other words, the aggregate circulating medium actually lost by the operation.

These facts were imperfectly appreciated by the public men of 1890. Most unfortunately, the whole matter was complicated by domestic politics of the narrowest sort. Platform declarations and campaign speeches had pledged the dominating party

[1] Secretary McCulloch, Annual Treasury Report, 1884, p. xxxi. See also the pessimistic letter of John Sherman to President-elect Garfield, July, 1880. — Recollections of John Sherman, II, 779.

[2] "The ownership of silver by the government again was largely decreased, in spite of the increase of total stock of the silver dollars in the country by the coinage of sixteen months."— Secretary Fairchild, Annual Treasury Report, 1888, p. xxix.

[3] The total treasury holdings in excess of certificates outstanding were June 30, 1888, $319,067,278; June 30, 1890, $255,892,905. — Annual comparative tables, United States Treasury Reports.

[4] Total national bank notes outstanding June 30, 1888, $252,368,321; June 30, 1890, $185,970,775.

to a revenue system which, designed primarily for protection, could by no possibility be estimated in advance. Legislative precedent had riveted the practice of voting appropriations without the slightest reference to the probable income of the year. Tradition had so imbued the people's mind with dread of bank-note issues not secured by government collateral, that the adoption of a rational banking system was not even discussed. Such a situation, with the business community demanding instant relief, resulted exactly as might have been anticipated. On Sept. 30, 1890, Congress adopted, strictly by vote of the administration party, an "act to reduce the revenue." This act levied on the majority of articles heavily increased tariff duties, with the avowed purpose of cutting down dutiable importations. But it also removed the greatest but one of all the revenue-producing taxes, the sugar tariff; and with this single blow struck off $55,000,000 annual revenue.[1] Without bringing into question the wisdom of the general purpose of this act of 1890, the law may properly be described as an utterly haphazard and unscientific measure. Certainly, few laws have ever more thoroughly belied in actual results the predictions of their authors. The framers of the bill named $43,000,000 as the outside limit of resultant revenue reduction;[2] in actual fact, it cut down annual income long before the disturbances of 1893 by no less a sum than $52,205,620.[3]

[1] In the fiscal year 1889, duties collected on sugar and molasses amounted to $55,976,228; in 1890 to $55,150,819; in 1891 (the old tariff applying during part of the year) they were $32,468,339; in 1892 only $76,987; in 1893 only $165,196; and in 1894 only $251,039. — United States Statistical Abstract for 1896, p. 16. Of course the most productive tax on any article, even in 1890, was the internal revenue tax on spirits.

[2] Senator Aldrich, who had charge of the measure in the Senate, said immediately before the final vote: "I now estimate the aggregate annual reduction, made by the bill as reported by the conference committee, at from forty-two to forty-three millions of dollars."— *Congressional Record*, Sept. 30, 1890.

[3] Following are the figures:

Fiscal year.	Total imports for consumption.	Of which dutiable.	Amount duty collected.
1890	$773,674,812	$507,571,764	$226,540,037
1891	854,519,577	466,455,173	216,885,701
1892	813,601,345	355,526,741	174,124,270

— Bureau of Statistics, Annual Report, 1892, p. lxxvii.

This of itself was a violent move, especially when all experience had taught that, if a trade reaction were to come with the tariff law unchanged, an even larger reduction, both in importations and in resultant customs revenue, would be inevitable.[1] Had Congress, however, stopped with the reduction in the revenue, its measures would at least have been defensible. But the notion had got abroad that, since the surplus was of itself an evil, Congress was justified in using any means available to scatter it. Accordingly the Congress of 1890 went to work expanding by wholesale its annual appropriations — an easy task in any legislature. Between 1889 and 1893 annual pension expenditures increased $71,732,778; annual miscellaneous disbursements (including river and harbor appropriations), $23,068,735; and war, navy and civil outlay in such proportion as to increase the annual expenditure by the enormous sum of $115,218,431.[2] In 1889, before the annual sinking-fund requirement had been met, the surplus revenue was $105,053,443.[3] Increased expenditures alone, as already noted for the fiscal year 1893, would have used up this annual surplus, even supposing the revenue to stand unchanged.

But, as we have already seen, the annual revenue also was cut down some $52,000,000 in the very face of the increase in appropriations. It is not surprising, therefore, that in 1892, under the same administration, the secretary of the treasury should have begun complaining that the surplus revenue was no longer large enough to meet the annual sinking-fund requirement.[4] Nor is it matter for wonder that on March 1, 1893, immediately before the Cleveland administration entered office, the government reported only $130,262,414 available surplus in the treasury, or barely $30,000,000 over the stipulated gold

[1] Recollections of John Sherman, II, 1006.

[2] These are the actual figures:

	Expenditures for		
Fiscal year.	Pensions.	Miscellaneous.	Total.
1889	$87,624,779	$80,664,064	$240,995,131
1893	159,357,557	103,732,789	356,213,562

[3] Secretary Windom, Annual Treasury Report, 1889, p. xxii.

[4] Secretary Foster, Annual Treasury Report, 1892, p. xxvii.

reserve.[1] During the next nine months of 1893, with the revenue act of the Fifty-first Congress and the appropriation laws of the Fifty-second still in force, the revenue fell $38,600,000 short of current expenditure.[2] It is a simple matter of arithmetic to show that at the opening of the new administration the trenching on the $100,000,000 gold reserve maintained against outstanding legal tenders was an impending certainty.

Secretary Sherman has declared in a published article, written to explain the breakdown of the treasury finances during 1893, that

> the deficiency of revenue was the primary cause of the demand for gold for United States notes; [and he adds] nor would deficiencies have occurred had not the president and both houses of the Fifty-third Congress, then in political sympathy, united in passing a law reducing the revenue below expenditures for the first time since the close of the war.[3]

This statement sums up an opinion very generally held by people less competent than Mr. Sherman to analyze the facts. It ought to be answered very decidedly, because it is a most extraordinary perversion of the truth of history. The Fifty-third Congress began its work on Aug. 7, 1893. Its first appropriation bills, outside of some small deficiency legislation, were passed in July and August, 1894, and they affected only the operations of the fiscal year beginning July 1, 1894.[4] Its first revenue bill, the Wilson Tariff Act, became a law Aug. 13, 1894,[5] and went into actual effect between then and the following January.

In other words, the revenue laws and the appropriation laws of the preceding administration were in full force until midsummer, 1894. Yet the annual treasury report for the year ending June 30, 1894 — and ending, therefore, nearly two months before the Wilson law went into operation — reported

[1] Annual Treasury Reports, comparative tables.

[2] Annual Treasury Reports, 1893, p. 26; 1894, p. 22.

[3] "Deficiency of Revenue the Cause of Financial Ills," by John Sherman, *Forum* for April, 1896, pp. 133, 139.

[4] Tribune Almanac for 1895, pp. 22, 36.

[5] *Ibid.*, p. 34.

a deficit of $69,803,260.[1] The monthly deficit, in fact, was largest in the quarter ending Sept. 30, 1893[2] — a period nearly three months prior even to the introduction of the Wilson bill in Congress.[3] Six months before the president and Congress, as Mr. Sherman intimates, had "united in passing a law reducing the revenue below expenditures," a bond issue had already been forced to protect both gold reserve and treasury surplus from absolute exhaustion.[4] Whatever mischief the Fifty-third Congress may have done later on — and it has a sufficient reckoning to meet — impartial history will not hold it responsible for the breakdown of the treasury. We have already seen at whose door that discreditable episode in finance must lie. Mr. Sherman's imputation is directly contradicted by the facts.

As between the two political parties, responsibility for this stupid and mischievous financiering must be divided. If the Republican House of 1890 and 1891 set the pace for reckless appropriations, the Democratic House of 1892 and the spring of 1893 maintained it. The same may be said of the silver-purchase act of July 14, 1890, which was thrown as a sop to free-silver coinage advocates of varying political connections. But both the revenue law and the silver-purchase law were fathered and advocated by the administration of 1890;[5] for the ill effects of both, therefore, impartial history must hold responsible the administration which endorsed them. In particular, the silver-purchase act, throwing out annually $50,000,-

[1] Secretary Carlisle, Annual Treasury Report, 1894, p. xxv.

[2] Excess of expenditure over revenue during the three months ending Sept. 30, 1893, was $17,560,072. — Annual Treasury Report, 1894, p. 22.

[3] The bill was reported by Mr. Wilson, Dec. 19, 1893. — McPherson's Handbook of Politics, for 1894, p. 182.

[4] On Jan. 31, 1894, not only was the gold reserve $34,000,000 below the legal requirement, but the treasury's additional balance of silver and legal-tender notes was only $12,262,708. The revenue deficit during the next three months was $18,332,000.

[5] Secretary Windom, Annual Treasury Reports, 1889 and 1890; President Harrison, Annual Message to Congress, Dec. 3, 1889. It is fair to say that the special message on the silver-purchase plan, promised in this first annual message of Mr. Harrison, was never submitted. On the other hand, as regards the president's attitude, see Senator Sherman's remarkable admission in Recollections of John Sherman, II, 1070.

000 fresh demand liabilities of the government[1] at the moment when that government's available assets were contracting at an exceedingly dangerous rate,[2] was a financial measure of such utter recklessness that no catastrophe which followed ought to have seemed mysterious. The total circulation of these notes was at its largest when, as we have seen, even the treasury reserve maintained against the original legal-tenders had for the first time fallen below its legal minimum.[3] Months before the election of 1892, conservative foreign critics were pointing out the certain consequence of this reckless financiering.[4]

With the Cleveland administration, as with Van Buren's in 1837, the long-predicted crisis developed almost in the inauguration week. No intelligent person supposes that the trade collapse was caused by the party change in government; such theories are made for children, stump speakers, and people whose reasoning powers are bounded by their prejudices. Nor

[1] Treasury notes, issued in purchase of bullion, held in the treasury and in outside circulation:

	In treasury.	Outside circulation.	Total.
July 1, 1891	$9,879,713	$40,348,704	$50,228,417
July 1, 1892	3,453,379	98,258,692	101,712,071
July 1, 1893	6,334,613	140,855,614	147,190,227

— Annual Treasury Report, 1893, p. cxiv.

[2] Amount of gold coin, silver dollars and legal-tender notes in the treasury in excess of certificates outstanding:

	Gold.	Silver.	Legal tenders.	Total.
July 1, 1890	$190,232,405	$26,699,317	$11,804,190	$228,735,912
July 1, 1891	117,667,723	22,112,714	11,366,996	151,147,433
July 1, 1892	114,342,367	5,265,528	8,696,590	128,304,485
July 1, 1893	95,485,414	6,797,135	20,398,866	122,681,415

[3] On June 30, 1893, legal-tender notes in circulation outside the treasury aggregated $471,630,040, against $334,688,977 on June 30, 1890. The treasury's total gold holdings in excess of gold certificates outstanding was $95,485,414 on June 30, 1893, against $190,232,405 in 1890. — Annual Treasury Report, 1893, pp. cxv, 96.

[4] "It [the United States Treasury] is likely before long to become involved in serious difficulties. Its reserve is approaching the 'apprehension point'; the point, that is, at which people will begin to fear that its stock of gold will not be sufficient to meet the demands that may be made upon it, and will be disposed to make a rush to convert their notes, lest, if they delay, conversion will be impossible."— *London Economist*, July 9, 1892. See also the *Economist* of Feb. 20, 1892.

did the panic of 1893 result wholly from the legislation of the Fifty-first Congress. As we can now in retrospect discover plainly, a season of trade reaction was already drawing near and would probably have been encountered even with wise and prudent laws upon the statute-books. But it is the terrible responsibility of that Congress that it blindly and recklessly crippled the treasury's resources, and left it helpless before the storm. It was the revenue and appropriation laws of the Harrison administration which brought the government, when the blight of panic fell upon the nation's trade, to the verge of bankruptcy. It was the currency law of that administration which wrecked the credit of the treasury at a moment when the stability of the Bank of England was needed to resist the shock. He who denies these two conclusions, in the light of the evidence which I have submitted, must be either blinded by partisanship or incapable of economic reasoning.

At the close of 1892 the trade movement itself was bringing matters to a head. Our markets were out of joint with the markets of the world. The export trade of the United States fell, during the nine months ending March 31, 1893, $163,430,018 below that of the year preceding. This decrease resulted measurably from the smaller grain harvest in the United States and larger crops abroad. But no such explanation applied to the import trade. While exports decreased, imports rose in the same period by the enormous sum of $90,572,354. During the nine months ending March 31, 1892, exports had exceeded imports by $209,383,096; in the last nine months of the Harrison administration imports were in excess by $47,119,276.[1] This was a record unprecedented since the days of irredeemable paper money. To offset the foreign debits thus incurred, there was no longer any westward flow of European capital. With the treasury approaching certain embarrassment and the currency threatened with depreciation, invested capital was withdrawing in enormous volume from our markets. Europe not only sold American securities, but recalled its floating capital invested in our open money markets. To make the settlement for this

[1] Bureau of Statistics, monthly Foreign Commerce Report for March, 1893.

increasing heap of immediate liabilities, there was nothing left but gold. During these same nine months $34,943,431 in gold was sent abroad;[1] by the middle of April upwards of $5,000,000 weekly was going out. Nearly all this export gold was obtained from the sub-treasury through presentation of legal-tenders for redemption; the city banks, ten months before, had been compelled to cease supplying gold to banking depositors.[2] As a result, the treasury gold reserve, on April 23, declined to $95,432,000.[3]

When the government's gold balance fell below the $100,000,000 mark fixed by tradition and authority,[4] a very serious problem arose for settlement. It was largely treasury notes, issued under the law of 1890, which had been presented for redemption.[5] The law provided that

> upon demand of the holder of any of the treasury notes herein provided for, the secretary of the treasury shall . . . redeem such notes in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law.[6]

This clause appears at first glance to be a hodge-podge compromise, and such in fact it was. Secretary Windom, who is entitled to more of the discredit of the law of 1890 than is commonly assigned to him, wished to have even the uncoined bullion used in redemption of the notes.[7] In the House, this extraordinary suggestion had been promptly brushed aside by a substitute measure, under which the new treasury notes, like the older legal-tenders, were made redeemable "on demand, in coin."[8] The Senate cancelled all the essential provisions

[1] Bureau of Statistics, monthly Foreign Commerce Report for March, 1893.

[2] See POLITICAL SCIENCE QUARTERLY, X, 587.

[3] Daily tables of cash balances, United States Treasury.

[4] See POLITICAL SCIENCE QUARTERLY, X, 576.

[5] During the three months ending March 31, 1893, gold paid out from the treasury in redemption of old United States notes was $13,812,348; in redemption of treasury notes of 1890, $16,439,386. — Annual Treasury Report, 1893, p. 12.

[6] Act of July 14, 1890, section 2.

[7] Annual Treasury Reports, 1889, p. lxxiv; 1890, p. xlvii.

[8] Conger substitute, House of Representatives, June 5, 1890.

of the House bill, and substituted a flat free-coinage measure.[1] The House, in turn, rejected every amendment of the Senate.[2] The bill as next patched up by the conference committee endeavored to fix on middle ground. It did so in the curious clause already cited.

Judged simply by the successive votes upon the measure, this game of legislative shuttlecock gave little clew to the actual purpose of the bill. More than one speaker, in the debate upon the conference measure, declared that he could understand neither its meaning nor its probable consequences.[3] It is, however, very important to observe that in the course of this debate not one Congressman expressed belief that in an emergency the treasury would refuse to pay out gold to note-holders who demanded it. Many of the debaters argued comfortably that the time would never come when the secretary would be forced to make his choice.[4] Others contended that the law would so advance the price of silver that the note-holder would always be willing to accept that metal in redemption.[5] Both these predictions proved to be totally erroneous. But, on the other hand, it was argued that if occasion for discrimination were by any possibility to arise, the note-holder must be paid whichever metal he desired; for otherwise the pledge of the parity clause would be violated.[6] No speaker openly denied this affirmation; on the contrary, the ultra free-coinage advocates opposed the measure on the explicit ground that the notes would always be redeemed in gold.[7] There was, it is true, much hesitation in subsequent official statements on the matter. Seventeen months after the passage of the act, the Republican treasurer of the United States declared that "the exact status

[1] Passed June 17, by a vote of 42 to 25.

[2] June 25, by a vote of 152 to 135.

[3] "A beckoning hand for an interpreter," was Senator Daniel's description of the parity clause. — Speech of July 9, 1890.

[4] Senator McPherson. — Speech of July 9.

[5] Senator Jones. — Speech of July 8.

[6] Senator McPherson. — Speech of July 9.

[7] Senator Cockrell said: "This compromise here is an abandonment, a total abandonment, of the double standard." — Speech of July 9. He predicted that gold would always be used to redeem the notes, and on that ground opposed the bill.

of the notes has yet to be settled. . . . The new notes will doubtless, in time, be regarded as a loan, secured by a full deposit of silver dollars or bullion."[1] But this is an interpretation which needs itself to be interpreted. Security for a loan is commonly regarded as that which is left in the lender's hands when the borrower defaults; but the actual question here was to decide in what this borrower should pay his debt in order to avoid default. In gold or silver at his own discretion, said one part of the act; and since the law of 1890 provided further for the coinage of enough of the purchased silver to redeem the notes,[2] the treasury was urged to use its option and to proclaim that gold would no longer be paid in redemption.

This was a tempting proposition. In the face of all the impending troubles of the treasury, the government held in its vaults, on April 1, 1893, $106,709,122 worth of silver bullion.[3] If this bullion were to be coined and offered to applicants for redemption of the notes of 1890, the gold reserve would thenceforth be depleted only by the redemption of the older legal-tenders, which, as we have seen, had thus far made up less than one-half of the total government notes presented for redemption.[4] For three days during April, 1893, when the gold reserve had fallen below the hundred-million mark, it was believed at Washington and on the markets that Secretary Carlisle would use the option of the government in tendering silver coin alone for the notes of 1890.[5] The president, how-

Senator Call agreed that "in all these provisions the gold redemption is asserted and is made the essential and the unqualified and the operative and the valuable condition of the bill." — Speech of July 10. These two speakers were free-silver-coinage men. Their view was not directly combated by any of the numerous other debaters. It is also significant that the two strongest silver men on the conference committee, Messrs. Bland and Harris, refused to sign the conference report.

[1] Treasurer Nebeker, Annual Treasury Report, 1891, p. 19.

[2] "After that time [July 1, 1891], he [the secretary of the treasury] shall coin of the silver bullion purchased under the provisions of this act as much as may be necessary to provide for the redemption of the treasury notes herein provided for." — Act of July 14, 1890, section 3.

[3] Annual Treasury Report, 1893, p. 90. This was the cost price; its coinage value was considerably larger.

[4] See note, p. 35.

[5] See market reports, daily papers of the time; also *New York Financial Chronicle*, April 22, 1893, p. 644.

ever, took ground decidedly against this policy. On April 20 Secretary Carlisle declared officially that

> in the exercise of the discretionary power conferred upon the secretary of the treasury by the act of July 14, 1890, he has been paying gold for the coin treasury notes issued for the purchase of silver bullion, and he will continue to do so as long as he has gold lawfully available for that purpose.

On April 23 President Cleveland added an equally decided statement, defining the administration's policy as follows:

> While the law of 1890, forcing the purchase of a fixed amount of silver every month, provides that the secretary of the treasury, in his discretion, may redeem in either gold or silver the treasury notes given in payment of silver purchases, yet the declaration of the policy of the government to maintain the parity between the two metals seems so clearly to regulate this discretion as to dictate their redemption in gold.

This very important precedent must be regarded as President Cleveland's personal decision. In his public statement of April 23 the president did indeed add his

> emphatic contradiction of the statement that the redemption of any kind of treasury notes, except in gold, has at any time been determined upon or contemplated by the secretary of the treasury or any other member of the present administration.

This statement does not, however, affirm that there was in the cabinet no one who had in general favored redemption in silver coin. As a matter of fact, there is sufficient authority for saying that more than one member of the administration had previously advocated, as a feasible resort, the silver-redemption policy. What the personal feeling of the secretary of the treasury was, before the decisive cabinet conference, will doubtless remain a matter of controversial history. Acting alone, it is very possible that he would have tendered silver. Mr. Carlisle's state papers, since the crucial episode of April, 1893, have contained the clearest and most cogent reasoning for the single standard of financial values. That his convictions on the question were sincere and thorough does not, I think, admit of doubt. But the problem of the treasury-note

redemption was not as simple as the general question of the standard. Mr. Carlisle's opinions in the past, moreover, subject though they might be to honest reconsideration, undoubtedly predisposed him to the use of silver for the notes of 1890. He voted, as a representative, against the Resumption Act of 1875; as a senator, he voted in favor of the Plumb free-coinage substitute for the silver-purchase bill of 1890. His own declaration of April 20, 1893, was framed, so far as concerned the statement of his previous belief, in very guarded language; and in his annual report of December, 1893, he made no explicit reference to the question.

The decision, however, was in the president's hands. In Jackson's administration, the treasury was regarded as responsible for its acts, not to the president, but to Congress; a secretary of the treasury like McLane or Duane was therefore accustomed to shape his course of action even against the wishes of the president. Opposition by the president to the secretary's policy, or his effort to control it, drew forth in those days Congressional philippics such as Webster's famous speech of May 7, 1834.[1] That theory of the treasury's independence of the president has, however, been entirely abandoned. Now the secretary of the treasury is as much the agent and subordinate of the chief executive as is the secretary of state or the secretary of the interior; and both Congress and the people have acquiesced in the new conception of the office. Entirely aside from this phase of the situation, however, Mr. Cleveland's position was unquestionably right. As we have already seen, the free-coinage senators themselves, in the debate of 1890, declared that adherence to gold payments would be the necessary outcome of the act. This was, in fact, the burden of the whole Congressional discussion of July, 1890; it cannot, therefore, be contended that the president in 1893 applied a new construction. On the contrary, he construed the law as it had been construed even by the Congress which enacted it. That the free-coinage Congressmen opposed the law in 1890 because of such construction, confirms rather than contradicts the

[1] Works of Daniel Webster (ed. of 1872), IV, 105, 106.

president's interpretation; the law was passed in the face of their publicly expressed predictions.

There was a third alternative suggested, to which some notice may be granted. Mr. Sherman has taken the position, both before and since the events of 1893, that when the resumption fund is drawn upon by presentation of legal-tenders for redemption, the legal-tenders thus redeemed ought to be added to that fund, and ought not to be reissued until the legal reserve is again intact. In 1879, Mr. Sherman, then secretary of the treasury, suggested that the notes thus redeemed should even be used "under the authority of section 3700, Revised Statutes, . . . for purchase of coin or bullion."[1] More recently, he has criticised the Cleveland administration for using "a fund specially pledged for another purpose to meet current liabilities."[2] But for this action, said he, "notes once redeemed" would be reissued "only for gold coin, . . . and the scarcity of currency would create such a demand for it that coin would be freely deposited in exchange."[3]

There cannot be the slightest question that this is the proper means of managing a reserve against outstanding notes. Every successful bank of issue in the world follows the practice, and the United States government, under existing laws, is one of these banks of issue. But proof that this is a scientific policy does not involve the corollary that such course of action would be legal. Had the treasury's total surplus been as large in 1893 as it was in 1889, Secretary Sherman's plan would undoubtedly have been adopted. But in 1893 the surplus was so small, and the government's monthly deficit so large, that refusal to reissue legal-tender notes redeemed would presently have left the government without the means of paying current liabilities. On June 30, 1893, the total surplus in the treasury, outside of fractional silver coin, was $126,664,048.[4] If, therefore, the notes redeemed by use of the $100,000,000 gold reserve were to be consistently locked up from subsequent disbursement, the

[1] Annual Treasury Report for 1879, p. x; for 1880, p. xiii.
[2] *Forum*, April, 1896, p. 140. [3] *Ibid.*
[4] Annual Treasury Reports, comparative tables.

surplus available for ordinary uses was less than $27,000,000. But in the next six months the excess of regular governmental disbursement over income was no less than $37,453,261.[1] It is therefore clear that, had the notes redeemed been thus withheld, the treasury, before the close of 1893, must have defaulted on its ordinary obligations.

Mr. Sherman has suggested, in addition, that the administration might define certain appropriations to be not "mandatory," and might thereupon, under the circumstances, refuse to meet them.[2] But for such a recourse there is neither precedent nor authority. Mr. Sherman appeals for precedent to the suspension, after the panic of 1873, of annual payments on the sinking fund.[3] He does not, however, notice that when, in 1892, Secretary Foster again, and from the same motive of deficient revenue, suspended sinking-fund purchases, he carefully based his action, not on the fact that the payments were not mandatory, but on the plea that previous bond redemptions in excess of statutory requirements had constructively anticipated charges on that account against the current year.[4] For Secretary Bristow's similar policy, during 1874, the same defense existed. No such apology could be advanced for suspending payment on other Congressional appropriations. Whatever the abstract propriety of such a move, it would have been a *tour de force* of the most unusual character. The older legal-tenders were subject to the provisions of the law of 1878, which declared that "when any of said notes may be redeemed . . . they shall not be retired, cancelled or destroyed, but they shall be reissued and paid out again and kept in circulation." The law of 1890 made similar provision, declaring that the treasury notes "when so redeemed may be reissued." Even Mr. Sherman, in his suggestions of 1879 and 1896, though he began by claiming this existing power for the treasury, ended, somewhat lamely, by complaining that Congress had not authorized such policy.[5]

[1] Annual Treasury Report for 1894, p. 22. [2] *Forum*, April, 1896, p. 130.

[3] Recollections of John Sherman, II, 1006.

[4] Annual Treasury Report, 1892, p. xxvii.

[5] "Congress neglected to cure the defects pointed out by me as secretary of the treasury in December, 1880, but I hope will correct them now. . . . With such

The panic which had broken out in the financial markets on the first reports of possible silver payments was for a time allayed by the president's declaration. Since this report, however, was only an incident in the general disorder and not a primal cause, the long-foreshadowed crisis continued to approach its culmination. The first act of the new administration was to summon Congress in extra session for the 7th of August, 1893. Before this extra session met, the country's whole financial structure had collapsed. In May, the panic struck New York with its full force; in June, dozens of interior banking and commercial institutions were going down, crippled by their excessive engagements on securities, grain and real estate;[1] in July, symptoms of general wreck were visible. Every market had fallen into chaos; the New York banks had suspended cash payments and had issued $38,280,000 clearing-house certificates; money was being hoarded by the millions; currency of all kinds exchanged for bank checks at a premium of four per cent;[2] during at least one week, universal bankruptcy seemed inevitable. In the face of such a situation, Congress met, and the president sent a very decided special message, urging repeal of the silver-purchase act of 1890. The essential points of this message may be summed up briefly. The law of 1890 had failed to meet the hopes of its advocates by raising the market price of silver. Its "parity clause" required redemption of the notes in gold if demanded by the holder; the notes were pressing for redemption, and the constant additions to the notes in circulation under the terms of the silver-purchase act threatened continuous depletion of the gold reserve. The seeming imminence of a depreciated silver standard had already wrecked both public and private credit, and such a standard could not be avoided unless the $50,000,000 annual addition to the supply of notes should cease.

The president was not alone in this conclusion. Secretary Sherman, whose ill-fortune it had been to see his own name tradi-

provisions in the law, the resumption fund could not be invaded to meet deficiencies in the revenue." — *Forum*, p. 140.

[1] *Dun's Review*, Dec. 30, 1893, p. 3.

[2] See POLITICAL SCIENCE QUARTERLY, IX, 26–28.

tionally attached to the law of 1890, has since declared: "From the date of the passage of that law to its final repeal, I was opposed to this compulsory clause."[1] Mr. Sherman had in fact himself introduced, in July, 1892, a bill for the repeal of the act of 1890, framed substantially in the terms of the repeal act of 1893.[2] Many Republican Congressmen of influence had taken a similar position. But the situation in the Fifty-third Congress was peculiar. I have referred already to the disintegration which inevitably sets to work, in the ranks of an administration party, at times of trade distress. This principle was visibly in operation, even before the extra session began in August. When Congress opened, and the president's special message was submitted, the storm broke almost instantly. The Democratic Party, as defined by the electoral vote of 1892, was made up of the most heterogeneous elements. No less than eight Democratic state conventions of that year had declared explicitly in favor of the free and unlimited coinage of silver dollars;[3] five others had made more cautious declarations whose actual purport was the same;[4] three had flatly repudiated the sound-money plank in the national party platform.[5] It was, therefore, to be expected that these states would demand a free-coinage bill as the price for repealing the act of 1890, and exactly this occurred. The whole situation was extraordinary enough to foreshadow the open party split of 1896. On the other hand, several Democratic state conventions had denounced emphatically the silver-purchase law, and had demanded its repeal; the same declaration was unconditionally made in the national Democratic platform of June 22.[6]

The proposition for repeal, then, had in its favor the pledge of the Democratic national convention and the attitude of the president. It was also favored, very decidedly, by the fact

[1] Recollections of John Sherman, II, 1189. [2] *Ibid.*

[3] Colorado, Florida, Georgia, Idaho, Kansas, Nevada, South Carolina and Texas.

[4] Illinois, Iowa, Michigan, Minnesota, Missouri.

[5] Colorado, Nevada, South Carolina.

[6] "We denounce the Republican legislation known as the Sherman Act of 1890 as a cowardly makeshift, fraught with possibilities of danger in the future which should make all of its supporters, as well as its author, anxious for its speedy repeal."

that practically all the business communities now ascribed the trade distress to the operation of the law of 1890. It was in point of fact this last-named influence which ultimately governed the vote upon repeal. In the vote of the House of Representatives, August 28, party lines were obliterated. Nominally, this repeal bill was a Democratic measure pure and simple; yet of the 239 votes cast in its favor, 101 were Republican, while of the 109 votes against it the Democrats cast 73. In reality, however, the vote divided not politically, but geographically. From states east of the Mississippi River and north of Tennessee and the Carolinas, only 15 votes were cast against repeal; this section, therefore, contributed all but 45 of the 239 votes which passed the measure in the House.

With the Senate, the case was widely different. During the Harrison administration, there had been admitted to the Union, from among the frontier territories, six new states: Idaho, Montana, North Dakota, South Dakota, Washington and Wyoming. I shall not here discuss the wisdom or unwisdom of the admission of these territories. The phase of the matter which concerns our present topic is the fact that such additions to the community of states added also twelve members to the Senate, and that these twelve new senators were without exception advocates of free coinage. Applying to the Senate thus enlarged the same geographical test as we have just applied to the House of Representatives, it will be found that the states east of the Mississippi and north of the Carolina border had only 38 votes out of the total 88. In other words, the states whose representatives in the House cast practically all the minority vote against repeal held in the Senate a distinct majority.

A two-months' struggle between the administration and the free-silver-coinage faction in the Senate followed — a struggle marked by unusual bitterness of feeling. Had the bill depended wholly for its support upon the avowed opponents of free coinage, it certainly could not have passed the Senate. But free silver coinage was not the single issue; the platform of the Democratic national convention was invoked in favor of repeal; pressure from all business communities, East and West, was

very strong; and the administration stood out inflexibly. On October 11, after nearly five weeks of debate, in which every kind of dilatory tactics had been employed by opponents of the bill, advocates of repeal forced a continuous session on the Senate, hoping thus to bring about a vote. The effort failed, after forty hours of filibustering. On October 21 a rumor circulated that a compromise, approved by the administration, had been arrived at. The terms of this reported compromise were the continuance of the silver-purchase law until October, 1894, and the coinage of the silver bullion. The president promptly repudiated any such agreement, and the report, having apparently originated in a real misunderstanding, gave rise to great personal bitterness among the senators. The president's announcement served, however, to break the last hope of the opposition. On October 30 the repeal bill passed the Senate by a vote of 43 to 32, 23 of the votes in favor of the measure being Republican.

The president, then, had won this memorable battle. So far, however, as concerned the administration's influence on legislation, it was a Cadmean victory. The vote of both houses on the repeal of the silver-purchase act marked the complete disintegration of the Democratic Party. For once the majority of conservative Republicans had been brought in line to carry through an administration measure. But in the nature of things this achievement was not likely to be repeated. Thenceforward the president and his cabinet had to face not only a Democratic Party honeycombed with bitterest hostility, but a Republican minority which was bound by precedent and principle to take a similar stand in opposition. The vote of Oct. 30, 1893, not eight months after inauguration day, was the last distinct legislative victory won by the administration.

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[*To be continued.*]

TRADE COMBINATIONS AT COMMON LAW.

THE rule that all contracts in restraint of trade were void, was early established in the English law. The first case in which this principle was announced is said to have been decided in the reign of Henry V.[1] In this case an action for debt was brought on a bond, conditioned that the defendant should not use his art of a dyer's craft within a certain city for six months. Judge Hall declared the bond void, and expressed his indignation at this attempt to restrain trade, by exclaiming: "And, by God, if the plaintiff were here, he should go to prison till he paid a fine to the king." This refusal to recognize the validity of any contract in restraint of trade was for a long time characteristic of the English law; but gradually the rule was relaxed.

The modern application of this rule was very well expressed by Judge Christiancy in the case of Hubbard *vs.* Miller.[2] Dissenting from the doctrine sometimes laid down, that all contracts in restraint of trade are *prima facie* or presumptively void, he said:

> If, considered with reference to the situation, business and objects of the parties, and in the light of all the surrounding circumstances with reference to which the contract was made, the restraint contracted for appears to have been for a just and honest purpose, for the protection of the legitimate interests of the party in whose favor it is imposed, reasonable as between them, and not specially injurious to the public, the restraint will be held valid.[3]

Under this rule two interests are to be considered, those of the parties to the contract and those of the public. As to the former, the rule was laid down that no contract which did not benefit both parties to the contract, should be regarded as

[1] See Year Book, 2 Henry V, fol. 5, pl. 26. [2] 27 Mich. 15.

[3] This statement was really nothing but an elaboration of the rule which had long before been laid down in the English courts by Chief Justice Tindal, in the case of Horner *vs.* Neves, 7 Bing. 743.

reasonable; as to the latter, no contract in restraint of trade was to be regarded as lawful which was injurious to the public. As a matter of fact, most of the cases actually decided have turned exclusively on the interests of the parties, and the tendency of the courts has therefore been to relax very greatly the old rule of the common law. This tendency probably reached its culmination in a case decided in 1887, by the New York court of appeals, Diamond Match Co. *vs.* Roeber.[1] Here the court was called upon to construe a contract made by Roeber with the Swift, Courtney & Beecher Co., the grantor of the Diamond Match Co., in which he agreed that he would not within ninety-nine years, except in the capacity of agent or employee of the Swift, Courtney & Beecher Match Co., directly or indirectly engage in the manufacture or sale of friction matches in any part of the United States except Nevada and Montana. The court held the contract to be valid, although practically in general restraint of trade, saying:

> When the restraint is general, but at the same time is coextensive only with the interest to be protected and with the benefit meant to be conferred, there seems to be no good reason why as between the parties the contract is not as reasonable as when the interest is partial and there is a corresponding partial restraint.

But the court of appeals, in making this decision, did not intend to depart from the old rule, so far as the maintenance of that old rule was necessary for the protection of the interest of the public. It said distinctly:

> Covenants of the character of the one now in question operate simply to prevent the covenanter from engaging in the business which he sells, so as to protect the purchaser in the enjoyment of what he has purchased. To the extent that the contract prevents the vendor from carrying on the particular trade, it deprives the community of any benefit it might derive from his entering into competition; but the business is open to all others, and there is little danger that the public will suffer harm from lack of persons to engage in a profitable industry. Such contracts do not create monopolies; they confer no special or exclusive privilege. If con-

[1] 106 N. Y. 473.

tracts in general restraint of trade where the trade is general are void as tending to monopolies, contracts in partial restraint where the trade is local are subject to the same objection, because they deprive the local community of the services of the covenanter in the particular trade or calling, and prevent his becoming a competitor with the covenantee.

And again:

Combinations between producers to limit production and to enhance prices are or may be unlawful, but they stand on a different footing.

This case has frequently been cited, as indicative of a change in the rule of the common law, and as establishing the proposition that in our present economic conditions the policy of the law is, in order to promote the greatest freedom of contract, not to declare void contracts even in total restraint of trade. But the court of appeals based its decision upon the express ground that the public interest was not involved. While holding valid the particular contract before it, although in general restraint of trade, the court specifically declared that combinations to raise prices stood upon a different footing, and recognized the fact that where the public interest was involved, the rule might well be different. The common law has all along refused, and does now refuse, to recognize the validity of agreements made between individuals for the purpose of raising the prices of commodities, and has stamped any such attempt as a criminal conspiracy.

1. *Agreements aiming to raise prices are invalid.*

That such agreements are invalid has always been the rule of both courts of equity and courts of law. Thus, take the case of Craft *vs.* McConoughy.[1] This was a bill in equity brought for an accounting and distribution of the profits of an alleged partnership based upon a contract to the following effect: Several grain houses were put into the business upon a basis of distributing shares to the signers of the agreement;

[1] 79 Ill. 346, decided in 1875.

each separate firm was to conduct its own business as if there were no partnership in existence. It was to be the duty of a general bookkeeper to make a record of all of the grain bought by each party, to debit him with the amount of money paid for the same, and to credit him with all sales; and at the end of every month each individual account was to be balanced, showing the profit or loss, which amount was to be divided *pro rata*, according to the number of shares held by each party. It was further agreed that prices were to be fixed from time to time, and each party to the agreement was to abide by them. Soon after the agreement was made, one party to it died, and his son demanded an accounting. The court held that the agreement was void, as contrary to public policy, and as being an attempt to foster a monopoly and to raise prices; and notwithstanding the fact that it had been partially executed, refused to require an accounting, saying: "The complainant and the defendants were equally involved in the unlawful combination; a court of equity will assist neither."

A similar and even stronger case, decided in Pennsylvania, is that of Nester *vs.* The Continental Brewing Co.[1] Here an association had been formed in Philadelphia among the brewers, for the purpose of controlling the sale and fixing the price of beer in Philadelphia and in Camden and Camden County, New Jersey. It was shown that the plaintiff had for valuable consideration obtained from a member of the association an assignment of a claim due such member from the association, without knowledge that the claim was based upon an agreement to monopolize the sale of beer. Notwithstanding his *bona fides*, the court refused to aid him, and denied his application for an accounting.

Not only courts of equity, but also courts of law, refuse to aid in the execution of such agreements. Thus, in the case of Chapin *vs.* Brown,[2] the grocers engaged in business in the town of Storm Lake agreed in favor of a third person to quit the business of buying butter for two years, and such

[1] 161 Pa. St. 473, decided in 1894.
[2] 83 Iowa, 156, decided in 1891.

third person agreed to carry on that business exclusively for the same period of time. In pursuance of this agreement, the plaintiffs came to the town and engaged in the business of buying butter; at the commencement of the suit they were so engaged, and had made arrangements to continue the business for the period of two years. The defendant, however, continued in the business of buying butter; and it was alleged that by so doing he had damaged the plaintiffs to the extent of one hundred and fifty dollars, for which judgment was asked. The court refused the application of the plaintiffs, on the ground that the agreement was against public policy, as tending to monopolize the butter trade at Storm Lake, and to destroy competition in that business. This case is particularly interesting because the agreement was as to purchase and not as to sale. It therefore did not result in disadvantage to the consuming public generally, but only in disadvantage to the producers of butter.[1]

A somewhat similar case, More *vs.* Bennett, was decided in January, 1892, by the supreme court of Illinois.[2] Here the stenographers in the city of Chicago had formed an association, of which all the parties to the suit were members. The object of the association was to establish and maintain uniform rates. A schedule had been adopted, and it was alleged that the defendant, contrary to the rules of the association, had cut rates against the other members thereof, whereby the plaintiffs had been damaged. The court refused to pass upon the question whether a contract could be found in such articles of association, and decided that, even if a contract could be found, the agreement was void on account of its attempt to regulate prices. The court refused, therefore, to award damages to the plaintiff. The case is interesting as showing that the courts will apply the same rules to the attempt to regulate the price of labor as to the attempt to regulate the price of commodities.

[1] It is only fair to say that the contract was declared void, not only because it was contrary to public policy, but also because in the opinion of the court it was not based upon a consideration.

[2] 140 Ill. 69.

Another good case is that of the Texas Standard Oil Co. *vs.* Adoue, decided in Texas in 1892.[1] This suit was brought to recover guaranteed net prices for all the products of certain mills, and for the costs and expenses of production, in consideration of the strict performance of all covenants in a contract. This contract, it was held by the court, gave the defendant an almost unrestricted field to obtain the raw material for its mills, and the exclusive right to control, free from the competition of the plaintiffs and others, not only the sales and ruling prices of the product of its own mills, but also the entire yield of the mills of the other parties to the contract. The court held that the manifest purpose and natural tendency of this agreement were to prevent competition in too many localities — upon the one hand, to reduce the price of the raw materials; and upon the other, to enhance that of the manufactured product by artificial means, to the disadvantage and detriment of the public. Therefore the complaint was dismissed.[2]

A similar case is Arnott *vs.* The Pittston and Elmira Coal Co.[3] Here the plaintiff's assignor, the Butler Colliery Co., had made an agreement with the defendants that it would not send coal north to any point except to the defendants, the latter agreeing to take from the Butler Co. not exceeding 2000 tons of coal per month. In pursuance of this agreement, the Butler Colliery Co. shipped 2700 tons to The Pittston and Elmira Coal Co., and the plaintiff, to whom it had assigned its claim, brought suit for the price of the coal. The court held that the contract was made by the defendants with the purpose of establishing a monopoly of coal in the city of Elmira, that this purpose was known to the plaintiff's assignor, the Butler Coal Co., that the contract was contrary to public policy, and therefore that suit might not be brought upon it. The court said:

[1] 83 Tex. 650.

[2] This case, like Chapin *vs.* Brown, noticed above, shows that the courts will take notice that the effect of a combination in restraint of trade is to reduce the prices of articles to be purchased, as well as to increase the price of articles to be sold by the combination.

[3] 68 N. Y. 558, decided in 1877.

Every producer or vendor of coal or other commodity has the right to use all legitimate efforts to obtain the best price for the article in which he deals. But when he endeavors to artificially enhance prices by suppressing or keeping out of market the products of others, and to accomplish that purpose by means of contracts binding them to withhold their supplies, such arrangements are even more mischievous than combinations not to sell under an agreed price. Combinations of that character have been held to be against public policy and illegal. . . . The purpose of the vendee was against public policy, and the vendor knew it. This brings us straight to the question whether the vendor delivering goods under such a contract can recover for the price. I think that under the circumstances of the present case, as found by the referee, he cannot. . . . He had a right to dispose of his goods, and (under certain limitations) the vendor of goods may recover for their price, notwithstanding that he knows that the vendee intends an improper use of them, so long as he does nothing to aid in such improper use, or in the illegal plan of the purchaser. This doctrine is established by authority, and is sufficiently liberal to vendors. But — and this is a very important distinction — if the vendor does anything beyond making the sale to aid the illegal scheme of the vendee, he renders himself *particeps criminis* and cannot recover for the price.

So, also, it has been held that a loan made for the purpose of aiding in a combination to raise the price of a particular article, cannot be recovered. In the case of Raymond *v.* Leavitt,[1] plaintiff had loaned the sum of $10,000 to the defendant for the purpose of controlling the wheat market at Detroit, with a view of forcing up prices. The defendant, who was to give the plaintiff a third of the expected profits, was at all events to repay the $10,000, with or without profits. In rendering its decision, the court said:

The object of the arrangement between these parties was to force a fictitious and unnatural rise in the wheat market, for the express purpose of getting the advantage of dealers and purchasers whose necessities compelled them to buy, and necessarily to create a similar difficulty as to all persons who had to obtain or use that commodity, which is an article indispensable to every family in the country. . . . We shall decline enforcing such contracts. If parties

[1] 46 Mich. 447, decided in 1881.

see fit to invest money in such ventures, they must get it back by some other than legal measures.

Probably the strongest case of all is that of Morris Run Coal Co. *vs.* Barclay Coal Co.[1] This was an action upon an accepted draft of the defendants in favor of the plaintiffs. The draft was made in execution of a contract between five coal companies for a sum found due in the equalization of prices under the contract. Provision was made in the contract for a committee of three to take charge of the business of all of these companies, to decide all questions and to appoint the general sales-agent. Provision was also made for the mining and delivery of coal, and for its sale through this agent, subject, however, to the restriction that each party should at its own cost deliver its proportion of the different kinds of coal in the different markets, at such times and to such parties as the committee should from time to time direct. The committee was authorized to adjust the price of coal in the different markets, and the rates of freight, and also to enter into such an agreement with the anthracite coal companies as should promote the interest of the parties. The companies were allowed to sell their coal themselves, but only to the extent of their proportion, and only at the prices adjusted by the committee. In answer to the claim that this agreement tended to establish a monopoly, the plaintiff replied that the true object of it was to lessen expenses, to improve the quality of the coal and to deliver it in the market in the best order to the consumer. These allegations the court said were immaterial:

Admitting their correctness, it does not follow that these advantages redeem the contract from the obnoxious effects so strikingly presented by the referee. The important fact is that these companies control this immense coal-field; that it is the great source of supply of bituminous coal to the state of New York and large territories westward; that by this contract they control the price of coal in this extensive market, and make it bring sums it would not command if left to the natural laws of trade; that it concerns an

[1] 68 Pa. St. 173, decided in 1871.

article of prime necessity for many uses; that its operation is general in this large region, and affects all who use coal as a fuel; and this is accomplished by a combination of all of the companies engaged in this branch of business in the large region where they operate. The combination is wide in scope, general in its influence and injurious in effects. These being its features, the contract is against public policy, illegal, and therefore void.

Further commenting upon the agreement, the court said:

The effects produced on the public interest lead to the consideration of another feature of great weight in determining the illegality of the contract, to wit: the combination resorted to by these five companies. Singly, each might have suspended deliveries and sales of coal to suit its own interests, and might have raised the price, even though this might have been detrimental to the public interest. There is a certain freedom which must be allowed to every one in the management of his own affairs. When competition is left free, individual error or folly will generally find a correction in the conduct of others; but here is a combination of all the companies operating in the Blossburg and Barclay mining regions and controlling their entire productions. . . . This combination has a power in its confederative form which no individual action can confer. The public interest must succumb to it, for it has left no competition free to correct its baleful influence. When the supply of coal is suspended, the demand for it becomes importunate, and prices must rise. Or if the supply goes forward, the price fixed by the confederates must accompany it. . . . Such a combination is more than a contract; it is an offense. . . . The present case is free of difficulty, the money represented by the bill arising directly upon the contract to be paid by one party to another party to the contract in execution of its terms. The bill itself is therefore tainted by the illegality, and no recovery can be had upon it.

While the courts will not enforce an unlawful agreement or give damages for the non-execution of an unlawful agreement, it does not by any means follow that they will prevent the execution of an agreement which is in reasonable restraint of trade. A good case upon this point is that of the Bohn Manufacturing Co. *vs.* Hollis.[1] The plaintiff was a manufac-

[1] 54 Minn. 223, decided in 1893.

turer and vendor of lumber and other building material, a large and valuable part of his trade being with retail lumber dealers. The defendant, the Northwestern Lumbermen's Association was a voluntary association of retail lumber dealers, formed to protect its members against sales by wholesale dealers, manufacturers to contractors and consumers. The method employed by the association was to demand of every wholesale dealer who sold directly to contractors and consumers ten per cent of the amount of such sales, and to notify all the retail dealers to refrain from dealing with such wholesale dealer until the payment was made. The plaintiff in this suit, having sold directly to consumers, was requested to pay the ten per cent to the association, failing which payment the secretary of the association threatened to send to the other retail dealers the notice provided for in the agreement of the association. Plaintiff demanded an injunction to restrain the issuing of these notices. The court refused the injunction; it held that the agreement was not in unreasonable restraint of trade or unlawful, and recognized that it was a general rule of trade in every department that wholesale dealers should refrain from selling at retail within the territory from which their customers obtain their business.

What one man may lawfully do singly [says the court], two or more may lawfully agree to do jointly; the number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful acts of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendant. If the act be unlawful, the combination of many to permit it may aggravate the injury, but cannot change the character of the act. In a few cases there may be some loose remarks apparently to the contrary, but they evidently have their origin in a confused and inaccurate idea of the law of criminal conspiracy, and in failing to distinguish between an unlawful act and a criminal one. It can never be a crime to combine to commit a lawful act, but it may be a crime for several to conspire to commit an unlawful act which, if done by one individual alone, although unlawful, would not be criminal. Hence the fact that the defendants associated themselves to do the act complained of is wholly immaterial in this case.

A somewhat similar case is that of Cote *vs.* Murphy.[1] In this case, workmen engaged in building trades had combined to wages by reducing the hours of labor; and associations ers in such trades had combined and agreed not to erials to contractors who acceded to the demands of the workmen, and to induce other dealers by all lawful means not to furnish such materials. The court held that such associations of employers were not liable in damages for conspiracy to contractors who, by reason of the combination, were not able to procure all the materials they could dispose of.

2. *Agreements aiming to raise prices are criminal.*

The early English and American cases, regarding labor as in the nature of a commodity, held very frequently that combinations among workingmen for the purpose of raising wages were, even if unaccompanied by any violence or other unlawful acts, criminal conspiracies. One of the earliest cases in this country was that of People *vs.* Fisher.[2] In this case, certain journeymen shoemakers had combined for the purpose of fixing the wages of members of the combination. They were indicted under a provision of the New York Revised Statutes which declared that if two or more persons should conspire to commit any act injurious to trade or commerce, they should be deemed guilty of a misdemeanor. This provision is regarded as declaratory of the common law. The court, in its opinion, declared that a combination to raise wages was injurious to trade or commerce, adding:

> It is important to the best interest of society that the price of labor be left to regulate itself, or rather be limited by the demand for it. Combinations and confederacies to enhance or reduce the prices of labor or of any articles of trade or commerce are injurious. They may be oppressive by compelling the public to give more for an article of necessity or of convenience than it is worth, or on the other hand, by compelling the labor of the mechanic for less than its value.

[1] 159 Pa. St. 420, decided in 1894.
[2] 14 Wendell, 9, decided in 1835.

It is only fair to say that the court was influenced in its decision by the fact that the indicted shoemakers left the employment of a master workman, in order to force him to discharge one who had formerly been a member of the shoemakers' association, but who had refused to pay the penalty fixed by the association for violation of the agreement not to work for less than a certain sum. It will be seen, therefore, that in this particular case the conspiracy included not only the combination to raise prices, but also something in the nature of a boycott. The court remarked:

In the present case an industrious man was driven out of employment by the unlawful measures pursued by the defendants, and an injury done to the community by diminishing the quantity of productive labor and of internal trade. . . . He had a right to work for what he pleased. His employer had a right to employ him for such price as they could agree upon. The interference of the defendants was unlawful; its tendency is not only to individual oppression, but to public inconvenience and embarrassment. I am of the opinion that the offense is indictable.

In commenting upon this general subject of labor combinations, the supreme court of Pennsylvania, in the case of Cote *vs.* Murphy, already referred to, said:

The fixed theory of courts and legislators . . . was that the price of everything ought to be, and in the absence of combinations, necessarily would be, regulated by supply and demand. The first to deny the justice of this theory and to break away from it was labor; and this was soon followed by . . . legislation . . . relieving workmen of the penalties of what for more than a century had been declared unlawful combinations or conspiracies.[1] Wages, it was argued, should be fixed by the fair proportion labor had contributed in production. The market price determined by supply and demand might or might not be fair wages, often was not, and, as long as workmen were not free by combinations to insist upon their right to fair wages, oppression by capital, or which is the same thing, by their employers,

[1] Thus, in New York it is provided that it shall not be a criminal conspiracy for persons to combine for the purpose of advancing or maintaining wages.—Laws of 1870, c. 19.

followed. It is not our business to pass on the soundness of the theories which prompt the enactment of statutes. One thing, however, is clear: the moment the legislature relieved one and by far the larger number [*sic*] of the citizens of the commonwealth from the common-law prohibitions against combinations to raise the price of labor, and by a combination the price was raised, down went the foundation on which common-law conspiracy was based, as to that particular subject.

The logical consequence of this change in the law was, in the opinion of the court, that, after employees had combined to raise wages, any combination made by employers against raising wages was not an unlawful conspiracy, inasmuch as the purpose of the employers was, not to interfere with the price of labor as determined by the common-law theory, but to defend themselves against a demand made altogether regardless of the price as regulated by the supply.

A perusal of the later decisions upon this subject, sometimes made as a result of a change in the ideas of the judges, sometimes made as a result of specific statutes passed upon the subject, must lead to the conclusion that at the present time a combination of laborers for the purpose of raising wages, if unaccompanied by any unlawful act,—as, for example, a boycott or violence,—is not to be regarded as a criminal conspiracy. One of the latest cases upon the subject is The Longshore Printing Co. *vs.* Howell.[1] In this case the court held that it was not unlawful for a union to make provision in its by-laws for a scale of wages, or for limiting the number of apprentices; nor was it unlawful for several or many employees to agree among themselves to quit their employer, in order by so doing to induce him to confine his employment to certain kinds of labor.[2]

But while the law at the present time is that combinations of laborers to raise wages, when unaccompanied by any unlawful acts, are not criminal conspiracies, it cannot be said that the old common law generally has been thus changed. That is, not-

[1] 26 Oregon, 527, decided in 1894.

[2] The common law was the same in the case of a combination of employers to reduce wages. Such a combination was a criminal conspiracy. Com. *ex rel.* Chew *vs.* Carlisle, Brightley's Report, Pa., 36.

withstanding the change made in favor of labor, it is still a crime to combine for the purpose of raising the price of commodities. One of the latest cases decided upon this point is People *vs.* Sheldon.[1] In this case, certain coal dealers in the city of Lockport entered into an agreement to organize a coal exchange. The object of this exchange was to secure a general supervision and protection of the interests of retail dealers in coal and similar commodities. It was made the duty of members strictly to obey all the provisions of the constitution, by-laws and resolutions of the exchange. Any member guilty of violating any provision of the by-laws, or of conduct unbecoming a member, or of giving short weight or overweight, was liable to forfeit his membership. The agreement further declared that the retail price of coal should as far as practicable be kept uniform; and that no price should be made at any time which should exceed a fair and reasonable advance over wholesale rates, or which should be higher than the current prices at Rochester or Buffalo, figured upon corresponding freight tariffs; and that at no time should the price of coal at retail exceed by more than one dollar the wholesale cost, except by the unanimous vote of all the members of the exchange. A certain member of the exchange was indicted, on the ground that this agreement constituted an unlawful conspiracy to increase the price of coal at retail in the city of Lockport, and that in pursuance of it the defendant and other members of the exchange elected officers and by resolution increased the price of coal seventy-five cents per ton. The indictment was found under section 168 of the Penal Code, which is a reënactment of the provision of the Revised Statutes, making it a misdemeanor for any two or more persons to conspire "to commit an act injurious to the public health, to public morals or to trade or commerce." The trial judge submitted the case to the jury upon the proposition that, if the defendants entered into the organization agreement for the purpose of controlling the price of coal and managing the business of the sale of coal so as to prevent competition in price between the members of the exchange, the

[1] 139 N. Y. 251, decided in 1893.

agreement was illegal; and that if the jury found that this was their intent, and that the price of coal was raised in pursuance of the agreement to effect this object, the crime of conspiracy was established.

The court of appeals, in deciding upon the propriety of this charge, said :

> The question here does not, we think, turn on the point whether the agreement between the retail dealers in coal did, as a matter of fact, result in injury to the public, or to the community in Lockport. The question is: Was the agreement, in view of what might have been done under it, and the fact that it was an agreement the effect of which was to prevent competition among the coal dealers, one upon which the law affixes the brand of condemnation? It has hitherto been an accepted maxim in political economy that "competition is the life of trade." The courts have acted upon and adopted this maxim in passing upon the validity of agreements the design of which was to prevent competition in trade, and have held such agreements to be invalid. . . . The organization was a carefully devised scheme to prevent competition in the price of coal among the retail dealers; and the moral and material power of the combination afforded a reasonable guaranty that others would not engage in the business at Lockport except in conformity with the rules of the exchange. . . . The *gravamen* of the offense of conspiracy is the combination. Agreements to prevent competition in trade are in contemplation of law injurious to trade because they are liable to be injuriously used. . . . If agreements and combinations to prevent competition in prices are or may be hurtful to trade, the only sure remedy is to prohibit all agreements of that character. If the validity of such an agreement was made to depend upon actual proof of public prejudice or injury, it would be very difficult in any case to establish the invalidity, although the moral evidence might be very convincing. We are of opinion that the principle upon which the case was submitted to the jury is sanctioned by the decisions in this state, and that the jury were properly instructed that if the purpose of the agreement was to prevent competition in the price of coal between the retail dealers, it was illegal and justified the conviction of the defendant.

Finally, it has been held that corporations may be guilty of the crime of conspiracy, and that they are so guilty when they

refuse to sell their products to dealers handling the products of rival companies.[1]

3. *"Trust" agreements justify forfeiture of corporate charters.*

The impossibility, under the existing law, of making contracts in restraint of trade which would be enforced by the courts, and the danger that such agreements would be followed by punishment, led to the formation of agreements which took absolutely out of the power of the original owners of a business all control over it. These agreements, commonly known as trust agreements, provided for trustees who could operate a number of different enterprises in accordance with their own ideas of what was proper, and who could thus absolutely prevent competition between the parties to the agreements. Such an agreement usually, but not universally, provided for the formation of a corporation out of a partnership wherever a business had been conducted under the latter form. In organizing the trust the stockholders in these corporations exchanged their stock for trust certificates issued by trustees, elected by the persons in interest. The trustees, it was believed, would thus become the only stockholders known to the law, and would therefore have the power of controlling the operations of the corporations whose stockholders had become parties to the trust agreement. In other words, the attempt was made to prevent competition by means of a federation of corporations.

This method was very commonly employed in this country for almost a quarter of a century without being opposed by the public authorities. In 1888, however, attention was directed to a trust agreement in the state of New York, and the attorney-general decided to bring an action in the nature of a *quo warranto*

[1] People *vs.* Duke *et al.*, *N.Y. Law Journal*, Jan. 23, 1897. It would seem, however, that rebates given on condition that the person receiving the rebate shall deal exclusively with the person giving the rebate are perfectly legal. — Mogul Steamship Co. *vs.* McGregor, H. L. App. Cases, 1892, p. 25; Nat. Distilling Co. *vs.* Cream City Importing Co., 86 Wis. 352; Olmstead *vs.* Distilling and Cattle Feeding Co., 77 Fed. Rep. 265.

to forfeit the charter of a corporation whose stockholders had participated in its formation. The matter was decided in the case of the People *vs.* the North River Sugar Refining Co.,[1] and this decision was followed by the supreme court of Ohio in State *vs.* Standard Oil Co.[2] In the New York case the action of the stockholders, even without any formal action upon the part of the corporation, was held to be corporate action, and to be contrary to public policy; the charter of the corporation itself was therefore forfeited. Judge Finch, who delivered the opinion of the court, said:

I think there may be actual corporate conduct which is not formal corporate action; and where that conduct is directed or produced by the whole body both of officers and stockholders, by every living instrumentality which can possess and wield the corporate franchise, that conduct is of a corporate character, and if illegal and injurious may deserve and receive the penalty of dissolution. . . . The directors of a corporation, its authorized and active agency, may see the stockholders perverting its normal purposes by handing it over bound and helpless to an irresponsible and foreign authority, and omit all action which they ought to take, offer no resistance, make no protest, but apparently acquiesce as directors in the wrong which as stockholders they have themselves helped to commit. That is corporate conduct, though there may be utter absence of directors' resolutions. . . . The abstract idea of a corporation, the legal entity, the impalpable and intangible creation of human thought is itself a fiction and has been appropriately described as a figure of speech. It serves very well to designate in our minds the collective action and agency of many individuals as permitted by the law, and the substantial inquiry always is: What, in a given case, has been that collective action and agency? As between the corporation and those with whom it deals, the manner of its exercise usually is material. But as between it and the state the substantial inquiry is only what that collective action and agency has done, and what it has in fact accomplished; what has seemed to be its effective work; what has been its conduct? It ought not to be otherwise. The state gave the franchise, the charter, not to the impalpable, intangible and almost nebulous fiction of our thoughts, but to the corporators, the individuals, the acting and living men, to be used by them, to redound to their benefit, to strengthen their hands

[1] 121 N. Y. 582, decided in 1890.
[2] 49 Ohio St. 137, decided in 1892.

and add energy to their capital. If it is taken away, it is taken from them as individuals and corporators, and the legal fiction disappears. The benefit is theirs; the punishment is theirs; and both must attend and depend upon their conduct. And when they all act collectively as an aggregate body without the least exception, and so acting reach results and accomplish purposes clearly corporate in their character and affecting the vitality, the independence, the utility of the corporation itself, we cannot hesitate to conclude that there has been corporate conduct which the state may review and not be defeated by the assumed innocence of a convenient fiction.

In the Ohio case the reasoning on this head was very similar.[1] In both of these cases, however, the judges felt called upon to consider the further question whether the act which had thus taken the form of a corporate act was sufficiently injurious and contrary to public policy to justify the forfeiture of the charter. Here the decisions were somewhat divergent. In New York the court held that the act of which the corporation had been guilty was in excess of its powers, and that the charter, therefore, was forfeited. The combination of sugar refineries was declared to partake of the nature of a partnership of corporations, and hence to be in violation of law. There was in the opinion a *dictum* as to the injurious effects of monopolies upon the public; but the court in terms declined

[1] Judge Marshall said: "The general proposition that a corporation is to be regarded as a legal entity existing separate and apart from the natural persons composing it is not disputed. But that the statement is a mere fiction existing only in idea is well understood and not controverted by any one who pretends to accurate knowledge on the subject. . . . Now, so long as a proper use is made of the fiction that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored and the question determined whether the act in question, though done by shareholders, that is to say by the persons united in one body, was done simply as individuals and with respect to their individual interests as shareholders, or was done ostensibly as such but, as a matter of fact, to control the corporation and affect the transaction of its business in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so because, the stockholders having a dual capacity and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act cannot preclude judicial inquiry on the subject. If it were otherwise, then in one department of the law fraud would enjoy an immunity awarded to it in no other."

to advance into the wider discussion over monopolies and competition and restraint of trade, and the problems of political economy. . . . Without either approval or disapproval of the views expressed upon that branch of the case by the courts below, we are enabled to decide that in this state there can be no partnerships of separate and independent corporations, whether directly or indirectly, through the medium of the trust; no substantial consolidations which avoid and disregard the statutory permissions and restraints; but that manufacturing corporations must be and remain several, as they were created, or one under the statute.[1]

In the *dictum* with regard to monopolies there were several very interesting statements, indicative of the opinion of the court as to the public policy of permitting combinations whose purpose or effect is to promote monopolies. The public interest which corporate grants are always assumed to subserve is most unfavorably affected, said Judge Finch,

when beyond their own several aggregations of capital they compact them all into one combination which stands outside of the ward of the state, which dominates the range of an entire industry and puts upon the market a capital stock proudly defiant of actual values and capable of an unlimited expansion. It is not a sufficient answer to say that similar results may be lawfully accomplished; that an individual having the necessary wealth might have bought all of these refineries, manned them with his own chosen agents, and managed them as a group at his sovereign will; for it is one thing for the state to respect the rights of ownership and protect them out of regard to the business freedom of the citizen, and quite another thing to add to that possibility a further extension of those consequences by creating artificial persons to aid in producing such aggregations. The individuals are few who hold in possession such enormous wealth, and fewer still who peril it all in a manufacturing enterprise; but if corporations can combine and mass their forces in a solid trust or partnership with little added risk to the capital already embarked, without

[1] The statutes here referred to permitted the consolidation of manufacturing corporations, and the court in a previous part of the opinion seemed to intimate that a consolidation under the statute would have been perfectly proper, inasmuch as "the resultant combination would itself be a corporation deriving its existence from the state, owing duties and obligations to the state, and subject to the control and supervision of the state, and not [as in the case presented] an unincorporated board, a colossal and gigantic partnership, having no corporate functions and owing no corporate allegiance."

limit to the magnitude of the aggregation, a tempting and easy road is open to enormous combinations vastly exceeding in number and in strength and in their power over industry any possibilities of individual ownership; and the state, by the creation of the artificial persons constituting the elements of the combination and failing to limit and restrain their powers, becomes itself the responsible creator, the voluntary cause of an aggregation of capital which it simply endures in the individual as the product of his free agency. What it may bear is one thing; what it should cause and create is quite another.

In the Ohio case the court declared the action of the corporations which formed the trust to be void, as contrary to public policy, on the ground that the attempt was made to form a monopoly. The judge said that the object of the agreement

was to establish a virtual monopoly of the business of producing petroleum and of manufacturing, refining and dealing in it and all its products throughout the entire country, and by which it might not merely control the production, but the price, at its pleasure. All such associations are contrary to the policy of our state and void. . . . Much has been said in favor of the object of the Standard Oil Trust and what it has accomplished. It may be true that it has improved the quality and cheapened the cost of petroleum and its products to the consumer. But such is not one of the usual or general results of a monopoly, and it is the policy of the law to regard not what may, but what usually happens. Experience shows that it is not wise to trust human cupidity where it has the opportunity to aggrandize itself at the expense of others. . . . Monopolies have always been regarded as contrary to the spirit and policy of the law. The objections are stated in "The Case on Monopolies," Darcy *vs.* Allein, Coke, pt. XI, 84 b. They are these: (1) "That the price of the same commodity will be raised, for he who has the sole selling of any commodity may well make the price as he pleases"; (2) "The incident to a monopoly is that after the monopoly is granted, the commodity is not so good and merchantable as it was before, for the patentee, having the sole trade, regards only his private benefit and not the commonwealth"; (3) "It tends to the impoverishment of divers artificers and others who before, by the labor of their hands in their art or trade, had maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary." The third objection, though frequently overlooked, is none the less important. A society in which a few men are the employers

and a great body are merely employees or servants is not the most desirable in a republic; and it should be as much the policy of the laws to multiply the numbers engaged in independent pursuits, or in the profits of production, as to cheapen the price to the consumer. Such policy would tend to an equality of fortunes among its citizens, thought to be so desirable in a republic, and lessen the amount of pauperism and crime. It is true that in the case just cited the monopoly had been created by letters patent; but the objections lie not to the manner in which the monopoly is created. The effect on industrial liberty and the price of commodities will be the same, whether created by patent or by an extensive combination among those engaged in similar industries controlled by one management. By the invariable laws of human nature, competition will be excluded and prices controlled in the interest of those connected with the combination or trust.[1]

4. *Are corporations for purposes of monopoly illegal?*

The effect of the foregoing and similar decisions was that any persons who intended to form a combination for the purpose of limiting competition, were obliged to seek a substitute for the trust agreement. As a general thing they effected an organization in the shape of a large corporation, since, as has been shown, the New York court of appeals had appeared to regard this as a legal method of forming a combination.[2] The courts were soon required to decide upon the legality of such action. The first case that came up was that of People *vs.* The Chicago Gas Trust Co.[3] A gas trust company, as it was called, had been formed, in whose certificate of incorporation the purposes of the corporation were stated to be the manufacture of gas and the purchase, holding and selling of stocks in other gas and electric companies in Chicago or elsewhere in Illinois. *Quo warranto*

[1] A similar decision was made by the supreme court of Nebraska in State *vs.* Nebraska Distilling Co., 29 Neb. 700, decided in 1890. See also Mallory *vs.* Hananer Oil Works, 8 S. W. Rep. (Tenn., 1888), where suit was brought against trustees of a trust agreement by a corporation which was a party to such agreement to recover possession of its property. Judgment was given in favor of the plaintiff on the ground that the corporation could not enter into such an agreement, which the court considered to be a partnership of corporations.

[2] *Ante*, p. 230.

[3] 130 Ill. 268, decided in 1889.

was brought against the corporation to obtain judgment of ouster against its use of the franchise to purchase and hold or sell the capital stock of other companies. It was clearly admitted on both sides that the court was not precluded from examining into the legality of the exercise of this franchise by the fact that the certificate of incorporation had been approved and filed with the proper executive officers of the state. The general incorporation act of the state permitted the formation of corporations in the manner provided by it for any lawful purpose. The question which arose was, therefore, whether the corporation in question had been formed for a lawful purpose.

In answering this question the court found that one result of the exercise of this franchise by the Chicago Gas Trust Company would be that it could control the four other companies in Chicago. The control of these four companies, it was thought, would suppress competition among them, and thus build up a virtual monopoly in the manufacture and sale of gas. The court said:

> Whatever tends to prevent competition between those engaged in a public employment or business impressed with a public character is opposed to public policy, and therefore unlawful. Whatever tends to create a monopoly is unlawful, as being contrary to public policy.

It therefore held that

> if contracts and grants whose tendency is to create monopolies are void at common law, then where a corporation is organized under a general statute, a provision in the declaration of its corporate purposes, the necessary effect of which is the creation of a monopoly, will also be void.

Further on in the opinion it is stated:

> To create one corporation for the express purpose of enabling it to control all the corporations engaged in a certain kind of business, and particularly a business of a public character, is not only opposed to the public policy of the state, but is in contravention of the spirit, if not the letter, of the constitution.

The court also cited with approval the following views expressed by the supreme court of Georgia in the case of Central Railroad Co. *vs.* Collins.[1]

> All experience has shown that large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. Having perpetual succession, any kind of a corporation has peculiar facilities for such accumulations, and most governments have found it necessary to exercise great caution in their grants of corporate powers. Even religious corporations professing, and in the main truly, nothing but the general good, have proven obnoxious to this objection, so that in England it was long ago found necessary to restrict them in their powers of acquiring real estate. Freed as such bodies are from the sure bound to the schemes of individuals, the grave, they are able to add field to field and power to power until they become entirely too strong for that society which is made up of those whose plans are limited by a single life.

For these reasons judgment of ouster was issued against the Chicago Gas Trust Company, as to the exercise of the franchise of purchasing the stocks in other gas companies.

All the cases thus far considered certainly give evidence that the courts of this country regard any combination, whatever form it may take, whose tendency or whose purpose is to form a monopoly, as contrary to public policy and illegal at common law; but none of them, not even the last, distinctly declares unlawful the formation of a corporation whose purpose or whose effect is to promote monopoly. This question it remained for the supreme court of Illinois to consider in the case of the Distilling & Cattle Feeding Co. *vs.* The People.[2]

In view of the decisions which the courts were almost universally rendering as to the illegality of trust agreements, the holders of trust certificates in the Distillers & Cattle Feeders' Trust, commonly called The Whiskey Trust, had in February, 1890, adopted a recommendation of the trustees to form a corporation with a capital stock of $35,000,000. The corporation was thereafter organized. The trustees of the

[1] 40 Ga. 582, decided in 1869.
[2] 156 Ill. 448, decided in 1895.

former trust subscribed for all the stock of the new corporation and elected themselves its first directors. They, or so many of them as were necessary to constitute a majority of the directors of each of the corporations composing the trust, also ordered a conveyance of all the property which those corporations held, to the newly formed corporation; and as directors of these corporations, they executed to the Distilling & Cattle Feeding Company a transfer of all of the property of these corporations, and surrendered to the holders of the trust certificates the shares of stock in the newly formed corporation in return for the trust certificates. The new corporation subsequently purchased the property and business of other corporations not parties to the former trust agreement. Suit was brought against the new corporation, and judgment of ouster from its franchise was demanded, on the ground that it had created a monopoly in the manufacture and output of distillery products, and secured such control over the consumers thereof as to destroy all competition in the manufacture and sale of such products throughout the United States.

The court, in rendering its opinion, said:

There can be no doubt, we think, that the Distillers' & Cattle Feeders' Trust, which preceded the incorporation of the defendant, was an organization which contravened well-established principles of public policy, and that it was therefore illegal. [The new corporation succeeded] to the trust, and its operations are to be carried on in the same way, for the same purposes and by the same agencies as before. The trust then being repugnant to public policy and illegal, it is impossible to see why the same is not true of the corporation which succeeds to it and takes its place. The control exercised over the distillery business of the country — over production and prices — and the virtual monopoly formerly held by the trust are in no degree changed or relaxed, but the method and purposes of the trust are perpetuated and carried out with the same persistence and vigor as before the organization of the corporation. There is no magic in a corporate organization which can purge the trust scheme of its illegality, and it remains as essentially opposed to the principles of sound public policy as when the trust was in existence. It was illegal before and is illegal still, and for the same reasons.

In answer to the objection that the defendant corporation by its charter was authorized to purchase and own distillery property, and that there was no limit placed upon the amount of property which it might thus acquire, the court said:

It should be remembered that grants of powers in corporate charters are to be construed strictly, and that what is not clearly given is by implication denied. The defendant is authorized to own such property as is necessary to carry on its distillery business, and no more. Its power to acquire and hold property is limited to that purpose, and it has no power by its charter to enter upon a scheme of getting into its hands and under its control all, or substantially all, the distillery plants and the distillery business of the country, for the purpose of controlling production and prices, of crushing out competition, and of establishing a virtual monopoly in that business. All such purposes are foreign to the powers granted by the charter. Acquisitions of property to such extent and for such purpose do not come within the authority to own the property necessary for the purpose of carrying on a general distillery business. In acquiring distillery properties in the manner and for the purposes shown by the information, the defendant has not only misused and abused the powers granted by its charter, but has usurped and exercised powers not conferred by, but which are wholly foreign to, that instrument. It has thus rendered itself liable to prosecution by the state by *quo warranto*. We are of the opinion that upon the facts shown by the information, the judgment of ouster is clearly warranted.

A case involving somewhat similar questions is that of The People *vs.* The Milk Exchange, decided by the New York court of appeals.[1] The Milk Exchange had ninety-odd stockholders, a large majority of whom were milk dealers in the city of New York, or creamery or milk-commission men doing business in that vicinity. At the first meeting of the exchange after its incorporation, the following among other by-laws was adopted: "The board of directors shall have the power to make and fix the standard or market price at which milk shall be purchased by the stockholders of this company." Acting upon this by-law, the board of directors from time to time fixed the price of milk to be paid by dealers, and the prices so fixed largely controlled the market in and about the city of New York.

[1] 145 N. Y. 267, decided in 1895.

The court, in deciding the case, declared its conviction that there was a combination on the part of milk dealers and creamery men in and about the city of New York to fix and control the price that they should pay for milk; and that a case was presented in which the jury might have found that the combination referred to was inimical to trade and commerce, and therefore unlawful. Accordingly, the charter was declared forfeited.

> It may be claimed [the court said] that the purpose of the combination was to reduce the price of milk and, it being an article of food, such reduction was not against public policy. But the price was fixed for the benefit of the dealers, and not the consumers, and the logical effect upon the trade of so fixing the price by the combination was to paralyze the production and limit the supply, and thus leave the dealers in a position to control the market, and at their option to enhance the price to be paid by the consumers.

This case is interesting as showing that the courts will take cognizance of an attempt through a combination in the form of a corporation to lower the price of commodities to the detriment of the producer as well as of an attempt to enhance the price at the expense of the consumer.

5. *Attitude of the United States Supreme Court.*

Notwithstanding the decisions thus far considered, persons who desired to form a trade combination were able to do so with impunity, on account of the fact that if their organization was declared illegal in one state, they could organize under the laws of another, provided the public opinion in the latter was not opposed to trade combinations. An attempt was therefore made in what is known as the Anti-Trust Law, passed by Congress in 1890, to give the national government the power, in addition to that which the states already possessed, to suppress trade combinations. But it was recognized by the promoters of this bill that Congress had no jurisdiction of specifically state industry and commerce. The act was, therefore, worded as follows: "Every contract, combination in the form of trust

or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations is hereby declared to be illegal." Every one participating in such a contract or engaging in such a combination was declared to be guilty of a misdemeanor, and made liable to severe punishment. It was provided that the circuit courts of the United States should have jurisdiction to restrain violations of the act, and that it should be the duty of the law officers of the United States to institute the proper proceedings. A suit was begun in Pennsylvania against certain sugar-refining corporations which had been absorbed by the American Sugar Refining Company. Evidence was taken before Judge Butler, of the circuit court, who said in his opinion: "The object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country." The opinion also showed that, after the purchase of these refineries by the American Sugar Refining Company, the latter corporation had obtained control of all refineries in the United States except one in Boston, whose output was about two per cent of the sugar refined in this country.

This case went on appeal to the supreme court of the United States.[1] Here, on the state of facts presented by Judge Butler, the court held that the act of 1890 was framed in the light of well-settled principles; that

Congress did not attempt thereby to assert the power to deal with monopoly directly as such, or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control or disposition of property, or to regulate or prescribe the price or prices at which such property or the products thereof should be sold, or to make criminal the acts of persons in the acquisition and control of property which the states of their residence or creation sanctioned or permitted. . . . The contracts and acts of the defendants related exclusively to the acquisition of the Philadelphia refineries and the business of sugar-refining in Pennsylvania, and bore no direct relation to commerce between the states or with foreign nations. . . . It is true that the bill alleged that the products of these refineries were sold and distributed among the several states,

[1] United States *vs.* E. C. Knight Co., 156 U. S. 1.

and that all the companies were engaged in trade or commerce with the several states and with foreign nations. But this was no more than to say that trade and commerce served manufacture to fulfill its functions. . . . It does not follow that an attempt to monopolize or the actual monopoly of the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though in order to dispose of the product the instrumentality of commerce was necessarily invoked. . . . There was nothing in the proofs to indicate any intention to put a restraint upon trade or commerce; and the fact, as we have seen, that trade or commerce might be indirectly affected was not enough to entitle the claimants to a decree. The subject-matter of the sale was shares of manufacturing stock, and the relief sought was the surrender of property which had already passed and the suppression of the alleged monopoly in manufacture by the restoration of the *status quo* before the transfers; yet the act of Congress only authorized the circuit courts to proceed by way of preventing and restraining violations of the act in respect of contracts, combinations or conspiracies in restraint of interstate or international trade or commerce.

It will be noticed that this decision was based upon three grounds: (1) that the proper remedy was not invoked, or at any rate was not invoked at the proper time; (2) that the combination did not disclose an attempt to monopolize; (3) that, even if it did so, it was not a combination in restraint of interstate or foreign commerce.

As to the first of these grounds, it may be said that the bill which was before the court asked that an injunction might issue to prevent and restrain the said defendants from further and continued violations of the act of Congress. This was in addition to the demand that the agreements between the defendants be cancelled and that the shares of stock transferred in performance of the contracts be restored to their original owners.[1]

[1] Judge Harlan, in his dissenting opinion, said on this point: "While a decree annulling the contracts under which the combination in question was formed may not in view of the facts disclosed be effectual to accomplish the object of the act of 1890, I perceive no difficulty in the way of the court passing a decree declaring that that combination imposes an unlawful restraint upon trade and commerce among the states and perpetually enjoining it from further prosecuting any business pursuant to the unlawful agreements under which it was formed or by which it was created."

As to the second ground of the decision, the trial judge found, as has been stated, that the object in purchasing the Philadelphia refineries was to obtain a greater influence or more perfect control over the business of refining and selling sugar in this country. Moreover, the state courts, in the decisions heretofore cited, have declared that they will go back of any alleged purpose of an agreement or of a certificate of incorporation and will inquire what is its real purpose and effect; and that if the latter are to establish a monopoly unreasonably limiting competition, they will declare the agreement void.

But while these first two considerations undoubtedly influenced the supreme court somewhat, the main ground upon which the decision was based was that the manufacture and sale of sugar were not interstate or foreign commerce. In order to reach this decision, the court laid little stress upon the purpose to monopolize the sale. The sale of sugar was declared to be merely an incident to the manufacture. As the court said, "trade and commerce serve manufacture to fulfill its functions." Laying the weight which they did upon the manufacture, they considered that they were bound by the case of Kidd *vs.* Pearson.[1] Here the

> question was discussed whether the right of a state to enact a statute prohibiting within its limits the manufacture of intoxicating liquors, except for certain purposes, could be overthrown by the fact that the manufacturer intended to export the liquors when made; and it was held that the intent of the manufacturer did not determine the time when the article or product passed from the control of the state and belonged to commerce, and that therefore the prohibitory act was not in conflict with the constitutional provision giving the right to regulate interstate commerce to Congress.

Another case which seems to have influenced the court was that of Coe *vs.* Erroll.[2] Here the question was "whether certain logs cut at a place in New Hampshire and hauled to a river town for the purpose of transportation to the state of Maine were liable to be taxed like other property in the state of New Hampshire"; and it was held that they were liable to

[1] 128 U. S. 1. [2] 116 U. S. 517.

taxation just as much as any other property in the state, and that the owner's intention and his partial preparation to ship them out of the state would not exempt them from taxation as articles of interstate commerce.

Judge Harlan, in a dissenting opinion, pointed out, however, that, under previous decisions of the supreme court, interstate commerce embraced something more than the mere physical transportation of articles of property and the vehicles or vessels by which such transportation was effected. He referred in particular to the case of Mobile County *vs.* Kimball,[1] where it was said that commerce with foreign countries and among the states, strictly considered, consists "in intercourse and traffic, including in these terms navigation and transportation and transit of persons or property, as well as the *purchase, sale and exchange* of commodities." Judge Harlan did not consider that these early statements and decisions had been modified by either of the cases referred to in the majority's opinion. As regards the question of monopoly, he said:

> A combination such as that organized under the name of the American Sugar Refining Company has been uniformly held by the courts of the states to be against public policy and illegal because of its necessary tendency to impose improper restraints upon trade.

And further:

> The object of this combination was to obtain control of the business of making and selling refined sugar throughout the entire country. Those interested in its operations will be satisfied with nothing less than to have the whole population of America pay tribute to them. That object is disclosed upon the very face of the transactions described in the bill, and it is proved — indeed conceded — that that object has been accomplished to the extent that the American Sugar Refining Company now controls 98 per cent of all the sugar-refining business in the country, and therefore controls the price of that article everywhere. Now, the mere existence of a combination having such an object and possessing such extraordinary power is itself under settled principles of law — there being no adjudged case to the contrary in this country — a direct restraint of trade in the

[1] 102 U. S. 691.

article for the control of the sales of which in this country that combination was organized. And that restraint is felt in all the states for the reason known to all, that the article in question goes, was intended to go and must always go into commerce among the several states and into the homes of people in every condition of life.

Finally, Judge Harlan argued for the public policy of the Anti-Trust Law in the following language:

We have before us the case of a combination which absolutely controls, or may at its discretion control, the price of all refined sugar in this country. Suppose another combination organized for private gain and to control prices should obtain possession of all the large flour mills in the United States; another of all the grain elevators; another of all the oil territory; another of all the salt-producing regions; another of all the cotton-mills; and another of all the great establishments for slaughtering animals and the preparation of meats. What power is competent to protect the people of the United States against such dangers except a national power — one that is capable of exerting its sovereign authority throughout every part of the territory and over all the people of the nation?

The decision of the United States supreme court, holding that the manufacture and sale of commodities were not, as not being objects of interstate commerce, subject to the regulation of Congress, was therefore not reached without protest; but the court was so nearly unanimous in its decision as to justify the belief that the decision itself will not be reversed in the immediate future.[1] The experiences of the states and the arguments advanced by Judge Harlan in his dissenting opinion would lead also to the belief that the regulation of these trade combinations by the states is practically impossible. Any attempt at efficient regulation must come from the national government.

In view of the fact that great insistence was laid in the last presidential campaign upon the necessity of some efficient regulation of combinations in restraint of trade, it may be well to summarize the views that the courts have expressed as to the

[1] The opinion of the majority in the recent case of the Trans-Missouri Freight Association seems, however, to render the future tendency somewhat uncertain.

impolicy of permitting these combinations to exist and of recognizing or enforcing in any way contracts for executing their purposes.

The reasons given by the courts for their attitude may be classified under three heads — economic, social and political. The economic reasons are two in number. In the first place, it is believed by the courts that a combination in restraint of trade and tending to promote a monopoly will result either in the sale of a depreciated article to the public, or in an enhancement of the price of the article which is so controlled. This was the important economic reason at the basis of the decision in the time of Queen Elizabeth, relative to monopolies granted by the crown. This reason has had so much weight with the courts that they have refused to investigate the question whether such has been the effect of a combination. They have simply declared that the possession of monopoly powers by any combination must inevitably result in an enhancement of price or in a depreciation in the quality of the article sold. Their reasoning here, it will be noticed, is distinctly *a priori;* and so long as they adhere to this principle, it will be impossible to prove by reference to actual facts whether it is based upon the truth or not. The second economic argument advanced by the courts in support of their policy is that the fixing by any combination of the price of raw materials injures the producer of the raw material, and will ultimately result in disadvantage to the consumer.

The social argument against combinations also dates from the time of Elizabeth. A monopoly, the court said,

> tends to the impoverishment of divers artificers and others who before by the labor of their hands in their art or trade have maintained themselves and their families, who will now of necessity be constrained to live in idleness and beggary.

In the form in which it is put, this argument would seem to rest on a misapprehension of the conditions caused by monopolies; and if applied in as broad a way as it is stated in this case, it would be available against the introduction of all labor-saving machinery. In the Ohio case of the State *vs.* The Standard Oil

Co., already referred to, this argument was somewhat modified. The court took the ground, not so much that the formation of the combination throws great numbers of individuals out of employment, as that the development of monopolies transforms great numbers of persons formerly independent into employees or servants. This argument, though treated by the Ohio court as a development of the view of the English court in the case of monopolies, is really quite different in character. A further argument of a social character is to be found in the opinion of Judge Finch in the Sugar Trust case. He based the right of the state to limit the activity of corporations, as distinct from that of individuals, on the ground that a direct grant of corporate powers would, if these powers were not limited, aid in the aggregation of wealth in a few hands. He did not desire to limit the right of individual action, but merely claimed that when specific powers which can only exist as a result of the grant of the state are exercised by individuals, they become rightly subject to regulation in the interest of the state as a whole. It is one thing, said he, for the state to respect the rights of ownership and protect them out of regard to the business freedom of the citizen; but it is quite another thing for the state positively to promote the aggregation of capital by creating artificial persons such as corporations, without limiting their powers.

The political reason advanced by the courts for their position with regard to trade combinations is perhaps as well stated as anywhere by the supreme court of Georgia. Here it is pointed out that all large accumulations of property in hands likely to keep it intact for a long period are dangerous to the public weal. In England it was found necessary to limit the amount of property which even religious corporations might possess, notwithstanding the fact that they, far more than trading bodies, might be expected to exercise their powers for the general good. Given the privilege of legal immortality, corporations, it was held, are apt to "become entirely too strong for that society which is made up of those whose plans are limited by a single life."

Columbia University in the City of New York

Columbia University, pedagogically, consists of a college and ›versity. The college is Columbia College, founded in 1754. ›niversity consists of the Faculties of Law, Medicine, Applied ›ce, Philosophy, Political Science and Pure Science.

The point of contact between the college and the university is senior year of the college, during which year students in the ›ge pursue their studies, with the consent of the college faculty, ›er one or more of the faculties of the university.

The various schools are under the charge of their own faculties, ›xcept that the Schools of Mines, Chemistry, Engineering and Archi›ecture are all under the charge of the Faculty of Applied Science, and for the better conduct of the strictly university work, as well as of the whole instruction, a university council has been established.

I. THE COLLEGE.

The college has a curriculum of four years' duration, leading to the degree of Bachelor of Arts. Candidates for admission to the college must be at least fifteen years of age, and pass an examination on prescribed subjects, the particulars concerning which may be found in the annual Circular of Information.

II. THE UNIVERSITY.

Pedagogically, the faculties of Law, Medicine, Applied Science, Political Science, Philosophy and Pure Science taken together constitute the university. These faculties offer advanced courses of study and investigation, respectively, in (*a*) private or municipal law, (*b*) medicine, (*c*) applied science, (*d*) history, economics and public law, (*e*) philosophy, philology and letters, and (*f*) mathematics and natural science. Courses of study under one or more of these faculties are open to members of the senior class in the college, and to all students who have successfully pursued an equivalent course of undergraduate study to the close of the junior year. These courses lead, through the Bachelor's degree, to the university degrees of Master of Arts and Doctor of Philosophy. The degree of Master of Laws is also conferred for advanced work in law done under the faculties of Law and Political Science together.

III. THE PROFESSIONAL SCHOOLS.

The faculties of Law, Medicine and Applied Science conduct respectively the professional schools of Law, Medicine, Mines, Chemistry, Engineering and Architecture, to which all students, as well those not having pursued a course of undergraduate studies as those who have, are admitted on terms prescribed by the faculties concerned, as candidates for professional degrees.

1. The School of Law, established in 1858, offers a three years' course of study in common law and equity jurisprudence, medical jurisprudence, criminal and constitutional law, international law, public and private, and comparative jurisprudence. The degree of Bachelor of Laws is conferred on the satisfactory completion of the course.

2. The College of Physicians and Surgeons, founded in 1807, offers a four years' course in the principles and practice of medicine and surgery, leading to the degree of Doctor of Medicine.

3. The School of Mines, established in 1864, offers courses of study, each of four years' duration, and each leading to an appropriate professional degree in mining engineering and metallurgy.

4. The Schools of Chemistry, Engineering and Architecture, set off from the School of Mines in 1896, offer respectively four-year courses of study, each leading to an appropriate professional degree, in analytical and applied chemistry; in civil, sanitary, electrical and mechanical engineering, and in architecture.

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Such are the rules of law in the United States with regard to the legality of trade combinations, and such are the reasons which the courts have advanced for the adoption of these rules. If these reasons are not sound, if the conditions of society are not what they were when these rules were adopted and these reasons were first advanced, it would be well that the rules of law be changed. Changes may be made by legislation, as has very generally been done in the case of labor combinations. If, on the other hand, these reasons are now sound and the rules of law based thereon are at the present time in accordance with public policy, some method ought to be provided for their efficient enforcement. This, it has been pointed out, can in the cases of the largest combinations now in existence be done only through the modification of the present rule of the United States supreme court with regard to national regulation of monopolies; or, in case the supreme court shall not see fit to modify its rules, by the adoption of a constitutional provision giving the Congress of the United States the necessary powers.

FRANK J. GOODNOW.

THE WIRE-NAIL ASSOCIATION OF 1895-96.

SO lately as 1888 *The American Architect* began an article on nails in this way: "The nails commonly used in connection with building operations are too well known to require any description. They are specifically designated as plate nails."[1] That year, 1888, was almost the first in which plate or cut nails felt a real competition from wire nails. In that year the latter formed less than a fifth of the total product;[2] in 1895 they constituted nearly three-fourths. The idea of making nails of wire did not arise in America; in fact, our people were even somewhat slow to adopt it. The first wire nails — headed by hand and ground to a point — appear to have been made in France early in this century.[3] Mr. M. Baackes, an old wire-nail manufacturer of Cleveland, says that the first machine for forming the heads was made in France about 1850.[4] According to Mr. John Hassall, who is still engaged in making wire-nail machinery in New York city, his father was active in making and running the first wire-nail machines used in this country, early in the fifties.[5] The business seems to have extended itself only modestly, for Mr. Baackes regards the factory which he helped to start at Covington, Ky., in 1875, as "the first mill for the manufacture of wire nails on this side of the Atlantic."[6] The production rose from 20,000 kegs in 1880, according to Mr. Baackes's estimate, to 125,000 in 1887; and the average price fell from $20.00 per keg in 1875 and $10.00 in 1880 to $4.81 in 1887. At the end of 1887 a manufacturer wrote: "Wire nails are now quoted at less than actual cost, as results will in time demonstrate."[7] About the same

[1] *American Architect*, Aug. 18, 1888, p. 73.
[2] Report of American Iron and Steel Association, 1889, p. 45.
[3] M. Baackes, in *Iron Age*, Jan. 2, 1896, p. 106.
[4] *Ibid.*
[5] *Iron Age*, April 23, 1896, p. 997.
[6] M. Baackes, in *Iron Age*, Jan. 2, 1896, p. 106.
[7] *Iron Age*, Jan. 5, 1888, p. 22.

time *The Iron Age*, the leading paper of the hardware trac said editorially: "It is evident that the business is now greatly overdone."[1] The production increased, however, to more than 300,000 kegs in 1890, and to nearly 600,000 kegs in 1895; and the average price fell to $2.85 in 1890, according to the estimate of Mr. Baackes, and to $1.60 in 1894. At present, April 1, 1897, it is about $1.50. These facts show how recently and how rapidly the business has attained importance, and how fast the price of wire nails has fallen.

The profits of the early wire-nail men, as first comers in the field, were doubtless good; but the cost of production at that time must not be gauged by the later selling prices. At the outset their machinery was imperfect. Then, the first nails were of small sizes, for special purposes, such as use in cigar boxes, furniture, mouldings and wagons; and small nails are relatively costly. It was not till 1886 that a list of regular or "penny" nails was published, and a serious effort was made to compete with cut nails in the general market. The wire of the first makers, too, was all of Norway iron; for they could not get any other material on which they could form a head that would not break off in driving. The H. P. Nail Co., established in 1879, is said to have been the first to succeed in using Bessemer steel wire. Finally, the price of Bessemer steel itself was at first much higher than now. Although quotations on steel billets earlier than 1887 are not available, their fall in price may be gauged by that of steel rails, which dropped from an average of $48.25 per ton in 1879 and $67.50 in 1880 to $37.08 in 1887. Billets were $32.55 on the average in 1887 and $16.58 in 1894,[2] while they are now quoted at about $15.00. It was the removal of these early limitations that made possible the great expansion of the industry.

As the business is now carried on, regular nails are sold with reference to a "base price" and a uniform schedule, or "card," of "extras." Excepting under the card made in 1895, the base has always been the same as the price of the largest nails. It

[1] *Iron Age*, Jan. 5, 1888, p. 22.

[2] Report of American Iron and Steel Association, 1896, p. 26.

the base only that is named in market reports and in quotations. The extras, which are added to the base to determine the prices of the smaller sizes, are fixed by agreement of the manufacturers, and are likely to remain unchanged for several years together. From April 11, 1892, to July 19, 1895, the card was as follows:

60-d.	base (no extra)
50-d.	$.10 extra
30-d. and 40-d.	.25 "
20-d.	.35 "
12-d. " 16-d.	.45 "
10-d.	.50 "
8-d. " 9-d.	.60 "
6-d. " 7-d.	.75 "
4-d. " 5-d.	.90 "
3-d.	1.20 "
2-d.	1.60 "

When 60-d. nails were quoted at $.85, put up in a keg which I am assured by a manufacturer cost at least $.09, the wire from which they were made was quoted at $1.15. Every nail-maker who bought his wire in the market lost the whole cost of handling and manufacture, and nearly four-tenths of a cent besides, on every pound of 60-d. nails he sold. The explanation of his apparent willingness to sell below cost is found in the character of the list of extras, and in the manner in which all orders were required to be assorted. The extras on all the smaller nails were far greater than the differences in cost between them and the largest. Indeed, the wire for a keg of 12-d. nails cost no more than that for a keg of 60-d. No manufacturer would sell 60-d. alone at the market price. All orders had to be so assorted that the average of the extras on the whole should be at least $.60 per keg: that is, if a dealer gave an order for a hundred kegs, at a base price of $.85, he had to make it up in such a way that the average price of the whole, by the schedule, would be not less than $1.45. So the loss on the larger and cheaper sizes was covered by the gain on the smaller and dearer. Some small manufacturers

took advantage of this artificial adjustment of prices, by making only the smaller sizes, and leaving the losing end of the schedule to the great establishments.

1. *History of the Association.*

Iron and steel products have been particularly fruitful of combinations; but before 1895 circumstances had not been favorable to bringing wire nails into the list. The manufacturers had been fairly contented, making the comfortable profits of a new and rapidly growing business. It is probable that combinations are not easily formed in any industry so long as the average man of those concerned, with average advantages, can make such a profit as the general opinion of business men pronounces fair; and that consolidation generally results from a strong sense of pressure. In this business, by the beginning of 1895, the necessary pressure had developed. The manufacturers cried out with one voice that they were ruined by competition. It must be noted, however, that most men do not consider it good policy, under any circumstances, to magnify their profits before the world; that men who have been accustomed to large profits do really imagine themselves ruined when they are reduced to not much more than ordinary interest on their capital; and that lugubrious statements, made in general terms and without figures, ought not to be taken without salt. The bulk of the wire-nail business was in the hands of six or eight great companies, which had their own wire mills and rod mills, and put the material through all the processes from the form of the steel billet. So long as smaller concerns, buying their wire in the market, continued to do business, it strains credulity somewhat to believe that the great establishments did not make moderate profits. The curious arrangement of the schedule of extras does seem to have given a certain opportunity to small makers; but the matter was in the hands of the great companies, and they would have changed the schedule if they had found it to work strongly against them. The strict requirement of assorted orders made it impossible for any maker of small nails only to do more than

a very restricted business. If any dealer bought many nails of such a maker, he could not buy his large nails at the market price.

The days of good profit to the average man with average advantages were, however, gone by; and the manufacturers — large and small alike — were in a state of mind to yield themselves plastic to the hand that could organize the machinery for increasing profits. This hand belonged to Mr. John H. Parks of Boston, who had been a member of the old firm of Loring & Parks, long well known as manufacturers of tacks. That firm combined with their principal competitors, some six years ago, in forming the Atlas Tack Corporation, which is still the giant of the tack trade; though the leading men connected with it have thought it well during the last few months to put it through a receivership and a reorganization, with the usual absorption of the interests of the smaller investors. For several years past, Mr. Parks has confined his personal attention to the promotion of combinations in various lines of hardware. Bolts and shovels, as well as tacks and nails, have known his supple hand. From a time early in the spring of 1895, he seems to have been busy in working up an agreement among the manufacturers of nails. The approaching consummation of this enterprise was announced on May 2, through *The Iron Age*, in the following words:

> With a view to securing a better condition of things and correcting influences which hitherto have tended toward irregularity in prices and the unsettling of the market, the manufacturers have been conferring with a view to concerted action in this direction.

The combination began its activity with the customary declaration as to its moderate purposes with respect to price. In the article from which I have quoted, this vital matter is thus dealt with: "The manufacturers directly concerned in the movement disclaim any intention of advancing prices unreasonably, their purpose being to market their goods at a reasonable profit."

The first effect of the rise of the combination was a press of orders. Many jobbers bought all the nails that they expected

to need for six months or more. From about May 1 the manufacturers refused to accept any orders for shipment later than May 30. By May 15 the base price had risen to $.95; and by the 20th it had become so difficult to place large orders that there was no quotable price. Some sales were, however, reported about this time at $1.15 to $1.20. The combination was formally completed in the last week of May, and the base price for June was fixed at $1.20, for car lots, f. o. b. Pittsburg. All nails, no matter from what mill, were to be sold, freight paid, on the basis of the Pittsburg price, plus the rate of freight from Pittsburg to the point of destination. For instance, a customer at Anderson, Ind., would have to pay a base price, consisting of $1.20 plus the rate of freight from Pittsburg to Anderson, whether he bought in Pittsburg, or in Cleveland, or from the mill in his own town. Jobbers were allowed a discount of five cents per keg on purchases of a thousand kegs from one mill within one calendar month; and the minimum was soon reduced to five hundred kegs. In addition, a rebate of ten cents per keg, payable after six months, was offered to jobbers who should neither buy any nails from outside makers nor sell below the association price.

The form of the association was that of a simple pool. Prices and output were always fixed for a month in advance. The agreed production was apportioned to the companies on a basis depending partly on sales for three months before the pool was formed, partly on production in one of those three months, and partly on capacity as indicated by the number of machines. Any mill could sell its privilege of production, or any part of it; but every mill was rigidly restricted to its allotment during each calendar month, unless it bought the allotment of another. A cost price was assumed, which was supposed to represent the cost of production at Pittsburg; and the cost at every other point was assumed to be equivalent to the Pittsburg cost with freight from Pittsburg added. This was because the raw material comes chiefly from the Pittsburg region. So the selling price, including delivery at the buyer's railroad station, and the assumed cost price were harmonized by the use of the

Pittsburg base. All the profits, above the cost prices so arrived at, were paid into the pool; and the amount in the pool, after paying all expenses, was divided monthly. The basis of division was the same as the basis for the allotment of production.

An inspector, hired by the association, was placed at each association mill, with the most sweeping powers of investigation. Every part of the mill, every book, every letter written or received, was open to him. So far as possible, outside owners of nail machines were hired to keep them idle, and makers of machines were hired to refuse orders for them from persons outside the association. For a year it was very difficult to buy a machine, and while the association lasted it was never easy. A company which went into the business in the autumn of 1896 writes:

> We found the market in which we could buy machines was very limited, most of the machine manufacturers having entered into an arrangement with the combination to stop making them for outside parties. We were unable to obtain what we wanted, and consequently our production of nails was much below what we intended it to be when we started.

With a similar combination of Canadian nail manufacturers, the association made an agreement by which each bound itself not to offer goods in the territory of the other. Efforts were also made to induce the European manufacturers to agree to let none of their nails come to America. Although it is said that they did not meet with much success, only one large lot of nails and a few small lots were actually imported during the existence of the pool.

The agreement of the wire-nail men was accompanied by a similar agreement of the cut-nail men. Although separate in form, these two organizations acted as one. The price of cut nails was accordingly advanced with that of wire nails, at first 20 cents below, and afterwards uniformly 25 cents below — a difference not relatively greater than that which had existed before the pool was formed. Wire nails were so far preferred that, in spite of the difference in price, their competition had reduced the trade in cut nails to a fraction of its former size,

and had thrown hundreds of cut-nail machines out of use. The existence of these machines was one of the chief sources of embarrassment to the two associations. The wire-nail pool had to turn over large sums to its weaker associate, to be used in paying the owners of these old cut-nail machines to keep them idle.

The demand for nails continued very strong through June. The production for the month had been restricted somewhat, in order to ensure control of the market. Before the 12th the mills had sold their entire allotments for the month and were refusing all orders.[1] Yet, at their meeting held the week following, they made a further restriction of their output for July, reducing it to about half the average monthly product for the previous year,[2] and fixing the price for July at $1.55. Dealers anticipated a further advance, and in their desire to protect themselves clamored for nails. Before July 4 some manufacturers had sold their entire allotment for the month and were again refusing orders. By the 10th, few nails could be bought from manufacturers.[3] On July 18 a new "card," or schedule of extras, was adopted. The extras on 10-d. and smaller nails were not changed; but all larger sizes were put on an equality with 10-d., with an extra of 50 cents. The requirement of assorted orders, or a minimum average of extras, was abolished; but the lowest extra was now almost up to the old required average. The base price for August was made $2.05.

The success of the nail combination had been followed by a sharp and general advance in the prices of iron and steel products, and had doubtless contributed to cause it. A market report of May 30 said: "Billets are $17.50 and will likely be higher, and the agreement reached by the wire-nail mills is also having its effect on rods, and prices are very much higher."[4] Between May 1 and August 1 plain wire, from which nails are made, rose from a base price of $1.10 per cwt. to $1.50; wire rods, from which wire is drawn, from $21 per gross ton to $29.00; steel billets, from which rods are rolled, from $15.50 per gross ton to $21.50. There seems

[1] *Iron Age*, June 13, 1895, p. 1248.
[2] *Ibid.*, July 11, 1895, p. 85.
[3] *Ibid.*
[4] *Ibid.*, May 30, 1895, p. 1143.

to have been what is called a good understanding between the producers in these lines, but no formal combination. On August 22, however, this announcement appeared: "The barb-wire trade has been organized on the same lines as the wire-nail trade. A sharp advance in prices has been made. Plain wire will likely advance in sympathy with barb wire."[1] On September 5 it was announced that prices of plain wire had been advanced, "as the result of an understanding arrived at by the manufacturers." The base price of wire nails was advanced to $2.25 on September 1, "in view of the increased cost of raw material." The demand had continued good during August. In the latter part of the month, in consequence of the restriction of output, there had been some scarcity. In September the demand began to fall off notably, but the mills disposed of their allotments for the month. Trade was poor in October, and in November it was very light. The manufacturers complained particularly of the large stocks which the jobbers had on hand, and which some of them were offering rather under the combination price. The pool was strengthened in November, however, by the accession of several companies which had been operating outside.

About November 25 the only large lot of nails which has been imported into this country in many years was received by the Bigelow & Dowse Co., of Boston. Rumor puts the amount at about 5000 kegs, or 20 carloads. Several small lots were received at New York during the next year, but the largest is not believed to have exceeded 500 kegs. It is not known by what means the Bigelow & Dowse Co. were convinced that it would be better not to repeat their operation; but apparently they did not cut the association price, and they brought in no more nails. Jobbers, who investigated the matter with a view to importing, say that English nails could not at any time have been imported with profit, but that German and Belgian nails could have been laid down in Boston or New York at from 50 to 70 cents below the highest price reached by the pool, even after paying the duty of 25 per cent. It required more

[1] *Iron Age*, Aug. 22, 1895, p. 404.

courage than appears at first sight, however, to venture on placing foreign orders. The German and Belgian nails are shipped in bags, and to make them salable in the American market they must be kegged after receipt, at an expense of from 10 to 20 cents a keg. The head is formed a little differently from that of the American nail, and the tendency of human nature to reject the unaccustomed might cause some objection to it. But the chief deterrent of imports, aside from the tariff, was the power of the pool to drop the price at any time to a point that would cause the importer a very serious loss. Nothing would have been so likely to cause a drop as the fact that large foreign orders were being placed.

The duty on nails does not now serve any purpose except to increase the power of combinations. Nails are produced here as cheaply as anywhere in the world, and are regularly exported. The duty does not protect the industry, and under full competition does not affect the price. But if there had been no duty when the pool was organized, either it would not have been organized, or it would have had to content itself with a much more moderate advance. An excessive advance would have caused the other obstacles to importation to be overcome, and would have led to free purchases abroad.

In December the manufacturers gave jobbers a guaranty on their December purchases against decline in January: that is, they agreed that, if they made a reduction of price in January, they would give jobbers a corresponding rebate on such nails bought in December as they had still on hand. This policy was thereafter followed from month to month till near the breaking up of the association. It was meant to induce freer buying by the jobbers; but its success was slight. The demand for nails was exceedingly light during the winter, and the stagnation propagated itself back to the market for raw material. In a market report of Jan. 2, 1896, is this remark: "Until there is an improvement in the wire and wire-nail trades, it is not likely there will be any demand for rods." On January 16 it was stated from Pittsburg that no sales of rods had been reported in that market for some time. Early in February the nail

association announced an advance of 15 cents, to take effect March 1. This galvanized the market into a mild, convulsive movement. The operation was repeated in April, with an announcement of an advance of 15 cents to take effect May 1. Trade was very dull, however, and the manufacturers admitted that the market was a good deal disturbed by outside nails and by the offerings of jobbers. High prices had so curtailed consumption that a considerable quantity of nails, bought before the pool was formed or in its early days, was probably still in the jobbers' hands. These formed a disturbing element, in addition to the growing production of outside factories.

About April 1, 1896, the makers of steel billets formed a pool. The amount of billets in the hands of middlemen, or contracted for by them, was so great, however, that the attempt of the pool to raise prices $3 or more per ton was only partially successful. The wire-rod makers also tried to form a pool, but after much negotiation were unable to agree. Their good understanding, however, seems to have continued.

Early in June the nail association succeeded in coming to terms with the Pittsburg Wire Co. and Baackes & Co., of Pittsburg, by which these companies agreed to stop making wire nails. Their nail mills were by no means of the first rank; but they were large enough to make a considerable figure in the market under the existing circumstances of very small consumption, and they had been selling somewhat below the association price.

If the statements of the manufacturers could be accepted freely, we should need to explain to ourselves the rather curious phenomenon of producers keeping the price of their product abnormally high, contrary to their own desires, in deference to the wishes of their customers. It was semi-officially announced that while the manufacturers came to their meeting on June 3 with the general expectation that some action would be taken looking toward a reduction in price, they were confronted with many letters from jobbers emphasizing the injury that would be done to the market by the reduction in the price of so staple a commodity as nails, and urging the manufacturers to maintain existing prices.[1]

[1] *Iron Age*, June 11, 1896, p. 1384.

Such a phenomenon would not have been inexplicable if it had existed; but an examination of twenty-nine letters of jobbers on the situation, published about that time, indicates that it was essentially a myth. Two of these regarded the price as a matter which concerned no one except the manufacturers, and which no one else ought to trouble himself about. Only seven could be counted against an instant reduction, on any construction of their words. Nineteen either were opposed to the existing high prices or at least went so far as to say that, if a reduction were to come before January 1 (a matter on which they expressed no opinion), it had better come at once. The retailers were unanimous for reduction, complaining of a great falling off in their sales, which some put as high as fifty per cent. They reported that building and repairing were much interfered with.

Meantime a growing number of small mills gave the association increasing annoyance. By July 1 it was estimated that 25,000 kegs a month were made by outside mills. The total sales for June, by the association and outsiders, were estimated at 90,000 kegs;[1] while it was said that the allotment for July was 65,000 kegs,[2] and that the associated manufacturers did not sell so many.[3] These statements were made by the Pittsburg office of the *Iron Age*, which was at the center of the movement, and which ought not, it would seem, to have sent out any but well-founded statements — at least about matters so definitely fixed as the monthly allotment. There is reason, however, for supposing that these figures were too low. A man who knows the innermost history of the combination has said that he does not think there was any month in which the manufacturers in the pool did not sell 150,000 kegs. This statement seems modest enough, considering that the average monthly production for 1895 was nearly 500,000 kegs.

Rumors of concessions and irregularities in price increased. On September 1 the guaranty to jobbers on each month's purchases against decline in the succeeding month was discontinued.

[1] *Iron Age*, July 23, 1896, p. 186. [2] *Ibid.*, July 30, 1896, p. 236.
[3] *Ibid.*, Aug. 13, 1896, p. 334.

It was noted with satisfaction that, in spite of the low prices which had to be made to meet foreign competition, the export trade was assuming relatively large proportions.[1] Early in September several outside manufacturers were induced, on expensive terms, to withdraw from the market. It was claimed that the production of those still outside was insignificant; but, in spite of this claim, the association lost its grip on prices to an extent far greater than at any earlier time. Chicago was the center of greatest disturbance. Nails were openly offered there by jobbers at $2.50, and finally at $2.25, for small lots from store, for which the association price was $2.80. The demand, however, showed a great improvement in September, and it continued good in October. It was estimated that the total output for October would be about 250,000 kegs,[2] or about half the average monthly output for 1895. Soon after October 1, the manufacturers succeeded in patching up the trouble at Chicago; and about the 15th the market reports said that there was "not a suspicion of weakness in any direction," and that the association had "demonstrated its ability to control the situation." It was, nevertheless, hardly two weeks before the final break appeared. About November 1 Chicago jobbers began to offer nails from store at $2.40. The break spread rapidly, and by the 10th the association price was merely nominal. Demand continued light. No one bought more nails than he had to have, because to-day's price was always likely to be bettered to-morrow. About November 20 nails were openly offered at Chicago at $1.50 by representatives of association mills. On December 1 the association held its last meeting, adopted a new card of extras, and formally dissolved. The new extras on common nails are as follows:

20-d. to 60-d.	base
10-d. " 16-d.	$.05
8-d. and 9-d.	.10
6-d. " 7-d.	.20
4-d. " 5-d.	.30
3-d.	.45
2-d.	.70

[1] *Iron Age*, Sept. 10, p. 512.

[2] *Ibid.*, Oct. 29, 1896, p. 837.

This schedule makes a large reduction in the relative price of small nails, which was undoubtedly intended to shut out the small manufacturers who had been making small nails only. The new card, however, comes much nearer than any previous one to representing the relative cost of large and small nails, under present conditions of manufacture.

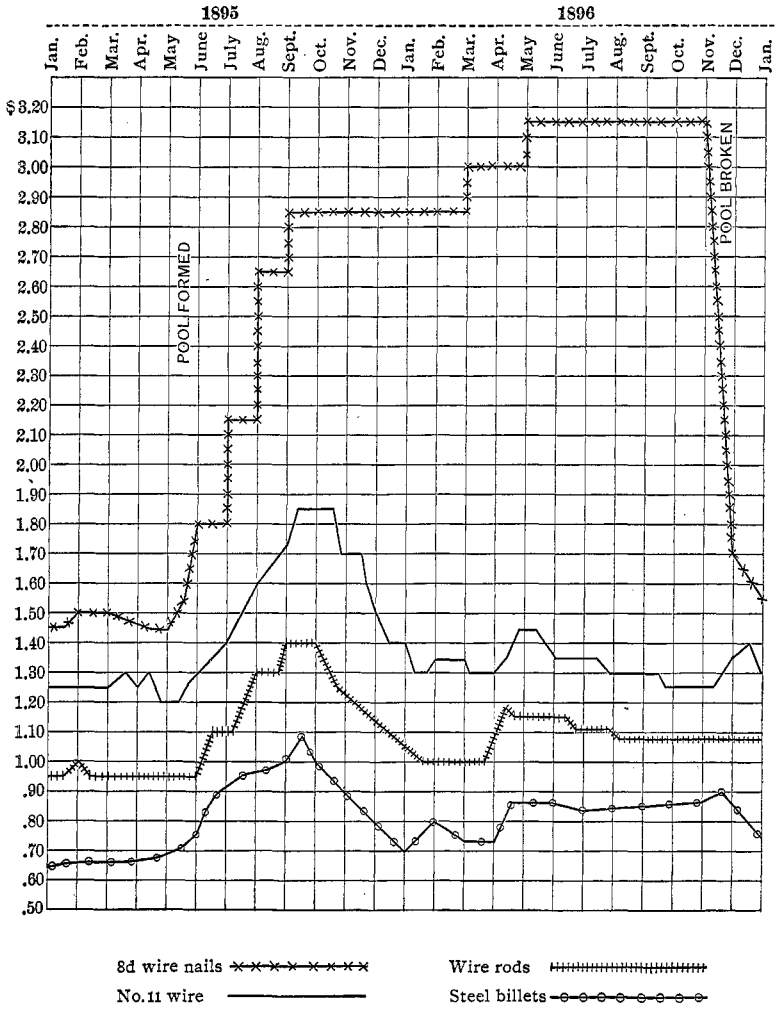
II. *The Course of Prices.*

When it is said that nails were selling on May 1, 1895, at $.85, and that on May 1, 1896, the association made the price $2.55, the price appears to have been multiplied within a year exactly by three. The case looks still worse when it is said that 60-d. nails sold in 1895 for $.85 a keg, and in 1896 for $3.05. In reality, while an ordinary bill of nails would have cost on May 1, 1896, at least $1.70 per keg more than a year earlier, it would not have cost three times as much. No nails were sold at the nominal base price in 1896; and though 60-d. nails were nominally sold at the base rate before the change of card in 1895, the statement that the price of 60-d. nails was at one time $.85 gives a false impression, for reasons which I have explained. A comparison of base prices after Dec. 1, 1896 with earlier ones is altogether misleading, because the present extras are much smaller. It has been estimated that a well-assorted order of nails would carry an average extra of about $.62 on the old card, $.70 on that of July 19, 1895, and $.12 on that of Dec. 1, 1896.[1] Perhaps there is no better simple measure of the actual course of the market than the change in the price of 8-d. nails. This size is used in large quantities; and when assorted orders were required, the extra on it was the same as the required average of extras. But this does not give a perfectly true idea of the changes of price. It is necessary to remember that during the life of the association the prices of the larger nails were increased even more by the increase of the extras on them.

The diagram printed below shows the movement during 1895

[1] *Iron Age*, Dec. 10, 1896, p. 1161.

and 1896 of the prices of 8-d. wire nails, of No. 11 wire, from which these nails are made, of wire rods and of steel billets. It is based upon the Pittsburg quotations, as published from week to week in the *Iron Age*. No. 11 wire costs about $.10 per cwt. more than the base sizes quoted in the market reports.



Iron and steel went through a notable boom and collapse in 1895. Without any marked change in the general condition of the country, without any corresponding change in general prices,

without any strong parallel movement in other countries, the prices of crude iron and steel, and other prices directly dependent on them, rose fast and steadily for some five months, and fell even faster in the next three. Between April 1 and September 15 steel billets rose more than sixty per cent, while by December 15 they were within ten per cent of the old level. It is not easy to get a fully satisfactory explanation of the rise. Near the end of March the Carnegie interests contributed to start it by very large purchases of iron. About the same time the H. C. Frick Coke Company announced an advance of fifteen per cent in wages, and an advance of more than thirty per cent in the price of coke, to take effect April 1;[1] and other coke shippers followed their lead. This made a great increase in the cost of producing and working iron and steel. A little later labor disputes threatened to stop production; and when they were settled, it was by an advance of wages. Other advances were announced by the great steel companies during May and June. These increases seemed to justify and to fasten the higher prices. Men gathered confidence that good times were coming, and that prices were not only to stay up, but to go higher. This confidence, reacting, bred demand; and renewed demand pushed prices higher and higher. The success of the nail combination, and the temporary activity which the advance in nails and the expectation of advance occasioned in the market, were among the causes which contributed to these phenomena. It is doubtful whether the rise of raw material had the slightest influence upon the price of nails; for the rise of nails began before that of steel, was eminently artificial, and was continued after the raw material had sunk nearly to its former price.

III. *The Interests of Dealers and Laborers.*

The undesirability, from the standpoint of those who want to use nails, of any restriction upon the use of them and of having to pay high prices to get them, is too obvious to be insisted on. The retail hardware dealers suffered with the

[1] *Iron Age*, March 21, 1895, p. 607.

consumers. Their sales were curtailed, without a proportionate increase in their profit per pound. They had to bear the brunt of their customers' complaints about the price of nails. They complained, also, of the annoyance which was caused by the new card of extras, under which the cheapest nails cost fifty cents per keg more than the nominal base price. When their customers saw nails quoted in the papers at $2.25, it was hard to convince them that the actual wholesale price of 60-d. spikes was $2.75. The jobbers, on the other hand, made large profits on the stocks which they bought before the pool was formed, or soon after; and they were enabled, by the system of discounts and rebates, which the manufacturers maintained, to make at least their usual profit on current purchases. This policy was meant to make the jobbers friendly to the association; and it seems to have been largely successful.

Some of the mills showed a disposition to raise wages as they advanced their prices, and so to make some little division of profits with their men. It was reported that one of the great companies gave its men an advance of ten per cent in June, 1895,[1] and ten per cent more about March 1, 1896;[2] that another raised wages ten per cent in July, 1895;[3] and that a third, after a strike, in September, 1895, advanced its wire-drawers ten per cent and fifteen per cent, and its nail-makers five per cent.[4] But the last-mentioned company, which at its full capacity employs about one thousand hands, at one time cut down its force to about three hundred. This reduction is proportional to the reduction of total sales from 500,000 kegs a month to 150,000. It seems safe to assume that the other companies must have made similar reductions. If half or two-thirds of the laborers were thus thrown out of work, they were not much helped by a small increase in the rate of wages paid to the rest.

The restriction of the employment of labor did not stop at the nail mills; there was a diffused effect which was probably greater, though it is less traceable. There is reason to believe

[1] *Iron Age*, June 20, 1895, p. 1288.
[2] *Ibid.*, March 12, 1896, p. 656.
[3] *Ibid.*, July 18, 1895, p. 129.
[4] *Ibid.*, Sept. 5, 1895, p. 496.

that building, and especially repairing, were perceptibly retarded.[1] To raise the retail price of a keg of nails, say from two dollars to four, must under any circumstances diminish purchases to some extent. The effect will be greater if the circumstances make it seem likely that the rise is temporary. In the present case, there was the added influence of a lively conviction of the buyers that the manufacturers were trying to rob them. If a man thinks that an effort is made to impose upon him, he will often subject himself to a good deal of inconvenience, for the satisfaction of thinking that he has not been imposed on. It is likely that thousands of men did without improvements which they could not afford to do without, because they would not submit to what they regarded as the arbitrary demands of the nail combination. It was, perhaps, in part because the manufacturers left this moral effect out of their reckoning, that the extent of the diminution of demand took them by surprise. Their calculations doubtless accorded with the view recently expressed by a small manufacturer, who experienced a strong demand while the association lasted, because he sold nails a little under the association price. He said:

> I do not think that the high price of nails restricted consumption to any perceptible extent. The item of nails in the cost of building is a very small one, and it was not over five or six years ago that the price was about the same as that fixed by the recent combination.

Consumption was not so small as production during the last months of 1895, or perhaps during the early months of 1896, while the jobbers still had some part of the stocks which they had laid in about the time the pool was formed. But the best information obtainable makes it appear that, during 1896, consumption as well as production must have been small beyond any possible expectation.

IV. *The Interest of the Manufacturers.*

It is apparently the general opinion that, quite aside from any consideration of the public welfare, and looking only to the pecuniary interest of the manufacturers, the combination

[1] *Iron Age*, June 25, 1896, pp. 1490–1493.

carried the policy of high prices too far. The association went to pieces after eighteen months, and prices went down to their former level; therefore it is assumed that the combination failed or, at least, that it would have accomplished its purpose more fully by a more moderate policy. The matter does not seem to me so simple. Mr. Parks, who was undoubtedly the guiding spirit in the whole transaction, went into it with eyes very wide open. He had already been connected with several tack combinations managed on the same principles. Of course they came to a rather speedy end; but Mr. Parks seems to have counted their experience as favorable, on the whole, to the policy of a short life and a merry one for pools. Moreover, he still maintains the wisdom of the course that he counseled. When the association collapsed, he said that it had lived longer than its most sanguine promoters expected, and as a financial undertaking had been an unprecedented success.[1] The manner of argument of a man who was connected with the association throughout its existence is as follows:

> Suppose we had put up the price $.15 a keg. A great many men who had had their eye on the nail business, would have said: "Those men have put up the price $.15, and they will probably make it $.25. There is going to be money in the nail business. I will go in." But when we put up the price $1.50, they said: "Those fellows are lunatics. They can't hold together. There will be a smash before they get fairly started. I will keep out of that business." As a matter of fact, we had hardly any new competition during the first year of the association. The new competition came mostly after the beginning of the second year. Then men began to say: "Those fellows have kept together twelve months, and they will probably do it a while longer. They are making a lot of money. I will try to get a slice of it." I am sure we kept the association going longer with a high price than we could have kept it going with a low price. I don't believe it would have lasted six months with a raise of $.25. The high price frightened off some people, and gave us plenty of money to buy off the rest.

It is hardly possible to over-emphasize the distinction between the great consolidations of which the so-called sugar trust may

[1] *Iron Age*, Dec. 3, 1896, p. 1108.

be taken as a type — consolidations which it may not be improper to distinguish specifically as trusts, because the typical examples were first united under the proper trust form of organization — and pools like the nail association. The broad differences of organization have their root partly in the conditions of the businesses concerned, and partly, it may be, in the mental characteristics of the managers; and they issue in great differences of policy and power. It would probably not be impossible to bring the making of wire nails under the control of one great company; but it would be much more difficult than it was to do the like with the refining of sugar. To refine sugar by methods commercially practicable to-day, a man must have hundreds of thousands of dollars to put at the risk of the business. With ten thousand dollars and six weeks' time, however, any man who likes can become a manufacturer of wire nails. A little factory can make them, not quite so cheaply as the great establishments which make their own wire, but at no very great disadvantage. It needs only a small rise above the lowest price at which the best mills can pay interest on the cost of their plants, to enable an indefinite number of small mills to start, making each its twenty-five or fifty kegs per day. This is the weakness of any form of combination in a business of this character — the possibility of a new factory in every thriving town.

No limit can be named to the success of skillful and determined managers of a centralized combination or trust, in any line, in crushing competition. An abnormal lowering of price in the local field of a small competitor is a weapon which needs nothing but persistence to make it inevitably fatal to him; and the revenues which the trust draws constantly from other fields, even if it loses in the region of cut prices, give it an unlimited power of persistence. There is no doubt of the trust's ability to destroy any competitor of a size which does not approach its own. This process is troublesome, however, and somewhat expensive; and in a case in which new competitors can spring up with so little money and in so short a time, the query is whether the situation of the trust would not be unpleasantly like that of a man fighting with mosquitoes.

It probably would be so, unless the trust should be content with a policy of greater moderation in its profits than any trust has yet had the self-denial to adopt. Any trust, having once got control of the market, could make it impossible for any competitor to establish a business which would pay a profit for a day, or would need any attention from the trust to make it disappear. This possibility depends upon the power of the trust to do for society such service as no competitor could do. The representatives of the trusts have not been negligent in setting forth the economies which they are able to effect: the production of all goods by the most efficient plants; the universal use of all improvements, patented or not; the economizing and full use of expert knowledge; the incorporation of subsidiary industries, like the making of packages; the saving of transportation by shipping from the factory nearest the consumer. Greatest of all, perhaps, and most decisive, because it is the economy that is absolutely out of the reach of a competitor, is the commercial economy that depends upon the control of the market — the saving of the expense of inducing customers to buy of this concern and not of that. A trust which should make over the greater part of these savings to its customers, and should content itself with prices which would give it only fifteen or twenty per cent per annum on the value of its productive property, as measured by the cost of replacing it, would probably never be troubled with any shadow of competition. But the general conclusion of competent and disinterested investigators seems to be that, up to the present time, every trust, when its control of the market has been established, has not only kept the whole of the savings of consolidation to itself, but has taken from the public something besides, making prices somewhat higher than they would have been under full competition.

The form of organization of a pool is less unattractive than that of a full consolidation, to a man who values his independent position and dislikes to become an employee; but there is in it as much less power as there is less unity. Under a pool, the economy of closing some establishments may be effected

by paying them a bonus, as was done for years by the steel-rail pool. The nail men dealt with outside mills by this plan, but under circumstances and in a way which hardly permit it to be regarded as an economy. It is probable that a pool, with production strictly limited to what the market will easily absorb at the prices fixed, might make some saving in the commercial expenses of advertising and selling, particularly if the circumstances and the policy of the pool were such as to give it a character of comparative permanence. The nail men were probably not able to make any savings of this class. The other economies which are possible to a trust seem to be out of the reach of a pool, while the central organization and the system of mutual watching seem even to add something to the cost of superintendence. It is probably safe to say that nearly all the gain which any manufacturers may make through a pool is made by raising their selling prices.

It can be maintained with a good show of reason that the nail men would have got more profit in the course of years from the policy of full consolidation, with prices permanently fixed low enough to make competition impossible. But experience has not yet shown this policy to be practically attainable in our present stage of civilization. Between that extreme and the other, which the nail men chose, it is doubtful whether there is any mean which they would have found golden. The choice practically open to them appears to have lain between a tolerably large profit, which might possibly last two or three years, and a very large one, which might be expected to last six months or a year. They chose the very large one; and they kept it, or at least kept the price up, for eighteen months. It is true that a very large part of the profits, especially in the later months, was consumed in subsidies and other expenses of the association. Some well-informed men, intimately connected with the trade and friendly to the manufacturers, think that their policy was short-sighted. The question has more sides than one, however, and it seems possible to make out a very good case for the view that the manufacturers did not choose the least profitable course.

V. *The Interest of the Public.*

It may not make much difference to the manufacturer whether he reduces his costs or raises his selling price; but it makes a great difference to the consumer. Aside from any lowering of prices, it is to the public interest that economies be made — that a given product be obtained with less cost and less exertion. If a consolidated trust would sell as cheaply as competing producers would have to sell, keeping to itself the whole of its economies but taking nothing more, the economies would benefit the public somewhat in the end. The production of wealth and the sum of capital are certainly increased by them; and such increase of capital and of production tends in itself to the general good. The actual policy of the trusts, in taking from the public something in higher prices besides their gain through saving, complicates the question; but there is a very considerable gulf between the effects of a trust, like the American Sugar Refining Co., and the effects of a pool, like the Nail Association. The actual lessening of the human effort that is required for a given result does accompany the trust, and we are all privileged at least to cherish the pious hope that some small fraction of the gain may ultimately work its way around to us. The pool, on the other hand, does not effect any saving of human effort. Its avowed purpose is to increase its members' share of the products of such effort. Its form of organization is probably incapable of producing the greater part of the social benefits which the trusts lay claim to; and it does not make much pretence of trying to produce them.

The claim of the trusts to a socially desirable effect on price takes two forms — that they make prices lower and that they make them steadier. The former effect has probably not appeared permanently in any instance; and the latter does not seem to have appeared generally. Both effects are, however, within their power. Unsteadiness of price, so far as it results from the action of trusts which have once established their

control of the market, is generally the result of high prices. The raising of prices above the competitive level causes competition to develop; and competition can be dislodged only by buying it out or by sinking prices below the competitive level. The trusts are regarded by their managers as permanent institutions, and they tend toward the policy which the managers think likely to bring the greatest net revenue in the long run. They tend toward a comparatively moderate forcing of present profits, with a fair degree of attention to the future. In consequence, if the prices of their goods are not steadier than they would be under full competition, they are probably not much less steady. The nail pool, on the other hand, was an ephemeral thing, designed for a quick rush into the market, a grasping of whatever gains might be within reach, and then — collapse. Its purpose was that of a corner — to get the greatest possible amount of profit out of those who had to have nails within a limited time. Its effect, therefore, was a great exaggeration of the normal unsteadiness of prices.

Too great productive capacity is one of the reasons which are regularly given for forming combinations. The providing of machinery for making far more goods than are demanded at the necessary prices is one of the wastes of competition. Of course it would not be practicable, with the completest centralization, to keep the nominal capacity of machinery down to the actual demand; for variations in the quantities demanded, variations in the kinds demanded, the necessity of being able to make many kinds at each of several places — all forbid an exact adjustment. There is no doubt, however, that here a trust can effect a saving over competitive methods, though it may nullify this benefit more or less completely by stimulating new competition through too high prices. The policy of the nail pool, on the other hand, greatly stimulated the tendency to the overproduction of machinery. The association tried to check it by subsidies to machinery-makers, but with only partial success. Such makers of nail machinery as would accept orders were overwhelmed with them. It was said that persons anxious to get into the nail business "overbid each other, and lucky buyers

of machines were offered premiums for their bargains."[1] When the pool collapsed, the machines which the artificially stimulated demand had called forth became, for the most part, dead property. Both to the owners and to society, they are an almost entire waste of capital.

In this way the pool aggravated one of the fundamental difficulties of the situation which it was formed to change. This is perhaps its most visibly lasting effect, and from it a serious obstacle arises in the way of renewing the pool. So far as their current business is concerned, the manufacturers might have been in no very different position if the pool had not been formed. The price of nails is now about the same, allowing for the change of extras, as in the spring of 1895. Of the hundreds of new machines which were set up during the eighteen months of fever, a large part have ceased to turn out nails, and as the months go by, others will cease. Some of the older and less efficient will go, one by one, to the scrap pile, and some of the newer may replace them. With the continued progress of invention the rest will doubtless grow relatively less and less efficient. The growth of the country, too, will make a fixed number of machines continually less important as a possible factor in the market. These, however, are processes of years. For a long time to come the hundreds of machines which stand ready to start at a week's notice must be reckoned with by any new combination. A small manufacturer, who was not in the pool, wrote in February, 1897: "I doubt if there will be another combine for a year, but I think it will ultimately come." It will come, as surely as seedtime and harvest; but not in one year, nor, in all probability, in two. It will probably not be possible, until several years have gone by, to form another association which shall effectively control the market.

VI. *Conclusions.*

Only two rather small classes are probably ready to give thanks for the concentrations of industrial and social power which are loosely covered by the name of trusts — those who

[1] *Iron Age*, Dec. 10, 1896, p. 1147.

draw wealth and power from them, and those who, desiring a general absorption of the control of production by society, think that the trusts are forwarding their aim; and some of the former class perhaps would not give thanks without certain haltings of conscience, while many of the latter account the case as one of those in which God makes the wrath of man to praise him. But an unfavorable judgment of the economic and social effects of an institution does not at all involve an unfavorable ethical judgment of the men who visibly represent it — at least in comparison with the rest of the community. The members of the nail association did what the rest of us would have done in their places. One who was active in forming the association gives this statement of their point of view:

> There is nail machinery enough in this country to produce four times as many nails as can be sold. When there is no pool the makers simply cut each other's throats. Some people think there is something wicked about pools. When we were trying to get up the nail pool, I talked with directors of companies who held up their hands against going into any sort of combination. I said to them, "How much did you make last year?" "Not a cent." "Are you making anything now?" "No." "Well, what do you propose to do? Sit here and lose what capital you have got in the business?" Some of them thought they could run along until some of the weak concerns died off. But I tell you plants don't die. If a concern fails, they reorganize it. They buy in the plant cheap, they have got rid of the old debts, and they are in better shape to compete than ever. There is only one way to make any money in a business like the nail business, and that is to have a pool.

This is the aspect that things would wear to us if we were in the position of the manufacturers. Some of us are perhaps opposed to combinations; but so were some that went into the nail pool. In weighing any man's opposition to combinations, it may be doubted whether it is of the sort to keep him out of them, till he has sailed the strait between failing profits and the trust, and has passed the siren voice.

The trusts simply do, with larger resources and higher organization, the things that every manager of a competitive business is trying to do. It is possible that we see the char-

acter of such things better when they are done on the larger scale; it may be one of the missions of the trusts to give us clearer and higher notions of ethics. But it seems probable that, if we begin to cast stones, the houses of the trusts will not be the only ones to suffer. If it is asserted to be wrong to crowd up the prices of the things we sell and to crowd down the prices of things we buy, wrong to make our business large by the destruction of our neighbor's, a good deal may be said for the ethical superiority of the altruistic man who should refuse to do these things; but no ethical distinction can be drawn between the man who does them strongly and successfully and the man who is only able to do them with less strength and less success.

The mechanism of the trust, properly so called, is perhaps not unworthy to be ranked among the greatest inventions of this century, either as a monument of intellectual acuteness or as an engine of momentous social effects. Like most of those other inventions which are more unanimously classed as useful, and for which individuals get credit, the invention of the trust did not really depend on the activity of any particular men. If neither Bell, nor Reis, nor McDonough, nor Edison had lived, a score of other men were looking for the telephone, and would soon have discovered it. Scientific and technical knowledge had reached a point from which it could not but be discovered; and no man could do more than hasten the discovery by a little. Just so, the development of the pool, the trust and the giant consolidated corporation was inevitable in the social and economic conditions of our age. If the world had lacked Mr. Rockefeller and his associates, it had other men of business and other lawyers; and it would not long have lacked the trust.

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THE NATURE OF CORPORATIONS.

THE most important and conspicuous feature of the development of society on its formal side during the past half-century is the growth of corporations, and especially of industrial corporations.[1] They have shared to such an extent in the rapidity and complexity of general social growth that social theorists have failed as yet to attain a full understanding

[1] "The facility with which corporations can now be formed has also increased [the supreme court's] business far beyond what it was in the early part of the century. Nearly all the enterprises requiring for their successful prosecution large investments of capital are conducted by corporations. They, in fact, embrace every branch of industry, and the wealth that they hold in the United States equals in value four-fifths of the entire property of the country. They carry on business with the citizens of every state, as well as with foreign nations, and the litigation arising out of their transactions is enormous, giving rise to every possible question to which the jurisdiction of the federal courts extends." — Address of Justice Field at the centennial celebration of the organization of the federal judiciary, New York, Feb. 4, 1890, 134 U. S. Rep. 742.

"Before 1850 we had [in Michigan] about forty-five mining corporations, seven or more railroad corporations, a few banking corporations, several plank-road corporations, and a few of a miscellaneous character; all, of course, under special charters [with the exception of religious corporations]. General laws to the number of one hundred and fifty-six have been passed from time to time since 1850, for incorporating almost every kind of lawful business and association, and the result has been that we now have about eight thousand corporations which are organized under those general laws, divided as follows: manufacturing and mercantile, twenty-five hundred; mining, thirteen hundred and twenty-eight; railroad, seventy-nine; street railway, one hundred and thirty-two; transportation, one hundred and twenty-three; state banking, one hundred and fifty-nine; charitable, two hundred and forty-eight; improvement, seventy-seven; miscellaneous, twenty-eight hundred and eighty-two. To this great number of domestic corporations must be added one hundred national banking corporations, and a large and not ascertainable number of foreign corporations, . . . which do business in this state by its express permission." — Address of President Alfred Russell at Jackson, Michigan, March, 1894, on "Corporations in Michigan," Publications of Michigan Political Science Association, No. 2, p. 97.

"Not far from one quarter of the wealth of the United States is held by trading corporations. It is not improbable that half the permanent business investment of the country is owned in this way." — Arthur T. Hadley, Railroad Transportation (1885), pp. 42, 43.

of their relations to modern life, even if it be conceded that serious efforts have been made to that end.[1] Like all other criticism of immature social institutions, the criticism of corporations has been largely negative and destructive, without recognition of their permanent and enduring elements. An effort must be made, however, to obtain a broader view of them — a view that, on the one hand, will reveal their necessary and permanent relations to society and social progress, and, on the other hand, will exclude such relations as are purely accidental or temporary. No little difficulty is caused by the failure to separate the "corporation question" from questions allied to it; it must be constantly borne in mind that this is primarily a question of social form, and only secondarily one of social content or function. Human energy is the content; the corporation is one of the forms through or within which the human energy becomes human activity. For example, the corporation question is often carelessly confused with that of the consolidated control of capital, or "trusts"; but the latter comes within the scope of the former only through an inquiry as to what extent the corporation, by virtue of providing a fit or usual form for the activity of trusts, affects such activity by restricting, expanding or otherwise influencing it.

An exceptional degree of independence and self-reliance must be exercised in a study of corporations, because the historical and statistical material for the work is so scanty and unreliable, and the work of interpretation already done is of so little service. Less enlightenment on the nature of corporations than one would be inclined to expect is given by jurists, either in legal treatises, in opinions or in judicial decisions; though the jurists alone, with the exception of recent sociologists, have pretended to offer a systematic treatment of the subject. When new social forces make their appearance and begin to be expressed in new social relations, the jurist endeavors to explain and control them by the application of legal principles already established in analogous social relations rather than by the application of principles that would be discovered

[1] *Cf.* Arthur T. Hadley, Railroad Transportation, p. 43.

through scientific study of the workings of the new forces.[1] For most practical purposes, the lawyer must assume that society is not subject to historical development, though such an attitude, while it conduces to the stability and conservation of social institutions, imposes on the student of institutions the necessity of exercising extreme caution in the use of technical legal material. Yet, without pretending to discard the established legal principles, legislatures and courts have made so many modifications of the law of corporations that the principles formulated by Coke and Blackstone have become in modern times quite inadequate as a foundation for it.[2] Consequently the later writers who have treated of private corporations have struck at the very root of the older law by discarding, in whole or in part, the cardinal theory of "artificial personality," [3] though for very good reasons they have not been followed by writers on public corporations.

Writers of political history, it must be admitted, cast little light on the subject of corporations. Constitutional history, as written, may be relied on for a knowledge of the form or framework of the state, and popular history, for a knowledge of national activity. Corporations, however, have constituted

[1] When sleeping-cars first came into extensive use, the first efforts of the courts were to construe the liabilities of the companies operating them as those of either common carriers or innkeepers, but it was found later that the legal rules relating to those two classes of persons were inapplicable to sleeping-car companies. Now, "according to the weight of authority, the liability of the sleeping-car company is neither that of a common carrier nor of an innkeeper." — American and English Encyclopædia of Law, *sub verbo* "sleeping-cars."

It is believed that the chief difficulty in the legislative and judicial control of corporations at present is due to the effort to apply to them legal principles elaborated in a system of law founded on individual social units instead of modifying the existing system so as to make its principles applicable to aggregate social units; the theory of "artificial personality," though harmless when applied with due limitations, has been the source of much confusion in legislation and legal decisions relating to corporations.

[2] *Cf.* Justice Miller in Liverpool and London Insurance Co. *vs.* Massachusetts, 10 Wallace, 566.

[3] Morawetz on Private Corporations, § 1 (2d ed.); Taylor on Private Corporations, § 22. W. W. Cook, in his work on Stock and Stockholders (§ 1), seems to adhere to the conception with modifications; as does also J. L. Lowell in his work on Transfers of Stock. See article on "The Legal Idea of a Corporation," in *American Law Review*, XIX, 114–116.

for the most part the framework of society, subordinate to that of the state, and have been overlooked or ignored by both classes of historians.[1] The results achieved by recent sociologists are more serviceable. In recognizing that all men and all combinations of men have their peculiar and appropriate social functions exercised in relations and sets of relations subject to constant change and development, they have been led to a comprehensive view of the formal or institutional side of society, and have avoided the narrowness of both jurists and historians. But in their efforts to classify and systematize social forms and functions, they seem not infrequently to have chosen objectionable bases of classification and to have somewhat arbitrarily exaggerated or disparaged particular attributes of institutions. To such tendencies more extended historical and statistical study of particular institutions must act as a corrective.

All human activity has its social as well as its individual aspect. Man is so essentially a "social animal" that his every act, however insignificant, has its effect, directly or indirectly, on his fellows. All men sustain social relations to all other men. The effect of the social relations — growth, stagnation or decay — is a product of two factors, the content (function) of the human activity and the organization (form) within which it is exerted. The existence of each factor implies the existence of the other. Social functions are exercised only through the machinery of social forms; yet the forms are continually suffering modification to meet the demands of new or altered functions. In general, function and form depend on and react upon each other; growth, stagnation and decay in each are reflected in some degree in the condition of the other. The corporation is a group of natural persons embodied in one of the many forms of organization within or through which certain

[1] Even Stubbs, in his monumental Constitutional History of England, views the English municipalities at the end of the Middle Ages almost solely as a part of the central administrative machinery of the state. Mrs. J. R. Green, in Town Life in the Fifteenth Century, has given an adequate treatment of one phase of corporate life. Gross's Gild Merchant is the only complete study of any one class of corporations.

classes of social functions are exercised. The limitations of form and function will appear in the following review of the several generic attributes of the corporation.

1. *Associate activity.* — The corporate form is one within whose limits associate, as distinguished from individual, activity is exercised, and comprehends both the interrelations of the associated members and their relations with other organs of society. The early distinction of corporations as aggregate or sole is manifestly illogical and has been almost entirely abandoned in practice.[1] There are probably no corporations sole in the United States, with the possible exception of church parsons in Massachusetts;[2] if there are any, their powers and duties may be fully interpreted by the laws of trust and trusteeship. It is significant that the later text-books on corporations give no space to the subject of the corporation sole. The inclusion of certain individuals in a classification of corporations was undoubtedly considered necessary on account of the presence in some public officers (or offices) of attributes common to them and to corporations, such as the legal limitation of activity (found in all public offices) or the limitation of control over property held for public purposes. From another point of view, the extended use of the term is explained by a particular application of the theory of artificial personality — a legal exaltation of the purpose for which property is held or power exercised above the personality of the person or persons holding the one or exercising the other.[3] Again, while the

[1] "The idea of a corporation sole has been claimed as peculiar to English law, but the novelty consists only in the name; and it has been justly remarked that 'as so little of the law of corporations in general applies to corporations sole, it might have been better to have given them some other denomination.'" — Dr. Wooddeson, Vinerian Lectures, I, 471, 472.

"There are very few points of corporation law applicable to a corporation sole." — Kent, Commentaries, II, 273.

[2] "It is possible that the statutes of some states vesting the property of the Roman Catholic church in the bishop and his successors may have the effect to make him a corporation sole; and some public officers have corporate powers for the purposes of holding property and of suing and being sued." — Blackstone, Commentaries, bk. i, p. 468, note of editor (Cooley).

[3] This idea is elaborated fully by Pollock and Maitland, History of English Law, I, 469–495.

functions of corporations aggregate and corporations sole may be the same, the latter lack the continuity of existence that is so prominent a characteristic of the former. When it is said that the king never dies, and that he thus resembles a corporation, the actual continuous group life of the latter is confused with the continuity of existence of the public office not possessed by its successive incumbents.[1] Groups, but not individuals, may have continuous existence; social functions of both groups and individuals may endure continuously. Holding property for particular public purposes, with incapacity to use it for other purposes or to alienate it, does not alone make the holder a corporation, though it is one of the attributes of a corporation that its use of its property is limited by the terms of the charter to which it owes its creation. So-called corporations sole differ from true corporations, not in function, but in form; the former lack the internal social structure of the latter.[2]

2. *Creation by the state.* — The corporate form, or sum of peculiar relations subsisting between the members of the corporate group and between them and other members of society, is created by the state; or, after spontaneous origin and maintenance by force of custom, is approved with the same legal effect as if originally created by it. Neither the group nor its functions, but only the internal and external personal and group relations under or within which the group exercises its functions, are created by the state. The progress of civilization demands the increasing exercise of associate activity, but not necessarily in the corporate form. As compared with the state, a primary, sovereign group, the corporation is a secondary, derivative, subordinate group. Likewise, ecclesiastical corporations, under the earlier conception of the church as society primarily organ-

[1] "The law has wisely ordained that the parson, *quatenus* parson, shall never die, any more than the king, by making him and his successors a corporation. By this means all the original rights of the parsonage are preserved entire to the successor; for the present incumbent and his predecessor who lived seven centuries ago are in law one and the same person; and what was given to the one was given to the other also."— Blackstone, Commentaries, bk. i, cap. 18. This is verbal jugglery. See also the case of Overseers *vs.* Sears, *infra*, p. 285, note.

[2] See discussion of functions of corporations, *infra*, pp. 290–294.

ized on its religious side (whether or not coextensive with the state), were subgroups of the church, deriving from it their internal and external social relations. To be sure, all social activity, whether of individuals or of groups, is limited and conditioned by the system of law under which it is exercised; for the state is itself, like the corporation, a group (though superior to all others) acting through or within certain self-imposed forms; but the corporate form brings to the members of a group internal and external relations different from the usual and regular social relations imposed on individuals by the existing system of law.[1] Not only is the corporate form artificial and exceptional, but the field of group functional activity is narrowed or widened, or otherwise artificially and exceptionally created or modified, by the act of the state. Nor need the corporate relations owe their existence to a direct and special act of the state; they may be created through any subordinate agency of the state that it may see fit to select, or by virtue of "general incorporation" laws, which cause the peculiar legal relations to arise upon the performance of certain

[1] Whether given legal relations are regular or exceptional depends, of course, on the nature of the system of law under which the relations are recognized or created and enforced. Some systems, such as that of early Rome, have been based on a composite unit, as the family or some other group; others — such as the Imperial Roman law and the English (and American) law since the destruction of feudalism — have been based on the simple unit, the individual. The members of a corporation act not as units, but as parts of a composite unit, and their social relations are to that extent exceptional as compared with the regular social relations of individuals regarded as social units.

It is sometimes prophesied with a considerable degree of assurance (as in the quotation in the note on page 292, *infra*) that society is to attain in the near future a stage of development in which the social unit will be aggregate or composite instead of individual, as at present; and that the corporation is the institution through which socialism, in a more or less modified form, is to be made effective. Unfortunately for such views, the historical development of corporations has not as yet afforded them much support. If the corporate form were always used, as one might expect, from a consideration of its adaptability, it might serve as a stepping-stone to socialism; but as a form of social activity, it has been perverted to highly individualistic uses, and has actually produced more exaggerated individualism. The use of corporations has tended to result, not in coöperative commonwealths, but in trusts. There is much more reason to expect that, if socialism comes at all, it will derive its organization from above, not from below — from the subdivisions of the state and not from the corporation; in other words, it is more likely to be state socialism than coöperative socialism.

preliminary acts by incorporators.[1] Some fields of social activity, such as the construction and operation of railways[2] and the formation and management of banks, may by modern law be occupied only by groups of persons organized in the corporate form. Whatever may be the purpose of granting special group forms, or of contracting or expanding the field of group activity, the act is always that of the supreme social group organized as the state or the church. This attribute of corporations has always been fully recognized by courts of law, and the enforcement of the rule of strict construction of corporate powers and acts has been consistent with such recognition.[3]

3. *Voluntary inception; compulsory endurance.* — The assumption by a group of the corporate form and the acceptance by individuals of membership in the group are voluntary, as distinguished from the compulsory political status of citizens in the state and its subdivisions. To this distinction it may be objected that the consent of the citizens of a municipality is not necessary to its incorporation, and that acceptance by them of a municipal charter is not necessary to make its provisions operative. Though that is now the well-settled rule with relation to public corporations, it is so generally regarded as repulsive to the spirit of English and American political institutions that some preliminary act in the nature of consent or acceptance on the part of the prospective citizens of the municipality is required before the law of incorporation is permitted to take effect. But, as a matter of fact, municipalities have exhibited a

[1] Blackstone, Commentaries, bk. i, pp. 473, 474.

[2] This is a broad statement of the fact as to railways. The exercise of the right of eminent domain is delegated to corporations alone. Some exceptional circumstances might enable individuals to construct and operate railways, but, speaking in general terms, the function is restricted to corporations. When railroads are sold at forced sale under decrees of foreclosure or on executions, it is held that an individual may purchase and operate the property, but that he may not succeed to the corporate franchise. Opinions in some cases seem to contemplate only a temporary operation of the property by the individual purchaser. At all events, individual ownership and operation of railways are regarded as justifiable only under extraordinary circumstances and when absolutely necessary to the attainment of justice.

[3] Beach on Public Corporations, I, 92, and cases cited; Dillon on Municipal Corporations, I, § 91; Sedgwick on Construction of Statutory and Constitutional Law, 338; American and English Encyclopædia of Law, *sub verbo* "corporation."

strong and increasing tendency to lose the character of corporations and to become more truly subgovernmental administrative bodies. This tendency has been expressed in the enactment of general incorporation laws, the more particular classification of municipalities, the increased interference by legislatures in the government of municipalities and the modification of the doctrine of consent to be incorporated. Municipal self-government is being rapidly transformed into a mere power of determining within narrower limits the means of executing laws imposed by state governments. The decadence of city government in England in the seventeenth and eighteenth centuries was evidenced by the multiplication of local commissions acting under the supervision of the central government. American cities seem to be passing at present through a similar phase of development, which indicates, so far as the present study is concerned, a decadence of corporate municipal life.[1] But to say that the inception of the corporate form is voluntary, is not equivalent to saying that non-members may be voluntarily exempt from the external effects of the organization and activity of corporate groups. One must be a citizen of some state; and whether or not a member of any corporation, his conduct must

[1] It is not out of place to note at this point the general rule that the prevalence of corporations has always been characteristic of periods of social expansion, as distinguished from those of social organization, or, if the expression be better, of extensive rather than intensive growth. New forces rapidly developing have had their growth in the form of corporations; when the movements of the new forces have reached the maturity of their effects, they have been digested — subjected to organization within the political framework of the state — and their corporate form has decayed. The new forces of post-feudal life in England were organized in corporations, and within them the new element of English personal liberty had its chief development and expansion; when the movement reached its maximum in the sixteenth century, the organization of the new social forces was accomplished through a stronger central government and improved administrative machinery, — national poor-laws, responsible parliaments, *etc.*, — while the municipal corporations decayed. Likewise, the movement of the national expansion of England that followed 1550 was characterized by the use of great trading and colonial corporations; but when the maturity of the movement was reached, the corporations were replaced by a more efficient home government, new colonial governments and independent (American) states. It ought to be expected, then, that the expanding social forces of American city life will be absorbed by the state governments as soon as their movements have reached the stage of maturity — but that will mean that the corporate character, to a certain extent, has departed from city life.

conform to the conditions imposed by the organized activity of the state, its subordinate institutions and the autonomous corporations created by it. There is a particular sense in which even the state organization may be described as voluntary; even if imposed by external force, it may be said to depend for its continued existence on the consent of the subjects upon whom it is imposed. But some kind of a political organization a society must have; and once organized, the state may coercively organize subgroups of its citizens for the exercise in detail of the functions of government. Such coercively organized groups are not, however, true corporations, though the name is often applied to them; legal writers have well described them as quasi-corporations, because they have many of the attributes of corporations, though lacking the essential elements of voluntary inception and autonomy.

After the corporate form has been assumed by a group, it is compulsory, from the side of the state, upon all its members, until forfeited for misuser or nonuser or regularly put aside in the manner provided by the state. From the side of the corporation, however, the corporate form may not be assumed or retained against the sovereign will of the state. The doctrine that "a charter is a contract" is vicious; the conception of a bargain between a state and a group of its citizens is illogical; the only final guaranty for the protection of rights and for the performance of duties is a sound social sentiment.

The prevalence of corporations is, therefore, characteristic of a state of society in which individual and not state initiative is relied on, and in which individual responsibility is expected to serve as a steadying force. In rapidly developing communities the individual initiative has often been unduly encouraged by making the maintenance of corporate relations (once assumed) less compulsory. Perpetual-lived corporations are usually born in epochs of social expansion; under settled social conditions, corporations are usually assigned a limited term of life.

4. *Autonomy, self-sufficiency, self-renovation.*— The group of members within the corporation is (*a*) autonomous, (*b*) self-sufficient and (*c*) self-renewing.

(*a*) Within the limits of the particular corporate form and function imposed or granted by the state, the corporate group controls the conditions (as to both form and function) of its own activity, without direction, interference or revision by other persons or groups of persons, including the state itself.[1] In this respect the true corporation is distinguished from purely administrative or subgovernmental bodies, which possess and exercise only enough discretion to execute properly duties for the most part directed, controlled or revised by superior social groups. Thus the autonomy (and thereby the corporate character) of American municipalities is greatly limited by the interference of state governments in local affairs through frequent modifications of their charters, the creation of state commissions for local purposes, and the almost excessive use of the writs of injunction and mandamus by the courts. Though the courts theoretically recognize the element of autonomy by refusing to compel by mandamus the performance of other than purely ministerial acts, or to prevent by injunction a reasonable exercise of a corporation's powers within the terms of its charter, the present tendency of legislation and judicial interpretation is to widen the category of ministerial acts and to interpret the "reasonable" more strictly. The limits of municipal activity are being narrowed, though the actual volume of activity within the narrower limits may be increasing. From the standpoint of historical social development, this characteristic of corporate relations has been most important; it is a proposition not difficult to establish that the earlier stages of nearly all the movements in the direction of what is compre-

[1] It is not necessary to assume that the state has made a contract with a corporation, the terms of which are expressed in the charter granted, in order to insure autonomy or stability of corporate life. It is entirely a question of public sentiment. In no other country could corporate powers and duties be so easily modified or destroyed by law as in England, for Parliament is supreme; but the social sentiment in favor of "vested interests" is so strong that English corporations have always enjoyed an exceptional degree of independence. Rarely have corporations been deprived by Parliament of their powers, even after long-continued misuse or abuse of them, without being provided with a liberal pecuniary compensation for them; yet no contract relations between England and the corporations could be considered to have existed.

hended in "personal liberty" have been organized in the corporate form.[1]

(*b*) During the period of existence granted to a corporation by its charter, its general powers must be sufficient to assure it existence and maintenance, and to give the ability to exercise effectively the particular powers granted to it and to perform the duties imposed upon it, independently of external social agents, except in so far as all members of society are dependent upon their social environment. Such powers, if not expressly granted, are uniformly held by the courts to have been granted by implication, some being considered as of the essence of the corporate organization itself, and others as necessary to the exercise of the particular activity of the corporation described in its charter. For example, if a corporation could elect necessary officers only when directed by some external agent so to do, it would not be self-sufficient; it might actually cease to exercise its functions for want of the official organs through which to act. Such a body would be merely an abortive, not a true corporation. In 1684, Charles II, by threatening to use the writ of *quo warranto*, compelled the London livery companies to surrender their old charters and accept new ones. In the latter it was provided that no one should be elected warden or clerk until his name should have been approved by the king; that the king should have the power of removing any warden, assistant or clerk; and that the wardens and commonalty were to be subject to the lord mayor and court of aldermen of the city of London (themselves to be appointed by the crown), who were to approve of all persons admitted to the clothing or livery.[2] The exaction of these concessions by Charles II and the attempt to enforce them by James II were readily recognized as tyran-

[1] For the part played in the movement by mediæval towns in England, see Mrs. J. R. Green's Town Life in the Fifteenth Century, II, 437–448. For the connection between the organic structure of the English trading and colonial companies and the national and state constitutions of the United States, see The Genesis of a Written Constitution, by William C. Morey, in the *Annals of the American Academy of Political and Social Science*, April, 1891, I, 529 *et seq.*

[2] Herbert, History of the Twelve Great Livery Companies of London, I, 218.

nous, and had much to do with the expulsion of the Stuarts and the revolution of 1688.

(*c*) A corporate group without power to renew its membership during the term of existence granted to it in its charter might cease to exist, and thus fail of its purposes for want of members. The existence of a group at all implies the necessity (real or assumed) of a plurality of persons for the due performance of some social function; if there were no such necessity, there would be no group. If, by the grace of the state, the group become a corporation through the assumption of a peculiar form, its character as a group does not cease to be necessary for the exercise of its social functions. The diminution of a very large number by the loss of even a single member might, in an extreme case, so impair the group as to make it inefficient for its work. The purpose of conferring the corporate form, however, is not to destroy the character of the group as such, but to make it more efficient by providing it with a form appropriate for its peculiar activity. Failure to provide adequate means for the renewal of a corporation's membership, therefore, would be inconsistent with the original purpose of conferring the corporate form. If at the same time the necessity of autonomy and self-sufficiency be given due weight, the means of renewal must be within the group itself — it must be self-renewal.[1] Thus it is an established principle that the loss by a corporation of an "integral part," in the absence of power to supply it, works its dissolution. It has also been held that when no provision is made in a charter for the filling of vacancies that may occur, the power to do so by coöptation is implied.

[1] In The Overseers of the Poor of the City of Boston *vs.* David Sears et ux. (22 Pickering, 122), it was contended by counsel that "the corporation thus created is more analogous to a sole than to an aggregate corporation. The two kinds run into each other, and the demandants (Overseers, *etc.*) are to be regarded as a sole corporation, or a quasi-sole corporation, with some of the incidents of an aggregate corporation. It is a necessary and unseparable incident of an aggregate corporation that it have the power of perpetuating itself by choice of members. Here the corporations have no such power, but they are chosen by the inhabitants of Boston; and they have a civil death annually, as the sole corporation dies a natural death." See pp. 277, 278 *supra.*

The three attributes here considered under one head (because each involves and implies the others) are in some cases very difficult to identify. They are all, however, found developed in some degree in every corporation, as well as in many bodies not usually regarded as corporations. When they are not highly developed, the corporation proper is not easily distinguished from the purely administrative body; indeed, it must be admitted that a critical analysis of most so-called quasi-corporations would reveal in them the presence of the three attributes. The question is one of degree of development: the corporation is in distinct, effective and clearly perceptible possession of them; in the purely administrative body they are indistinct, rudimentary and almost imperceptible, and accordingly such a body ordinarily depends on the state for supplementary activity to enable it to exercise its functions. The necessity of autonomy and self-sufficiency is the basis of the doctrine enforced by the courts (as an exception to the general rule of strict construction of corporate grants and powers) that corporate powers and duties shall be so construed as to permit the accomplishment by the corporation of the original purpose of its creation.[1]

5. *Compulsory unity.* The creation of a corporation contemplates that, in all its relations with other organs of society, it shall act and be acted upon as a unit. Accordingly, it is provided by its charter (supplemented by its by-laws) with means of determining the group will of its members, with agencies through which the group will shall be executed, and with agencies through which other social organs shall maintain their relations with it. In the element of compulsory unity, corporations are distinguished from most other associate bodies, and resemble most nearly the state itself. Blackstone very aptly called them "little republics," though he would have been more faithful to history if he had called republics "big corporations."

[1] Beach on Public Corporations, I, 93, and cases cited; Dillon on Municipal Corporations, I, § 87, and cases cited; Field on Private Corporations, pp. 66, 67; Taylor on Private Corporations, § 121.

The conception of compulsory unity is one of the sources[1] of the theory of "artificial personality"; the corporation is said to have a common name, and to be, "for certain purposes, considered as a natural person,"[2] "vested by the policy of the law with the capacity of acting in several respects as an individual."[3] There is nothing harmful in the recognition by the state of such a capacity in a subgroup of its citizens, if the fact that it is still a group be not lost to view. Though unified in action, the corporation is none the less a group: indeed, its unity of action preserves it as a group; if each member persisted in following his own will in preference to finding a common ground on which a group will might stand, the group would be inactive, and lawyers would readily determine it liable to forfeit its charter for nonuser. The fact that the common will of the group may not coincide completely with the will of any one member ought not to exempt the members from responsibility for the effects of its execution. It is purely a legal fiction that a corporation is an "artificial person" — "a conception, which, if it amounts to anything, is but a stumbling-block in the advance of corporation law towards the discrimination of the real rights of actual men and women."[4] It must be admitted, however, that the theory of artificial personality has been discredited in practice, by the rejection or modification of many of the principles founded on it. One of these, the principle of limited liability, has been the source of an unusual amount of confusion. It is a logical deduction from the theory of artificial personality, that, as individuals, the members of a corporation have no ownership of debts due to it, and are not liable for debts owing by it: "si quid universitati debetur, singulis non debetur; nec, quod debet universitas, singuli debent." The principle has been so extensively applied that the corporate form has come to be used more to secure the advantage of limited liability than for any other purpose.[5]

[1] The other source of the theory is found in the nature of the functional activity of the corporation, which will be considered below.—*Infra*, p. 290.

[2] Angell and Ames on Corporations, p. 1.

[3] Kyd on Corporations, p. 13. [4] Taylor on Private Corporations, § 51.

[5] "The distinctive feature of the modern trading corporation is the limited liability of its members." — A. T. Hadley, Railroad Transportation, p. 43.

It may be conceded that some social functions are so public in character as to justify setting a limit to the pecuniary risk of those who perform them. But such limitation is independent of the social form (whether corporate or not) in which the persons acting are organized. There is nothing in the corporate form itself to justify the exaggerated application of limited liability. This pernicious movement has decreased the personal responsibility on which the integrity of democratic institutions depends, and has introduced into both investments and social services a dangerous element of insecurity. Limited liability of members was not a feature of early corporate life in England, and its prevalence in this century has been due to an overestimation of the importance of national internal development.[1] More settled economic conditions have already resulted in some improvement; and the element of personal responsibility is gradually pushing its way back into the management of corporations so far that limited liability, instead of being an advantage, is often regarded by promoters and investors as a positive detriment.

6. *Motive in private interest.* A corporation is composed of persons having a private or particular (or local), not merely a public or general, interest in the subject-matter of the group activity, whether it be political, social (in the narrower sense), religious or economic. This is partly deducible from the voluntary inception of corporate relations; for only those will desire to assume such relations who have the satisfaction of a private interest as their motive. A distinction in this respect is traceable between the quasi-corporation and the corporation proper. What the citizens of a county do as such they do as members of the inclusive society of the state: their acts are

[1] The sentiment is fairly expressed in the following words: "It is a well-known fact that many of the enterprises which have greatly developed the resources of the country, and which have been of great benefit to society, would never have been undertaken without corporate organizations. No new enterprise is a cinch [*sic*]; it is more or less uncertain and speculative, and where it involves large expenditures of capital, unless the men who undertake it can know the limit of their liability, it will remain undeveloped." — Suggestions for Amendment of the Laws Governing Corporations in the State of Michigan, by Jay P. Lee, in Publications of Michigan Political Science Association, No. 3, pp. 74, 75.

limited (theoretically, at least) to such as it is necessary for them to do as members of the general society of the state, and do not include such as they have merely a particular, private or local interest in doing. The same may be said of the citizens of a municipality; but here there is a field of activity in which they are considered to be actuated by a particular, private or local interest, not shared by society in general. Lower in the scale, members of a so-called private corporation, such as one for purposes of trade, are actuated almost entirely by private interest. In some cases, however, associations upon which a compulsory organization has been imposed by the state, have become corporations by perverting the machinery of the imposed organization to uses dictated by the private interests of the associated persons; such was the origin of the old English corporation of the Merchants of the Staple, or Staplers.

Public and private, however, are relative terms: what is a public and what is a private interest are determined only by the stage of development that has been attained by a particular society. In a rapidly growing community, a body of citizens so influenced by patriotic sentiment as to establish a business enterprise largely for the purpose of "booming" their country may be said to be actuated by something more than mere private interest; while a similar venture under mature and settled social conditions would have little of the public element in it. Public and private, social and individual, interests are always found in combination, and sometimes so blended and confused that it is extremely difficult to determine which is predominant. Legislatures and courts of law have often been driven in the application of the principle to assume apparently inconsistent attitudes toward very similar facts, though the correctness of the principle has not been denied. The principle must be adhered to, even if in many cases so hard to apply. In the corporation proper, then, private and particular interest is permitted to seek its own satisfaction; and public and general interest is consulted, if at all, from the side of the corporation, only incidentally, collaterally or secondarily, as set forth in the paragraph following.

7. *Functions public and appropriate for associate activity.* — The social functions performed by corporations have had two enduring qualities. They have been (*a*) such as were regarded, under successive sets of social conditions, as conducive to the welfare of the public and of society in general, rather than to the particular welfare of the persons performing them; and (*b*) such as were more advantageously performed by associate than by individual activity. The first has reference to the relations of the activity of the corporate group to the society of which it is a part; the second, to the relations of the group to the conditions under which its activity must be exercised.

(*a*) What now appears at first blush too narrow a view of corporate functions would probably have been accepted as sufficiently comprehensive before the beginning of the nineteenth century. The unprecedented growth of private corporations since 1830 seems to discredit the statement that their functions have always been regarded as having a public end; but it is believed that even private corporations find justification for their existence in the general opinion that public welfare is materially promoted by the more facile exercise in corporate form of social functions whose exercise is prompted by the pursuit of private interest.[1] Nor is the limitation inconsistent with the statement made in paragraph 6 above. The corporate form has always been intended and used to promote public welfare through private interest, by affording to the latter a social mechanism through which adequately and effectually to express itself. The almost insuperable difficulty in the use of the corporate form has been to reconcile the private motive and the public purpose of the activity exercised within it. But the difficulty is due not so much to the corporate form itself as to the character of the activity; indeed, it is urged with much force that the use of the corporate form has a tendency to

[1] See note on p. 280, *supra*. "The purpose in making all corporations is the accomplishment of some public good. Hence the division into public and private has a tendency to confuse and lead to error in investigation; for unless the public are to be benefited, it is no more lawful to confer exclusive rights and privileges upon an artificial body than upon a private citizen." — Mills *vs.* Williams, 11 Iredell (N. C.), 558.

ameliorate the unfortunate social conditions incidental to some kinds of social activity. The class of social evils usually included in discussions of the "railway problem" are evils due more to methods of transportation under modern social conditions than to the peculiar legal form in which the men engaged in transportation are organized. Ownership and operation of railways by individuals would entail greater evils than their ownership and operation by corporations.[1]

The public end of corporate functions is another source of the pernicious legal theory of "artificial personality."[2] The function is personified, and the aggregate of rights and duties involved in the performance of the function is separated in thought and law from the succession of natural persons or groups of persons in whom they are reposed. Then the persons or groups are known to the law as corporations to the extent of their connection with the social functions in view. Hence the division of corporations into aggregate and sole. The early English parson was the *persona ecclesiae;* the church was personified in him; the land of which he had a limited use was the property of the church, or the property of society devoted to particular religious services performed by the parson.[3]

The private corporation pure and simple is a product of nineteenth-century social, political and industrial conditions, of which democracy and individualism are the foundations. The belief in the equality of men, combined with the tendency to restrict the area of state activity at the end of the eighteenth century, checked the creation of corporations involving class privileges, inequality and the limitation of individual activity. The state, it was held, must not delegate to corporations powers that it could not itself safely exercise. On the other hand, so far as functions dangerous to the liberty of the individual absolutely required associational activity, the nearer the associations

[1] *Cf.* A. T. Hadley, Railroad Transportation, p. 48; and R. T. Ely, The Future of Corporations, *Harper's Magazine*, LXXV, 260, 261 (July, 1887).

[2] See p. 275, *supra*.

[3] See Pollock and Maitland, History of English Law, I, 483–486.

were to the individual the less dangerous they seemed to be; accordingly corporations became more numerous in the early part of the present century. But again, no class distinctions could be tolerated; the assumption of the corporate form and the exercise of corporate powers must be free to all. General incorporation laws were therefore justified by social theories. The distinction between public and private functions is never easy to determine, and the problem is not made easier by democratic theories of society and the state; all functions have tended to reach the same level, and "incorporation for any lawful purpose" has been freely permitted to all. A false definition of public and private functions has been the cause of the confusion. The "private corporation" is a contradiction in terms, and has no place in a sound organization of society. The present tendency in the business world (as well as in the courts) is to distinguish more clearly between the various purposes for which corporations are organized, and to estimate the responsibility of the organized persons accordingly.

(*b*) The importance of associate activity as a means to social ends has been only gradually developed and appreciated in the progress of society. Before the present century even partnerships were unusual, and when they existed were usually composed of members of the same family. The object of pre-nineteenth-century corporations was primarily to provide and to limit the conditions of individual activity, and only secondarily to afford a means of expression for unified associate activity. It is only in the nineteenth century that the latter attribute has been magnified (concurrently with a depreciation of the former) to such a degree as to menace seriously the stability and permanence of the individual as a social unit.[1]

[1] "The modern form of corporation prevailed because it was found to be the best form of ownership for the large permanent investments under concentrated management which are required in modern industry." — A. T. Hadley, Railroad Transportation, p. 46.

"As John Stuart Mill says, [the union of capitalists and laborers] must be brought about by the development of the partnership principle. No one . . . can tell exactly what form this will take, but some things seem already clear. Corporations will play an important part in this development, as they gradually become more democratic in their tendencies. Corporations and coöperative enterprises will

The principle of association may make itself manifest in two degrees: first, in the imposition of conditions of activity by a group on its individual members; and second, in the absorption of the activity of its members by the group as a unit. The activity in the former case is so clearly appropriate for associated persons that it will not be discussed. As to the latter, whether absorption by a group of the activity represented by its membership is advantageous, depends upon the relation between the unit of greatest efficiency of the activity itself and the unit of ability to exercise the activity; in general, when the former exceeds the latter, association will be advantageous. The ratio of the two factors varies in successive stages of society, and the necessity of association varies accordingly. In some cases, both degrees of association have been manifested in the activity of the same corporation; in the fifteenth century fishing vessels were frequently owned by a borough and used by the burgesses in common, each conducting his business for himself, but according to the ordinances of the corporation, and using the corporation vessels in common with his fellows. The principle of joint-stock management of the entire activity of the corporation was first fully applied in the East India Company, and in that case it was a gradual evolution; originally an "open" regulated company with several groups of investors and boards of directors, it later by degrees came to be a complete joint stock company with one body of investors under unified management.

The corporate function has both the attributes just considered. However fully developed either attribute may be, the function is not truly corporate if the other be wanting.[1]

become more and more nearly assimilated until they can scarcely be distinguished." — Richard T. Ely, "The Future of Corporations," *Harper's Magazine*, LXXV, 260 (July, 1887). See comment on this view in the note on p. 279, *supra*.

[1] "To render such an establishment [of a joint stock company] perfectly reasonable (*a*) with the circumstance of being reducible to strict rule and method, two other circumstances ought to concur. First (*b*) it ought to appear with the clearest evidence that the undertaking is of greater and more general utility than the greater part of common trades; and secondly (*c*), that it requires a greater capital than can easily be collected into a private copartnery. If a moderate capital were sufficient, the great utility of the undertaking would not be a sufficient

After the foregoing somewhat extended discussion of the nature of the corporation, the following is offered as a definition: A corporation is a body of persons upon whom the state has conferred such voluntarily accepted but compulsorily maintained relations to one another and to all others that, as an autonomous, self-sufficient and self-renewing body, they may determine and enforce their common will; and in the pursuit of their private interest may exercise more efficiently social functions both specially conducive to public welfare and most appropriately exercised by associated persons.

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reason for establishing a joint stock company, because, in this case, the demand for what it was to produce would readily and easily be supplied by private adventurers. In the four trades [banking, fire, marine and capture insurance, canals and city water supply] both those circumstances concur."— Adam Smith, Wealth of Nations, bk. v, cap 1.

FRANCIS A. WALKER'S CONTRIBUTIONS TO ECONOMIC THEORY.

FRANCIS AMASA WALKER was a born leader of men. As soldier or as statistician, as college president or as writer of books, he called forth strong personal loyalty in all with whom he came in contact. He had a rare combination of courage and courtesy. He knew a vast number of facts, but he was always striving to add something more to that knowledge. It is mere commonplace to say that no other man has had so wide an influence on the economic thought of America in the present generation. Wherever he led the way thousands of readers followed. He took up ideas that had been overlooked, and in a few years made them central members in the accepted body of economic doctrine. There were three leading ideas for which he contended — his theories of profits, of wages and of money. In two of the three he has had overwhelming success. What was heresy yesterday has become orthodoxy to-day. There is no better evidence of the completeness of his success than the fact that the scientific world is now discussing, not Walker's theories of profits and of wages, but the exaggeration of those theories.

In giving an estimate of his contributions to political economy, I am going to speak plainly of what he may have overdone or left undone, no less than of what he did. I do this reverently, for to General Walker I owe more, professionally and personally, than to any other economist, past or present. I know that he would have wished to have the article written in this way. He was not one of those men of strife for whom the most fitting death-tribute is to leave them peacefully at rest. He was great enough not to need any artificial enhancement of his greatness.

The first of the three ideas with which Walker's name is identified is his extension of the notion of marginal gain to the theory of business profit. While he was not the first to dis-

cover the analogy between profit and rent — for he had been in some respects anticipated by Whately, Mangoldt and others, not to speak of his father, Amasa Walker — he was the first to lay due stress upon it, and to give to it proper weight in the theory of distribution.

Adam Smith had analyzed the price of commodities into three parts — wages, rent and profits. Ricardo had shown that what Smith counted as rent was itself resolvable into two elements: profit on capital invested in the land, and true economic rent — a differential gain due to the superior advantages of some lands over others in the matter of fertility or location. The effect of Ricardo's analysis was to narrow the use of the term rent and to widen the use of the term profit. Profit was in turn further analyzed into interest, insurance and wages of superintendence; and the differences in the rates of profit for different industries or for different men were regarded as due to the varying cost of insurance or of superintendence in the several cases.

It was at this point that Walker applied his criticism. He showed that what had been called wages of superintendence was not to be regarded as wages at all. It was not money advanced by a capitalist to a laborer, but money retained by that capitalist or employer for himself out of such receipts as he might ultimately realize from the sale of his product. It was not a fixed sum based on the cost of education, and analogous to the salary of a foreman or superintendent, but an extremely variable sum based on the superior efficiency of one capitalist or employer over another. In view of these facts, Walker felt himself justified in applying to profit the same kind of analysis which Ricardo had applied to rent. He separated it into two parts: a return to the capitalist, which takes the form of interest; and a return to the employer, or *entrepreneur*, which constitutes true profit. He thus had a division of the product into four shares, instead of three — not wages, profit and rent, for laborer, capitalist and landowner respectively; but wages for laborer, interest for capitalist, rent for landowner and profit for *entrepreneur* or employer.

More than this, the laws which governed this newly discovered share, the profit of the *entrepreneur*, were, according to Walker, closely analogous to those of economic rent. Each share in distribution represented a surplus rather than an expense—an excess of price above cost rather than a cost. Hence these elements of rent and profit might vary all the way from zero upward. There was "no-rent land" and there were "no-profit employers"—land whose product barely remunerated the labor and waiting involved in its cultivation; mechanical industries that barely repaid the labor and abstinence involved in their conduct. All superior land yielded rent; all superior commercial brains yielded profit. The extent of such superiority determined the measure of rent or of profit in each case. The fact that there was not enough of the superior land or of the superior brains to supply the whole market, prevented the price from falling to the level of cost set by the best land or the best brains, and gave to each possessor of such land or of such brains a surplus of price above expense which constituted his share in distribution. From this theory it followed that neither profit nor rent was an element in the price of products, in the same sense that wages or interest was an element; that prices would not be raised by the imposition of taxes on rent or profit, nor lowered by their remission; that both rent and profit were results of the existing rate of demand for products, rather than causes of the existing rate of supply of those products.

These conceptions are so fully wrought into the current economic thinking of the present day that it seems hard to imagine a time when they were unfamiliar. They have been combined with the doctrines of marginal utility and of normal price in such a way as to present a strikingly clear picture — I am tempted to say a fallaciously clear picture — of the process of exchange and distribution. We think of a demand curve made up by consumers to whom the utility of the article to be purchased gradually diminishes; of a supply curve made up by producers for whom the cost of delivering successive supplies of the article gradually increases; of a normal

price at which the utility to the last purchaser just warrants him in compensating the cost to the last producer; and of triangular areas representing excess of utility above price for the purchasers and of price above cost for the producers — consumers' and producers' rent respectively. In these ways of looking at things Walker had no part. He was, like most of his generation, totally unfamiliar with Cournot. If he had read Jenkin at all, it had been only very late in life. He had gone over Jevons's *Theory of Political Economy*, and had tried to incorporate its conclusions in some of his own books; but he had not really assimilated it into the general structure of his economic mind, nor did he make use of it as an instrument of original analysis. Under these circumstances, he left his discovery of the character of profits to stand by itself. He did not see the light which Marshall's combination of utility and expense curves might be made to shed upon the gains of producers and consumers; nor did he, on the other hand, expose himself to the dangers which those who use this combination suffer, in treating "expense" and "utility" as if they were correlated or commensurable terms, and in estimating "total benefit" by adding the two things together.

What is called "consumers' rent" does not correspond to the gains which we ordinarily know by the name of rent, but to the differences between the sums which the various producers actually receive under competition, and those which they would be ready to take if they did not have the benefit of such competition. For instance, there is a market rate of wages of two dollars a day, and a market rate of interest of four per cent. Some laborers would be ready to accept one dollar a day if no better terms could be had; some investors would be ready to lend money at two per cent, or even at one per cent, if no higher rate were offered. The two-dollar rate for all laborers, and the four-per-cent rate for all investments, which in our ordinary computations form parts respectively of wages and of interest, are the chief elements of producers' surplus. Walker made no analysis either of these elements of surplus, or of the corresponding consumers' gains. Here he was at least consist-

ent. His successors have sometimes made the positive mistake of analyzing consumers' gains on one basis, and producers' gains on another — a course which involves serious error.

The only criticism to which Walker is fairly open in this matter applies to Ricardo also; and it is one, I believe, which Walker himself was ready to admit as being in some degree justified. He does not give proper weight to the existence of differential losses, nor adequately discuss the relation of these losses to the corresponding gains. Both rent and profit are received on the basis of past investments of capital, which may have failed to produce a return sufficient to cover the wages advanced and the interest guaranteed. The degree of failure will depend upon the want of skill or foresight shown in the investment; but habitually there will be a considerable number of cases of such failure. Instead of starting from a point which yields no profits or rent, production will start from a point which yields less than none. It is, of course, perfectly proper for Ricardo or Walker to ignore these cases in their theories of rent or profit; but such facts render some of their deductions from these theories quite untenable. A tax on rent or profit, for instance, *will* affect the price of products; for it confiscates a possible gain in case of success, while leaving a risk of loss in case of failure, and thus interferes with certain investments of capital, which otherwise would be made on a large scale, and which, if made, would greatly enhance the supply of products. In fact, any treatment of this subject which regards capitalists as a class separate from land-owners and *entrepreneurs* is full of pitfalls. Human nature being what it is, the *entrepreneur* must be either a capitalist or a fraud. The two parts of his gain, as *entrepreneur* and as capitalist, may be subject to different laws; but he needs capital of his own to earn either part honestly. We may say that one part of his income is due to the use of capital as a subsistence fund, and the other part to the use of capital as an insurance fund; but each gain is one that attaches to the possession of capital. This is a point which it is impossible to neglect in practice and unwise to ignore in theory.

More widely known, though less original, are Walker's contributions to the theory of wages. Down to about 1860, the wage-fund theory had been all but universally accepted by economists. Even those who most objected to its conclusions on ethical grounds, like Lassalle, did not undertake to criticise the doctrine, but accepted it as true, and made its acceptance the basis of an indictment against modern society. It was first actively attacked by Longe in 1866, then by Cliffe Leslie in 1868, and by Thornton in 1869. Thornton's book had a wide influence, and sufficed to convert John Stuart Mill; but it never obtained such wide popularity as was enjoyed by Walker's book on *The Wages Question*, which appeared seven years later and gave the deathblow to the old views. In his succeeding works he did not rest content with this destructive criticism, but gradually developed a positive theory of his own, to the effect that wages constitute the residual share in the product of industry. He held that rent, profit and interest were determined by fixed laws; and that whatever was not by these fixed laws specifically assigned to rent, profit or interest, accrued to the benefit of the laboring class — in other words, that the laborers, as a body, necessarily received the benefits of increased efficiency and of modern improvements.

We shall best understand the wage-fund controversy, and Walker's part in it, if we separate the question of wages into three parts:

1. What is the source from which wages are paid?

2. What determines the share of the laborer (and of other producers) in each unit of product?

3. What determines the amount received by the laborer per unit of time?

It is in the confusion between these questions, rather than in the difficulty of answering either of them separately, that most of the wage controversies have arisen.

To the first of these questions there can really be but one answer: Wages are paid out of capital. It did not need Taussig's learned book to tell us this. There are, indeed,

passages where Walker appears to claim that wages are not advanced out of capital; but the cases which he adduces are so exceptional in their nature as to emphasize Taussig's point rather than Walker's. It would seem as though Walker had at times confused questions of source and questions of measure, and had thought himself obliged to make a show of defending an untenable position as to the source of wages, lest he should seem to abandon a sound and tenable position as to the measure of wages.

The second question is the one which occupies most of our present writers on distribution. It is really not a question of distribution at all, but one of *remuneration.* It does not concern itself with rates of income, but with elements of price. In dealing with the problems involved in this question, Boehm-Bawerk's method of analysis is probably the one most familiar to the scientific students of this generation. Boehm-Bawerk shows how, while advancing wages to the laborer, the capitalist retains a certain portion of the expected product as compensation for waiting, and shows what causes determine how large a proportion of the product shall be thus retained. He is not occupied with determining the total amount advanced, or the total amount retained; but is concerned with the ratio between these two amounts, and with the time of waiting which is involved.

In analyzing rent, profit and interest, the problem with which Walker dealt is similar to that of Boehm-Bawerk, in spite of the great difference in methods used. But when he came to wages he changed his policy. He dealt with wages as a share of the national income. In his mind, the income of the laborers depended on what the laborers produced. Walker's residual theory of wages was based on a complete and half-unconscious passage from a problem of remuneration to a problem of distribution. The *shares* of the landowner, the *entrepreneur* and the capitalist depend upon competition; the *rate* of wages depends upon efficiency; therefore, Walker inferred, all the benefits of efficiency accrue to labor. Had he applied to the laborer's share in each unit of product the same reasoning

that he applied to the capitalist's or to the landowner's share, he would have found that it, too, depends upon competition; had he applied to the annual income of capitalists or of landowners as a class the same reasoning that he applied to the income of laborers as a class, he would have found that these incomes also depend upon efficiency of labor. Under a given percentage of distribution, *all* rates vary with the collective efficiency of the industrial organism.

The question at once arises, how so able an economist as Walker allowed himself to be involved in such a confusion. The answer, if I have rightly guessed it, is one which is characteristic of his whole work as a theorist. I think he made the mistake which he did, because in the nineteenth century this particular mistake involves little or no practical error. Walker was a man of facts. He probably knew more commercial facts that were worth knowing than any other man in the world. He knew which theories explained facts, and which theories did not. The wage-fund theory, as he had inherited it from his father, was emphatically of the latter class. It did not harmonize with the facts at all. It said that wages should be high in many cases where they were actually low, and *vice versa*. Walker made a new analysis that corrected this error. When he had gone so far, he was quite content to let the rest of the traditional theory remain undisturbed. This habit of mind explains his attitude toward the question of wages, and his extraordinary influence over popular readers. He made new paths where new paths were obviously needed, and there only. He rendered the service — which to nineteen readers out of twenty is the all-important one — of making theory fit actual facts.

But how does it happen that an imperfect theory so well explains nineteenth-century facts? Because of the somewhat fortuitous circumstance that the cheapening of products in this century has chiefly affected those things of which the laboring classes are large consumers. *A*, *B*, *C* and *D* engage in a partnership. The share of each partner is fixed by previous arrangement. *D* is the only member of the firm who consumes

its products on a large scale. Suppose that the efficiency of production is doubled and the price falls one-half. *A*, *B* and *C* will be left where they were before; *D* will appear to be the residual claimant. General Walker would say: "The shares of *A*, *B* and *C* are fixed; *D* gets what he produces." He failed to see that *D* gets what he produces, simply because he *consumes* what he produces. The statement that *D*, the laborer, is the residual claimant in industrial society as it exists to-day seems to be pretty nearly correct; but it is correct in virtue of a circumstance which Walker fails to bring out in his analysis.

There is another point closely allied with this, in which Walker hardly realized the bearing of the theory which he advocated. He was right in laying stress on the fact that the product of the laborer constituted the measure of the laborer's reward. But he thought that the point at issue between his theory and the wage-fund theory lay in the antithesis between a future product and a past product; whereas, it really lies in the distinction between a *rate* of production and a *fund* of accumulation. Wages as an element in distribution are a flow and not a fund. A fund of capital divided by a number of laborers will not, as a simple question of mathematics, give a *rate* of wages. It will give a *quantity* of wages. There is nothing in the terms of the solution to show whether that quantity means wages per day or per week or per year. To assume without proof, as did so many of the English economists, that it means wages per year, is to commit one's self to an *ultra*-physiocratic[1] conception of distribution which this same school of economists was quick to reject.

The failure to grasp the distinction between funds and flows, so well emphasized by Newcomb, was specially unfortunate in that it led Walker to a theory of money at variance with the general tenor of his economic work. There is a curious parallelism between the wage-fund doctrine, which he was so zealous in attacking, and the quantity theory of money, which he was

[1] The "net annual revenue," of the physiocrat, is in some sense a true wage fund.

equally zealous in defending. The wage-fund doctrine holds that wages depend on a ratio between quantity of capital and amount of population. The quantity theory of money holds that prices depend on a similar ratio between quantity of money and amount of products to be exchanged. Both theories are open to the same criticism: they neglect the varying degrees of rapidity of circulation — in the one case of capital, and in the other of currency.

Walker attacked the quantity theory in the one case, and expanded it in the other, on grounds of practical experience. He saw that wages did not rise when unconsumed products were plenty and did not fall when unconsumed products were scarce; he saw that prices in several important instances did rise when special circumstances had increased the supply of money, and did fall when circumstances had prevented such increase. He saw that the growth of productive industry in recent years, combined with the demonetization of silver, had been attended with a fall in prices; he developed a theory to account for that fall, and to persuade governments to take measures for arresting it, without much regard to the question whether that theory did or did not correspond to his analysis of other economic problems.[1]

Walker's theory of prices was very much like Mill's. The chief difference was in the definition of money. Mill included only money of redemption — the means by which an account could be discharged. Walker included all instruments which circulated from hand to hand, like bank notes. The important function of money, he said, was that of a medium of exchange. The current transactions of commercial life constituted a demand for such a medium of exchange. The amount of coin, government notes and bank notes constituted the supply of the medium of exchange. Whatever increased the demand tended to make the value of money rise, or to make prices fall;

[1] I think that Walker was justified in saying that nearly all of the theoretical answers to his position were quite unsatisfactory. By far the most interesting of those which I have seen is that of Knut Wicksell, in the last (February) number of Conrad's *Jahrbücher;* but it would take too long to discuss the detailed points which it involves.

and *vice versa.* Whatever increased the supply tended to make the value of money fall, and to make prices rise; and *vice versa.* The influence of bank deposits on prices he seems to have regarded as comparatively slight. Such deposits for the most part represented, to his mind, transactions which were arranged on a credit basis from the outset. The deposit account did not affect the supply of the medium of exchange; the most that it could do was to preclude the demand for the medium of exchange which the transaction in question might otherwise have created.

There are two main lines of attack which can be adopted by the critics of the theory. In the first place, it may be urged, as Walker himself urged against the wage-fund theory, that the really important factor in the problem is the efficiency of the money rather than its quantity, so that a theory of prices based primarily on the latter serves to distract attention from the really important factor in the case. Or again, it may perhaps be urged with even greater effect that the demand for money is not primarily or chiefly a demand for the medium of exchange, but a demand for a reserve to secure contracts. This view of the function of money seems to explain far better than the other the functions performed by banks in increasing the efficiency of money, and paves the way for a theory of credit which shall neither overrate nor underrate its effect on prices.

This question as to the primary or chief function of money gains special importance in connection with Walker's recent book on *Bimetallism.* That book contains the following conclusions, either explicitly stated or very clearly implied:

1. That statesmen and governments, if they had been so minded, could have maintained gold and silver in concurrent circulation at something like the old ratio.[1]

[1] While General Walker disclaims any intention of discussing the question of the ratio at which the two metals are to be coined indiscriminately, none of his arguments as to the merits of bimetallism have any force unless it would have resulted in keeping the average ratio of value of silver to gold considerably higher than it actually has been. For a large part of his argument rests upon the assumption that under free silver coinage the quantity of money in the world would have increased more rapidly than it has. Now in order that silver money should

2. That their failure to do so is largely responsible for the fall in prices and profits during recent years.

3. That the present position of the laborer, though doubtless somewhat improved by modern inventions, does not show so much gain as economic theory would warrant us in expecting and demanding; and that the deficit may fairly be charged to an appreciating currency as its cause.

If it were true that money were only to be regarded as a medium of exchange, and that every other function were incidental and subordinate, we should probably have to assent to the first of these points. The government has great power in making any article available as a medium of exchange in virtue of its mere act of coinage. But the demand for a reserve to secure contracts cannot be thus influenced by the government. If a man has made gold contracts, the possession of legal-tenders does not constitute an available reserve; and the attempt to increase the money supply by the issue of legal-tenders proves wholly fatuous. Not on the basis of theory, but on the basis of the number of gold contracts now in existence or likely to be put in force in the immediate future, the monometallist is justified in taking direct issue with the points summarized from Walker's *Bimetallism*, and in saying:

1. That the demonetization of silver, while it doubtless helped to produce[1] a fall in prices, was not an arbitary act

have increased more rapidly than it has, there must have been either a decrease in the use of silver in the arts, or an increase in the output from the mines. Neither of these results would have taken place under free coinage unless the commercial price of the silver had been thereby increased.

[1] Some of the monometallist writers weaken their case and correspondingly strengthen Walker's case by asserting, or seeming to assert, that there was no effect of this kind, basing their statements on the fact that other causes were working to the same end. But, without the demonetization of silver, those other causes would not have produced the observed result in anything like the degree to which it has actually made itself felt. The real question is this: Would the governments, in the face of these other causes, have been able to maintain free coinage of silver at the old ratio, and concurrent circulation of gold side by side with the silver? If it should appear that they could probably have done so, then we must treat demonetization as an independent cause of the fall in prices; if it should appear that they could not have done so, then the acts of demonetization become a relatively unimportant mediate link in the chain of causation on which the monometallist lays so much stress.

of governments, but an expression of the demands of the commercial world. Had statesmen abstained from such demonetization, it is far from certain that the subsequent course of gold prices would have been materially altered. There is little or no evidence that bimetallic legislation has the power which General Walker ascribes to it; and the experience of France, on which Walker relies to prove his own view, rather goes — witness the curious cases cited by D'Avenel from mediæval French history — to prove the contrary.

2. That the responsibility for the present fall in prices, with the loss of profit and the irregularity of employment by which it has been attended, must be sought in the previous period of inflation, rather than in the present period of depression: in other words, that the business methods in use from 1850 to 1873 left the commercial world with an inadequate money reserve, and were not of a kind that could have been permanently maintained, even supposing the coinage laws to have suffered no change — except perhaps by continued depreciation of the currency.

3. That there is no clear ground, either historical or theoretical, for supposing that a continued depreciation of the currency would have made the laborer's position any better than it is at present. For, so far as the bimetallic argument is made to rest on the residual theory of wages, it is not leaning on a very strong support.[1]

It was Walker's misfortune to issue his book on bimetallism at a time when comparatively few people could or would study it in just the way that it deserves. It came before the public in the midst of a political campaign when the silver party made use of some of its statements to support practical measures which its author most strongly disapproved, and when the gold party was so prejudiced by this misuse of the book that most of its members shut their eyes to its real scientific value. It had been Walker's hope to make the discussion of interna-

[1] Of course this is not intended as either an exposition or a criticism of the bimetallic theory in general, but of those distinctive arguments for bimetallism on which General Walker laid special stress.

tional bimetallism a means of preventing the angry agitation which had sometimes threatened to involve the United States in a policy of independent coinage of silver. His book was already in press when the silver issue came up with unexpected acrimony and put peaceful argument on the subject out of the question. And then, when the campaign was over, and the time was come for quiet discussion, he left us suddenly.

The last letter which he wrote me ended with the words: "I am glad that you are going to criticise my *Bimetallism*." If ever there was a man who cared more for a candid discussion of the truth than for his own particular statements of the truth as he understood it, it was General Walker. Certain it is that there were few men I have ever known who had so little to fear from straightforward truth-telling.

> His life was gentle; and the elements
> So mixed in him, that nature might stand up
> And say to all the world, "This was a man."

ARTHUR TWINING HADLEY.

YALE UNIVERSITY.

REVIEWS.

The Speaker of the House of Representatives. By M. P. FOLLETT. With an Introduction by Albert Bushnell Hart, Ph.D. New York, Longmans, Green & Co., 1896. — xxvi, 378 pp.

In a brief preface Miss Follett expresses in generous terms her sense of obligation to helpers, especially to Professor Hart, without whose "continued help . . . this study would never have been completed," and "to Radcliffe College, which, in connection with Harvard College, makes such work possible." The admirably written introduction, contributed by Professor Hart, tells of the importance of the subject, of the reasons for the neglect with which it has been treated hitherto, of the spirit and methods of the author, of the arrangement of the book and of some of its more important conclusions. The speaker, says Professor Hart, is, next to the president, the most powerful man in the nation, and his power is increasing. No "publicist or statesman" has "made the speakership his study," because "public men do not stop to consider the familiar powers of the speaker. The ordinary books on public law pass him over, because he is hardly mentioned in the constitution. . . . While to the general public . . . the speakership, as a powerful office, . . . is less in the public eye" than the presidency. "Another reason why there has hitherto been no study of the speaker, founded on investigation, is the volume and variety of the sources which have needed to be examined." He adds:

> To study the historical growth of the speaker's office, and to show from the actual practice of Congress what his functions have been and now are, has been the long and patient task of Miss Follett. . . . This book represents the strenuous labor of a well-equipped investigator for more than half of each year during four successive years. Whatever may be done by diligent search into the records, by visits to Washington, by conferences with ex-speakers and by a comparison of all her varied material has been done by the author. . . . Miss Follett appears to have worked in an impartial and scientific spirit to solve a knotty problem in history and practical government.

Professor Hart, finding the author's conclusions to be "that the speaker's power is necessary and salutary; that he was never intended to be a moderator, but from the beginning had and exercised political leadership; that he is the only visible means of escape from a legis-

lative chaos; and that it is to the interest of good government that the speaker exercise the responsibility which has gradually come upon him," declares that he himself is convinced by the voluminous and carefully sifted evidence which she presents, "that the speaker's present status is a natural, normal and inevitable development of our system of government, and promises good and not evil."

The earlier sections of Miss Follett's first chapter, on the "Genesis of the Speaker's Power," give in brief outline an interesting account of the speakership of the House of Commons, from its first appearance late in the fourteenth century until the beginning in the eighteenth of that final stage of development which has transformed the incumbent of this office from a cringing servant of the crown into the dignified, independent, impartial and greatly respected speaker of to-day. Of equal interest is the account, in the later sections of the same chapter, of the development of the speakership in America during the colonial and revolutionary periods. Here, in the course of the eventful seventeenth and eighteenth centuries, the office became, through the acquisition of political functions, radically different from its English prototype, which was and still is little more than a moderatorship. It is to these political functions, slowly but securely established during the long struggles between colonial assemblies and royal governors, that the author traces the parentage of the most distinctive and, we may add, useful features of our Congressional speakership as now constituted.

The second chapter is on the "Choice of the Speaker." In this the discussion of the principles of choice is suggestive and instructive. Miss Follett holds that parliamentary knowledge and experience and previous service in the House have some weight; that strife for sectional advantage is a factor of considerable importance. But

of much greater influence than any sectional claims . . . are the many private schemes of individuals and corporations. Men with special interests to be advanced, or those anxious to obtain government subsidies in aid of some commercial enterprise, take an active part in the election of the man from whom they hope to get the most assistance. A very important factor in the speaker's election is his personal popularity. . . . The speaker, moreover, must be a man whom his party can unreservedly trust; . . . who will so organize the House, regardless of all personal interests and private feelings, that it shall act in harmony with the party. . . . New men come to Washington, some anxious for promotion and fame, many with high motives, . . . yet for an opportunity to show their capacity for public usefulness and to gain national distinction, they are wholly dependent upon the

good sense, justice and good-will of the speaker; a candidate, therefore, who has these qualities in a large degree, will be likely to gain their support. . . . The prospect of places on committees of course influences many votes. . . . Another important factor in the speaker's election is the relative probability of success. . . . The motives, however, which have by far the most influence . . . are purely political. . . . Each member asks himself in regard to the various candidates, "Will this man constitute the committees as I wish, and will he allow the bills which I favor to be brought in?

The discussion of the principles of choice is followed by a clear, but perhaps too condensed, account of the contested elections in 1839, 1849, 1855 and 1859.

In the third chapter — to the general reader perhaps the most attractive of all — we have a brief account of each speakership from 1789 to 1895. In the course of the narrative it becomes evident that the growth of the speaker's power has been hastened and, in a considerable degree, its peculiar forms determined by the stronger men, such as Clay, Blaine, Carlisle and Reed, who have held the speakership.

Chapters IV to VII are devoted to a study of the parliamentary, as distinguished from the political, powers and duties of the speaker. In the fifth chapter Miss Follett shows that the speaker's vote "is not only more than a casting-vote, but . . . something quite different." "The speaker of the House of Commons gets his right to vote through his position as speaker; the speaker of the House of Representatives through his position as a member of the assembly." She shows that by the rules the speaker is obliged to vote "to break a tie, to make a tie, to complete a two-thirds vote and, when his vote is necessary, to make a quorum"; while some speakers have claimed and at times have actually exercised the right to vote on any pending question, "this claim rests upon the lack of prohibition."

After showing in the sixth chapter that the rights and duties of the speaker in respect to the "Maintenance of Order" are not greatly different from those belonging to the moderators of similar legislative assemblies, Miss Follett takes up in the next chapter the subject of "Dealing with Obstruction.":

Representative institutions rest on the principle of government by majorities, but they should include also the protection of the minority. . . . Of late years the minority has carried the protection afforded it by the rules beyond all legitimate use to an attempt to thwart the legislation of a responsible majority. The methods of obstruction are many, but the two principal devices are: breaking a quorum by refusing to vote, and interposing dilatory motions.

This statement of the situation is followed by a fair and full account of the way in which, under the bold leadership of Mr. Reed, the speaker has acquired the powers which enable him to keep obstruction within convenient limits. It is no longer possible for those who are present to break a quorum by refusing to vote; dilatory motions are of no avail, since the speaker need not recognize them. The victory and its usefulness are indisputable, but the victory has been purchased at considerable cost; Anglo-Saxons have been loath to allow to any presiding officers the power to make absolutely final decisions binding upon the house. And it is true that in conjunction with the enormous influence which the speaker already possesses, it is a power which might be abused. Its justification lies in the absolute necessity that some one assure to the House the opportunity for the proper discharge of its functions.

Chapters VIII, IX and X, entitled respectively, "Power through the Committee System," "Power through Recognition" and "Power as a Political Leader," treat in an effective way of the increasingly important aspects of the speakership as a political institution. The foundation of the speaker's political power is the right conferred by the first Congress to appoint the committees of the House. This right has come to include the right to appoint to the chairmanships. The principles which guide the speaker in the discharge of this function, as generally understood, are "the interests of his party." But "since the speaker always owes his election to the dominant faction of his own party, he naturally gives to that faction the preference in the construction of the committees." The author makes in this connection a statement which is calculated to astonish if not alarm.

> Lately, moreover, there has grown up the theory, among the speakers at least, that the chair has the right to have and to pursue a policy of its own; so that recent occupants of the office have been known to accomplish their ends in direct opposition to what has seemed . . . the predominant opinions of their party.

It is, however, his "power through recognition" that exhibits the control of the speaker over legislation in its most personal and, to many, most disquieting, not to say offensive, form. The way in which this power is sometimes exercised is not consistent with the respect due to a Congressman and to the constituency which he represents. Even Miss Follett, who would not lessen the prerogatives of the speaker, admits that "the subject of recognition is one of the most difficult to adjust in the whole legislative system."

The tenth chapter opens with the assertion that "the speaker of the House of Representatives is the acknowledged leader of his party in the House." In earlier times he was but one of the leaders and often not the foremost. To-day he stands distinctly at the head. Moreover, he shows at least a tendency to aspire to do more than merely embody the will of his party in national legislation; he would become a real premier and devise the policy of his party. The chapter points out the opportunities for leadership not hitherto considered which the speaker now enjoys, the most important of which is that which comes to him as chairman of the committee on rules.

The final chapter is on "The Speaker's Place in our Political System." This contains a summary of the powers of the speaker, a view of their origin and the causes of their development, and a frank confession that the speaker is not, but should be, responsible: "The one thing in the present position of the speaker which is much to be regretted, and which will always tend to produce evil results until remedied, is the possession of such important prerogatives without definite responsibility." The chapter proceeds with a discussion of this important question of the responsibility of "the speaker as the head of the legislative department" and as an executive officer, and closes with "a plea for a better adjustment."

The six useful appendices which follow include a "Bibliography of the Speakership" and the rules of the House of Representatives. The table of contents and index are ample and well made. Throughout the book numerous footnotes acquaint the reader with the sources studied and the authorities consulted.

The foregoing analysis of Miss Follett's work, although brief, makes extended comment unnecessary. The importance of the theme is not open to question. That the treatment is of rare excellence will be conceded by every thoughtful reader. In few recent works belonging to the field of politics and history do we find so much evidence of the conditions which are essential to the making of a good book — a well-chosen theme, grasp of subject, mastery of material, patient, long-continued, wisely directed labor, good sense and good taste.

There are two respects in which the book seems to me defective. In the first place, I do not think that Miss Follett has presented with adequate fullness the evils which result directly from the centralization of so great powers in the hands of the speaker. She does not overstate the extent of this centralization in saying that "Congress no longer exercises its lawful function of law-making; . . . it is not

even the maker of the legislative power; it is but the maker of the real maker, the speaker of the House of Representatives." This means a degradation not only of the Congressman, but also of the constituency that he represents, and therefore of the people of the United States. The House of Representatives has ceased to be a place where a man can be sure of an opportunity for public service at all commensurate with his zeal and capacity. It has become a place where such opportunities are no longer rights, but favors, bestowed partly on personal and partly on party considerations. The ascendency of the speaker resembles in too many of its aspects the ascendency of the party boss. Moreover, Congress is a school of politics for the whole country; and the spirit and methods which prevail there are reproduced more or less fully and rapidly all over the Union. The author's conclusion that this centralization is necessary and salutary may be well grounded; but it is prudent not to overlook its cost.

The book seems also to scant another important feature of its general theme — the relationship of the development of the speakership to the development of party government. It can scarcely be doubted that the two are organically related. But the wonder is that in a region so new the author should have succeeded in exploring so far and so well. She has placed every student of politics and political history under heavy obligations.

AMHERST COLLEGE. A. D. MORSE.

État Fédéral et Confédération d'États. Par LOUIS LE FUR, Docteur en Droit. Paris, Marchal et Billard, 1896. — xvii, 839 pp.

In the first three hundred and fifty pages of this book the author gathers the material of which he is to make use further on. All of the confederations and federal states which have ever existed are described. The reader finds here an account of the Greek confederations, of the Republic of the United Netherlands, of the Germanic Confederation and the German Empire, of the Swiss Confederation before and after 1848, of the United States, of the federal republics of South America and also of the Dominion of Canada. Such a summary is very convenient, if well done, as it is in this case. The author shows ample and accurate knowledge, and he has the French gift of lucid exposition.

The theoretical or critical, as distinguished from the historical, part of his work, the author begins by a discussion of sovereignty, which he justly regards as distinguishing the state from all lower forms of

political organization. This view leaves no room for the category of non-sovereign states. The various theories that have been advanced in order to avoid this conclusion, including the divisibility of sovereignty, are examined and rejected. Present terminology, the author holds, is the result of historical traditions. The provinces of a decentralized simple state are in some instances not a whit behind the members of a federal union, either in the strength of local patriotism or in the extent of their authority. The pages devoted to this topic are well worthy of perusal.

When M. Le Fur comes to discuss the nature of sovereignty he is clearly hampered by the eighteenth-century conception of natural law, as something outside of and above the state, and imposing obligations upon it. He insists that the superlative is a relative term and that even the state is subject to law. Every one admits that the state, like every other earthly thing, is subject to limitations. It cannot, for instance, disregard economic laws without suffering the penalty. But if it does disregard them, its subjects are nevertheless bound by its commands. The law by which the French Convention fixed the price of commodities was in violation of sound economic principles, but it did not for that reason transcend the competence of the state. To hold otherwise is to introduce into a discussion of legal questions considerations that belong to a different category.

This confusion of thought avenges itself later in a curious manner. The author affirms that the indivisibility of sovereignty is to be inferred, not from the nature of sovereignty, but from the unity of the state. This, however, is a distinction without a difference; for how long would the state remain one were it not at the same time sovereign? The state could not be sovereign were it not one, nor one were it not sovereign. The same misconception mars the chapter dealing with the origin of the federal state. While giving a fair and lucid account of Jellinek's position, the author yet maintains that federal states both can be and in some instances are formed by treaty; and then he seeks the authority which compels the observance of the treaty and excludes the right of secession in the natural law, which is above the constitution and above the state itself. Fairness seems to require that in such a case the reviewer should quote the author's words:

Ce n'est plus en effet de contracts conclus entre individus, et qui par conséquent ont besoin d'être sans cesse renouvelés, qu'il s'agit ici, mais bien de conventions entre collectivités publiques qui ne meurent pas. Et ces conventions sont obligatoires, car les principes du droit s'imposent aux états

eux-mêmes; et bien qu'il n'existe pas au-dessus d'eux de pouvoir commun capable de les constraindre par la force à l'exécution de leurs obligations, il n'en sont pas moins tenus en droit d'accomplir celles qu'ils ont contractées.

It is difficult to imagine why the treaties by which a confederation is formed should not have the same sanction; but if so, what becomes of the distinction between the federal state and the confederation, which it is the object of this volume to establish?

Despite such drawbacks, however, the book before us is not without substantial merits. The author has made a thorough study of the literature of the subject, and his analysis of the views of other writers is clear and discriminating. His own criticisms, moreover, are often so pertinent and suggestive as to increase the regret that his standpoint compels him to be untrue to the general trend of his own opinions, and to reject upon fundamental questions the views of writers who have done most to clear up the problem of the nature of the federal state.

RICHARD HUDSON.

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Éléments de Droit Constitutionnel. Par A. ESMEIN, Professeur à la Faculté de Droit de Paris, Directeur-Adjoint à l'École Pratique des Hautes-Études. Paris, 1896. — 841 pp.

As in his well-known *Cours Élémentaire d'Histoire du Droit Français*, the author has aimed in this book to "compose a treatise at once elementary and scientific"; and at the outset one may acknowledge the success with which he has performed his difficult task. Throughout the comparative historical method is employed; so that in effect the work, though having as its ultimate object an exposition of the constitutional law of France, is an elaborate treatise on the development of the forms and principles of self-government in the modern state. It is marked by the same care in definition, the same terse epigrammatic diction and the same clear analysis which characterize the author's great work on *Le Mariage en Droit Canonique.* Moreover, one is struck by his intimate acquaintance with the literature of his subject, particularly that which relates to the constitutional history of Germany, England and the United States.

Besides an introduction of twenty-three pages, the book is divided into two parts. The first part deals with "Modern Liberty, its Principles and Institutions"; and the second, with "The Constitutional Law of the French Republic."

In the introduction, by a series of definitions, the essential

analysis of the entire treatise is developed. Constitutional law is declared to be "the fundamental part of public law," all whose "other branches presuppose its existence," as indeed does private law "when the latter appears in written form." Constitutional law has three objects. "It determines (1) the form of the state; (2) the form and organs of government; (3) the limits of the rights of the state." Each of these three objects is defined and discussed in the order named. "The state is the juridical personification of a nation; it is the subject and the support of public authority;" while that which in law constitutes a nation is "the existence in that society of men of an authority superior to the individual wills." This authority, which in its sphere recognizes no "superior or concurrent power, is called the sovereignty." It has two aspects: "the interior sovereignty, or the right to command all the citizens composing the nation, and even all residents of the territory; and the exterior sovereignty, or the right to represent the nation and to bind it in its relations with other nations." With respect to form, the "constitution of the interior sovereignty," states are distinguished on the one hand as "simple and mixed"; on the other, as "unitary and federative."

Much confusion, he continues, arises through the diverse senses in which the word "government" is employed by writers on constitutional law. First, it is not to be confounded with "sovereignty." In the "proper and general sense," government "designates the exercise of public authority by the sovereign; c'est la souveraineté mise en œuvre." Again, it is a common fault to use government in the restricted "sense of the executive power and its immediate organs." This error owes its origin to two facts. In the first place, just as the legislative power is the "veritable regulator of the sovereignty," though distinct from it, so it is mainly through the executive that the action of the government is brought home to the citizen. Secondly, it is due to the powerful influence of Rousseau, in whose language "sovereign" is synonymous with the "legislative," and "government" with the "executive" power. This confusion makes it all the more difficult to distinguish clearly the "government" from the "administration"; and the difficulty is complicated by the fact that often, as in the French law, the organs of the government, properly so called, act as the organs of the administration. Yet, in reality, the two conceptions are quite distinct. Revolution may often change the form of the government without essentially affecting the administration: "je dirai que le moteur était changé mais que la machine n'en continuait pas moins sa marche régulière."

The first part of Professor Esmein's work is of special interest to the student of institutional history. The author has set himself the task of searching out and interpreting "the juridical theory of the fundamental institutions and superior principles which in the nineteenth century figure in the constitutional law of the West." These institutions and principles are traced to two sources, each treated under a separate "title." The first title deals with the influence of the English constitution on modern institutional forms and ideas. The author does not here attempt a systematic history of the English constitution, but rather seeks for those "institution-types" which it has contributed to the law of free peoples and particularly to that of France. With clear insight, much learning and a firm grasp on the details of his subject, he shows in five chapters how the English constitution has become one of the elements of modern liberty. Then he discusses the origin and character of representative government, the bicameral system, the responsibility of ministers and the parliamentary or cabinet system of government. In making known to France and to Europe in general the principles of English constitutional liberty, the influence of Montesquieu, de Lolme and Blackstone is especially emphasized. Under the second title of this first part, also in five chapters, are considered the principles developed through the philosophy of the eighteenth century and proclaimed by the French revolution. Rousseau's theories are carefully analyzed, and the modern history of the law of nature is traced from the writers of the twelfth century onward. The origin of the theory of national sovereignty, of the separation of governmental powers, of the rights of the individual and the theory of the written constitution are successively treated; and this part of the book, aside from its proper scientific purpose, constitutes a most important contribution toward understanding the forces which produced the French Revolution.

The second part, dealing with the constitutional law of the French Republic, cannot here receive the notice which it deserves. It is a very clear and able exposition of the French system of parliamentary government. No better manual for university or even for popular use exists. Indeed M. Esmein, when due allowance is made for the narrower field and the more scientific and technical aim of his book, has rendered us a service for France comparable to that of Mr. Bryce for the sister republic. It is earnestly to be hoped that the *Droit Constitutionnel* will speedily find an English translator.

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The Recollections of Alexis de Tocqueville. Edited by the COMTE DE TOCQUEVILLE, and now first translated into English by Alexander Teixeira de Mattos. New York, The Macmillan Co., 1896. — xiv, 409 pp.

During the last troubled century of her history France has produced many politicians who have posed as philosophers, and a few philosophers who have mingled in politics. De Tocqueville is a conspicuous example of the latter class. For over ten years he played a part in the Chamber of Deputies, and conformed externally to the accepted canons of the politician's life. But for all that he was no politician. The motives which guided his official actions were not those of his colleagues. He was above all the man of observation and reflection. While Thiers and Guizot employed either directly or indirectly all the tricks of the politician's trade to attain the politician's end — power, de Tocqueville, watching with some disdain the methods of those about him, found his most congenial employment in maintaining a connection between his party's policy and the fundamental principles for which the party stood. Among the most skillful of the phrase-makers, whose gift is so potent in French politics, he was distinguished from the rest by attaching more importance to the substance than to the form of his phrases. He understood the tendency of the French public to take what he calls the "man-of-letters' view of politics," which consists in

> seeking for what is novel and ingenious rather than for what is true; in preferring the showy to the useful; in showing one's self very sensible to the playing and elocution of the actors, without regard to the results of the play; and . . . in judging by impressions rather than reasons [p. 88].

Against this tendency, de Tocqueville felt strongly the necessity of unceasing strife.

The "recollections" embodied in the work before us cover the personal experiences of the author from February to June, 1848, and from June to October, 1849. By a happy chance, the philosophical student of democracy in its most peaceful aspect was able to observe from the center the phenomena of democracy in cyclonic development. The result of the observation, committed to writing two years after the fact, combines the vividness of the first impression with the sobriety of the matured judgment upon the events. In respect to the actual happenings of February and June, 1848, de Tocqueville's detailed account serves only to strip off the few remaining shreds of "glory" from many very commonplace incidents that have been dis-

guised by them. It is in his judgments of leading men concerned in the affairs of the day, and in his reflections upon the general character of politics, that the author's work is most fascinating.

Few of the leading politicians of the time emerge intact from the philosopher's crucible. Thiers's weaknesses are made particularly prominent. In the presence of the trouble which his own political course had precipitated, he is shown to have lost his head entirely; and when the socialists rose in Paris in June, 1848, he was prompt to urge the abandonment of the city (pp. 202, 203) — the expedient which, when adopted under similar circumstances, and largely through his influence, in 1871, led to the most disastrous consequences. Lamartine appears in these pages as endowed with much greater physical courage than Thiers, as well as with a higher degree of moral stamina and political insight. Ledru-Rollin, who loomed so large and terrible in the excited imagination of many of his contemporaries, is dismissed with contempt as a

> sensual and sanguine heavy fellow, quite without principles and almost without brains, . . . free from malice . . . and incapable of cutting the throats of any one of his adversaries, except, perhaps, for the sake of historical reminiscences or to accommodate his friends [p. 151].

The almost uniformly unfavorable judgment of de Tocqueville on the conspicuous men of the day is doubtless attributable at bottom to the fact that they, as practical politicians, could not be adjusted to the philosophical formulas which were the unconscious foundation of the critic's thought.

The general reflections on politics with which the narrative of particular events is interspersed are of the same striking character that made the author's reputation in his first great work. The theme upon which most of them depend is democracy and revolution as illustrated by France. The February Revolution, he claims, sprang from "general causes impregnated with accidents"; and this is true of all like transactions. Neither a fatalistic succession of general causes, which "suppress men from the history of the human race," nor a chapter of accidents, nor a suddenly improvised stroke of genius or audacity in any popular leader, embodies the complete explanation of any great political upheaval. M. de Tocqueville claims that he foresaw *a* revolution, but he concedes that *the* revolution took him by surprise; and he denies that anything more than this can be claimed by any of his contemporaries, whether conservative or radical.

The events of February were recognized at once as having terminated the rule of the *bourgeoisie*, and de Tocqueville comments with ill-concealed malice on the anxiety with which this class sought to ingratiate itself with the masses. A plebeian ancestor now became a prize to every family, who "took as great pains to make a display of [him] as, not long before, they would have taken to conceal his existence." But it was the socialistic, as distinct from the purely republican, element in the revolution that gave the event its peculiar significance. De Tocqueville easily detects the cause of the socialists' failure to control France as the extremists had done in the first revolution. The country people, who in 1789 had everything to gain by the projects of the Parisian leaders, in 1848 had everything to lose. The abolition of property rights in 1848 would have undone the work of 1789. This is why the whole country population rose *en masse* to support the government against the insurgents of May and June. But de Tocqueville, while rejoicing at the result, is too much of a philosopher to be sure that it is final. His study of the march of revolution through sixty years has made him chary of setting any limit to its progress. All political institutions inconsistent with general equality have been swept away; is it not to be expected that the social institution, private property, which appears to be the only remaining sign of inequality among men, will also be assailed? He puts, but does not answer, the question: "Will socialism remain buried in the disdain with which the socialists of 1848 are so justly covered?" He is clearly in doubt.

> The more I study the former condition of the world, and see the world of our own day in greater detail . . . the more I am tempted to believe that what we call necessary institutions are often no more than institutions to which we have grown accustomed, and that in matters of social constitution the field of possibilities is much more extensive than men living in their various societies are ready to imagine [pp. 100–101].

The last part of the *Recollections* treats of the period when the author was minister of foreign affairs in the Barrot cabinet, at the beginning of Louis Napoleon's presidency. This part was written in 1851, and while in no degree less interesting than the others, it seems to me to be very distinctly impressed with ideas of the time of the writing, and thus to lack faithfulness to those of the time written of. The trail of the *coup d'état* is over it all.

WM. A. DUNNING.

The Nicaragua Canal and the Monroe Doctrine. By LINDLEY MILLER KEASBEY. New York, G. P. Putnam's Sons, 1896.—622 pp.

Professor Keasbey has written a book on an interesting and important question. Between North America and South America lies an isthmus, in many places not over thirty miles wide, which divides the Atlantic from the Pacific, and compels ships coming from the east to make the long and perilous journey around Cape Horn in order to reach the Pacific ports. The idea of connecting the two oceans at this isthmus suggests itself naturally, and plans for a canal were formed almost as soon as the shape of the American continent had been ascertained by discoverers. Under Charles V and Philip II plans were made for cutting through the isthmus a water-way, which, after three centuries, still remains unfinished.

Besides giving a full account of these early attempts, Professor Keasbey shows how one European nation after another has tried to obtain control over some part of Central America. Such efforts have not yielded very important results. Spain has lost the position she once held, and the states which now occupy the isthmus are as ill governed as most of their South American sisters. Professor Keasbey, like many others, views with complacency the idea of our assuming a protectorate over this region, in which lives an ignorant and indolent population under shifting despotisms christened by the name of republics. The wisdom of such a step is at least doubtful. The parent who, in addition to caring for his own large family, insists on assuming responsibility for the acts of all the incorrigible good-for-nothings who live in the neighborhood, may be philanthropic, but he is not well advised.

Great as are the difficulties which attend the construction of a canal through the isthmus, no one can doubt that, sooner or later, communication will be opened between the Atlantic and the Pacific. Possibly the cost will be so large that such an undertaking will not prove to be a commercial success, but it will be as important to civilization as the canal of Suez. Professor Keasbey evidently thinks that the question, when the canal will be constructed, is of less importance than the question, by whom it will be constructed. Many will, however, fail to appreciate the importance of having this work done under the supervision of our own government. In times of peace the ships of all nations will use this means of communication; in times of war no rights will be respected except those that are protected by force. From the Suez Canal the English have reaped the greatest advantage; but this is because they have the largest foreign com-

merce. Since the construction of the canal England has acquired the majority of the stock, but it is hard to see what especial benefit she derives from this; no more English ships pass through the canal because the English government is the largest stockholder. If the possession of a canal in Nicaragua or Panama were important to us in time of war, we could hold it only while we had more ships and stronger ships than our enemy. To suppose that, in case of war with England, a British fleet of ironclads would despondently turn away from a canal guarded by some stray American gunboats, because it had been constructed with American capital or was under the protection of the American government, shows a lack of familiarity with the usages of warfare.

Whether the canal is built by a future de Lesseps or a future Warner Miller, this country will reap the greatest advantage from its construction. Professor Keasbey gives a full account of the long record of failure in the past; but, notwithstanding this, he is justly confident that in the present condition of science and commercial development the completion of a canal will not be long postponed. The work done at Panama has been the only serious attempt at construction, and the failure of that undertaking need not discourage other projectors. Over two hundred and fifty million dollars were spent there, and the canal is far from completion; but as one-third of the amount was stolen, one-third was wasted and only one-third was spent on the work, this does not show that the cost of cutting through the isthmus will necessarily reach an impossible sum. The account of the Panama scheme and of the manipulations, not to say the machinations, of de Lesseps is the most interesting chapter in this book. A few errors have been allowed to creep in, and de Lesseps is made to say that American opposition was due to envy of "la gloire Français." The great projector was often wrong in his engineering, and still more often wrong in his facts, but his French was always correct.

JAMES BRECK PERKINS.

ROCHESTER, N. Y.

William Henry Seward. By THORNTON KIRKLAND LOTHROP. (American Statesmen Series.) Boston and New York, Houghton, Mifflin & Co., 1896. — 436 pp.

The present work should be judged by the purpose with which it was written. It exhibits in a compact and somewhat popular form the life of the person of whom it treats, and his relations to the times

in which he lived. To this mode of treatment the life of Seward does not readily yield. As the result of a certain vivacity and resourcefulness of temper, his name is associated with questions rather than identified with them; and the number of important events with which he was connected is so considerable, and the precise part he played in some of them is as yet so indeterminate, that his career invites investigation and discussion rather than narration. The present work does not attempt to clear up doubtful questions by new evidence. On the other hand, it presents a fair summary of that which has already been disclosed.

The fact that Mr. Seward was, as Mr. Lothrop states, "charged with having no political convictions," is due to the combination of traits that caused him at times to propose courses of action which seemed to others to be irrational. There were occasions on which he exhibited impulsiveness and lack of self-restraint. An example of this may be found in his memorandum to President Lincoln of April 1, 1861, in which he suggested a probable declaration of war against two European powers, a possible declaration against two more, and the rousing in Canada, Mexico and Central America of "a vigorous continental spirit of independence" against "European intervention," as a remedy for the political ills of the United States. It would be difficult to believe that such advice was given seriously, if there had been any object to gain by a lack of seriousness. But there was none.

Mr. Seward held the office of secretary of state through eight long and eventful years, and he was required to deal with many difficult questions. It would be impossible, in the limits of a review, to discuss his career in that office. That on many occasions he exhibited great skill is generally conceded. His industry was remarkable; and it is curiously attested by hundreds of memoranda written hurriedly in pencil across the face of dispatches, showing to how great an extent he personally directed the work of his department. Mr. Lothrop states that he remained in the cabinet after President Lincoln's death, "not so much to take part in the process of reconstruction as because he wished to dispose of the diplomatic questions which the war had left unsettled, and thus to finish his work." In this opinion I am inclined to concur. It doubtless was the wish to which Mr. Lothrop has adverted that led him, in 1868, to undertake the settlement of the Alabama claims. Mr. Lothrop goes very far, however, in saying that the Johnson-Clarendon convention "gave to the United States, in substance, all that it got by the Treaty of Wash-

ington." The Johnson-Clarendon convention and the Treaty of Washington were very different instruments, not in form only, but also in substance. They were about as unlike as two treaties of arbitration could be.

J. B. MOORE.

Harvard Historical Studies. Vol. I: The Suppression of the African Slave-Trade to the United States of America. By W. E. BURGHARDT DU BOIS, Ph.D., 335 pp. Vol. II: The Contest over the Ratification of the Federal Constitution in the State of Massachusetts. By SAMUEL BANNISTER HARDING, A.M., 194 pp. Vol. III: A Critical Study of Nullification in South Carolina. By DAVID FRANKLIN HOUSTON, A.M., ix, 169 pp.—New York, Longmans, Green & Co., 1896.

The series of historical monographs, of which these volumes are the first installment, appears in unusually attractive form. The publishers, so far as their art could go, have left little to be desired. The plan of the series is also very comprehensive. It will include studies in European as well as American history, besides collections of documents, reprints and bibliographies. An enterprise planned and conducted as this promises to be, must be widely useful in making accessible material for history and in furnishing an avenue for the publication of thorough studies on special topics.

The volume of Mr. Du Bois on the *Suppression of the Slave-Trade* fittingly introduces the series, and in a way indicates what the character of the monographic material in it is likely to be. The volume is a thorough and painstaking study of the efforts made by the American colonies, and by the commonwealths and federal government subsequent to the Revolution, to restrict or abolish the traffic in slaves, of the obstacles which these efforts met with and of their failure until the traffic was swept away in the war which had as one of its results the abolition of slavery itself. The material is well arranged and clearly set forth. Statements throughout are carefully fortified by the citation of authorities. By treating the colonies under the classes of planting, farming and trading colonies, the economic cause of the origin of slavery and of the persistence of the slave-trade in the South is sufficiently indicated. At the same time the reason why the restrictive legislation of those colonies and the humanitarian enthusiasm of the early Revolution were not strong enough to stop the trade is clearly shown. The history of the compromise of 1787, by which for twenty years the control of the traffic was left almost

exclusively to the states, is plainly stated. The failure of the federal law of 1807 is attributed to the inadequate penalties provided for its violation, to the provision contained in it that the states might dispose of illegally imported negroes and to the general indifference about its execution. Objections to the exercise of the right of search by England, which in part had a natural historical origin, prevented coöperation with foreign powers in the suppression of the traffic. The author also shows the remarkable extent to which the merchants of the Northern states were interested in the trade. Finally, the great increase in the production of cotton after 1820 so strengthened the demand for slaves in the South that the legal barriers were shown to be altogether too weak to check their importation. For a long period before the Civil War the laws against the traffic were systematically violated. Not the least valuable material in the volume is the conspectus of colonial, state and federal legislation against the slave-trade contained in the appendices.

The second monograph, by Mr. S. B. Harding, contains discursive material on the *Contest over the Ratification of the Federal Constitution in Massachusetts*. The study cannot be called a systematic work, nor does it present any especially skillful organization of material. On the contrary, it seems very possible that the character and plan of the volume were largely dependent on the nature of the working material and its accessibility. Considerable contemporaneous matter in the form of pamphlets and newspaper articles has been utilized. Some use, although apparently not exhaustive, has been made of the Massachusetts Archives; and much dependence has been placed upon numerous local histories for aid which in many instances could very probably have been found in manuscript and in more complete form. Possibly the most important service of the monograph is the reprinting from the *Hampshire Chronicle* of a suggestive letter by "Cornelius," and from the *Massachusetts Centinel* of eight letters by "A Federalist Republican."

Of the six chapters in Mr. Harding's volume, the first indicates the development of the extreme self-confidence of the lower classes of the population when disposing of political affairs, and the appearance of sharp lines of cleavage between the classes of the people, both as to social arrangements and as to economic relations and political divisions. The second chapter presents the material directed against the constitution, both in the press and in personal letters. The third chapter relates the action of the General Court in calling the state convention, and the action, controversial or other, taken thereon by

fewer than a score of towns. The succeeding portions discuss the opposition to the constitution in the convention, the ratification of the document and its reception. The analysis of situations is not in all cases strong, and the relative prominence given to certain towns and individuals, presumably as types, is apt, unless qualified, to be misleading.

The third monograph in this series, by Professor Houston, is a straightforward and unpretentious discussion of the development of theories of nullification in South Carolina. The author's "aim is principally to look at the movement from within, to trace its origin and development inside the boundaries of South Carolina and to discuss the validity of the leading doctrine in the light of the precedents on which the nullifiers mainly relied and of South Carolina's earlier history." The latter purpose resolves itself largely into a process of turning back upon the South Carolinians of the later twenties the words and acts of their fellows during the first two decades of the century. The contrast thus revealed may be explained on grounds of expediency, of local political and economic interest and of real statesmanship; but recognition must be given to a revolution of attitude, in which the year 1816 is fixed upon as

> the beginning of the end. . . . One form of statement might be that it marks the time when South Carolina erased from her program liberality, breadth of view and unselfishness, and wrote in their place niggardliness, narrowness and selfishness; when she began to turn from union towards separation. From another point of view, it marks the time when, not South Carolina, but the other sections of the country which had secured control of affairs, changed their policy from a broad to a sectional one. From a third and higher standpoint, it marks the time when the less admirable qualities of both sections became conspicuous in a struggle for what each section believed, or appeared to itself to believe, was for its own interest, and also for that of the country at large [pp. 5, 6].

The author's purpose or method tends also to throw into prominence the problem of adjusting relations between expediency and consistency, and it gives occasion for what to some will seem like the belittling of Calhoun. An instance of that history-writing which has persisted in making Calhoun the embodiment of nullification is made the text for an elaborate criticism of that theory. On this subject Professor Houston's work marks a clear advance over most historians of the period. Careful treatment, naturally, is given to the development of Calhoun's views and to his connection with

the nullification movement; but it is insisted that "his change followed that of the majority of the people of the state; and whatever pressure there was, was exerted by the state on him, not by him on the state" (p. 60). This view of his relation to the state is thus reiterated: "It would be much nearer the truth to say that South Carolina coerced Calhoun, than to say that Calhoun misguided South Carolina" (p. 64).

The author's belief that Calhoun figured in the controversy "as an expounder, and as little else," makes natural and necessary the inclusion, as of importance to the narrative, of the work of such men as George McDuffie, Dr. Thomas Cooper, William Drayton and James Petigru, and of such material as the "Sidney" papers and Turnbull's "Crisis." Without such elements the history of nullification could not be attempted.

A third — and perhaps the most significant — feature in the author's work is the importance attached to the economic situation, and the manner in which that side of the development is portrayed. This is in striking contrast to those portions of the work which treat of the purely political aspects of the subject. There is much in the latter that is now the merest commonplace; for example, the conclusion "that the issue of the controversy was decidedly a victory for the general government, at least so far as principles are concerned" (p. 134). Yet even on this side of the work certain portions, especially in the chapters on "South Carolina's Change of Attitude" and on "Formulas of Nullification," are very suggestive.

With reference to one of the leaders it is remarked: "It would be tedious to follow McDuffie through the elaborate and ingenious argument in which he undertook to sustain his position" (p. 39). So also with reference to the various types of nullification theory, it is said to be impossible "to describe the forms the doctrine was made to assume by its different expounders" (p. 79). Nevertheless the reader should willingly consent to such tediousness, and the author might doubtless have overcome, in large measure, the impossibility of adequate description. Satisfaction and completeness on such points may justly be expected, unless the aim is to subordinate the scholarly to the popular. Such limitation is especially unfortunate with reference to the form and history of the Replevin Act.

Certain references are either vague or incomplete, as on pages 57, 110, 111; while "Benson," for Benton (p. 95), merely emphasizes the general care shown in putting the works of the series through the press. Eighteen pages are devoted to seven appendixes, including a

letter of Calhoun to Robert S. Garnet, first published in 1893. The usefulness of the index is impaired by the omission from it, contrary to the practice in Mr. Harding's volume, of material in the notes.

COLUMBIA UNIVERSITY. HARRY A. CUSHING.

The Indian Village Community. By B. H. BADEN-POWELL, M.A., C.I.E. London, New York and Bombay, Longmans, Green & Co., 1896. — xvi, 445 pp.

Students of the village community now have to reckon with an important series of books, bearing more or less directly upon their subject, that will doubtless lead to no little revision of theories regarding the status and land tenure of primitive peoples. Dr. Meitzen,[1] Professor Maitland[2] and, in the work here reviewed, Mr. Baden-Powell have recently discussed the evidence for Germany, England and India respectively, and have presented extremely important conclusions thereon.

The Indian evidence has long needed an investigator; and Mr. Baden-Powell is the first to furnish anything like an adequate presentation of the subject, and to give a systematic account of the village in India in all its forms and variations.[3] He has entered on his task with a full appreciation of the nature of the problems before him, with a desire to set before English readers the collected evidence regarding the details of the villages, and with the unconcealed purpose of correcting the theories of older writers — especially those of Sir Henry Maine and his followers — which were based on a wholly inadequate knowledge of the subject. As an Indian official, Mr. Baden-Powell has the advantage of being familiar at first hand with his subject; and as a student of comparative institutions, of being able to bring his evidence into line with the evidence from other countries. It is the more unfortunate, therefore, that his work, admirable as it is in many respects, should be disfigured by distinct defects of construction and presentation.

After an introductory chapter upon the village and its forms in general — in which we are introduced to conclusions before the evidence is presented — Mr. Baden-Powell begins his examination

[1] Siedelung und Agrarwesen der Westgermanen und Ostgermanen, der Kelten, Römer, Finnen und Slaven (1895).

[2] Domesday Book and Beyond: Three Essays in Early English History (1897).

[3] Mr. Baden-Powell has already presented portions of the evidence in two earlier works: The Land Systems of British India (1892); and A Short Account of the Land Revenue Administration in India (1894).

proper with a study of the physical and geographical conditions of India, in order to discover how far the local economy of the country has been influenced by natural causes. He finds that physical conditions have influenced to a very considerable degree the form of local organization and the character of agricultural customs; that hill ranges are unfavorable to settlement in villages; that the necessities of jungle-clearing, of water supply and of defense against enemies have compelled compact organization; that climatic conditions have prevented tribal coaration; that the constant need of irrigation has made a shifting cultivation impossible; and that the labor of clearing the soil has prevented the employment of the open-field system. Turning to the ethnographic conditions, he devotes a chapter to the Aryan conquest, and then passes in review the customs of the non-Aryans, Tibeto-Burmans, Kolarians and Dravidians, who, he thinks, had a good deal to do with the building up of the existing village land customs. Returning to the Aryans he examines their agricultural ideas and practices. He agrees with Sir W. Hunter that throughout five-sixths of India the actual work of tillage remained in the hands of non-Aryan or Sudra races; considers that Aryan landholding had a natural tendency to the landlord form; and believes that the Aryans conceived of no special form of village as such, though they probably formed villages where the conditions were favorable, and took the lordship of villages already established.

After thus clearing the ground, Mr. Baden-Powell shifts his point of view, and studies the village in its relation to the tribe and the clan, furnishing us in this particular with one of the most valuable and interesting chapters in the book. It is evident that a great deal of material exists in India which may be of no little value in helping to elucidate the problem of the tribal origin of the village, which in the West has thus far, owing to the want of evidence, eluded the efforts of scholars. This material concerns the structure of the tribe and the clan, the relation of the clan to the village, the division of lands among the members of the clans and subclans, the landed rights of the tribesmen and a host of minor agricultural customs.[1] We are

[1] Such as the desire to obtain equality, pp. 132, 180, 244, 255, 271, 275, 283; exchange of holdings, 180, 252, 255, 257, 262, 375–378; casting of lots, 253, 280, 325; "ploughland," as the amount necessary for family support, 271, 275, 278, 308, 324–325; measuring fields with a "staff of reed," 190; balks, 190; linces (terracing of hillsides), 51. Some of these customs, as the references show, are noted in other chapters. It may not be without interest to mention here the custom of *hamsāya* — the admission of non-tribesmen — among the Pathān and Bilūchi tribes, pp. 245, 246.

frequently reminded of Mr. Seebohm's study of the tribal system in Wales, and wish over and over again that our author had elaborated this part of his subject and had devoted to it a much larger portion of his book.

The first conclusion drawn from the evidence is that in India there exists no single dominant form of the village to furnish a general typical description, such as Sir Henry Maine gave. Two forms appear. One, the *raiyatwāri* village, contains no trace of common or even of joint tenure, but in it the several portions were allotted or taken up severally. Villages of this type prevail everywhere among the non-Aryans, where Aryan conquest and overlordship have not transformed them into large landlord estates and co-shared villages, and are in every case traceable to a tribal or clan origin. The other, which Mr. Baden-Powell calls the "joint village," is found not in one simple type, as is the case with the *raiyatwāri* village, but in many variations (eight are noted on pp. 348–350) the chief characteristic of which is a joint tenure — a co-sharing of the land by a body of owners, though the land may or may not be actually partitioned. The *raiyatwāri* village Mr. Baden-Powell declares to be the older, looking back to a period when the "joint village" had not come into existence. The latter, he thinks, can be traced to conquest of non-Aryan peoples by Aryans, Jats or Gujars, to settlement by such conquerors in new territory, or to certain other causes that are artificial and not tribal. After his discussion of the tribe and the village, he devotes considerable space to an examination of these artificial causes, which, he says, are four: individual enterprise, rise to local power of individual families, establishment of royal courts and especially grants by the state for religious and secular purposes. Much of what our author tells us regarding the grant of royal rights (pp. 205, 207, 212, 218, 273, 296 ff.) may be profitably compared with what Professor Maitland says on the growth of seigniorial power in early England.[1]

Having thus, in his examination of these two forms of the village, carried us through every part of India, from Panjāb to Madras and from Gujurāt to Assam, — and at times it is a most bewildering journey, — he offers the general and sweeping conclusion that no "communal holding" exists or has existed in India.[2] He recognizes

[1] Domesday Book and Beyond, essay ii, § 5.

[2] The following is Mr. Baden-Powell's definition of communal tenure: "'Common holding' implies that all should join in cultivating as large an area as necessary, and that each should then receive a portion of the harvest suitable to

"collective right," but not joint ownership; and declares that even where there exists joint holding and collective responsibility, the whole area is often held in household severalty. Even the joint form of tenure he regards as a late development; for, as above noted, he refers the origin of the *raiyatwāri* village, in which there is individual ownership, to the pre-Aryan period, when settlement was made in virgin territory, when the obstacles to be overcome were those of nature, not of man, and when title came from clearing and conversion of the jungle "in a manner purely natural." [1]

We welcome the evidence that the author presents and have no fault to find with his main conclusion. He has certainly made good his case against communal ownership of land in India. But have not earlier writers confused the terms "communal" and "collective"? An exact nomenclature is becoming the more essential as the conditions of primitive landholding are becoming the better known. Professor Maitland can find nothing "communal" in the land system of early England; and I for my part, have never been able to see anything "communal" about the land arrangements of the New England towns. Does not this word, so frequently used by writers on primitive institutions, imply a conception of social and economic relations that is utterly foreign to the thought of primitive peoples?

Although of unquestioned value for the facts that it contains, the book before us is open to grave criticism. There is a great deal of evidence, but there is also a great deal too much conjecture and speculation. Many of the minor conclusions are not borne out by the data presented, and I fear that the anthropologist would make short work of some of Mr. Baden-Powell's theories of tribal development. Then, too, the subject-matter — complicated at best — is presented in a manner that only increases the perplexity of the reader. Instead of a series of complete examples, we are given great quantities of evidence gathered without much regard for system from the settlement reports, district manuals, and other sources which are sometimes specified and sometimes not. The style, too, is often obscure, the ideas often lack logical sequence, the same thought is often repeated with unnecessary frequency and much that is immaterial to the main

his wants, without thought of any particular share calculated on any principle whatever, and without thought of the proportions between the amount of sustenance required and the actual amount of labor and capital or the number of cattle contributed to the common task" (p. 409).

[1] P. 398. Mr. Baden-Powell's use of this phrase is unscientific. *Cf.* pp. 233, 236. What "human nature" was in tribal times is one of the things we should very much like to know.

purpose is thrown in. It is only after careful and thoughtful reading that we make sure of the author's purpose; and at times it is difficult to see the bearings of the material collected. One longs for Mr. Seebohm's clear-cut methods and Dr. Meitzen's beautiful maps. Perhaps in this particular I am doing the author an injustice, for he, too, longs for a Domesday Book or a series of Extenta for India (p. 360); but at least it is not too much to ask that what evidence is available should be presented in a clear, logical and reasonably interesting manner — and this is not the case with Mr. Baden-Powell's book.

CHARLES M. ANDREWS.

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Die Socialdemokratischen Gewerkschaften in Deutschland seit dem Erlasse des Socialisten-Gesetzes. Von DR. JOSEF SCHMOELE. Erster, vorbereitender Teil. Jena, G. Fischer, 1896. — xviii, 212 pp.

Much has been written about German socialism in its political aspects; less has been said about the labor movement in Germany solely from the economic point of view. The fact is that Social Democracy has so entirely overshadowed trade-unionism in Germany that even the Germans have given little attention to the investigation of labor organizations proper. In recent years, however, the Social-Democratic labor unions have been extending their activity beyond the sphere of political agitation; many of their leaders have come to realize that the moral and intellectual capacity of the laboring class is improving too slowly to permit any thought of accomplishing the social reformation by political agitation alone. What is even more important, they see that their promise of a golden age is losing its attractive power with workingmen who have been trusting in the fulfillment of this promise for nearly a generation. Hence the Social-Democratic labor unions no longer contemn practical aims and slow progress by means of education and contests with individual employers — a policy which they have in the past repudiated with fine scorn. An instance in point is the conduct of the Social Democrats in the great strike of the white-goods workers in Berlin in the winter of 1896, when they rendered the same practical aid that is given in England by the trade unions. Dr. Schmöle is one of the German scholars who think that Social Democracy is losing its revolutionary character and is assuming something like the attitude of the English trade unions

toward the capitalistic class. He finds that the new leaders, like Legien, the president of the association of Social-Democratic *Gewerkschaften*, while nominally holding to the Marxist theory, are nevertheless giving their attention mainly to the building up of labor organizations that shall afford real support to the workingman when he falls in need. And there are many other German scholars who share the belief that the labor movement will in the near future become educational and will make for a peaceful solution of the labor problem.

At present, nevertheless, there exists a wide difference between the Social-Democratic unions and the Hirsch-Duncker unions, which were patterned after the English trade unions. It will be remembered how in 1868 the German Liberals, under the leadership of Dr. Max Hirsch, the exponent of English trade-unionism, attempted to start a similar movement in Germany, and how Schweitzer, Lassalle's successor as president of the General Association of German Workingmen (*Allgemeiner Deutscher Arbeiter Verein*), anticipated the Liberals by winning over the Berlin labor congress of September, 1868. The Hirsch party, however, called another meeting and adopted a trade-union program. Neither form of organization attained immediate prosperity; in 1877 the Hirsch-Duncker *Gewerkvereine* had a membership of less than 20,000, and the Social-Democratic *Gewerkschaften* of about 50,000; while the most recent data available show a membership (1895) of 68,717 and 273,451 respectively.[1]

These figures show the relative economic importance of the two movements. The Hirsch trade unions have already been written up; but a history of the Social-Democratic *Gewerkschaften* from the economic point of view has been lacking, for the reason, already stated, that their activity has been mainly political. Dr. Schmöle, *privat-docent* at the university of Greifswald, contributed the article on the German labor unions (*Gewerkvereine*) to the *Handwörterbuch der Staatswissenschaften*, and has now undertaken a three-volume history of the *Gewerkschaften*. He first sketches the movement of 1868–78, which attained little importance economically but aroused sufficient terror among the politicians to cause the special law of Oct. 23, 1878, which proscribed socialistic organizations, socialistic meetings and socialistic newspapers. Of the twenty-five general organizations (*Verbände*) existing at the time of the passage of the law, sixteen had disappeared before the end of the year, and only four remained in 1883. Mean-

[1] *Cf.* Oldenburg, "Gewerkvereine," in Conrad's Handwörterbuch der Staatswissenschaften, first supplementary volume.

while a new movement had begun, and it is this which forms the subject proper of Dr. Schmöle's work. The present volume is introductory, and sketches in broad lines the origin and tendencies of the movement; the second volume will describe the development and constitution of various typical unions; and the third volume will discuss the relations between the Social-Democratic and other labor organizations, their extent and their services, and the attitude of society and the law.

Dr. Schmöle shows how the special law of 1878 was evaded, and within five years was interpreted so liberally by the administrative authorities that the Social-Democrats were not hindered in reorganizing societies, so long as they were moderate in the expression of their political views. On the other hand, the judicial decisions, especially in the matter of the insurance laws which regulated friendly societies, were very harsh, frequently depriving the workingmen's societies of the principal object of their existence. The judges are criticised by Dr. Schmöle for their narrowness and bigotry. But if few unions might establish friendly funds, organization could be effected by means of trade societies (*Fachvereine*); and out of these came a "loose" local organization by means of committees of trustees (*Vertrauensmänner*). In these various ways politics were nominally excluded, and the law was evaded. In 1883 the first general organization (*Tischlerverband*) was formed, and was not dissolved by the police. After that, organization went on rapidly. Oldenburg gives the number of members as 100,000 in 1885, and 277,000 in 1890, after the lapse of the law of 1878.

Schmöle is free to admit that the movement is still in an experimental stage, and is ever seeking new purposes and methods; but, as already indicated, he believes that it will lay aside its revolutionary tendencies and become educational. It is to be feared, however, that he has underestimated the difficulties in Germany, where the compulsory insurance law leaves too little opportunity to the laboring men for the management of funds in which they are especially interested.

Dr. Schmöle's treatment is fresh and interesting and, like most of the researches of German students, is based on a comprehensive collection of facts. Those who are interested in the non-political activities of the Social-Democratic organizations will find this a valuable book.

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Die Steuern: Allgemeiner Theil. Von DR. ALBERT SCHAEFFLE. (Hand- und Lehrbuch der Staatswissenschaften. II. Abtheilung: Finanzwissenschaft. 2. Band.) Leipzig, C. L. Hirschfeld, 1895. —xiv, 420 pp.

Die Steuern: Besonderer Theil. Von DR. ALBERT SCHAEFFLE. (Hand- und Lehrbuch der Staatswissenschaften. II. Abtheilung: Finanzwissenschaft. 3. Band.) Leipzig, C. L. Hirschfeld, 1897. —xvi, 663 pp.

Dr. Schäffle has been known to all students of fiscal problems since the appearance in 1880 of his important work on *Die Grundsätze der Steuerpolitik.* Of his other contributions to social and political science it is not necessary to speak, further than to say that in many and varied fields of scientific as well as of political activity he stands among the foremost writers and administrators on the European continent. The two volumes which are here reviewed quite maintain his great reputation: they are exact, incisive, clear and up to date; and for the advanced student they present many points of view worthy of consideration. Yet, when the works are carefully analyzed, it will be found that most of the fundamental ideas are already contained, although, of course, in less systematic form, in the earlier work of 1880; and, to the average Anglo-Saxon reader, the disadvantages of the scheme of devoting two large volumes to the general and the special part of taxation will be more apparent than the advantages. The Germans love to be "*gründlich*" at all costs, and to devote a great deal of space in their scientific treatises to what impresses the practical man as savoring a little of metaphysics; and this we see especially in the general part of Dr. Schäffle's work. Another weakness of the work is inseparable from the method of treatment. The second volume, or special part, really depends, in many of the chief divisions, upon the discussion of the more fundamental problems in the first part. As a consequence we have a considerable amount of repetition. Most readers will therefore find the second volume, which contains in compressed form no inconsiderable portion of the first volume, at once more interesting and more valuable.

In the second volume the most important discussion is that of the classification of taxes, for upon this depends much of the distinctive value of the author's treatment. Dr. Schäffle divides taxes into direct and indirect; but he takes strong exception to the commonly accepted theory that it is only the direct taxes which correspond to the "faculty" of the individual. According to him the indirect taxes accomplish the

same result, but in a different way. The direct taxes are intended, in his opinion, to reach the general or average taxable capacity of the individual, while the indirect taxes are intended to reach the "actual" or "special" or "individualized" ability. He is able to reach this conclusion, however, only by counting among the indirect taxes, in addition to the ordinary taxes on commodities and exchange, what he calls the *Bereicherungs-steuern*, including the taxes on inheritances, on unearned increment and on lotteries, as well as some others not usually put into that category, like sumptuary taxes or so-called direct expenditure taxes. His whole discussion of indirect taxation thus becomes highly artificial, and by this arbitrary classification loses much of its merit. It is not likely that English or American writers will adopt his classification.

In the general discussion of principles Dr. Schäffle is quite up to date. He lays stress, for instance, on the modern problems connected with double taxation and with the treatment of corporations. To Germans the books will be of value because of the special importance attached to Swiss and American experience. For the average American reader there is still a great deal that is only of very secondary interest; but the advanced student will find in almost every chapter of the two works some new food for thought. They are distinctly able works of an able man.

EDWIN R. A. SELIGMAN.

Die Persönlichen Steuern vom Einkommen, verbunden mit Ertrags- oder mit Vermögenssteuern. Mit besonderer Beziehung auf württembergische Verhältnisse. Von FRIEDRICH JULIUS NEUMANN. Tübingen, Verlag der H. Laup'schen Buchhandlung, 1896. — vi, 277 pp.

Professor Neumann's monographs follow one another with surprising rapidity. His work on the reform of local taxation in Saxony had scarcely been published when a new income-tax bill in Würtemberg led him to make an equally careful study of this and related forms of taxation. Where questions of taxation are concerned, he is a believer in special investigations with reference to existing conditions in particular places, as compared with either the deductive or the exclusively historical method.

Beginning with an historical chapter in which he points out a preference for taxes on product in the south and for personal income taxes in the north of Germany, Professor Neumann proceeds next to consider the advantages and disadvantages of the former. The

chief weaknesses of taxes on product he finds to lie in the conflicting interests of urban and rural producers; in the difficulty of establishing a just scale of progression, exempting a minimum of existence, and making allowance for debts and other personal relations; and in certain loopholes of evasion. Out of these defects of the taxes on product he constructs a negative kind of argument in favor of the general income tax; though he is willing to retain the former for communal purposes, or even for the use of the smaller commonwealths. In local finance he is a champion of the benefit theory of taxation. As the most practicable means of lessening the administrative defects of the income tax and of securing a heavier taxation of funded than of unfunded incomes, he shows the need of levying supplementary taxes either on product or on property; and he points out many defects of property taxes, including their inequalities and practical regressivity, the difficulty of assessment and the disregard of the different degrees of productiveness of capital; nor does he forget to cite American experience as a horrible example. Finally, numerous questions arising in connection with the income tax are considered in much detail. Whether the earnings of wife and children should be exempt; what allowance should be made for necessary living expenses, and especially for house rent; the amount to be exempted; the rates of progression — these are some of the specific problems discussed. The author advocates the deduction of house rent, not only because it is unjust to tax rent which is paid without taxing also that which is saved by home-owners, but also because it is from the incomes of the poor that the greatest proportion must be deducted on this account; and this is shown by sufficient statistics to hold true both in the town and in the country.

MAX WEST.

WASHINGTON, D.C.

Traité Théorique et Pratique d'Économie Politique. Par PAUL LEROY-BEAULIEU. Paris, Guillaumin et Cie., 1896. — 4 vols. vii, 793, 652, 694, 810 pp.

The activitity and facility of the accomplished editor of the *Économiste Français* are astounding. Not only does he lecture at the *Collège de France* and at the *École Libre des Sciences Politiques;* not only does he write a weekly article of considerable length in his own journal; not only is he a frequent contributor to the *Revue des Deux Mondes;* not only does he turn out every two or three years a fresh and always noteworthy volume on some phase of economic inquiry —

not only does he do all this, but he also finds time amid all these arduous occupations to write a general work of stupendous proportions like the one here reviewed, and to write it in such an attractive way that, notwithstanding its size and cost, it runs through the first edition in less than six months. No one but a Frenchman could accomplish such results; and there are few Frenchmen who could accomplish them as well as M. Leroy-Beaulieu.

Volume I contains the general introduction, treats in a second book of the production of wealth, gives in a third book the general conditions of modern industrial development, such as liberty, private property and competition, and begins the fourth book, on "Distribution," by treating of the law of rent. Volume II discusses agriculture and mining, profits and interest, wages and the labor question. Volume III contains a fifth book on exchange, including value, supply and demand, money and banking. Volume IV completes the treatment of exchange by discussing trade and commerce, takes up consumption in a sixth book, devotes a seventh book to population and emigration, and closes with an eighth book on socialism and taxation. An appendix of 88 pages contains an index.

The new *Theoretical and Practical Treatise on Political Economy* is intended, as the title implies, to appeal to both classes of economic students. The author, however, prides himself on his close acquaintance with facts; and it is indeed primarily from this point of view that the work is attractive. With all his interesting writing, M. Leroy-Beaulieu has never made much claim to advance pure theory; and while we do find in this treatise a welcome given to the work of the Austrian school, with whose main results the author seems to be tolerably familiar, there is no attempt to blend these results with the body of his thought. Even the one point upon which the author especially prides himself — the theory of interest and his prediction of many years' standing as to the fall in the rate of interest — does not seem to be either especially new or particularly striking. To the student of pure theory the treatise will not bring much that is novel or suggestive.

M. Leroy-Beaulieu seems, furthermore, to have had in mind only two classes of readers — those interested in theory and those attached to practice. He has almost wholly neglected those addicted to the historical side of economics. We search almost in vain in his book for the newer points of view that have been so ably presented by the German historical economists and some of their foreign followers. It is especially in the discussion of the social problems that we miss

this important element. For aught that we learn from the context the work of the last thirty years outside of France, with the exception of that done by a few English and Austrian writers on theory, has been completely thrown away. The only exception to this apparently general neglect is that the French translation of Roscher is continually mentioned. But Roscher is not typical of the newer writers; and to quote him ninety-nine times, while Schmoller is rather contemptuously brushed aside in two bare allusions, is not likely to give the reader confidence in the author's wide reading.

But if the work is accepted for what it is, and not for what others might desire it to be, the verdict must be distinctly favorable. M. Leroy-Beaulieu has a decidedly sane and evenly balanced mind (except possibly when he contemplates the wickedness of the socialists and protectionists); and the work is replete with interesting criticism on an abundance of well-chosen facts. Perhaps nowhere can be found a better collection of ample and well-digested statements from every field of business activity; while the comments are usually sensible and moderate. If not profound, the work is decidedly even and interesting; and if it is not calculated to give an impetus to any new movement in economic thought, it sums up, at all events, with undoubted ability, most of what is striking in the "liberal" school of French economists.

EDWIN R. A. SELIGMAN.

Appreciation and Interest. By IRVING FISHER, Assistant Professor of Political Science in Yale University. (Publications of the American Economic Association, Vol. XI, No. 4.) New York, The Macmillan Co., 1896.—111 pp.

The fundamental idea enlarged upon in this very able memoir is that variations in the value of money, if steady or foreknowable, tend to be neutralized, so far as the relations of debtor and creditor are concerned, by compensatory changes in the rate of interest. Professor Fisher justly says that the subject has received scant attention from economists, and that the neglect of it constitutes a serious deficiency in economic discussion, more especially as regards the burning question of the effect of the appreciation of gold (assuming it to exist) upon debtors. Indeed, there are only two important references that the author is able to give to writings in which the factor in question is recognized — the first being a paper by Jacob de Haas in the *Journal of the Royal Statistical Society*, March, 1889, entitled "A Third Element in the Rate of Interest"; and the second, Professor J. B.

Clark's paper in the POLITICAL SCIENCE QUARTERLY, September, 1895, on "The Gold Standard in the Light of Recent Theory."

The work is divided into three parts. The first part (34 pp.) contains a statement of the theory, which is extremely simple, together with a discussion of various mathematical questions involved in it, some of which are quite intricate. The second part (45 pp.) is devoted to an examination of a large number of facts fitted for the testing of the theory, and also for the determination of the degree to which, in actual experience, the compensatory modification of the rate of interest has been adequate or inadequate to the neutralization of the effect upon debts of variations in the value of money. The third part (13 pp.) deals with the application of the theory and the facts in the first two parts to the bimetallic controversy and to the general theory of interest.

The theory of the connection between appreciation (or depreciation) and interest is essentially contained in the second chapter, and is, of course, very simple. If we positively knew that the standard of value in actual use was rising in comparison with some other standard, the rate of interest which any one would be willing to pay, if the transaction were carried on in terms of the first standard, would be less than that which he would be willing to pay if it were carried on in the second. He would make allowance for the relatively increased value of the principal and interest which would become due in the one case as compared with the other. The standards in question might be gold and silver, or gold and wheat, or gold and labor, or what not. For convenience of language we shall for the moment speak of them as gold and silver. If we knew for certain that gold was appreciating relatively to silver at such a rate that a unit of gold would, at the end of a year, purchase $(1 + a)$ times as much silver as at the beginning, and if the rate of interest we were willing to pay in silver were j, we should be equally willing to pay in gold a rate of interest i, which is obviously determined as follows:

At the end of a year, the amount arising from a unit of gold would be $(1 + i)$, and the quantity of silver which this would purchase would be $(1 + a)(1 + i)$ times the quantity that a unit of gold would have purchased at the beginning of the year. But, on the other hand, if this purchase had been made and the silver had been placed at interest at the rate j, the amount at the end of the year would have been $(1 + j)$ times the quantity purchased at the beginning. In order, then, that the result of the two transactions be the same, it is necessary that $(1 + a)(1 + i) = 1 + j$, whence

$j = i + a + ai$. The formula of course reduces approximately to $i = j - a$, which is quite accurate enough for most purposes; and Professor Fisher lays too much stress on the deviation from this simple equation.

By means of this formula referring to a single year, it is possible, of course, to deduce the amount which should accrue in the course of any number of years, so as to produce equivalence in the whole outcome, as between transactions in the two standards, whether regular or irregular instalments be paid by way of interest or partial payments. The author gives the mathematical discussion of questions of this kind, including also the problem of perpetual annuities, in the third and fourth chapters; and in the fifth chapter he considers the case in which the rates of appreciation and interest vary during the period. The reader interested in the economic problem under discussion may without loss take all this for granted, and simply assume that so far as the formulas are needed for the purposes of Part II — comparison with the facts — they have been correctly obtained and are correctly applied by the author. In the sixth chapter it is pointed out that a limit is set to the possibility of compensation by the obvious requirement that appreciation must not be so rapid as to require for its correction a negative rate of interest.

Coming to the consideration of facts, Professor Fisher begins by stating (Chapter VII) that while, speaking generally, appreciation of the standard is not explicitly foreseen, it is virtually foreseen through experience of the course of prices, wages, profits, *etc.* The practical business man has this virtual foresight in a high degree, and can tell better than the academic bimetallist what interest he can afford to pay. The eighth, ninth and tenth chapters contain the most interesting matter in the memoir, being devoted in the main to the discussion of statistical data by which an attempt is made to measure the actual influence which this virtual prevision of appreciation has had upon the rate of interest. The first specific comparison made is that between two classes of United States bonds, the coin 4's and the currency 6's. The most interesting confirmation of the theory furnished by the table here presented is given by the fact that all the way from 1870 to 1875 any purchaser of the currency bonds realized a decidedly *lower* rate of interest than a purchaser of the gold bonds (both being supposed to hold the bonds to maturity), a result which can be accounted for only by supposing that there was an expectation of a rise in the gold value of the paper. It was only after 1878, when resumption had been virtually accomplished, that the relation

between the two classes of bonds was reversed, the gold bonds thereafter yielding a lower net interest.

The next comparison instituted is that between gold and silver. For this purpose the author avails himself of the simultaneous quotations in the London market for gold and silver India bonds. The simultaneous presence, in the same market, for a long series of years, of these two classes of bonds issued by the same government, adapts them peculiarly to serve the purpose of a study of the way in which the fall of silver since 1873 has operated upon the rate of interest. It has been objected by a reviewer of Professor Fisher's memoir that the comparison is entirely vitiated by the circumstance that the silver bonds were repayable on three months' notice, while the gold bonds had a long period to run — a circumstance which the critic says "is of itself sufficient to account for the major part of the difference in the interest rate."[1] In making this remark, however, he overlooks the circumstance that the table extends back to 1865, and that from that time until 1875, when the fall of India exchange began, the difference in rates of interest realized seems to have been only two-tenths of one per cent. Moreover, this antecedent difference is taken into account by the author in arriving at his conclusion concerning the period subsequent to 1875.

From the data furnished by the quotations, Professor Fisher finds that the average annual interest realized by persons purchasing silver bonds (the whole transaction being of course looked upon as carried on in silver) between 1875 and 1895 was 4.5 per cent, while in the case of gold bonds the average interest was 3.7 per cent, showing an estimated annual appreciation of gold relatively to silver of 0.8 per cent, or after allowance for the antecedent difference above referred to, of 0.7 per cent. But the actual annual appreciation of gold in relation to silver during these twenty years was 2.1 per cent. Accordingly, the anticipation of the decline of silver operated in a marked degree upon the rate of interest, but by no means in an adequate degree. Against the 2.1 per cent annual fall, investors protected themselves to the extent of 0.7 per cent, and the remaining 1.4 per cent means a *relative* loss to the purchasers of silver bonds.

"The question arises at this point," says Professor Fisher, "How is this $1\frac{1}{2}$ per cent to be distributed? Did investors overestimate silver or underestimate gold most? There is nothing in the foregoing investigation to decide this vexed question. Our quantitative

[1] H. H. Powers in the *Annals of the American Academy*.

result is purely a differential one." He arrives at the conclusion, however, that almost certainly not more than three-fourths of one per cent was due to an underestimate of gold, since there is every reason to believe that foreknowledge in the case of gold was far better than in the case of silver. In his reasoning on this point, however, Professor Fisher seems to have fallen into a serious error. The fact that the "result is a purely differential one" not only prevents one from inferring how the difference "is to be distributed," but from asserting that it is, in any ordinary sense, to be distributed at all. There is nothing in the data presented at this point to preclude the theoretical possibility that, with reference to some third standard — and some kind of third standard must be had in mind when one speaks of a distinction between overestimating silver and underestimating gold — both silver and gold had been overestimated, and that the difference was one of degree of overestimation.

More interesting than the foregoing investigation is that next taken up, in which money (gold) is compared with commodities generally by means of index numbers. There being no recorded "commodity interest," recourse must be had to comparisons of successive periods, instead of rates simultaneously realized. Space will not permit a detailed account of the extensive and laborious comparisons instituted; suffice it to say that the record of rates of interest prevailing in periods of rising and of falling prices seems to show with sufficient uniformity that these tendencies are regularly countervailed in some measure by changes in the rate of interest, which is high or low according as prices are rising or falling. But, as in the case of the comparison between gold and silver, the adjustment is found to have been inadequate, so that commodity interest was high when money interest was low, and *vice versa*. The author regards the results arrived at as enabling us to "understand why a high rate of interest need not retard trade, nor a low rate stimulate it." While he is entirely right in his criticism of what distinguished authorities have rather fatuously said on this point, and while his conclusions throw useful light on the subject, would it not be more to the purpose simply to say, in reply to those who may be puzzled by the phenomenon in question, that the rate of interest is more the effect than the cause of business conditions, and may therefore in general be expected to be somewhere near what is justified by results?

Comparison is made not only between money and commodities, but also between money and labor; and, in view of this comparison more particularly, the final conclusion reached by the author is that

the loss sustained by debtors in general, by the appreciation of gold, after allowing for the fall of interest due to the anticipation of this appreciation, has been about two-thirds of one per cent per annum.

The foregoing will serve to convey an idea of Professor Fisher's work. It abounds in acute observations of which no mention has been made; nor has any account been given of Part III, which, while bearing directly on the living question of bimetallism, is less distinctive. The labor involved in the construction of the tables must have been extremely great. The argument is sometimes open to the charge of being one-sided, the author's attention being so strongly concentrated upon the single factor he is discussing; but it is marked throughout by great ability and insight. Professor Fisher's monograph will repay close study, and is certainly a valuable contribution to scientific economics.

FABIAN FRANKLIN.

BALTIMORE, MD.

An Essay on the Present Distribution of Wealth in the United States. By CHARLES B. SPAHR, Ph.D. New York, Thos. Y. Crowell & Co., 1896. — 184 pp.

Dr. Spahr has brought together what statistics there are bearing on the distribution of wealth and of incomes in Europe and the United States. It is needless to say that such statistics are very difficult to get. A census of individual wealth or income has never been attempted; and it could never be successful, because of the ignorance, untruthfulness and suspiciousness of individuals. Statistics based on income taxes, probate returns, *etc.*, suffer from the desire of people to minimize their tax burdens, and from the policy of exempting the lower incomes. The doubtfulness of the absolute figures is still further accentuated by the necessity of filling up the *lacunae* with estimates of wages, of the average amount of property enjoyed, of average consumption, *etc.*, which allow a wide margin for the subjective bias of the operator to work in.

Of these dangers Dr. Spahr is well aware. In his preface he says:

> The writer has learned, and hopes to teach, that, upon matters coming within its field, the common observation of common people is more trustworthy than the statistical investigations of the most unprejudiced experts. Indeed, he has come to believe that social statistics are only trustworthy when they show the world at large what common observation shows to those personally familiar with the conditions described.

Throughout the book Dr. Spahr gauges the bias or subjective judgment of his authorities, going so far in respect to some criticism of his own original work as to say: "This criticism would have been valid had it not come from a conservative . . . " (p. 59).

These scientific tests or canons of criticism, namely, the rejection of statistics that are contrary to common sense and of evidence presented by prejudiced observers, seem to be very fair; but when they are applied in the body of the book, their superficiality is at once apparent. The "common observation of common men" turns out to be Mr. Spahr's opinion that wealth is very unequally distributed. Every statement, however wild (such as Mr. Holmes's 4000 millionaires worth $3,000,000 apiece), that supports this opinion, is cordially accepted as statistics; while Mr. Giffen's most careful and elaborate studies are minutely criticised and then rejected. The ground for classing Mr. Holmes as a conservative, and for denouncing the whole "Aldrich Report," on the charge that the men engaged on it were hurtfully biased by the political bearings of the question, lies also in Dr. Spahr's subjective consciousness.

Statistics must be treated objectively. The inferences from them depend for their validity upon the success of the statistician in basing his figures upon trustworthy observation and in avoiding the use of conjectures to supplement his figures. The weak point in all these statistics is the large part played by "it is estimated." Mr. Holmes's conclusion that nine per cent of the families of the United States own about seventy-one per cent of the wealth rests on not less than six pure "estimates" or assumptions in regard to the average wealth of different classes over and above their indebtedness. By a further series of "estimates" — for example, by conjecturing that "in the nation at large, the number of families worth more than $500 is perhaps one million in excess of the number owning their homes or farms," and "that the propertyless families own household property worth $150" — Dr. Spahr reaches the conclusion that one per cent of the families own as much property as the remaining ninety-nine. I doubt if this conclusion would agree with the "common observation of common people"; but even if it should, it is not based on statistics.

Having shown that property and incomes are unequally distributed and that (in his opinion) the inequality is increasing, Dr. Spahr seems to think that his task is ended. But that is only the beginning. The real question is whether such concentration of wealth is not a good thing for the whole community. Dr. Spahr naïvely

assumes that an equal distribution of wealth is the best system. Still more naïvely he asserts:

> The distribution of wealth is under the direct control of laws for which the national conscience is responsible; and the distribution of wealth has become better or worse precisely as the national conscience has been directed to, or directed from, the laws controlling it.

This happy position ignores the complexity of the social arrangements by which wealth is produced and distributed, and the absolute necessity for leadership in industry, for forethought and saving, and for the development of character and responsibility.

The happiness of individuals is measured, not according to their ownership of property or even according to income, but according to their command of the enjoyments of life. To measure this statistically is a task which Dr. Spahr does not essay. Mr. Giffen's *Progress of the Working Classes* still remains the most notable attempt in that direction, but it is ignored in this book. In Part III on the "Distribution of Taxes," the author seems to catch the true spirit of such an investigation. The injustice of particular forms of taxation, says he, rests on the unequal diminution of the power of enjoyment which they impose on the several classes. He advocates the principle of the personal property tax as "thoroughly imbedded in the public consciousness," so that "violations of it are everywhere felt to be an abuse demanding a remedy." But he glides over the difficulties of assessing personal property, and even seems to believe that we are more and more successful in reaching its true valuation. The polemic against Professor Seligman's assertion that the assessed valuation of personal property in California had decreased since 1872 is hardly sustained by the table on page 148, namely:

ASSESSMENT OF PERSONALTY IN CALIFORNIA.

1871	$ 86,000,000
1872	220,000,000
1873	118,000,000

This shows, according to Dr. Spahr, that 1872 was an exceptional year. But if we continue the table, we shall have:

1874	$210,000,000
1875	199,000,000,

which removes the basis for such a contention. It would be pleasant to believe that personal property pays its full share of taxes, for it would nullify much of the denunciation of the rich for

evasion of public burdens. It does not seem to me, however, that Dr. Spahr has given due consideration to the mass of evidence presented by Dr. Seligman on this point in the essay on the property tax, from which the above figures were taken. Without presuming to decide the question, I should say that Dr. Spahr's further contribution to the discussion, namely, that the census estimate of the amounts of personal and of real property ($25,000,000,000 and $40,000,000,000, respectively) reveals the true proportion of personalty to realty, and that assessed values are approaching that proportion, involves the statistical fallacy that is so frequent throughout the book —the assumption that the correspondence of two uncertain estimates establishes certitude.

RICHMOND MAYO-SMITH.

La Science Sociale, d'après les Principes de Le Play et de ses Continuateurs. Par J. B. M. VIGNES. Paris, V. Giard et E. Brière, 1897.—2 vols., 460, 455 pp.

Conscience et Volonté Sociale. Par J. NOVICOW. Paris, V. Giard et E. Brière, 1897.—380 pp.

An important contribution to descriptive sociology is made by M. Vignes's work, in which one of the definite methods which have been proposed for this science — that of Le Play — is applied, not indeed with the minute fullness of Le Play's own writings, but with rather more consecutiveness and with more conciseness and precision.

The work is divided into three parts. The first, after an explanation of Le Play's method, presents a careful account of primitive social conditions, including a description of the primitive family, of the economic stages of fishing, hunting and pasturage, of the beginnings of the useful and liberal arts, and of the primitive modes of religion. The second part deals with the invention of labor-saving devices, the domestication of animals and the use of wind and water for transportation and for rude manufacturing operations. This stage brings with it certain transformations of the family, which are explained, with little attempt at critical discussion. The development of new arts of utility, and the origins of mining, forestry and exchange are also explained; and the new developments of religion, of war and of government, which are consequent upon the economic progress of this stage, are considered. The third part deals with the age of steam and of electricity. The great inventions and the modern organization of labor are described; and those changes in family life which have been brought about by the transformation of industry,

the growth of population and the development of civilization are discussed.

From this brief description of the work it will be seen that M. Vignes has not attempted what Le Play undertook, namely, to describe particular societies with full attention to geographical divisions and historical conditions. He has rather given us an account, as nearly as possible in accordance with Le Play's method, of the general evolution of society. His work is therefore to be compared not only with the monographs of Le Play, but also with the accounts of social evolution which have been written by Spencer, Letourneau and De Greef. Unlike the latter works, however, this treatise makes no attempt to deal with all phases of social evolution: its chief purpose is to explain the evolution of family life as it has taken place under the influence of economic and industrial development. That Vignes's opinions are substantially identical with those which Le Play so strongly defended is everywhere manifest. He takes an extremely gloomy view of the present state of family life, and attributes what he calls the ruin of the modern family and the rapid diminution of the birth-rate in civilized countries to modern industrial methods and to democracy.

In M. Novicow's treatise on the social consciousness and will there is a very different conception of sociological method and, of course, an altogether different explanation of social problems. Novicow is chiefly interested in the psychological phenomena of society, and his studies are analyses of social thinking, feeling and action. He argues that in every nation there is naturally formed an intellectual *élite* which he calls a social sensorium. He undertakes to describe the process by which ideas appear and spread within a population, transforming themselves successively into ideals, desires and actions. One of the most interesting portions of his volume is that in which he discusses the rapidity with which ideas are transformed into social action, and the limits of social consciousness in space. The latter phenomenon is the psychological basis of patriotism.

In the latter part of his volume, M. Novicow discusses some of the modern questions of the day in European societies. This gives him an opportunity to illustrate the application of his psychological theories in a very interesting way. The great modern questions seem to him to group themselves under the categories of militarism and socialism. The student of sociology will find many fruitful suggestions in M. Novicow's strictly psychological discussion of these themes.

FRANKLIN H. GIDDINGS.

The History of Economics. By HENRY DUNNING MACLEOD. New York, G. P. Putnam's Sons, 1896. — xv, 690 pp.

Those who expect to find in Mr. Macleod's latest book a veritable history of the science of economics will be grievously disappointed. But those who are interested in learning some autobiographical details about the well-known author, and in having dished up to them in a new form some of the ideas that he has been developing with endless iteration for the past thirty years, will find the book to their liking. Starting with the conception that economics is a physical science, and that its really important content hinges on the definition of wealth and value, Mr. Macleod treats in turn of Demosthenes, the classic jurists, Condillac and the Physiocrats, Adam Smith, Ricardo, Whately, Say, Mill, Bastiat, Perry, Jevons and himself. His sense of proportion may be inferred from the fact that he devotes six pages to Ricardo, four to Bastiat and fourteen to himself. This is excusable; for, when as a mature man he began to study the works of the classic economists, he found that "they were merely a chaos of confusion and contradictions," "in no sense a science, but the butchery of a science." "I saw," he adds, "that the greatest opportunity that had come to any man since the days of Galileo had come to me"; and he describes in detail how he successfully seized the opportunity. As a matter of fact, Mr. Macleod has for the past ten or fifteen years been seeking to impress upon a somewhat incredulous public the importance of his new contribution to economics.

The major part — about five-sixths — of the present volume is devoted to a consideration of the fundamental concepts and axioms of economics, arranged alphabetically from "Acceptilation" to "Wealth." This analysis, it must be conceded, is always acute and interesting, especially in those pages where he leaves his well-worn topics of money and credit and discusses some of the more general principles, like that of rent. Naturally, he has nothing but sneers for the "scholastic economists, such as Mill, Capps, Jevons, Roscher and Marshall"; and he furnishes his readers with a ready-made general estimate of his work in the following words:

> I have now laid bare the foundations of economic science. Like Botta and Layard at Nineveh; Schliemann at Troy, Argos and Mycenae; Petrie and many other explorers in Egypt — I have swept away the rubbish and folly which has accumulated over the doctrines of the ancients for centuries, and laid bare the solid and impregnable foundations upon which the majestic structure of economic science is to be erected.

EDWIN R. A. SELIGMAN.

Industries and Wealth of Nations. By MICHAEL G. MULHALL. London, Longmans, Green & Co., 1896. — 451 pp.

This work needs but little notice. It is by the author of the well-known *Dictionary of Statistics*, and has the same faults as that work, namely, uncritical use of statistical data, unwarranted assumptions in order to fill up gaps and lack of adequate references to authorities by which the figures can be verified. The book is dedicated to his "Fellow-workers in the Field of Statistical Research"; but I doubt if in any other science a compendium would be regarded as a work of research, or a mass of unverified or unverifiable data and conclusions would be welcomed by fellow-workers. Mr. Mulhall quotes with approval Leroy-Beaulieu's dictum, "We must avoid the absurdity of limiting statistics to ascertained facts, for in many cases this branch of science can reach only approximate results"; but he evidently misunderstands it. He seems to think that it frees the statistician from all control, and that a "guess," however wild, is better than no guess at all. The truth is, that the moment we leave the ground of ascertained fact, and reach the domain of simple probability, it becomes all the more necessary to explain the method and to give the reasoning by which each conclusion has been reached.

Mr. Mulhall's methods are revealed in his treatment of one of his most interesting categories — the "Earnings of the World." These he gives with great precision, both for all countries and for different branches of industry in each country. As there are, of course, no direct statistics, he adopts as applicable to all countries the formula described below. To determine the annual income of a nation he adds together the following figures:

Agriculture: 60 per cent of the gross annual product.
Manufactures: 50 per cent of the output of mills and artisans.
Mines, forests, fisheries: total annual product.
Commerce: 10 per cent of aggregate internal trade.
Transportation: 10½ per cent of the same.
House-rent: 6 per cent of the value of all houses.
Domestic wages: two-thirds of all house-rent.
Public service: 50 per cent of the national revenue.
Professions: 10 per cent of the sum of all the preceding items.

The three last criteria are so strange that a little explanation would have been welcome. That commercial earnings are ten per cent of the aggregate internal trade is possible, did we know what the aggregate internal trade is. The other estimates are equally unsupported.

RICHMOND MAYO-SMITH.

RECORD OF POLITICAL EVENTS.

[From November 12, 1896 to May 8, 1897.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — The period has been characterized by considerable activity in this field. As during the preceding year, relations with Great Britain and with Spain have contributed the most important incidents. The settlement of **the Venezuelan boundary dispute**, announced at the end of the last RECORD, was carried into effect as follows. On November 9, a protocol was signed by Secretary Olney and Sir Julian Pauncefote embodying an agreement that the boundary should be determined by an arbitral tribunal, whose decision should be governed by three rules: (1) that adverse holding for fifty years should make good title; (2) that the arbitrators might recognize rights and claims resting on any other ground that is valid according to existing international law; and (3) that in case territory of one party be found to be occupied by citizens of the other, "such effect shall be given to such occupation as reason, justice, the principles of international law and the equities of the case shall in the opinion of the tribunal require." The members of the tribunal were to be nominated, two by the justices of the United States supreme court, two by the judges of the British supreme court of justice, and a fifth by the King of Sweden. On the basis of this agreement a treaty of arbitration was negotiated by the British and Venezuelan ministers at Washington, and was signed February 2. The treaty embodied some slight modifications of the plan proposed in the agreement: for example, the nomination of one of the arbitrators on behalf of Venezuela was assigned to her chief executive, the other being named by the justices of the United States supreme court. The arbitrators named were, for Great Britain, Baron Herschell and Sir Richard Collins; for Venezuela, Chief Justice Fuller and Justice Brewer. The rules to govern the arbitration were incorporated in the treaty in substantially the same form as in the agreement. The final ratifications of the treaty were exchanged February 27. On the same day the boundary commission appointed by President Cleveland formally terminated its existence and submitted its report. The report consisted merely of a description of the work done by the commission and of the material collected and filed. — The negotiations for a **general arbitration treaty** with Great Britain ended in the signing of such a treaty by Secretary Olney and Sir Julian Pauncefote at Washington, January 11. On the following day the document was transmitted by President Cleveland to the Senate for ratification. The chief provisions of the treaty were as follows: The parties agreed to arbitrate all questions of differ-

ence between them which they might fail to adjust by diplomatic negotiation. Three kinds of tribunals were provided for: the first to consist of two arbitrators, with an umpire to be appointed by agreement between the justices of the Supreme Court of the United States and the members of the Judicial Committee of the British Privy Council; the second to consist of four arbitrators, with an umpire to be chosen as in the first class; the third to consist of six members, three to be named by the president from the judges of the Supreme Court or Circuit Courts of the United States, and three to be named by the queen from the judges of the British Supreme Court of Judicature or the members of the Judicial Committee of the Privy Council. For tribunals of the first and second classes the umpires were to be appointed, in case of a failure of the designated authorities to agree, by the King of Sweden. To tribunals of the first class was assigned jurisdiction over all differences which did not involve the determination of territorial claims. In cases of pecuniary claims not exceeding £100,000 in amount, the decision by a majority of such a tribunal was to be final. For pecuniary claims involving larger amounts and for all other matters in its jurisdiction its decision was to be final only if unanimous; if not unanimously decided such cases might be taken by either party for review to a tribunal of the second class, whose decision by majority was to be final. Any controversy involving territorial claims was to go to a tribunal of the third class, whose award was to be final if determined by a majority of not less than five to one, or if, when made by a less majority, neither party within three months protested against it as erroneous. In case of a failure of arbitration through insufficient majority or through protest, there was to be no recourse to hostile measures until mediation had been invited. Finally, in any case before a tribunal of the first or second class, the tribunal might decide, on the motion of either party, that the determination would involve a "disputed question of principle of grave general importance affecting the national rights of such party"; whereupon the case must be dealt with by a tribunal of the third class. This treaty was greeted with widespread favor in the press, but was antagonized at once in the Senate by the jingo element and by the personal adversaries of the administration. The committee on foreign relations reported the draft favorably, but with certain amendments, on February 1. The ensuing debate soon revealed that a vote on ratification could not be obtained before March 4, and the whole matter was dropped. At the opening of the new Congress the Senate committee again considered the treaty and reported it, with amendments, on March 18. During two weeks' discussion the Senate adopted the committee's amendments and also others, with the result that the draft was radically transformed. Instead of the general reference of all disputes to the tribunals, it was provided that any difference "which, in the judgment of either power, materially affects its honor or its domestic or foreign policy," should be submitted to arbitration only by special agreement; that no question should be submitted save with the consent of the Senate in its treaty-making capacity; and that no claim of a British subject

against a state or territory of the United States should be submitted under any circumstances. The first of these changes was due mainly to the objection that without it the Monroe Doctrine might be subjected to arbitration; the second to the sensitiveness of senators as to their constitutional functions in foreign relations; and the third to a desire to protect states against claims on their defaulted bonds. Other changes modified materially the method of appointing the arbitrators for the United States, and struck out entirely the designation of the King of Sweden as umpire. Even with these amendments, the opposition to the treaty was not overcome; and the final vote on ratification, taken May 5, resulted in its rejection, the vote standing 43 to 26, less than two-thirds in the affirmative. Thirty Republicans and thirteen Democrats voted for the treaty; eight Republicans, twelve Democrats and six Populists against it. — President Cleveland devoted considerable space in his annual message to our **relations with Spain and Cuba**. All the evidence pointed, he declared, to a prolonged conflict between the Spanish government and the rebels, with no certainty as to the result save that the industrial value of the island would be totally destroyed. The loss of invested capital thus threatened, together with the strain and expense of maintaining the obligations of a neutral in the presence of a widespread and active popular sympathy for the insurgents, gave to the United States a lively interest in the situation. But none of the proposals commonly favored embodied a feasible method of manifesting this interest. The recognition of belligerency to the insurgents would be detrimental to our own concerns; the recognition of Cuban independence was impracticable, because the insurgents possessed no discoverable civil organization; the purchase of the island was impossible, since Spain refused to sell; and armed intervention, at the cost of war with Spain, was at present incompatible with the pacific character and national honor of the United States. Under these circumstances the president declared that mutual concessions by Spain and the insurgents seemed the only possible road to peace. Accordingly the government had suggested to Spain the bestowal of autonomy on the island with satisfactory guaranties of her own sovereignty, and had intimated that influence would be exerted to secure from the insurgents an acceptance of this concession. But, Mr. Cleveland continued, if neither this nor any other solution should terminate the war, a time would probably come and a situation arise, "in which our obligations to the sovereignty of Spain will be superseded by higher obligations, which we can hardly hesitate to recognize and discharge." Under no circumstances would the United States permit the acquisition or control of Cuba by any foreign power other than Spain. As to the method of action when the proper time should arrive, the president deemed that that should be left open. — The somewhat aggressive conclusion of the president's statement apparently stimulated the friends of Cuba in Congress to force matters to an issue. On December 18 the Senate committee on foreign relations agreed to report favorably a resolution acknowledging the independence of the Republic of Cuba and declaring

that the United States would use its friendly offices to end the war with Spain. An incipient "war scare" was caused by this action; but on the following day Secretary Olney gave to the press a statement deprecating the harmful effect of the committee's proceeding, and declaring that the power to recognize the independence of Cuba "rests exclusively with the executive." The proposed resolution, if passed by the Senate or by the House, "can probably be regarded only as an expression of opinion by the eminent gentlemen who vote for it." Such a resolution, if passed by both Houses, "is inoperative as legislation and is important only as advice of great weight tendered to the executive." The secretary's somewhat caustic statement produced as great a sensation as the action which called it forth; but his position was supported by many constitutional lawyers, even in Congress. The resolution was duly reported to the Senate, but for some reason its author, Senator Cameron, refrained from pressing it for consideration. — In connection with the protection of American citizens in Cuba the State Department has been kept very busy. The citizens in question are in many cases Cubans, whose naturalization has been made useful for the purpose of aiding the insurgents and escaping the consequences. In February the matter of Julio Sanguilly gave occasion for another outbreak of anti-administration heat in the Senate. Sanguilly had been convicted by a civil court of participation in insurgent operations, and was under sentence of imprisonment. His case had been the subject of active negotiations with Spain, but on February 24 a resolution was brought up in the Senate demanding his instant and unconditional release. The State Department was bitterly denounced in debate for its weakness; but at that very time a pardon had been promised by Spain, and on the 26th the prisoner was set free. Sanguilly came to New York, and early in April was arrested in Florida on charge of complicity in fitting out a filibustering expedition. As to the maintenance of the neutrality laws at home, the work of the administration has been materially aided by the action of the courts. On March 1 the supreme court sustained the seizure and forfeiture of a notorious filibustering craft, the *Three Friends*. In February a Philadelphia merchant of good standing was sentenced to imprisonment for two years, on conviction of concern in a filibustering enterprise. — Lesser incidents in our foreign relations have been as follows: On December 3, the president issued a proclamation reimposing on vessels from German ports certain tonnage dues which had been suspended in 1888. His action was based on proof that some of the German states had imposed such dues on American vessels, though reciprocal exemption had been a condition of the suspension of 1888. On January 30, Secretary Olney and Sir Julian Pauncefote concluded a convention providing for a commission to mark the Alaskan boundary along the 141st meridian, where existing uncertainties have recently assumed importance, owing to the discovery of gold in the region. President McKinley in April took up the serious consideration of the seal fisheries in Bering Sea and appointed commissioners to submit a plan for effectively

protecting the herd from destruction. On the 19th he appointed J. W. Foster as special envoy to negotiate with Great Britain an agreement for joint action in the matter. It is understood that communications have been exchanged between the two governments looking to some modification of the Paris tribunal's regulation of pelagic sealing. — A congress of the International Postal Union assembled at Washington, May 5, with delegates from all parts of the world.

THE CLEVELAND ADMINISTRATION. — In internal affairs the final months of President Cleveland's term were uneventful. At the treasury the deficit increased steadily and by the first of March had reached $48,000,000 for the fiscal year. The gold reserve, on the other hand, maintained throughout the winter a reassuring aspect. No indication appeared of a reaction from the inflow of the metal that was in progress at the close of the last RECORD, and the reserve in the treasury reached and maintained the amount of $150,000,000. Secretary Carlisle refused, however, in November to resume the issue of gold certificates, on the ground that such action would tend to check the increase of the reserve. — In the sphere of the Interior Department several important actions are noteworthy. On February 7, by order of the president, the number of pension agencies in the United States was reduced from eighteen to nine, effecting an annual saving of $160,000. On the 22d the president set aside by proclamation thirteen new forest reservations in the public lands of the West, including some twenty million acres, and raising the total amount of land thus reserved to nearly forty millions. The number of distinct districts reserved was increased by this action to forty. Mr. Cleveland's order was violently assailed by Western Senators, and strong pressure was put upon Mr. McKinley to revoke or modify it. In December the Dawes Commission for treating with the five civilized tribes of Indians reached, after long negotiation, an agreement with the Choctaws and Chickasaws, by which these two tribes undertook to accept allotments of their lands in severalty and to abandon their independent political organization. — On January 22, after the failure of the funding bill in the House of Representatives (see *infra*, p. 359), Attorney-General Harmon began foreclosure proceedings against the Union Pacific Railway Company on subsidy bonds that had fallen due on or before January 1. Under an arrangement previously made with representatives of the company, the government was assured of receiving about $46,000,000 in cash, equivalent to the principal of the bonds and about 3⅓ per cent interest. The stipulated interest was six per cent.

THE McKINLEY ADMINISTRATION. — The new president was inaugurated on March 4 with the usual ceremonies. In his **inaugural address** he dealt first with the questions of currency and finance. As to the former, he suggested a commission to study and report upon the whole situation; at the same time he promised to do all in his power for international bimetallism, meanwhile using every available resource to keep the value of our silver coin on a par with gold. Of fundamental importance,

however, was a revenue adequate to meet the expenses of the government. This, he held, must first be secured, and by legislation which should heed the unmistakable mandate of the people in the elections, that not internal taxes but a tariff on the protective principle should be the means to the desired end. Mr. McKinley announced his approval of the Republican Party's anti-trust policy and of checks on immigration, and spoke warmly in behalf of civil-service reform. As to foreign affairs, he promised a policy firm, dignified, just and impartial, but avoiding wars of conquest or territorial aggression. Holding that "peace is preferable to war in almost every contingency," he eulogized arbitration as the true method of settling international differences, and urged upon the Senate the early ratification of the pending treaty "not merely as a matter of policy, but as a duty to mankind." Finally, an extra session of Congress was announced, to deal with the tariff question; and the address concluded with congratulations to the country that the elections indicated the obliteration of old sectional lines. — President McKinley's cabinet was not completed until the day before inauguration. It was as follows: Secretary of State, John Sherman of Ohio; Secretary of the Treasury, Lyman J. Gage of Illinois; Secretary of the Navy, John D. Long of Massachusetts; Secretary of War, Russell A. Alger of Michigan; Secretary of the Interior, Cornelius N. Bliss of New York; Postmaster-General, James A. Gary of Maryland; Attorney-General, Joseph McKenna of California; Secretary of Agriculture, James Wilson of Iowa. As usual, **appointments to office** occupied most of the administration's attention during its first weeks in power, though the recent extensions of the civil-service reform produced a notable falling off in the pressure of office-seekers. The only important branch of the service yet open to the old methods is that of fourth-class and "presidential" post-offices. Here an immediate "clean sweep" has been the rule at the accession of a new administration; but on March 15 Postmaster-General Gary announced that except where removals were made necessary by delinquency or incompetency, all postmasters would be allowed to complete their four-year terms. Secretary Sherman also announced that the system of consular appointment recently put in force by Secretary Olney would be retained. In the diplomatic service the following appointments have been made. Ambassadors: to Great Britain, John Hay of the District of Columbia; to France, Horace Porter of New York; to Germany, Andrew D. White of New York; to Italy, William T. Draper of Massachusetts. Ministers: to Mexico, Powell Clayton of Arkansas; to Austria-Hungary, Charlemagne Tower of Pennsylvania; to Japan, A. E. Buck of Georgia; to Turkey, J. P. Angell of Michigan. In the consular service: consul-general at London, W. M. Osborne of Massachusetts; at Paris, J. K. Gowdy of Indiana. In the departments at Washington, assistant secretaries as follows: Treasury, O. L. Spaulding of Michigan and W. B. Howell of New Jersey; Agriculture, J. H. Brigham of Ohio; Interior, Thomas Ryan of Kansas and Webster Davis of Missouri; Navy, Theodore Roosevelt of New York; State, T. W. Cridler of West Virginia

and W. R. Day of Ohio; War, G. D. Meiklejohn of Georgia; Assistant Postmasters-General, Perry S. Heath of Indiana, W. S. Shallinberger of Pennsylvania and J. L. Bristow of Kansas. Commissioner of patents, Benjamin Butterworth of Ohio; of pensions, H. C. Evans of Tennessee; of the general land office, B. Hermann of Oregon; of Indian affairs, W. A. Jones of Wisconsin. — The currency and finances began in April to assume a somewhat different aspect from what was familiar during the winter. In view of the approaching increase of duties vast quantities of imports were hurried through our ports in March, and the treasury's receipts for the month showed a large excess over expenditures. The movement continued through April, and by May 1 the deficit for the year had fallen to $33,000,000. On April 24 a change in the comfortable currency situation was manifested by the exportation of gold for the first time since autumn. Up to the close of the RECORD, however, the movement had not assumed serious proportions. President McKinley, on April 12, appointed three monetary commissioners to promote the cause of international bimetallism, under the act of Congress mentioned below. The appointees were Senator Wolcott, ex-Vice-President Stevenson and General C. J. Paine of Boston.

CONGRESS, REGULAR SESSION. — The second session of the Fifty-fourth Congress opened on December 7. The president's **Annual Message** was a long document, covering all phases of the government's activity. As to foreign affairs, in addition to the discussion of the Cuban insurrection, summarized above, the only noteworthy passage was that touching the Armenian massacres. Here Mr. Cleveland pointed out the difficulty of giving adequate protection to our missionaries, but declared that everything possible had been done and that claims had been pressed upon the Ottoman government for compensation for missionary property destroyed at Harpoot and Marash. As to internal affairs, the president sketched the condition of every department, but without novel or striking treatment or suggestions. He concluded with a defense of the existing tariff, claiming that its provisions would ultimately insure a sufficient revenue, that meanwhile the treasury would be able to pay its way, and that the operation of the tariff on commerce and general welfare was altogether beneficial. As to the currency, he recorded again his conviction that the true way to reform lay through withdrawal of the greenbacks and Sherman notes, and authorization of the national banks to expand their circulation so as to provide all the currency needed. — The legislative output of the session was scanty. A considerable number of private pension bills were passed, many of them becoming law without the president's approval; but the most important **public measures enacted** into law were (1) that abolishing the death penalty in all federal convictions except for treason, murder or rape; (2) that prohibiting the sale of intoxicating drink to Indians; and (3) that authorizing the president to appoint commissioners to any international conference that may be convoked on the subject of bimetallism, or to call such

a conference himself. — More numerous were the important **measures that failed.** On January 11 a bill to refund the debt of the bond-aided Pacific railways and settle up the long-standing problem as to their relations to the government was defeated in the House, after a sharp debate, by 168 to 102. A few days later a Nicaragua Canal Bill, which proposed that the United States should assume control of the construction of the work under a franchise granted by Nicaragua to a private company, was met by a protest from the Central American minister at Washington, declaring that the franchise in question was already forfeited by failure of the company to fulfill its conditions. After this protest the bill, which had seemed likely to pass in the Senate, was withdrawn by Senator Morgan, who professed to see British influence behind the action of the minister. An Immigration Bill passed both houses, and was sent to the president February 17. It excluded from admission to the United States, in addition to the classes already excluded, all persons over sixteen years of age unable to read and write, except the aged parents and grandparents and the wives and minor children of qualified immigrants; and prohibited from coming "regularly or habitually" to the United States to work, those male aliens who returned home "from time to time." On March 2 the president vetoed the bill on the grounds, among others, that further restriction of immigration was at present unnecessary; that illiterate immigrants were less dangerous than educated agitators and anarchists from abroad; and that the provision designed to shut out Canadian workingmen was "illiberal, narrow and un-American." Forty-five bills were subjected by President Cleveland to the "pocket veto," of which a joint resolution to prevent the introduction and spread of contagious diseases into the United States was perhaps of the most general importance. — **The appropriation bills** provided for a total expenditure of about $526,000,000, eleven millions more than for the current year. Four of the bills failed to become law by the end of the session. One — the General Deficiency Bill — was in conference between the two houses when the session expired. Three others — the Sundry Civil, the Indian and the Agricultural Bill — were sent to President Cleveland in time, but for various reasons he refused to sign them. As the extra session was known to have been resolved upon, the failure of the bills was not regarded as of great importance.

CONGRESS, EXTRA SESSION. — The policy of an extra session of the new Congress was decided upon by the Republican leaders in December. It became evident during that month that there was no hope of passing any tariff measure in the Senate, owing to the hostile attitude of the silver Republicans. Accordingly, the House ways and means committee proceeded to prepare a general revision of the tariff, to be submitted to the new Congress. Hearings were given to interested parties for the two weeks succeeding December 28, and the bill was ready for introduction in March. On the 6th, President McKinley issued his proclamation summoning Congress to meet on the 15th. The Senate had already met in the customary

special session to confirm the incoming president's appointments, but had done nothing toward reorganizing its committees except to put Mr. Davis of Minnesota in the chairmanship of the committee on foreign relations, made vacant by Mr. Sherman's entrance into the cabinet. The new House, assembling on the 15th, organized by the reëlection of Speaker Reed and the other officers of its predecessor. The party classification of the House was: Republicans, 206; Democrats, 122; Populists, Silverites and Fusionists, 29. In accordance with the policy agreed upon by the Republican leaders, only three committees were appointed — those on rules, on ways and means and on mileage — so that no business but the appropriations and the tariff could be proceeded with. The four appropriation bills that had failed were promptly passed on the 19th and 20th in substantially the form in which they had passed the previous House. On the day Congress met Mr. Dingley, chairman of the ways and means committee, introduced **the tariff bill** that had been prepared under his guidance. Its character and contents, as described in Mr. Dingley's statement, were as follows: The purpose was twofold, to raise revenue and to encourage the industries of the United States. The bill as drafted was expected to give from seventy to a hundred millions increase over the present revenue. The chief means to secure this increase were the transfer from the free to the dutiable list of wool, lumber, opium, paintings and statuary, and other articles; an increase of duty on woolens, sugar, agricultural products, manufactures of jute, flax and hemp, some grades of iron and cotton goods, and especially on liquors, tobacco, silks, laces, *etc.* As a rule, the rates were fixed between those of 1890 and those of 1894. In the agricultural, the wool and the glass and earthenware schedules the rates of 1890 were restored, and in a few cases increased. Specific duties were in general preferred to *ad valorem*, and the reciprocity provisions of 1890 were restored, with the addition of new articles — among them wines, mineral waters and silk laces — as a basis for making reciprocal agreements. Under a rule adopted by the House on the 19th, the Dingley Bill was debated for ten days, and was then, on March 31, adopted by 205 to 121. The majority included five Democrats and one Populist; no Republican voted against the bill and 21 silver men declined to vote. Some amendments were adopted during the debate: the exemption from duty of books and scientific apparatus for the use of educational institutions, which the bill had repealed on account of the frauds based on it, was restored, probably in consequence of an earnest and widespread remonstrance from colleges and universities; further, in order to prevent a great loss of revenue by anticipatory importations, a clause was inserted on the last day, putting the schedules in effect on all imported goods that were actually purchased on or after April 1, 1897, without reference to the date of the bill's final passage. After concluding its work on the tariff, the House, without taking up any other business, merely kept in nominal session, by adjournment at the constitutional three-day intervals, pending the Senate's action on the bill. The latter body, because the Populists and silver Republicans still

held the balance of power, was unable to organize its committees or make much progress with business. Some consideration of appropriations and the passage of a bill for the relief of the sufferers by the Mississippi floods, April 7, constituted almost the whole legislative work of the month. The Senate committee on ways and means was meanwhile laboriously considering the Dingley Bill, and on May 4 the measure was reported, with about a thousand amendments. The changes tended on the whole to lower rates; and revenue was further aimed at by provisions for a duty on tea and an increase of the internal tax on beer, both, however, to terminate on January 1, 1900.

THE FEDERAL JUDICIARY. — The following decisions have been made by the supreme court. November 16, Fallbrook Irrigation District *vs.* Bradley: Held, that the California statutes providing for the formation of irrigation districts in the arid belt and authorizing the assessment of lands to pay the cost of irrigation are not in conflict with the constitutional prohibition against taking property without due process of law. November 30, Missouri Pacific R. R. Co. *vs.* Nebraska: Held, that a state law authorizing the requirement that a railway company shall surrender to individuals a site for an elevator to be erected and used for their private benefit is unconstitutional, as permitting private property to be taken without due process of law. December 14, Turnpike Road Co. *vs.* Sandford: Held, that a Kentucky law reducing rates chargeable by a turnpike company so unreasonably as to prevent the company from making adequate repairs or declaring dividends out of its receipts is unconstitutional, as taking private property without due process of law. January 4, R. R. Co. *vs.* Mathews: Held, that the Missouri statute making railroad companies liable for property destroyed by fire from their locomotives is not repugnant to the national constitution. January 18, R. R. Co. *vs.* Ellis: Held, that a Texas statute making railroad companies liable for an attorney's fee in case of failure to pay small claims within thirty days after presentation is unconstitutional, as depriving such companies of the equal protection of the law. January 18, Scott *et al. vs.* Donald: Held, that the provisions of the South Carolina Dispensary Act forbidding the importation of liquor by any one except certain state officers are unconstitutional, as restricting interstate commerce. February 1, Sandford *vs.* Poe and other cases: Held, that the "Nichols Law" of Ohio, providing that the property of telegraph, telephone and express companies may be taxed at a valuation ascertained by comparing the property in the state with the entire property of the company, is not in conflict either with the interstate-commerce provision of the constitution, or with that forbidding a state to deny to any one the equal protection of the laws, or with that prohibiting the taking of property without due process of law. January 25, Robertson *et al. vs.* Baldwin: Held, that the federal law conferring on state justices of the peace power to arrest and return to their ships deserting seamen is not repugnant to the constitution, and that such arrest and return is not contrary to the guaranties of liberty in the amendments to the constitution. March

1, Allgeyer *vs.* Louisiana: Held, that the Louisiana law which prohibits a citizen from doing in the state certain acts necessary to secure for property in the state insurance in a foreign company that has not complied with state laws, is invalid, as depriving a citizen of liberty without due process of law. April 19, *In re* Chapman: Held, that the proceedings through which a person had been sentenced to fine and imprisonment for refusing to answer questions before a Senate Committee investigating charges of corrupt conduct on the part of Senators, were in conformity with law and with the constitution.

THE ELECTIONS. — The completed returns of **the presidential vote** in November made McKinley's plurality over Bryan a little more than 600,000, instead of the million stated in the last RECORD. The latter figure was based on the returns from the more populous centers, while the rural returns, coming later, revealed the chief strength of the Democrats and Populists. Of the minor candidates, Palmer received about 139,000 votes, New York leading with 19,000; Levering, the Prohibition candidate, received 134,000, Pennsylvania leading with 19,000; and Matchett, the Socialist candidate, received 34,000, New York contributing about one-half of them. The electoral vote, as finally counted, stood 271 for McKinley and 176 for Bryan. For vice-president, however, the opposition to the Republican candidate was divided between Sewall, the Democrat, and Watson, the Populist; and the vote stood, Hobart, 271, Sewall, 149, Watson, 27. — **The senatorial elections** secured to the Republicans a less effective control of the Senate than had been anticipated. Utah elected a Democrat in place of a retiring Republican, and in Idaho and Washington silver Republicans were replaced by Populists. On the other hand, Democrats were replaced by Republicans in Illinois, Indiana, Maryland, New York, Ohio and Wisconsin. The composition of the new Senate was ultimately as follows: Republicans, 48 (6 silver); Democrats, 35 (4 gold); Populists, 7. — **The municipal elections** in April in the West showed a very heavy reaction from the Republican majorities of last November. Chicago, in particular, gave a great Democratic victory.

THE ANTI-TRUST MOVEMENT. — The period under review has been characterized by a widespread manifestation of legislative and judicial hostility to industrial and commercial combinations of capital. This fact is attributed by many to the influences which were evoked by the Populistic element in the last presidential campaign. Practically all the state legislatures that were in session during the winter considered anti-trust bills; and the list of states in which such measures actually became law includes Georgia, Indiana, Wisconsin, South Carolina, Arkansas, New York, Nebraska, Tennessee, North Dakota and South Dakota. The Georgia Act, which was passed in December, was very sweeping in its provisions. It declared unlawful and void all contracts or combinations tending to lessen free competition in the importation or sale of commodities, or "to advance, reduce or control the price" to either producer or consumer; for violating

the act domestic corporations were to forfeit their charters, while foreign corporations were to be prohibited from doing business in the state. Similar acts were passed by South Carolina, North Dakota, and Arkansas. In New York a committee of the legislature in February carried on an investigation of "trusts," devoting especial attention to the organizations that control respectively the sugar and the coffee business. As a result of its labors the committee reported two bills which were passed in March, but were of a rather less vigorous character than that described above. — A special phase of the anti-monopoly movement was an agitation, central at Chicago, against the great retail department stores. Legislation to restrain these enterprises, either by taxation or otherwise, was considered in Illinois and a number of other states, but no effective results seem to have been obtained. — The most important event, perhaps, in this general field was the **Anti-Trust decision of the Supreme Court** of the United States, March 22, in the case of United States *vs.* Trans-Missouri Freight Association. This was a case in which the Department of Justice had sought to dissolve an association of Western railroads, on the ground that it violated the Anti-Trust Act of 1890 (POLITICAL SCIENCE QUARTERLY, V, 734–735). Decisions against the government had been rendered in the circuit court and in the circuit court of appeals. The supreme court, however, by five judges to four, reversed this action of the lower courts. The defendant was an association of railway companies for the purpose of fixing and maintaining uniform freight rates within a defined territory by joint agreement and joint regulation. It was held in the opinion of the court (1) that the terms of the Anti-Trust Act covered combinations among railroads as well as among trade and manufacturing corporations; (2) that all combinations in restraint of trade or commerce were made illegal by the act, whether the restraint were reasonable or unreasonable; and (3) that the agreement in question necessarily worked in restraint of trade or commerce, and could therefore be dissolved by the injunction that had been applied for. The unexpectedly wide scope given to the Anti-Trust Act by the court, contrary to the common belief that the rate-fixing associations among railroads were permitted by provisions of the Interstate Commerce Act that had not been superseded by the later law, caused a great sensation; and the decision was at once followed by the dissolution of the Western Freight Association, which regulated a huge volume of business on lines centering at Chicago. The Joint Traffic Association, through which the business of the trunk lines from New York to the West is regulated, also took steps to adjust itself to the new situation, but finally decided to maintain its regular working. Certain *dicta* in the court's opinion indicated, moreover, a very hostile attitude toward trade and manufacturing combinations that drive small dealers out of business or force them to become mere employees of the great capitalists. It was probably because of these *dicta* that the American Tobacco Company announced the cancellation of its "factors' agreements," and the "Sugar Trust" indicated a disposition to

do the same. (The "factor's agreement" is a contract by which the retail dealer, on penalty of having his supply cut off, binds himself to conform to the requirements of the "trust" as to origin and price of a commodity in which he deals, *e.g.*, sugar or tobacco.) A motion for a rehearing of the Freight Association case was made in April, but the court laid the subject over till autumn.

VARIOUS STATE LEGISLATION. — The results of the voting on important **amendments to state constitutions** in the November elections were as follows: Repeal of prohibition article, adopted by South Dakota; woman suffrage rejected by California, adopted by Idaho; requirement of naturalization, in case of foreign-born persons, three months before voting, adopted by Minnesota, rejected by Montana; requirement of declaration of intention six months before voting, adopted by Texas; permission to employ other methods of voting, if secret, than ballot (voting machines), adopted by California, rejected by Nebraska. Substitution of biennial for annual elections of state executive and legislature, rejected by Massachusetts; prohibition of trusts and combinations, adopted by South Dakota; permission of progression and other special modes in taxation of sleeping-car, telegraph, express and other companies, adopted by Minnesota: authorization of civil verdict by five-sixths of jury, rejected by Nebraska; authorization of cities to frame their own charters, adopted by Minnesota. Of the thirty-nine **state legislatures** which meet biennially, over thirty were in session during the past winter. The output of important legislation, however, was not large. The treatment of trusts is mentioned elsewhere. Laws requiring railroads to carry bicycles as baggage, and regulating or prohibiting the sale of cigarettes were passed in many states. In West Virginia, however, an anti-cigarette law was declared unconstitutional by the supreme court. **Kansas**, in which the Populists controlled both houses of the legislature, was expected to produce radical laws, but the expectations were not fulfilled. During the winter the state authorities undertook to confiscate the real estate of the Atchison, Topeka and Santa Fé Railway under the law forbidding aliens to hold land. The attempt failed, owing to a discovery that the law had never been legally enacted; an effort to remedy this defect failed in the legislature. — In **South Carolina**, where radical legislation is also to be expected, the work of the session included a graduated income tax, a graduated license tax on insurance companies, and a requirement that every foreign insurance company, in order to do business in the state, should deposit with the government $10,000 in securities, to cover any judgment that might be rendered against it. — Idaho enacted a law prohibiting the employment of aliens by municipal or other corporations; Colorado abolished capital punishment; South Dakota adopted local option and high license in liquor dealing; and in North Dakota a constitutional amendment was submitted to the people looking to an educational qualification for the suffrage and to compulsory voting. In Missouri a compulsory voting law was declared unconstitutional by the supreme court. — In **New York**, the

large Republican majority, working under the leadership of United States Senator Platt, attracted much attention by the machine-like character of its operations. The completed legislation included amendments to the Raines Liquor-Tax Law (see this RECORD for June, 1896, p. 377) designed to prevent evasion under the exceptions in favor of hotels and clubs ; a Graduated Inheritance-Tax Bill, imposing rates that in some cases rise as high as fifteen per cent ; and a Civil-Service Bill, designed to restrict the competitive system of appointment, and providing that "fitness," as determined through examination by the appointing officer, shall have equal weight with "merit," as determined by the existing civil-service boards. An important decision on **the law of labor** was rendered by the New York State Court of Appeals early in March, in the case of Curran *vs.* Galen. A workman who refused to join a labor union was at the instance of the union discharged by his employer, and was prevented from getting work elsewhere. Having sued the officers of the union for damages, on the ground that they had conspired to deprive him of a livelihood, they set up the defense that his discharge had been due to a lawful contract between his employer and the union, under which the former undertook not to keep in his employ any one who was not or did not become a member of the union. But the court declared that such a contract was unlawful — in "conflict with that principle of public policy which prohibits monopolies and exclusive privileges." The defense set up, therefore, was held to be insufficient.

MUNICIPAL GOVERNMENT. — The charter for the **Greater New York** was completed by the commission appointed to draft it and was submitted to the legislature February 19. It embodied a complete and complicated scheme for the entire government of the new municipality. Legislation was entrusted to a bicameral assembly ; the executive power was assigned to an elective mayor, with control over the appointment of subordinates; the levy and expenditure of money was put in the hands of a board of high executive officials. The draft was adopted by the legislature without important modification, and was approved by the mayors of all the municipalities concerned, save New York City. Mayor Strong, of that city, disapproved the project, April 9, on account of certain provisions which had received very general condemnation from friends of municipal reform. The objectionable features were : the bicameral legislature instead of a single chamber; the bipartisan police commission of four members, instead of a single-headed department; and the restriction of the mayor's power to remove his subordinates to the first six months of his term. No effect was produced by the mayor's disapproval, and the bill, having been passed again by large majorities, became law. — In **Baltimore** the mayor's controversy with the council over the appointment of officers (see this RECORD for June, 1896, p. 380) was terminated by a judicial decision, November 19, sustaining him at every point and declaring illegal the council's acts depriving him of the power of appointment. — The common council of Boston passed an ordinance, January 28, establishing a municipal printing plant.

LYNCH LAW. — The number of incidents that have come to the notice of the compiler is thirty-three — all in the former slave states. Of the victims twenty-nine were negroes; and the offense charged was actual or attempted rape of a white woman in seventeen cases, and murder in most of the others. The state authorities have manifested in most cases great activity in thwarting and in prosecuting the lynchers, but difficulties in the way of success are often insuperable. An illustration of the obstacles that have to be overcome is found in the fact that a Mississippi farmer who turned state's evidence in a lynching case last year was assassinated in his bedroom in March. Light was thrown on the uncertainty of reports on lynching affairs by the discovery in January of a negro, who, with a fellow-criminal, was supposed to have been lynched in Alabama, in 1894. The two had been taken from the officers of the law by a mob, but, it appears, had escaped from their captors. As the negroes were under legal sentence of life imprisonment, they naturally did not reveal the truth; and as the governor offered large rewards for the members of the mob, the latter failed to make public all they knew. In this case "lost in the woods" — the euphemism commonly employed in the South to describe the fate of a negro seized by a mob — expressed the literal truth.

II. FOREIGN NATIONS.

TURKEY AND THE CHRISTIANS. — The affairs of the Ottoman power have continued throughout the period under review to form the chief point of international interest. For the first three months the questions involved in the Armenian massacres were most conspicuous; during the last three months the situation in Crete and Greece took precedence. In respect to **the Armenians**, the diplomatic pressure exerted by the powers resulted in a general amnesty, December 22, to both Christians and Mohammedans who had been concerned in the disturbances. The efforts to secure the operation of the administrative reforms which the Sultan had promised were less successful. Orders issued by the Porte for putting into effect desired changes were followed by no results whatever. Toward the end of November, however, the Russian Czar, who had up to that point opposed all threats of force by the powers, gave way to the extent of agreeing to consider methods of coercion in case reforms demanded by all the powers could be secured in no other way. This attitude removed the most serious obstacle in the way of effective pressure, and was reported to have made a profound impression on the Sultan. The ambassadors of the powers at once proceeded, in a series of conferences, to concert a precise plan of operations. This task was not completed till February 8, when the result was submitted to the respective governments. At just that time, however, the Cretan question assumed a critical character; and, in the developments which followed, the other matter, so far as public information is concerned,

disappeared from view. A fresh outburst of fanaticism, in the middle of March, resulted in the killing of from fifty to a hundred Armenians at Tokat, in Asia Minor, and the pillage of the Armenian quarter. This was followed by the usual "vigorous protests" by the powers, and a special commission was sent out by the Porte to investigate the responsibility of the Turkish officials for the trouble. — **The crisis in Crete** was precipitated by an outbreak of hostilities at Canea, February 5, between Mohammedans and Christians. The vaunted reforms which the powers had undertaken to secure (see last RECORD) had not gone fully into effect, and the conflict seems to have been merely a renewal of the old friction which the reforms had been intended to remove. The outbreak was followed at once by fighting from one end of the island to the other, on the familiar lines — the Mohammedans, supported by the Turkish garrisons, holding the coast towns, and the Christians holding the open hill country. In Greece sympathy for the Christians took at once a very demonstrative form, and the government promptly dispatched a flotilla to the scene of the disturbances, with arms and provisions for the insurgents. On February 14, a Greek war-ship fired upon a Turkish transport that was conveying aid to the government forces. In response to the protests addressed to the Greek government, at the instance of the Sultan, by the powers, the government proclaimed its resolution to protect the Christians in Crete, and for that purpose to occupy the island. On the following day a force of 1500 Greek troops, dispatched from Athens, landed near Canea. At the same time the war-ships of the powers, which had assembled in large numbers, landed marines in the town to protect it. Similar action was taken at the other towns which the Christian insurgents were threatening; and on several occasions the foreign vessels were obliged to open fire on the assailants to make them keep at a proper distance. Neither Cretans nor Greeks, however, attacked the foreign troops. Throughout western Europe much popular sympathy for the cause of the Christians in Crete was manifested, and much popular applause was bestowed on the Greeks. On February 22 it was announced, however, by the governments of Great Britain, France and Germany, in reply to questions in the respective legislatures, that the six powers were resolved to act together in pacifying Crete, and that the intervention of Greece would not be tolerated. The scheme of the powers was embodied in collective notes presented to the Greek and Turkish governments on March 2. It provided for administrative autonomy for Crete, under the suzerainty of the Porte, and declared that annexation to Greece was out of the question "under present circumstances"; the Greek government was accordingly ordered to withdraw its military and naval forces from the island within six days under penalty of compulsion. The Porte promptly signified acquiescence in the plan of the powers. Greece, however, declared that the scheme of autonomy "unhappily cannot correspond to the noble intentions that inspired it"; pleaded for the annexation of the island; and declined to withdraw her land

forces, on the ground that that would be to "abandon the Cretan people to the mercy of Mussulman fanaticism and the Turkish army." She asked, finally, that the choice of government be left to the people of the island. This practical defiance of the powers was followed, after some days of delay, by the announcement of a blockade of the Island of Crete by the allied fleets, and the reënforcement of the occupying marines by infantry. The blockade was formally proclaimed on March 16, and became operative on the 21st. The Greek war-ships withdrew; but the land force intrenched itself in a strong position and continued to give moral, if not physical, support to the insurgents. The latter paid no attention to the project of autonomy, but kept up their operations against the Turkish garrisons, whom the allied fleets were called upon repeatedly to defend. It was announced by the admirals that the blockade would last only until the Greek force withdrew from the island; and it was understood that the withdrawal of the Turkish troops would follow that of the Greeks. A proposition to blockade the ports of Greece was said to have been urged very strongly by the German Emperor; but the British government, probably fearing public sentiment at home, seems to have withheld its consent to such action. — **War between Greece and Turkey** broke out in connection with the situation in Crete. While that situation was developing both nations had been calling out their reserves and concentrating armies on the Thessalian frontier, with a view to any contingencies. The war fever ran high in Greece; and as the forces confronted each other, the chances of a collision became very great. On April 5 it was announced that the powers had made to Greece and Turkey a joint declaration that, in case of a conflict, the aggressor would be held responsible for all consequences, and in no case would be permitted to derive any advantage from the struggle. Fighting was actually begun on the 9th, by a body of Greek irregulars, who, under the auspices of the National League, a patriotic society, crossed into Macedonia and attacked a Turkish position. The regular Greek officers disavowed this movement, and were said to have exerted themselves vigorously to prevent it. Fighting continued, however, at various points; and on April 18, the Porte, on the ground that the aggressions of the irregulars had been supported by the Greek regular army, broke off diplomatic relations and ordered the Turkish army to cross the frontier. Hard fighting began at once at all the passes through the mountains that constitute the boundary. The Turks were superior in numbers and forced the Greeks steadily back till on the 24th Larissa, the base of the Greek position, was captured. A new position was then taken by the defeated army at Pharsalos, on the southern border of the Thessalian plain, but on May 6 the Turks, after a general engagement, drove the Greeks from this line also. Meanwhile the Greek fleet had bombarded several towns along the coast of the Gulf of Salonica, but without important results; and on the western coast of Epirus, Greek forces, after making some progress in Turkish territory and threatening Janina,

were driven back to their original positions. The reverses in the field provoked great popular irritation at Athens. The Delyannis cabinet fell April 29, and was succeeded by a ministry headed by M. Ralli. Demonstrations of hostility to the king and royal family were frequent, and there was apparently danger of a revolution. The great powers were known to be in consultation over the situation, but no steps toward intervention were made public.

GREAT BRITAIN AND IRELAND. — The usual pre-Parliamentary political discussions during November and December turned chiefly on the question of **Irish financial relations.** On the basis of the royal commission's report, noticed in the last RECORD, a very active agitation developed in Ireland for a readjustment of taxation in favor of that part of the United Kingdom. Home Rulers and Unionists, noble landlords and dynamiters, united in supporting the demand and in denouncing the injustice of the existing system. On the other side, it was maintained that no grievance really existed; that the royal commission had been "packed" in favor of Home Rule and had reported in that sense; that there was no justification for treating Ireland as a distinct taxable entity; and that if Irishmen actually paid disproportionate taxes, it was merely a result of their greater consumption of whiskey. The question seemed at one time likely to play a prominent part in the work of Parliament, but the government avoided this by announcing, at the opening of the session, that a new royal commission would be appointed to deal with the matter, and especially to consider the extent to which the greater relative outlay on the government of Ireland could operate as a set-off against the greater contribution. A short debate on this subject in the Commons at the end of March was followed by a vote of 317 to 157 in favor of the government. — **Parliament** assembled January 19. The Queen's Speech dealt largely with foreign and colonial affairs, and declared that the present condition of the world required a continuation of "prudent foresight" in providing for the defense of the empire. Chief among the measures announced was that dealing with primary education, and especially with the voluntary schools. The Voluntary Schools Bill, as explained by Mr. Balfour on February 1, avoided the complexity of the bill which had failed at the preceding session, and provided merely that such schools should be exempted from the payment of rates, and should be further aided by an allotment of 5*s.* per pupil from the exchequer. The distribution of the money was to be directed by the Education Board, in coöperation with associations organized by the schools according to sect. The opposition to this bill was not very serious, and it passed in the Commons, March 25, by a majority of 200. In accordance with a program previously announced, Mr. Balfour introduced in April a bill giving aid to necessitous board schools also. The omission of such aid had been the chief ground for opposition to the earlier measure. The budget presented by Sir Michael Hicks-Beach, April 29, indicated an unusually prosperous year. A surplus of £2,473,000 was revealed, but no reduction of taxation

was proposed. Among the additional expenditures resolved upon was £200,000 for an increase of the British garrison in South Africa. — Foreign affairs gave rise to the most animated **party contests** of the session. The Liberals in general, and the more radical wing in particular, assumed a very critical attitude toward the government's Cretan policy. Lord Salisbury's adherence to "the European concert" was assailed as a mere submission to Russian lead, and the use of force against the Christians in Crete was violently denounced. The Earl of Kimberley, who had been chosen at the opening of the session to succeed Lord Rosebery as Liberal leader in the upper house, announced definitely his repudiation of the "integrity of the Ottoman Empire" as a principle of British policy. The trend of Liberal thought, both in and out of Parliament, was accentuated by a letter of Mr. Gladstone, published March 18, in which he eloquently advocated the cause of Greece, and raged against the whole course of the "European concert" in dealing with Turkey. As to the government, Lord Salisbury confessed at the opening of the session that in sustaining the Porte against the projects of Nicholas I in the Crimean days, Great Britain had "put its money on the wrong horse"; but he insisted that the only way to avoid woes now, as great as those of the Crimea, was to act in coöperation with the other powers. When the Cretan difficulty arose, the government's course was justified on the same reasoning, as well as on the necessity of protecting the Moslems in Crete from massacre by the Christians. In the House of Commons Sir William Harcourt, leading the Liberals, harassed the government severely on several occasions, but declined Mr. Balfour's challenge to move a vote of censure. — The Irish Parliamentary Party manifested throughout the session the usual factional differences. An attempt in March to bring together on the financial issue all the representatives of Ireland, including Conservatives, proved abortive. It was considered significant that at the annual conference of the National Liberal Federation at Norwich, in March, the program contained no specific reference to Irish Home Rule. — The parliamentary committee to investigate the Transvaal raid began its work in February. Mr. Cecil Rhodes came from Africa to give testimony. He admitted that the project practically originated with himself, and that it was intended to extend the British Empire. It was justified, he believed, by the treatment of the *uitlanders* by the Boers. The inquiry had not ended at the close of this RECORD.

THE BRITISH COLONIES AND INDIA. — In **Canada** the settlement of the long-pending Manitoba school question was announced in November. Prime Ministers Laurier, of the Dominion, and Greenaway, of Manitoba, concluded an agreement under which the schools were all to be subject to the control of the provincial authorities, to be held to a uniform standard of efficiency and to use the same text-books. Religious teaching for a half hour daily by any Christian clergyman was provided for, when demanded by a given number of parents, but no child was to be obliged,

without his parents' consent, to attend this teaching. Where forty children in a city or town, or twenty-five in the country, should require either a Catholic or a non-Catholic teacher, the demand was to be granted, provided that the non-religious qualifications of all teachers should be the same. This agreement failed to satisfy many of the leading Catholic clergy; it was ratified, however, by the Manitoba legislature, March 25, and went into effect as law. On that day the Dominion Parliament opened at Ottawa. The chief measures announced in the governor-general's speech were a revision of the tariff and a change in the franchise law so as to leave the regulation of the suffrage to the various provinces. The tariff bill, as published in April, embodied a general reduction of duties, the establishment of preferential rates for British goods and a very decided discrimination against products of the United States, subject, however, as the finance minister declared, to modification in case the burdens on Canadian products were removed from the Dingley Bill. — In **the Australian colonies** the legislative sessions of the autumn closed without the enactment of the radical measures that were proposed and in some cases passed by the lower houses. In both Victoria and New South Wales referendum bills were killed in the Legislative Councils. The movement for federation, on the other hand, made very decided progress. During the winter West Australia passed an enabling act for the constitutional convention, leaving only Queensland standing aloof from the scheme. Early in March delegates to the convention were elected — ten in each of the five colonies participating, and on the 22d the convention assembled at Adelaide. A series of resolutions was at once submitted by a delegate from New South Wales and soon adopted, proposing principles on which the constitution should be framed. These included the retention by the respective colonies of powers not delegated to a central organ; the exclusive control of customs and excise taxes, and of military and naval affairs, by the federal parliament; and absolute freedom of trade among the federated colonies. Subject to these conditions, it was resolved to establish a bicameral legislature, a federal supreme court, and an executive consisting of a governor-general appointed by the queen and a ministry responsible to the legislature. The convention's work had not been completed at the close of this RECORD. — The stress of **famine and plague in India** has absorbed the energies of the political authorities. Severe drought in large districts made famine probable by the end of the summer, and the pressure began to be felt in October. Active measures for dealing with the situation were begun by the Indian government in November, and by the middle of March the number of persons receiving relief had risen to over 3,000,000. Public works on an extensive scale were carried on to give employment. Private aid was enlisted throughout the empire, and huge funds were raised by subscription. The Mansion-House fund alone, managed by the Lord Mayor of London, had reached in April £500,000. Non-British lands also contributed largely. With the maturing of crops in the spring some improvement was manifest in the general situation, but it was

anticipated that the distress would be acute in some regions until near the end of the year. The bubonic plague made its appearance in the autumn at Bombay and in some other parts of western India. Its ravages were confined mostly to the natives, and the efforts of the government to stamp it out met with almost insuperable obstacles in the unsanitary habits and the social and religious prejudices of the people. By the end of the winter, however, a system of control had been put in operation, sometimes by the strong hand, and the danger of a very wide spread of the pestilence had been greatly reduced. The most decisive measure was an act authorizing the governor-general to prohibit infected persons from leaving their province. This was adopted late in February, as the fear of consequences if Mohammedan pilgrims were detained was dominant at first. Even the Mohammedans, however, later became reconciled to the system.

FRANCE. — The course of political life has been exceptionally placid. The Chambers have been in session throughout the period under review, except for a recess at the holidays. M. Méline has maintained his position at the head of the government without serious difficulty. Radical attacks by interpellation have been frequent but unavailing. In March the Chamber of Deputies took a definite step toward restraint of obstruction by adopting a provisional rule that interpellations can be made only on Saturdays. The ministry received a slight check by the passage, November 17, of a bill simplifying the method of electing senators. Though its consideration was opposed by the government, the bill passed, by 297 to 238; a further motion requiring the government to press the measure in the Senate was voted down, 311 to 241, and accordingly no change in ministry occurred. — Most of the parliament's attention was devoted to the budget for 1897, which was finally voted on March 29. Of other legislation the most important actually effected was that increasing the export bounties on beet sugar, to meet similar action by Germany and Austria-Hungary. — The elections for one-third of the senators, held January 3, resulted in a triumph for the Moderate Republicans. Where the Radicals opposed the Moderate candidates, the opposition in nearly all cases failed. — The Panama scandal came into some prominence at the end of March through a confession made by Arton, the lobbyist chiefly concerned in the bribery. Proceedings were instituted against several deputies and senators who were implicated by Arton's exposure, but no convictions followed.

GERMANY. — The work of the Reichstag has gone very little beyond the discussion of the budget and other routine business. Even in this the inability of the government to secure a certain majority has been very clearly demonstrated. In March, in connection with the naval estimates, the minister of marine brought forward a scheme for greatly increasing the navy, and demanded a large appropriation to put the scheme in operation. The project was understood to have emanated from the emperor, but the Reichstag refused, March 20, by 204 to 143, to grant the desired money. This vote was followed by the retirement of Admiral Hollman, the minister of

marine. Conservatives and National Liberals supported the government, but the Clericals decided the matter against it. Another project that failed was the amendment of judicial procedure, insuring, among other things, a right of appeal in criminal cases and compensation for persons unjustly accused. The Reichstag inserted in the bill an amendment providing that editors need not reveal the names of writers in their papers. The government resisted this amendment, and when it was adopted withdrew the bill. On the other hand, a private member's bill for the repeal of the Jesuit-Exclusion Law was passed, April 3, but with no hope of approval by the Bundesrath. In the middle of March the latter body adopted and sent to the Reichstag a bill to regulate emigration, which provided for a rigorous imperial supervision of companies and vessels engaged in forwarding emigrants, and was avowedly aimed at so controlling the destination of the emigrants as to promote their highest welfare as well as the ultimate welfare of the German race as a whole. A new Code of Commerce, supplementing the Imperial Civil Code, was adopted by the Reichstag April 7, to go into effect with the Civil Code in 1900. — When, on January 1, **the new Bourse Law** (see last RECORD) went into effect, the produce exchanges at Berlin and other cities dissolved their organizations, but the members at once resumed business under other forms devised to evade the provisions of the law. The authorities claimed that the new associations were also subject to the law, but up to the close of this RECORD no definite step has been taken toward enforcing the legislation against them. — Certain phases of militarism have formed a prominent topic of public discussion during the period under review. Early in the autumn, at Carlsruhe, a young lieutenant named Brüsewitz, considering himself insulted by an artisan who brushed against him in a *café*, demanded an apology from the offender, and, when it was not forthcoming, run him through with a sword and killed him. The officer was tried by a military court and sentenced to dismissal from the army and four years' confinement in a fortress. Heated discussion in the press and in the Reichstag followed this incident, and the practice of duelling and the whole code of conduct among army officers was severely commented on. The emperor disapproved the court's disposition of the Brüsewitz case and ordered a new trial, which resulted in January in a sentence of the offender to imprisonment for three years. Meanwhile the emperor issued a decree, January 1, supplementary to existing regulations on courts of honor and duels among officers. To prevent duels more effectively, it was enjoined upon officers to end their quarrels by reconciliation, "so far as professional honor and good manners (*gute Sitten*) permit," and a procedure was laid down through which a council of honor should coöperate in effecting such reconciliation. It was made the duty of officers to lay their disputes before this council and to accept its decisions, subject to an appeal to a court of honor, whose judgment should be final. No definite penalty was prescribed, however, for a failure to conform to this method of settlement. In case a challenge should be given or accepted before or pending action of a coun-

cil of honor, the decree merely provided that the matter should be reported to the emperor. — **The Prussian Landtag** met November 20. A very favorable financial situation was revealed by the budget, which produced a good surplus instead of the expected deficit. The work of the session concerned chiefly routine matters.

AUSTRIA-HUNGARY. — The central point in Austrian politics has been the **elections for the Reichsrath** for the first time under the new electoral law. The old Reichsrath, after finishing routine business, was dissolved January 23, and the elections were ordered for March 4–15. The campaign and its results emphasized what recent events had clearly revealed — the wreck of the German-Liberal Party through the great strength of the anti-Semitic and Clerical movements. The German Liberals secured only seventy-seven members, as compared with one hundred and nine in the former house; the German Nationalists, recently split off from the Liberals, secured thirty-nine; the Czechs, sixty-three; and the Poles, fifty-nine. The anti-Semites and Christian Socialists made marked inroads on most of the national groups, and through the new *curia* the Social Democrats secured about a dozen seats. The new Reichsrath was opened, March 29, with a speech from the emperor which promised a large number of projects for social improvement, including an extension of the workingmen's insurance system. The chief item in the program of the session, however, was declared to be the ratification of the adjustment with Hungary. In connection with the efforts to form a majority under the new party conditions, the Badeni cabinet submitted its resignation to the emperor April 2; but the resignation was not accepted, and after an interval the ministry, having received a public assurance of the imperial favor, settled down to its work again. An imperial ordinance requiring a greater use of the Czechish language in official business in Bohemia was put in force in April, and was regarded as a concession designed to secure the support of the Young Czechs for the government. This ordinance was the basis for a motion, May 6, to impeach Prime Minister Badeni and other ministers for gross violation of their powers. The motion was voted down on the 8th by 203 to 163. — Dr. Lueger, the anti-Semite leader, having been elected burgomaster of Vienna, was this time confirmed by the emperor (*cf.* RECORD for June, 1896, p. 390).

RUSSIA. — The **financial condition** of the empire, as set forth by Minister Witte in January, was very prosperous. Though there was a deficit in 1896, the increases in revenue were so marked that in the ordinary budget a surplus was assured for 1897, due largely to the development of the trans-Siberian railway. An extraordinary expenditure of over 120,000,000 roubles was provided for, devoted altogether to railway construction; and this sum was to be met by the surplus in the ordinary revenue, together with drafts upon the treasury reserve. Preparations have been made for pressing forward work upon the 900 miles of railway through northern Manchuria, which, by permission of China, are to form the last link in the chain uniting European Russia with the Pacific. The finance minister announced

also that the arrangements for putting the monetary system on a gold basis were approaching completion. — On January 13 it was announced that Count Muravieff would succeed the deceased Prince Lobanoff as minister of foreign affairs. The leaning toward France previously displayed by the new minister caused for a time a panicky feeling in the German press. — An undercurrent of **discontent among the university students** throughout Russia has been manifested on two occasions in extensive public demonstrations. In Moscow, November 30, a large body of students took part in a public ceremony in memory of those killed in the disaster at the coronation of the Czar (see last RECORD), and indulged in manifestations of disrespect toward the authorities. Several hundred students were arrested, and the ringleaders were imprisoned. Thereupon demonstrations of sympathy for the prisoners were made on a large scale by the students at St. Petersburg, Kazan, Kieff and other university towns. In March occurred another outbreak, this time at Kazan, where the suicide of a woman student who was in prison as a political suspect was said by her fellows to have been caused by an attempt of an official to outrage her. On this occasion a thousand arrests were made. In April it was reported that the authorities had discovered the manifolding apparatus by which the appeals to the students and other seditious matter had been printed, with much evidence of a widespread revolutionary organization.

ITALY. — A general election has been the only incident of importance in the abnormally placid political life of Italy. The old parliament was in session from November 30 to January 21, and carried through certain legislation, chiefly of financial character. The treaty with France in reference to Tunis (see last RECORD) was ratified with little opposition. Dissolution of the Chamber followed the final adjournment. The elections took place March 21 and resulted in a sweeping victory for the government, the opposition securing only about 150 seats out of 500. The new parliament assembled April 5. In the king's speech a program of educational, judicial, administrative and social reform was announced, a maintenance of the *status quo* in Africa and a steady support of the concert of the powers in Eastern affairs. The assurance of an equilibrium in the budget was proclaimed with especial satisfaction. A test vote on an interpellation on foreign policy stood 278 for the ministry to 132 against. This seemed to point to a long lease of power for Premier Rudini. — On April 22 a lunatic attempted to stab King Humbert as the latter was driving in Rome, but the king received no injury.

SPAIN AND HER COLONIES. — The situation in Cuba at the close of this RECORD seemed on the whole more favorable to Spain than at any time since the outbreak of the insurrection. Financially the government was relieved of its immediate straits in November by the domestic loan then issued (see last RECORD). The opening of 250,000,000 pesetas of this loan to popular subscription on the 16th was the occasion of a great patriotic demonstration in the large cities, and the sum was subscribed for more

than twice over. It was reported in April, however, that the treasury was again in difficulty and that another loan was under negotiation. From a military point of view some progress has been made in breaking the insurgent power in Cuba, though nothing decisive has been effected. In Pinar del Rio General Weyler's expedition in force in November drove the insurgents to their mountain strongholds, and occupied the open country. Maceo, the insurgent commander, left the province early in December, and passed by boat around the *trocha* to the province of Havana. There he was killed in a skirmish on December 4. His successor in Pinar del Rio, General Rivera, was captured by the Spaniards March 28. The Cuban cause at that end of the island appears to have lost all important military cohesion, though large Spanish forces are necessary to hold the province against guerrilla uprisings. In January General Weyler proceeded eastward to drive the insurgents systematically out of the provinces of Havana, Matanzas and Santa Clara. His operations have not been successful in bringing the insurgents to a pitched battle, and the campaign has consisted only in a series of petty engagements in which success has been about equally divided. From their mountain strongholds the Cubans harass all parts of the central provinces and destroy the sugar estates which obey the governor-general's orders to grind cane; while the Spanish columns devastate those which do not obey. The financial and economic condition of the island remains as bad as possible. The forced circulation of paper money has produced serious disorders in some of the towns. — **In the Philippines** the fighting in November and December went against the Spaniards; but toward the end of March the chief strongholds of the insurgents were, after a long siege, carried by the government troops, and the end of the uprising became merely a matter of time. — A large degree of **administrative autonomy for Puerto Rico and Cuba**, which had been voted by the Cortes in March, 1895, but withheld from operation on account of the rebellion, was proclaimed operative in the former province by royal decree January 1. On February 6 the reforms applicable to Cuba were published, with a provision that they would be put in force when order should be restored and every attempt at separation should have ceased. The scheme gives to municipalities the choice of their own officers and control of local taxes and of education; establishes for the island an administrative council of thirty-five members (twenty-one of whom are elective by the people), with control of the Cuban finances; provides for the preferential treatment of Spanish products in Cuban tariffs; and requires that the higher administrative and judicial officers, appointed by the governor-general, shall be either natives of Cuba, or Spaniards of two years' residence therein. There is careful provision in various parts of the project for authority in the governor-general to maintain the paramount rights of Spain as against any tendency in the local organs to disregard them. This project of reform was looked upon as designed to comply with the suggestion of President Cleveland's message as to conciliation (*supra*, p. 354). The

insurgent leaders promptly declared, however, that it was insincere and that in no case would they accept it. In April General Weyler notified the home government that the western and central provinces of Cuba were sufficiently pacified; and accordingly, on the 29th, a royal decree was signed directing the new system to be put into operation in those districts.

MINOR EUROPEAN STATES. — The relations between **Norway and Sweden** have manifested no evidence of improvement in the latest period of political activity. It was announced in December that the negotiations for a renewal of the commercial and shipping treaty between the two lands had failed. The Swedish parliament formally denounced the treaty during the winter, and in July, 1897, its provisions go out of operation. The severance of union in this respect does not promise success for the joint commission which is laboring to devise a scheme for strengthening the bonds between the two kingdoms. — In **Denmark** a conflict developed in March, between the ministry and the Folkething over the finances, and between the ministry and the Landsthing over a radical project for agrarian reform. A situation arose like that which was terminated in 1894 (*cf.* this RECORD for June, 1894) and resort had to be made to a provisional budget. — In **Switzerland** a project of law establishing a national bank, with exclusive power of issuing notes, was rejected on referendum, February 28, by 247,000 to 192,000. The attention of the governmental bodies has been chiefly concerned with projects for old-age and accident insurance, for the unifying of civil and criminal law, and for the nationalization of the chief railway systems. A plan for the last-named purpose was presented by the Bundesrath to the legislature in March. — **Portugal** experienced a ministerial crisis at the beginning of February, caused by financial questions. The Robeiro cabinet was supplanted by one presided over by Senhor Luciano de Castro. — In **the Danubian states** political life has been without incidents of great importance. In Bulgaria a new Sobranje was elected in November, with little opposition to the government's candidates, and the work of the session that began in December was chiefly routine. The war between Greece and Turkey excited no demonstrations in any of the Danubian States. Possibly the situation brought, more promptly than would otherwise have happened, the gratification of certain demands of Bulgaria and Servia as to ecclesiastics in Macedonia. These states, together with Roumania and Montenegro, received in April the official thanks of Russia and Austria for their correct conduct. The trial of three persons accused of complicity in the murder of Stambouloff in 1895 resulted, December 30, in the conviction of two of them and their sentence to three years' imprisonment. In Servia a cabinet crisis at the end of December resulted in the retirement of the Novakovitch ministry and the accession of one under the presidency of M. Simitch. The change was declared to have only internal significance. Roumania's legislature opened its session November 27 with an address from the throne declaring both internal and external conditions to be most satisfactory. A cabinet crisis soon followed, due mainly to personal and

factional causes. Premier Stourdza retired in favor of M. Aurelian; but in April the latter in turn was forced out, and the Stourdza cabinet resumed power.

AFRICA. — Events in the sphere of British interests have attracted most attention in connection with this continent. As to the **expenses of the Dongola expedition** (*cf.* last RECORD) the court of appeals at Alexandria, on December 2, sustained the lower court's decision that the application of funds to that purpose by the commissioners of the public debt was illegal, and required that the money taken from the reserve should be returned. Great Britain promptly agreed to lend Egypt the amount necessary to satisfy this requirement; and it was pointed out in both Great Britain and France that the former's hold on Egypt was rather strengthened by the financial relation thus established. To that extent the incident as a whole presents a French legal and a British political victory. The revenue of Egypt for 1896 was exceptionally large, and the surplus reserve was raised to £6,444,000. — Two little **wars in the Niger region** have increased British power there. For massacring a peaceful trading expedition the king of Benin was conquered and dethroned in February, and his possessions near the Niger delta annexed to the British Coast Protectorate. At the same time the Royal Niger Company's forces were engaged some hundreds of miles up the river in a campaign which resulted in the overthrow of the powerful Mohammedan state of Nupé and the extension of the company's control over its territory. — By decree of the sultan in April the legal *status* of slavery was abolished in Zanzibar. This act gave great satisfaction to a public sentiment in England that has been very active ever since Zanzibar became a British protectorate. — **The situation in the Transvaal** has been characterized by many manifestations of suspicion as to British designs on the country. The great popular demonstrations in the Cape Colony in favor of Cecil Rhodes, when he passed through on his way to England, served to confirm the Boers in their fear of aggression. An Alien Immigration Act passed by the Volksraad in November was complained of by the British government as in conflict with treaty obligations. The act required that all aliens entering the Transvaal should furnish guaranties of ability to support themselves, and should be equipped with passports renewable every three months. The Boers declared this to be a necessary police measure in view of the great number of laborers attracted by the mining industry. A decision of the supreme court at the end of January caused trouble between the Volksraad and the judiciary. The court held valid a mining claim that had been set aside by executive order, confirmed by resolution of the Volksraad, the judges holding that under the constitution private property could not be taken without compensation. The Volksraad thereupon passed a bill, in February, expressly denying to the court the right to overrule acts of the legislature as unconstitutional, and modifying the constitution and tenure of the court. The judges, when called upon to conform to this act, agreed only upon the understanding that the more offensive clauses should be repealed

and the independence of the court be left intact. It was reported that the British government complained of the Volksraad's proceeding as endangering the property rights of *uitlanders*. During the winter the Transvaal government submitted a claim against Great Britain of £1,677,938 for damage inflicted by the Jameson raid. Throughout the spring the construction of fortifications and the importation of military stores were actively carried on by the Transvaal government, while a visit of President Kruger to the Orange River Free State was supposed to signify an attempt to form an alliance. The British government kept up an animated protest against the Transvaal's acts, as tending to derogate from British supremacy in South Africa. In April additional troops were sent to the Cape Colony, and on the 22d a fleet of eight war-ships appeared in Delagoa Bay. This demonstration, taken in connection with declarations by Mr. Chamberlain, the Colonial Secretary at London, that British supremacy would be maintained at all hazards, increased the general tension. — The relinquishment by Italy of her protectorate over **Abyssinia** left King Menelik, as master of his own foreign relations, an object of much interest to the British and French governments. A French mission to the Abyssinian capital started in November and by spring had concluded a commercial convention and was said to be negotiating certain political relations. In March a British envoy proceeded to Abyssinia, to secure the regulation of territorial questions concerning the upper Nile region. An Italian garrison has remained in possession of Kassala, but avowedly only to hold the Dervishes in check on behalf of British interests in Egypt. — The French in **Madagascar** have, after considerable resistance by native tribes, established their power in effective form. Slavery has been abolished and the educational system put on a sound basis. At the beginning of March the Hova queen, Ranavalona, who had been allowed to retain a nominal authority, was finally deposed and banished to the Island of Réunion.

THE ORIENT. — The political life of **Japan** has been relatively peaceful. In the parliamentary session which opened December 22 the most important legislation effected was that establishing a gold standard for the currency. For the silver money was substituted a gold coinage at the ratio of 32⅓ to 1. Silver coins were limited in legal-tender character. This act was passed in March. A bill in reference to freedom of the press was brought forward by the government, but its fate was still undecided at the close of this RECORD. It provided for a considerable limitation of the government's power to suspend publication of newspapers, and for judicial process in all save a limited range of offenses. The death of the crown prince of Japan was announced in March. — The terms of a treaty concluded at the end of September, if correctly reported, have greatly enhanced the **influence of Russia in China.** The Russians secured the right to run 900 miles of railway, in completion of their trans-Siberian line, through Chinese Manchuria, and in addition to build a line, if China should not decide to do it, connecting this system with Moukden and Port Arthur. China reserved

the right to purchase the lines at the end of thirty years, but conceded to Russia in the meantime the right to maintain troops at important points to protect the lines. An arrangement was also said to have been embodied in the treaty by which China, in return for a guaranty of Port Arthur and other seaports against foreign powers, assured Russia of the use of those positions for military and naval purposes in case of need. — **The situation in Corea** has been cleared up by the publication of a treaty between Russia and Japan, under which both agreed to leave to the king full liberty of action in both foreign and domestic policy. For the maintenance of order pending the organization of an adequate native military and police force, each power left a small military detachment in the country, with a pledge to withdraw it when order should be entirely restored. In February the Corean king returned to his palace from the Russian embassy, where he had taken refuge a year before (see this RECORD for June, 1896).

LATIN AMERICA. — **Brazil and Uruguay** suffered in the latter part of the winter and in the spring from insurrectionary disturbances. In the former state, bands of so-called "fanatics" — persons dissatisfied with the republic on religious and political grounds — gave trouble throughout the winter, and early in March inflicted a severe defeat on a military force sent against their chief stronghold in the state of Bahia. Serious military preparations were then made by the government, but the issue has not yet been determined. In Uruguay an important rebellion, which seems to have had little basis beyond personal ambition, had resulted by April in the destruction of the government's authority in the eastern half of the republic. Montevideo was declared under state of siege at the beginning of March. — In **Chili** the passions of the close presidential election noticed in the last RECORD manifested themselves in the session of the Congress in November. President Errazuriz, in adopting a concessive policy toward the Liberals, gave offense to his own party. A cabinet crisis was forced and a change of ministry resulted, the new body being composed entirely of Liberals. Conservative hostility to the president ran very high. — At the beginning of March diplomatic relations between Venezuela and Great Britain were formally resumed. The indemnity for the Uruan affair was paid by Venezuela in January. — The government of the "**Greater Republic of Central America**," provided for by the Amapala convention (see this RECORD for December, 1895), went into operation as between Honduras, Salvador and Nicaragua in 1896. All foreign relations were taken charge of by the diet, a body composed of one delegate from each state, and on December 23 the new federation was formally recognized by President Cleveland through the reception of its diplomatic agent at Washington.

WM. A. DUNNING.

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MILITARY GOVERNMENT IN THE SOUTH DURING RECONSTRUCTION.

BY the acts of March 2 and March 23, 1867, Congress laid down the lines on which the process of reconstruction was finally to be carried through. This legislation, supported by the public sentiment of the North, practically settled the constitutional issues of the war. Not that efforts were not made to break the hold of the national military power on the South. Sanguine lawyers of both sections hastened to Washington to invoke the aid of the supreme court in overthrowing what seemed palpably unconstitutional proceedings under the Reconstruction Acts. Mississippi applied through counsel for an injunction to restrain the president from enforcing those acts,[1] but in vain; "government by injunction" in this particular aspect failed to win the favor of the court. Nor was any better success attained when Georgia moved against Stanton, the subordinate,[2] rather than Johnson, the chief. The court wisely recognized a sphere in which it would not intrude upon the discretion of the executive. A more promising opportunity to test the obnoxious laws arose in connection with the writ of *habeas corpus*. For the better enforcement of the Civil Rights Act Congress in 1867 extended the appellate jurisdiction of the supreme court to all *habeas corpus* cases that involved United States laws. One McCardle, a Mississippi editor, availed himself of this law to bring before the court the question as to

[1] Miss. *vs.* Johnson, 4 Wall. 475. [2] Georgia *vs.* Stanton, 6 Wall. 51.

the legality of his arrest under the Reconstruction Acts. The supporters of these acts were very distrustful of the court, especially as to its possible opinion on the clauses establishing military government. When, therefore, the court denied a motion to dismiss McCardle's appeal and heard the case argued on its merits, the Congressional leaders were greatly alarmed. Before an opinion was rendered the House hurried through a repeal of so much of the act of 1867 as was involved in McCardle's case; the Senate concurred with unwonted celerity; and, though the scheme was detected in time to receive the president's veto, the bill became a law, and the court dismissed the case for want of jurisdiction.[1] The justices were no doubt greatly relieved to escape the responsibility of deciding this case. It was much better from every point of view that the fierce controversy of the times should be fought out entirely by the distinctively political organs of the government. After the failure of the McCardle case the opposition to reconstruction found significant expression chiefly in the messages of the president and the platforms of the Democratic Party, neither of which carried much weight.

Meanwhile the process was carried to its conclusion by the military commanders to whom its execution was entrusted. The functions of these officers were, under the terms of the acts, of a twofold character. First, the "adequate protection to life and property," which was declared by the acts to be lacking, was to be furnished by the military; second, the organization of a new political people in each of ten[2] states was to be effected according to the method laid down in the acts. The purpose of this essay is to set forth the leading features of the military régime in the performance of the first of these functions.

I.

The chief end of the Reconstruction Acts was purely political. They were enacted for the purpose of giving the negro

[1] *Ex parte* McCardle, 6 Wall. 324; 7 Wall. 512.

[2] Tennessee had been restored to her normal relations in the summer of 1866.

the ballot in the ten Southern states which had rejected the proposed Fourteenth Amendment. Their whole operation, therefore, must be regarded as incidental to this object. That the establishment of military government was a feature of the system they embodied, was due primarily to the fact that the introduction of negro suffrage was possible only by the strong hand. The act of March 2 did indeed allege that "no adequate protection for life or property" existed in the states concerned, and asserted the necessity of enforcing peace and good order therein. But these declarations were inseparably connected with the denunciation of the existing state governments as illegal; so that the lack of protection for life and property could be construed as arising from the illegality rather than from the inefficiency of the *de facto* civil authorities.

It was, indeed, contended by the more violent radicals in the debates on reconstruction that the actual conditions in the South were intolerable and that military force was needed for the mere maintenance of peace, apart from political reorganization. But the weight of evidence pointed to the contrary. The reports of the army commanders and of the commissioners of the Freedmen's Bureau for 1866 were almost uniformly of a reassuring tone. Abuse of freedmen and Union men was not only becoming less common, but was also receiving adequate attention from the ordinary state courts. General Wood declared that in Mississippi substantial justice was administered by the local judiciary to all persons irrespective of color or political opinions. General Sickles thought the same to be true for most parts of South Carolina. General Howard, the head of the Freedmen's Bureau, drew from the reports of his subordinates a similar conclusion as to the whole region covered by their operations.[1] On the other hand, General Sheridan found a good deal still to be desired in Louisiana and Texas, and Sickles admitted that certain specified counties of South Carolina failed to afford a safe habitation for the freedmen. The latter officer's explanation of the existing disorder embodied a truth that was applicable very generally throughout the South. He declared

[1] See reports annexed to that of the Secretary of War for 1866.

that the outrages in the localities referred to were not peculiar to that time.

> Personal encounters, assaults and difficulties between citizens, often resulting in serious wounds and death, have for years occurred without serious notice or action of the civil authorities; . . . where it has hitherto seemed officious to arrest and punish citizens for assault upon each other, they can hardly be expected to yield with any grace to arrests for assaults and outrages upon negroes.[1]

The general here touched upon a potent source of evil to the South in the days of reconstruction. Northern opinion tended to judge the rebel states by social standards that never had been fairly applicable to them. A laxity in the administration of criminal justice that had always prevailed was wrongly ascribed by the North to a mere *post-bellum* spirit of rebellion and race hatred.

The most striking evidence that affairs were assuming a normal condition in the South was afforded by the extent to which military authority and jurisdiction were withdrawn during the year 1866. The Freedmen's Bureau had been endowed with judicial authority in cases in which the freedmen were not assured of equal rights with the whites; but by the end of that year a gradual relinquishment of this authority was completed in most of the states. Only in parts of Virginia, Louisiana and Texas were the special courts still in existence at the time of the commissioner's report. The ordinary administration of civil and criminal justice for all citizens irrespective of race had thus been resigned to the state courts. This process had of course been rendered much more rapid by the enactment of the Civil Rights Act, which gave to the regular national judiciary jurisdiction over cases in which equal rights were denied. By action of the military authorities the "vagrancy laws" and other offensive statutes passed by the state legislatures for controlling the blacks had been rendered nugatory, and the United States courts manifested from the outset a resolution to give to the Civil Rights Act an interpretation that should effectively nullify any parts of the "black codes"

[1] Report annexed to Annual Report of the Secretary of War for 1866.

that had escaped the military power. But all further labor by the judiciary on the problem of securing equal civil rights for the freedman was rendered for the time unnecessary by the resort to military power to secure him equal political rights.

In the spring of 1867, when the first Reconstruction Act went into effect, the general situation in the South was probably not as satisfactory as it had been at the beginning of the preceding winter. Two causes had contributed to a reaction. In the first place, the crops had in many parts of the South failed entirely in 1866. The pressure of famine began to be felt early in the winter, and by the beginning of the next spring the distribution of food through both public and private agencies had assumed large proportions.[1] Upon the relations between the races the crop failure had serious effects. Complaints arose in every direction from the freedmen that their wages were not being paid by their employers. The latter in too many cases were quite unable to pay, in others were disposed to take advantage of the situation to escape their liability. Much friction naturally arose out of the circumstances. To this was added the bad feeling generated by the discussion of negro suffrage in Congress and out during the winter. As the resolution of the dominant party to enfranchise the blacks by force became clear, the disgust and despair of the whites tended toward expression in violence, especially wherever the freedmen manifested any consciousness of unwonted power. There is little room to doubt that the establishment of military government at the South was indispensable to the Congressional scheme of reconstruction; but that such government was necessary without reference to that scheme is hardly to be conceded.

II.

By the act of March 2, 1867, the ten Southern states affected were divided into five military districts, each to be

[1] By authority of a joint resolution of March 30, the Freedmen's Bureau devoted half a million dollars to the purchase and distribution of food in the South. — Report of Commissioner Howard.

commanded by an officer not below the rank of brigadier-general. The duties of these officers were

> to protect all persons in their rights of person and property, to suppress insurrection, disorder and violence, and to punish, or cause to be punished, all disturbers of the public peace and criminals.

For the execution of these duties the commanders could either allow the local civil tribunals to try offenders or organize military tribunals for the purpose. In case the latter method were employed, the sentence of the tribunal was to be subject to approval by the district commander; and, if it involved the death penalty, to the approval of the president. Interference with the military under color of state authority was declared null and void, while the existing civil governments in the states were declared provisional only, and subject to the paramount authority of the United States, to abolish, modify, control or supersede. In these provisions were defined the functions of the commanders so far as the preservation of order and the conduct of civil administration were concerned. Their duties in the reorganization of the state governments were set forth in the supplementary act of March 23d, and will be considered elsewhere.

On the 11th and 15th of March orders from army headquarters made the following assignments of commanders: first district, Virginia, General Schofield; second district, North Carolina and South Carolina, General Sickles; third district, Georgia, Florida and Alabama, General Pope; fourth district, Mississippi and Arkansas, General Ord; fifth district, Louisiana and Texas, General Sheridan. All these officers had distinguished themselves in the war and had acquired reputations that guaranteed success in any military capacity. But the positions in which they now found themselves demanded other than purely military qualities. They were to carry out a great political policy, which was to be resisted not by armed force, but by political means. They were to act under a commander-in-chief who was a violent adversary of the policy, and under a general of the army whose conscientious efforts to

maintain an impartial attitude failed to conceal his disposition to favor the policy. They had to deal, moreover, with civil governments which their commander-in-chief insisted were constitutional organizations, but which Congress had declared destitute of legality. Though military officers are not supposed to have political opinions, the five generals could hardly fail to be influenced by their personal conclusions on the great issues of the day. It was generally known that Sheridan and Pope were in favor of strong measures in dealing with the South, and that Sickles would readily adopt a radical line of action.[1] If Schofield and Ord, from whatever motives, failed to conform to this example, it was inevitable that they should be displeasing to the extremists in Congress and should be sustained by the moderate Republicans and the Democrats. Political, rather than military, considerations would necessarily form the basis for judgment upon the conduct of the commanders; and in order to sustain their honorable reputations a degree of tact and discretion in civil affairs was essential that far exceeded anything that had been required of them before.

As to the mass of the whites — the people, in a political sense, of the South — no possible conduct of the military rulers could be expected to win their approval. The necessity of submission to force had been thoroughly learned, and no organized resistance was attempted to the few thousand troops that were scattered over the ten states.[2] But the loss of the self-government which had gradually been restored during the last two years caused deep indignation and resentment. Apart from the dread of approaching negro domination, the mere consciousness that the center of authority was at military headquarters, and not at the state capital, disheartened the most moderate and progressive classes. It soon appeared, more-

[1] *Cf.* Blaine, Twenty Years of Congress, II, 297, note. This note, though satisfactory for the subject in connection with which I have cited it, contains a number of those inaccuracies of statement and implication which mar every part of this useful but untrustworthy work.

[2] The Adjutant-General's Report of October 20, 1867, gives the total force in the ten states as 19,320, distributed among 134 posts. Richmond and New Orleans had about 1000 men each; but at no other post were there as many as 500. Of the total force, over 7000 were in the fifth district — Louisiana and Texas.

over, that military government was not to be simply nominal; the orders of the commanders reached the commonest concerns of every-day life, and created an impression of a very real tyranny.

At the outset all five generals announced a purpose, and most of them a desire, to interfere as little as possible with the ordinary civil administration.[1] Officials of the existing governments were directed to continue in the performance of their duties until duly superseded. All elections under state laws were forbidden, however, since the negroes were to be clothed with the suffrage before the popular will should again be consulted. As to the administration of justice, whenever it appeared to the military officers that the ordinary courts were not sufficiently active or impartial in their work, cases were transferred to the military tribunals that were expressly authorized by the Reconstruction Act. The punishment of blacks by whipping or maiming, which was provided for by recent state acts, was prohibited at once, in accordance with a rider in the army appropriation act of March 2, 1867. It was inevitable that the summary overriding of the established order, on however moderate a scale, should engender conflicts of authority and consequent friction; but the only result was that the assertion of military control in the administration of both civil and criminal law increased steadily in scope in all the districts as the months rolled on. Each fresh recourse to arbitrary authority aroused a great storm of reproach and denunciation from the Democratic press both North and South; and in June the administration itself, through a published opinion of Attorney-General Stanbery, harshly disapproved the policy adopted by most of the officers. This brought a crisis; and Congress, hastily reassembling, conclusively defined the scope of the military power by the supplementary legislation of July 19.

[1] The most important orders and correspondence relating to military government in its initial and determining stages are embodied in Sen. Ex. Doc. No. 14, 1st sess., 40th Cong.

III.

The most harassing question that had to be dealt with by the generals on assuming their commands was that of their relation to the officers of the existing state governments. The act of March 2 declared these governments to be provisional only and subject to the paramount authority of the United States "to abolish, modify, control or supersede the same"; but did not expressly empower the district commanders to wield this paramount authority. In pursuance of their express power to maintain order, the generals were, however, obliged to assume that a control over the *personnel* of the state administration was implied. Removals from office were, accordingly, made from the beginning on grounds of inefficiency or of obstruction to the work of registering the negroes. As removals did not abolish the offices, but were followed by appointments, military headquarters tended to become the center of a keen struggle for place and patronage. The mutual recriminations of the parties to such struggles were echoed throughout the land and contributed one more element to the embarrassment of the commanders.

The manner of filling vacancies caused by removal or otherwise also gave rise to serious discussion. Under military law there seemed no doubt that an officer or soldier could be detailed by the commander to perform the duties of any position. This method was employed in many cases; but in this respect the supply of troops was entirely inadequate to the demand, and resort had to be made to civilians. At this point, however, important questions of constitutional law arose. What was the legal status of a civilian appointed, for example, governor of Louisiana? Was he a state or a federal officer? Certainly not the former; for, apart from the question as to whether any state in the constitutional sense existed in Louisiana, no officer of such a state could be conceived as deriving his tenure from the will of an army officer. But if the appointee were a federal officer, why should he not be subject to the constitutional requirement of appointment by the president, with the advice and

consent of the Senate? Congress might, under the constitution, vest the appointment of inferior officers in "the president alone, in the courts of law or in the heads of departments";[1] but there seemed no basis for appointment by a major-general commanding a military district. As a matter of fact, the attempt to define the precise status of civilian appointees was never successful. The radicals in Congress thought they should be designated rather as "agents" of the district commanders than as officers in any strict sense.[2] It was rather gratifying than otherwise to reflect that these "agents" drew their salaries, not from the army appropriation or any other national funds, but from the treasury of the state.

Serious as were the questions involved in the policy, the commanders were forced by sheer necessity to make civilian appointments from the very outset. In this practice the whole spirit of the reconstruction legislation required that only "loyal" men receive preferment. Thus was begun, even before reconstruction was effected, the process of giving political position and power to a class which, from the nature of the case, could have little influence with the masses of the Southern whites. In the beginning the test of "loyalty" was a record of opposition to secession and of positive hostility, or at least lukewarmness, to the Confederate cause. As the reconstruction proceeded, the test was insensibly transformed until, before the end was reached, the prime qualification of the loyal man was approval of the Reconstruction Acts and of negro suffrage. Office-holding thus tended to become the prerogative of those few whites who professed allegiance to the Republican Party. Only in connection with the registration and after the enfranchisement was complete were the blacks admitted to important official positions.[3]

The actual practice of the commanders in respect to removals and appointments varied in the different districts. From Virginia to Texas the construction and application of the powers

[1] Constitution, art. ii, sec. 2.

[2] *Cf.* Wilson in Cong. Globe, 1st sess., 40th Cong., p. 527.

[3] Five negroes were appointed policemen in Galveston as early as June 10, and there may have been other instances of this kind.—Ann. Cyc., 1867, p. 715.

conferred by the act grew more radical with the progress southward. General Schofield, in Virginia, besieged headquarters with supplications for authoritative rulings upon his powers, and meanwhile exercised the powers with great moderation. Civil officers were not "removed," but were "suspended" from office and "prohibited from the exercise of the functions thereof until further orders."[1] Civilian appointments were made after consultation with local judicial officers, and the appointees were duly commissioned by the governor of the state. In the Carolinas General Sickles was obliged to assert his authority more freely. He was, however, able to maintain cordial relations with Governors Worth and Orr,[2] and this fact smoothed his path somewhat. Removals were made only for positive misconduct in office, and were but twelve in number for the first three months of the command.[3] Appointments were very numerous, a large number of municipal offices falling vacant by expiration of the incumbents' terms. The extent to which the military power affected the most peaceful aspects of social life is illustrated by the fact that a "trustee of Newbern Academy" was among those who were clothed with official authority by orders from headquarters.[4] In the third district General Pope assumed at once an extreme position as to the scope of his authority, and proposed to exercise it by deposing Governor Jenkins, of Georgia, for expressing hostility to the Reconstruction Acts. The governor saved himself by a plea of ignorance as to the commander's will, and escaped with nothing worse than a severe scolding, administered in a letter which manifested the same easy self-confidence and fluency of expression that had made its author a little ridiculous in the second Bull Run campaign.[5] At the end of May the mayor, chief of police and other municipal officers of Mobile were summarily removed, and their places were filled by "efficient Union men." The occasion for this was a disturbance that took place in connection with a meeting at which Congressman Kelley, of

[1] *Cf.* Special Orders, No. 50 and No. 54, in reference to certain justices of the peace.

[2] Sickles to Grant, Sen. Ex. Doc., No. 14, 1st sess., 40th Cong., p. 56.

[3] *Ibid.*, p. 58. [4] *Ibid.*, p. 81. [5] *Ibid.*, p. 102.

Pennsylvania, made an address. This exercise of the power of removal and appointment excited very widespread attention, and controversy raged fiercely as to the justice and legality of the action. It was but a few days later that General Sheridan, at New Orleans, took the most decisive step of all in removing Governor Wells, of Louisiana, and appointing Mr. Flanders, a civilian, in his place. Removals and appointments in minor offices[1] had been very frequent in the fifth district, but this last action brought the whole question to a head. As department commander before the passage of the Reconstruction Acts, General Sheridan had conceived a very poor opinion of the leading politicians of both Louisiana and Texas, Governor Wells among them.[2] But Wells had influential friends in administration circles at Washington, where Sheridan was particularly disliked; and, moreover, the extension of the discretionary power of a commander to a sphere where very important considerations of influence and emolument were involved caused a great sensation.

President Johnson was now overwhelmed with demands that the acts of Sheridan and Pope should be overruled. Attorney-General Stanbery had been asked for an opinion on this and other points in the interpretation of the reconstruction laws. His opinion, rendered under the date of June 12, declared that these acts gave no authority whatever for either removal or appointment of executive or judicial officers of a state.[3] But Congress sprang promptly into the breach, and by the supplementary act of July 19[4] gave to the commanders, in the most unqualified terms, power to remove at their discretion any state officer, and to fill vacancies either by the detail of an officer or soldier, or "by the appointment of some other person." Under this authority there was no longer any room for doubt or ground for hesitation. The act provided further that it should be the "duty" of the commanders to remove from office all persons

[1] The attorney-general of the state and the mayor and city judge of New Orleans were removed March 27.

[2] *Cf.* Sheridan's report for 1866, in Rep. of Sec'y of War, 2d sess., 39th Cong.

[3] The opinion is in Sen. Ex. Doc. No. 14, 1st sess., 40th Cong., p. 275.

[4] Given in McPherson, History of the Reconstruction, p. 335.

"disloyal to the government of the United States," and required that new appointees should take the "iron-clad oath."[1]

Every facility was thus afforded for a complete control of the *personnel* of the civil administration by the commanding officers. When the constitutional conventions under the new registration met in the various states, strong pressure was put upon the generals and upon Congress to bring about a "clean sweep" of the existing officials, and a bill requiring such a proceeding was brought before the House of Representatives. But General Schofield and other officers declared that the adoption of this policy would render government impossible, as there were not available enough competent persons to fill the places vacated, if the iron-clad oath were required. Until reconstruction was nearly completed the commanders, therefore, were permitted to retain their discretion in the matter, and changes were made, as a rule, only for good cause.[2] Governor Throckmorton, of Texas, was removed July 30 for having made himself an "impediment to the execution of" the Reconstruction Acts, and was succeeded by a civilian named Pease.[3] Governor Jenkins, of Georgia, who had escaped the power of General Pope, fell quickly before that of General Meade, who succeeded Pope at the beginning of 1868. The governor, having refused to execute warrants on the state treasury for the payment of the expenses of the constitutional convention, was summarily deposed, and his functions were assigned to General Ruger.[4] Governor Humphreys, of Mississippi, was deposed in June, 1868, as an obstacle to reconstruction, and was succeeded by General Ames. In other states governors were removed,

[1] The stringent oath required from officers of the United States, by act of July 2, 1862. It could not be taken by any one who had given "voluntary support" to any Southern government during the rebellion.

[2] By the law of Feb. 6, 1869, the commanders were required to remove all officers who could not take the iron-clad oath. But at that time military government prevailed only in Virginia, Mississippi and Texas.

[3] The unsuccessful candidate in the election at which Throckmorton had been chosen governor.

[4] The treasury officials, sympathizing with Jenkins, concealed and spirited away the books of the treasury, whereupon the suspected persons were brought before a military commission for punishment. But General Meade's financial path was very thorny. — See his report for 1868.

but only to facilitate the transition from the military régime to the permanent system under the new constitutions. Of the lesser state officials the changes in *personnel* were naturally most extensive in the larger towns and cities. It was there that partisan zeal tended to find its most heated expression; and there also were to be found in the greatest numbers the Union men who could qualify for office under the new law. Before reconstruction was completed, therefore, the municipal administration in all the principal cities was remanned by military authority. The list in which this was wholly or partially the case includes Wilmington, Atlanta, Mobile, Vicksburg, New Orleans, Galveston and Richmond.

IV.

In respect to the relation of the district commanders to the laws of the states subjected to their authority, there was room for a difference of opinion similar to that which we have seen in respect to the *personnel* of the governments. Power to modify or set aside existing laws was not expressly bestowed upon the commanders; and the recognition of civil governments of a provisional character gave room for the implication that the legislation of these governments was to have permanent force. But a different view was acted upon by most of the generals from the beginning. Assuming that they were endowed with all the powers incident to "the military authority of the United States," and that their duty to "protect all persons in their rights of person and property" required the unlimited use of such powers, they refused to regard the state laws as of any significance save as auxiliary to the military government. Whatever validity attached to such laws was due to tacit or express approval of them by the commander. General Schofield, in giving to military commissioners the powers of county or police magistrates, directed them to be "governed in the discharge of their duties by the laws of Virginia," so far as these did not conflict with national laws "or orders issued from these headquarters."[1] General Sickles specifically pro-

[1] Gen. Orders, No. 31, May 28, 1867.

claimed in force "local laws and municipal regulations not inconsistent with the constitution and laws of the United States or the proclamations of the president, or with . . . regulations . . . prescribed in the orders of the commanding general."[1] From these illustrations the implication is clear that existing law could be superseded by the military order — that the district commander had legislative authority.

Against this interpretation of the Reconstruction Act Attorney-General Stanbery argued most earnestly in his opinion of June 12. No power whatever, he declared, was conferred on the commanders in the field of legislation. They were to protect persons and property, but the sole means for this purpose that the law gave them was the power to try offenders by military commission; save where such procedure was deemed necessary, the jurisdiction and laws of the old state organization remained intact. But the ingenuity of Mr. Stanbery was of no avail. In the supplementary act of July 19 Congress declared explicitly that the ten state governments, at the time the Reconstruction Act was passed, "were not legal state governments; and that thereafter said governments, if continued, were to be subject in all respects to the military commanders of the respective districts, and to the paramount authority of Congress." This phraseology assured to the generals the same free hand in respect to state laws as was assured in respect to state officers by other parts of the act.

So far as the criminal law was concerned, the failures of justice which had been alleged as justifying the establishment of military government were attributed to the administration rather than to the content of the law. The military commissions which were constituted with various degrees of system and permanency by the district commanders served very effectively to supplement the regular judiciary in the application of the ordinary state law. No extensive modifications of the law itself, therefore, were considered necessary. When policemen or sheriffs failed to arrest suspected or notorious offenders, the troops did the work; when district-attorneys failed to

[1] Gen. Orders, No. 1, March 21, 1867.

prosecute vigorously, or judges to hold or adequately to punish offenders, the latter were taken into military custody; when juries failed to convict, they were supplanted by the military courts. It was fully realized from the outset that, in the condition of public opinion in the South, trial by jury could not be expected to give strict justice to Union men or, in general, to the freedmen. As an alternative, however, for the general establishment of military commissions a remodeling of the jury laws was an obvious expedient. If juries could be empaneled from blacks and whites indiscriminately, the influence of the rebel sentiment would be neutralized. It seemed axiomatic, moreover, that, if the freedmen were qualified to vote, they were qualified for jury service. Accordingly, we find that the more radical commanders — Sickles, Pope and Sheridan — used their authority to decree that the blacks should be accepted as jurors. With the completion of the registration of voters, the attainment of the end sought was simple; court officers were directed to make up the jury panels from the registration lists.[1] General Schofield, in Virginia, with his usual wise conservatism, concluded that this method of solving the problem would not be satisfactory, and confined himself, therefore, to the use of military commissions.[2]

Before the completion of the registration made feasible the method finally employed, the commander in Texas had sought to attain the end by requiring jurors to take the "iron-clad oath." But this was bitterly resented by the Southerners on the ground that it practically excluded native whites from the juries.[3] Even the final method caused great friction between the courts and the commanders in Louisiana and Texas. The vast extent and sparse population of the region included in these states made the fifth district altogether the most difficult to

[1] *Cf.* Report of Secretary of War for 1867, vol. i, pp. 304 ss, 331 ss.

[2] "After full consideration I became satisfied that any rule of organization of juries, under laws which require a unanimous verdict to convict . . . must afford a very inadequate protection . . . in a society where a strong prejudice of class or caste exists." — Report of General Schofield in Report of Secretary of War, 1867, vol. i, p. 240.

[3] For the correspondence on this matter, see Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, pp. 208–210.

deal with in every phase of the reconstruction process. When General Hancock, succeeding Sheridan, assumed command in November, 1867, he formally revoked the order requiring that jurors be chosen from the registered voters, and put the old state laws in operation. This action was an incident of the new commander's general policy, which, as embodied in his famous General Orders, No. 40, reversed that of his predecessor. "Crimes and offenses," he declared, "must be left to the consideration and judgment of the regular civil authorities"; and in Special Orders, No. 203, after reciting that Sheridan's order as to jurors was acting as a clog on justice, he asserted that in determining the qualifications for jurors it was best to carry out the will of the people as expressed in the last legislative act upon the subject.[1] The reluctance of General Hancock to interpose, either through military courts or through modification of the jury laws, in the ordinary administration of justice, gave great offense to the loyalists in the South and to the radicals throughout the Union, and was held to have resulted in a widespread revival of crime in the fifth district.[2]

The changes in the jury laws by military authority affected, of course, both civil and criminal law. Of like scope was the summary abrogation by General Sheridan of a Texas act of 1866 by which the judicial districts of the state were rearranged, the commander holding that the act had been passed for the purpose of legislating two Union judges out of office.[3] Of the modifications of criminal law pure and simple, conspicuous examples are found in Sickles' General Orders, No. 10, in which the carrying of deadly weapons was forbidden, the death penalty for certain cases of burglary and larceny was abolished, and the governors of North and South Carolina were endowed with the powers of reprieve and pardon.[4] This last provision was probably suggested by a case in which the military power had been effectively invoked by the civil in the interest of mercy.

[1] For the whole subject see Hancock's report in Report of Secretary of War for 1868; also Ann. Cyc., 1867, pp. 463–464.

[2] See his report for a sharp correspondence with Governor Pease, of Texas.

[3] Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, pp. 218 *et seq.*

[4] *Ibid.*, p. 62.

A negro in North Carolina had been convicted of burglary and sentenced to death. The governor believed that the case called for clemency, but under the state laws he had the power only to pardon and not to commute. As a pardon was not desirable, the case was laid before the district commander, who then, by his paramount military authority, commuted the sentence to imprisonment for ten years.[1]

The operation of military government in connection with the general police power of the states is illustrated by General Sickles' prohibition of the manufacture of whiskey, on the ground that the grain was needed for food; by his prohibition of the sale of intoxicating liquor except by inn-keepers; by General Ord's command that illicit stills and their product be sold for the benefit of the poor, on the ground "that poverty increases where whiskey abounds"; and by General Sheridan's summary abolition of the Louisiana levee board and the assignment of its duties to commissioners of his own appointment, "in order to have the money distributed for the best interests of the overflowed districts of the state."[2]

V.

As to the administration of justice in the field of private law, interference by the district commanders was for the most part confined to action in special cases where the proceedings of the courts seemed inequitable or contrary to public policy. Under the latter head fall a variety of instances in which the circumstances of the war and of emancipation were involved.

[1] Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, p. 76.

[2] The full reason assigned in the commander's order was: "To relieve the state of Louisiana from the incubus of the quarrel which now exists between his excellency the governor and the state legislature as to which political party shall have the disbursement of the four million dollars of 'levee bonds' authorized by the last legislature, and in order," *etc.*, as above. — Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, p. 250. General Sheridan's orders and correspondence afford copious evidence that his temper was sorely tried by the Louisiana politicians. In several of his dispatches to General Grant his language in reference to the president's policy was perilously near the line of insubordination; but it won for him the enthusiastic support of the radicals in the North, and the House of Representatives passed a special vote of thanks to him for his services in Louisiana.

Thus we find General Schofield ordering a Virginia court to suspend proceedings for collecting a judgment in a case of assault committed in 1863.[1] General Sickles set aside a decree of the South Carolina court of chancery which ordered that a fund, raised to remount a Confederate cavalry force in 1865, but left unused in a Charleston bank, should be returned to the contributors. The general held that the money belonged to the United States.[2] Again, a Charleston savings bank was obliged by military order to pay, with interest, sums due to certain soldiers who were in the garrisons of Forts Sumter and Moultrie in 1860, and who had demanded their money, but in vain, just before the beginning of hostilities.[3] General Ord suspended proceedings looking to the sale of an estate on account of a deed of trust for money due for the purchase of negroes.[4]

Such examples of intervention by special orders are numerous; a far-reaching modification of law and procedure was attempted only by General Sickles in the second district. His General Orders, No. 10, of April 11, 1867, with the later supplementary decrees, assumed, as Attorney-General Stanbery complained, "the dimensions of a code."[5] The basis of this policy was the widespread destitution among the people and the General's conviction that extraordinary measures were necessary to enable them to develop their resources. There was no room for doubt that the Southern states were all in a condition of economic demoralization. As usual under such circumstances, the complaints of debtors, based generally on real hardship, were loud and widespread. Not in the Carolinas alone, but throughout the South, the demand for stay laws was heard. It would hardly have been surprising if all the district commanders, in the plenitude of their powers and the benevolence of their hearts, had sought to bring prompt relief by decreeing new tables. General Sickles, after describing the distress due to crop failure and debt, and the "general disposition shown by creditors to enforce upon an impoverished

[1] Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, p. 47.
[2] Ann. Cyc. for 1867, art. "South Carolina."
[3] Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, p. 86.
[4] *Ibid.*, p. 152. [5] Opinion of June 12, *ibid.*, p. 281.

people the immediate collection of all claims," declared that "to suffer all this to go on without restraint or remedy is to sacrifice the general good." Accordingly, he announced the following regulations, among others, to remain in force until the reconstructed governments should be established: Imprisonment for debt was prohibited. The institution or continuance of suits, or the execution of judgments, for the payment of money on causes of action arising between December 19,[1] 1860, and May 15, 1865, was forbidden. The sale of property upon execution for liabilities contracted before December 19, 1860, or by foreclosure of mortgage was suspended for one year. Advances of capital, required "for the purpose of aiding the agricultural pursuits of the people," were assured of protection by the most efficient remedies contained in existing law; and wages of agricultural labor were made a lien on the crop. A homestead exemption, not to be waived, was established for any defendant having a family dependent upon his labor. The currency of the United States was ordered to be recognized as legal tender. Property of an absent debtor was exempted from attachment by the usual process; and the demand for bail in suits brought to recover ordinary debts, "known as actions *ex contractu*," was forbidden.

These sweeping enactments were followed by others of a similar character. Having prohibited the manufacture and regulated the sale of whiskey within the district, General Sickles further decreed that no action should be entertained in any court for the enforcement of contracts made for the manufacture, sale, transportation, storage or insurance of intoxicating liquors. Having prohibited discrimination in public conveyances between citizens "because of color or caste," he gave to any one injured by such discrimination a right of action for damages. Finally, he abolished distress for rent, and ordered that the crops should be subject to a first lien for labor and a second lien for rent of the land.[2]

[1] South Carolina passed its ordinance of secession December 20, 1860.

[2] Gen. Orders, No. 32, May 30, 1867; Sen. Ex. Doc., 1st sess., 40th Cong., No. 14, p. 71.

This interpretation of military authority as the basis of a benevolent despotism called forth a vigorous protest from Attorney-General Stanbery in his opinion of June 12. But nothing was done to interfere with the commander's proceedings until he came in rude conflict with the national judiciary. On the theory on which his decrees were based they were valid against any authority save Congress. Chief Justice Chase sat in the circuit court at Raleigh in June, 1867, and proceeded in due course to decide cases and issue process of execution to enforce judgments. A marshal who undertook to execute in Wilmington a judgment that fell within the stay decrees of General Orders, No. 10, was prevented by the commander of the post, who was sustained by General Sickles. This action raised an issue of a much more serious character than was involved in the interference with merely state judicial procedure. Chief Justice Chase protested to the president that the military authority established to enforce the laws of the United States was being employed to obstruct them. Steps were taken by the federal district attorney in North Carolina to proceed against Sickles for resisting judicial process of the federal courts. General Grant wrote to Sickles that "the authority conferred on district commanders does not extend in any respect over the acts of courts of the United States." Still Sickles asked for time to explain; but before his explanation was completed, the president performed the executive duty which Mr. Stanbery had in June assured him could not safely be avoided or delayed;[1] for on August 26 General Sickles was, by order of the president, relieved of his command. His successor, General Canby, promptly instructed the commander at Wilmington not to oppose the execution of the circuit court's judgment. Thus it was settled that, though a debtor was protected against a creditor who was a citizen of the same state, a foreign creditor was assured of the customary relief. This situation was only another example of the anomalies that characterized the whole process of reconstruction. To any protest against the injustice of such a condition the ready re-

[1] Opinion of June 12.

sponse was: Hasten the work of reconstruction, secure the admission of the states to full rights, and all irregularities will cease.

In other districts than the second the apparent necessity of relieving distress produced a few instances of paternal modification of private law. In June, 1867, General Ord, "with a view to secure to labor . . . its hire or just share of the crops, as well as to protect the interests alike of debtors and creditors from sacrifices of property by forced sales," suspended till the end of the year the judgment sale of lands under cultivation, crops or agricultural implements, on actions arising before January 1, 1866.[1] But this decree was explicitly declared to be not applicable so far as the United States courts were concerned. In Virginia, also, sales of property under deeds of trust were suspended where the result would be to sacrifice the property or to leave families or infirm persons destitute of support.[2] Radical action on behalf of debtors was strongly favored by many in the South; and this sentiment found expression in the constitutional conventions when they assembled in the various states. In Mississippi the convention petitioned General Gillem, Ord's successor, to stay executions for debt by military order; but the general refused.[3] Hancock, in the fifth district, when asked if he would enforce an ordinance of a convention for the relief of debtors, replied that he regarded such an ordinance as beyond the scope of the convention's authority.[4] Pope, in the third district, referring to suggestions that had been made publicly, said: "I know of no conceivable circumstance that would induce me to interfere by military orders . . . with the relation of debtor and creditor under state laws."[5] The conventions in Georgia and Alabama, however, adopted ordinances prohibiting various proceedings "oppressive" to debtors and abolishing certain debts, to take effect with the new constitution. General Meade, who had succeeded Pope, became aware that great hardships were being

[1] Gen. Orders, No. 12, Sen. Ex. Doc., 1st. sess., 40th Cong., No. 14, p. 146.
[2] Ann. Cyc., 1868, p. 760. [3] *Ibid.*, p. 508.
[4] Report annexed to Report of Secretary of War, 1868-69, vol. i, p. 249.
[5] Ann. Cyc., 1867, p. 365.

caused by the eagerness of creditors to press for executions, in order to anticipate the operation of the ordinances. As the only method of meeting this difficulty, he proclaimed the ordinances in force at once as a military order.[1] Thus Georgia and Alabama were for a time on the same plane with the Carolinas in this particular matter.

VI.

In the administration of state finances the same arbitrary authority was exercised as in the matters already considered. By the act of March 23 Congress provided for the payment out of the treasury of the United States of "all expenses incurred by the several commanding generals, or by virtue of any orders issued or appointments made by them under or by virtue of this act." But the "fees, salary and compensation to be paid to all delegates and other officers . . . not herein otherwise provided for" were to be prescribed by the respective conventions, which were authorized by the act to levy and collect taxes for the purpose. A method of interpretation no more liberal than that which was applied by Congress to other provisions of the act would have availed, if applied to these, to throw the entire burden of state administration on the national treasury.[2] In practice, however, the Congressional appropriations were employed only for the expenses of the registration and of the elections, both for delegates to the conventions and for ratification of the constitutions. The running expenses of the state governments were paid from the respective state treasuries. The condition of the finances in most of the states was anything but reassuring; and the feeling of the property owners toward reconstruction did not conduce to more than usual promptness in the payment of taxes. Considerable friction developed also in adapting the administrative machinery of assessment, collec-

[1] Report annexed to Report of Secretary of War, 1868.

[2] President Johnson, employing this method, rolled up an appalling total ($16,000,000 certainly, and "hundreds of millions" probably) as his estimate of the sum necessary to carry out the Reconstruction Acts. — Message of July 15, 1867.

tion and disbursement of moneys to the requirements of military rule. Most of the difficulties were removed through the generals' control over the *personnel* of the administration. Their legislative authority became necessary, however, in a number of cases through expiration of the laws regulating tax levies and appropriations. The assembling of the legislatures was, of course, forbidden; and the prolongation of the laws beyond the term fixed by their provisions was effected by orders from headquarters.[1] At the same time advantage was taken of the opportunity to effect such changes in taxation and expenditure as seemed desirable under the changed circumstances. General Pope directed that no payments should be made from the state treasuries of his district, except on his approval, in order that he might prevent further expenditures for "bounties to soldiers in the rebel army for support to their families; pay of civil officers under the confederacy; providing wooden legs, *etc.*, for rebel soldiers; educating rebel soldiers, *etc.*," few of which he thought likely to be authorized by the reconstructed state governments.[2] In South Carolina General Canby suspended the collection of a tax on sales which had been imposed by the last legislature, and had given rise to complaints because of its retroactive effect;[3] and in December decreed material reductions in several kinds of taxes.

When the conventions met in the various states, the military authority was required to settle various questions connected with their financial operations. As we have seen, the conventions were authorized by law to levy and collect taxes on property for the payment of the delegates and for other expenses. One of the first acts in each convention was to fix the salary of delegates — at a figure generally that aroused much enthusiasm among the negro members. But to await the levy and collection of a tax before enjoying the emolument of office was a possibility that seriously damped the ardor of the constitution-makers: in fact, in view of the poverty of the people in

[1] *E.g.*, Hancock's Special Orders, No. 40, of February 22, 1868. — Report of Secretary of War, p. 232.

[2] Pope's report, annexed to Report of Secretary of War for 1867.

[3] Ann. Cyc. for 1867, p. 699.

general and the antagonism of the whole tax-paying class to the convention, such delay threatened the further process of reconstruction with failure. Hence recourse was had at once to the expedient of an advance from the state treasury for immediate expenses, on the security of the tax that was levied by the convention. Such advance was ordered by the commanders,[1] as no authority of state law for this appropriation of funds could be found. But the power of the commanders was called upon to restrain as well as to promote the activity of the conventions. There was a marked tendency on the part of these bodies to arrogate to themselves governmental as well as constituent functions, and to exceed the limits of the task prescribed by the terms of the Reconstruction Acts. This tendency the commanders firmly repressed. In Mississippi, among other manifestations of this spirit, the ordinance for the levy and collection of the tax to cover the convention's expenses was cast in a form that General Gillem refused to approve. His refusal to enforce it caused the convention to repeal it and to pass another that was satisfactory to him.[2] This episode illustrates the fact that, in the plenitude of their powers as absolute rulers, the generals were above the constituent assemblies of the inchoate new states as distinctly as they were above the governmental organs of the expiring old states.

The foregoing review reveals how far-reaching was the authority of the military commanders in the practical operations of state government. It would be hard to deny that, so far as the ordinary civil administration was concerned, the rule of the generals was as just and efficient as it was far-reaching. Criticism and denunciation of their acts were bitter and continuous; but no very profound research is necessary in order to discover that the animus of these attacks was chiefly

[1] It was for refusing to issue the warrants in conformity to this order that the governor and financial officers of Georgia were removed by General Meade. — *Ante*, p. 393.

[2] Report in Report of Secretary of War, 1868, pp. 585 *et seq.* One clause of this latter ordinance, which imposed a tax on railroads, contrary to an exemption in their charters, was annulled by General Gillem.

political. The instincts and traditions of popular government would permit no recognition of excellence in any feature of arbitrary one-man rule ; and the whole system was, moreover, in the eyes of the critics, hopelessly corrupted by the main end of its establishment — negro enfranchisement. The influence of this end was, in truth, so prominent that a judgment on the merits of the administration of the generals apart from it is almost impracticable. In their conduct of civil affairs equity and sound judgment are sufficiently discernible to afford a basis for the view that military government, pure and simple, unaccompanied by the measures for the institution of negro suffrage, might have proved for a time a useful aid to social readjustment in the South, as preliminary to the final solution of the political problems. But the opportunity for the most profitable employment of such government had passed when, through President Johnson's policy, civil functions had been definitely assumed by representative organizations in the states. There would, indeed, have been substantial merit in the consistent application of either the presidential or the congressional policy in reconstruction; but there was disaster alone in the application of first the one and then the other.

WM. A. DUNNING.

WASHINGTON CITY GOVERNMENT.

IN respect to its municipal government the city of Washington is unique among the political institutions of the United States. It is, in fact, the only political unit in the whole land in which local authority is not based on popular suffrage. Our national capital has been a laboratory of political science in which the democratic ideal of the equality of men in choosing their rulers has been tested and found wanting. Over twenty years ago this doctrine was laid aside as a failure, after having been tried in actual practice for more than three-quarters of a century.

In the Constitution of the United States exclusive jurisdiction over the District of Columbia was reserved to Congress. To the national legislature, therefore, is due the municipal organization that, up to a recent date, received very neglectful treatment from its creator. During the process of planning and founding the city, its government was vested in commissioners appointed by the federal authority. When Washington was formally incorporated, it was intrusted to a mayor appointed by the President of the United States and a council elected by the people. At the end of ten years the council was empowered to select the executive. In less than another decade (1820) a new corporation was ordained, consisting of a mayor and a miniature congress; and all the members of this corporation — mayor, aldermen and councillors — were to be chosen by popular election. Thus Congress generously turned its child adrift, on the benevolent principle that the youngster could look after its own needs better than any one else.

This change hastened the progress of the city but little. The system was put to a severe strain in bitter factional fights at nearly every election, in which a larger part was often played by national than by local questions. Improvements went on slowly; the streets were practically without pavements and the town without houses. People floundered

through the mud in winter and were choked by the dust in summer. The population took nearly sixty years to reach as many thousands. Circumstances, however, ultimately forced into mind some conception of the dignity and importance that should attach to Washington as the capital of a great country. The Civil War thrust before men from every nook and corner in the land the backwardness and shabbiness of the city. Local pride was then stimulated to higher aims, and efforts were put forth to make Washington worthy of its position. But ambition in its first flush was frequently untempered by sound judgment; and the money intended for improvements was wasted, if not swept away in corruption.

Congress then came forward to check the spendthrift, and restored the original form of government, with changed titles. A governor and the members of an upper house were to be chosen by the President and Senate of the United States, and the members of a house of delegates were to be voted for by the people. In conjunction with these, to aid in the development of the city, a board of public works was provided for, likewise to be appointed by the national government. But the results were not all happy. It is true that the rural town began rapidly to grow into a city, and that generous plans were mapped out to provide for its development for half a century to come; but a terrible storm of indignation burst forth from the irate taxpayers. Whether the perplexities of the situation were so distressing that only contempt for settled procedure could meet the needs of the hour; or whether it was seen by penetrating minds that a lax Congress could be aroused to a sense of its responsibility only by outraging all order and decency; or whether the temptation of "fat jobs" was too much for all except stern moralists; or whether the chief officials were vulgar "bosses," bent only on plunder for themselves — at all events it is certain that, not only the city, but the whole country rang with charges of rascality, venality and general lawlessness in the government of the District. Yet out of this whirlwind of strife and passion finally emerged the outlines of an enlarged urban community. During all the

conflict and confusion a great deal had been accomplished in the way of material improvement, though much of the work was slovenly and had to be done over. Whether the same goal could have been reached by advancing in the regular paths of a civilized society, no man can now say. As a final commentary on this episode of upheaval it can be said that Congress, after a laborious investigation, became ashamed of its own child, and voted to put him back into leading strings again, with not a voice raised in defense of his wild escapades. All measures for giving the people some share in city administration were cast aside, and it was acknowledged that for the peculiar needs of Washington democratic government was impossible. Congress realized that for three score years and ten it had been on the wrong track, and that the welfare of the municipality was indissolubly bound up with that of the nation. This tardy change of heart resulted in 1878 in the establishment of the form of government which now prevails.

In this system the claims of the municipality on the nation are frankly admitted in the provision that the national government shall bear one-half of the local expenses. This proportion is based on the fact that one-half of the value of the real estate in the District is comprised in the public buildings. To conduct the work of administration a responsible bureaucracy is substituted for an immature democracy. All the usual powers of a municipal corporation are lodged in the hands of three commissioners, appointed for a term of three years at a salary of $5000 each. Two of them are nominated from civil life by the President of the United States and confirmed by the Senate, the chief qualification being that they shall be citizens of the United States and "actual residents" of the District of Columbia for the three years next preceding their appointment. The third commissioner is assigned to exclusive duty by the president from the engineer corps of the army.

These three men are the official head of the corporation of the District of Columbia. They are endowed with the control of appointment and removal over practically all the executive officers in the District. Through their wide powers of regula-

tion in police, health and other matters they come very near the line of legislative functions. They are organized as a board, with one of their number chosen by themselves as president, to transact business by a majority vote. For the dispatch of routine matters they parcel out the duties among themselves, each being considered supreme in his own domain, subject, of course, to the decision of the board. There is no legal or permanent division, though the army officer commonly has charge of those details that pertain to the engineering department of a city. The general assignment of functions at present in force is as follows:

President John W. Ross acts as tax assessor, city attorney, inspector of liquors and property clerk; and controls matters touching charitable and reformatory institutions, licenses, public schools, the workhouse, the fire department, routes of street railways, street sweeping and special permits. Commissioner Wight acts as auditor, collector, coroner, health officer, harbor master, inspector of buildings, lumber, food and fuel, and trustee of Columbia hospital; and supervises the Chesapeake and Ohio Canal, elevators, fire escapes, hay scales, insurance companies, paupers, the police, the telegraphs and the telephones. Commissioner Black (the army officer) takes charge of contracts, the parking commission, railways, highways, the river front, sewers, licenses to steam engineers, the surveyor's office, the water department, plumbing, gas lamps, and the inspection of boilers, bridges, asphalt and cement. The engineer member, moreover, has by law the aid of three assistants, drawn from that well-trained body of specialists, the United States engineer corps. One of these at present supervises all surface improvements; the second looks after the water, lighting and plumbing departments; and the third, after the sewers.

Such in outline is the existing city government of Washington — a system quite different from that of any other city in America. More puzzling to the average citizen is the absence of the usual facilities for getting rid of an obnoxious administration at the next election. What, then, can be done in Washington? What if this system gets crusted with barnacles

or wrapped in red tape? What if the commissioners become haughty and arrogant, and the army officer begins to show that contempt for civilians that seems inseparable from a soldier's profession?

The best guarantee against these dangers is the gauntlet a man must run to win the prize, and the keen scrutiny to which he is exposed after getting it. In all actions touching the municipality the President of the United States is in a position to be as free from improper personal motives as a man can be in this world. Neither friends nor foes can rise up in the city to make or mar his fortunes, because the citizens, being excluded from the polls, are utterly insignificant in any national matter. Having no further lot among the people than a sojourn for a limited number of years, the president can act solely with an eye to a perfect administration. Congressmen also occupy, to some extent, the same elevated plane. Many of them, being practically citizens, feel defects and shortcomings as keenly as the ordinary man, but with the advantage that they can stand in the capitol and utter their criticisms in the hearing of the whole land. They can speak for their fellow-citizens, and by Congressional inquiry can have the smallest details of municipal business laid open to public inspection.

From the establishment of the system in 1878 the president, in appointing commissioners, has usually taken special pains to find the best men—through his personal knowledge, if possible, or through confidential interviews and thorough study of lives and records. In several cases the post has been offered to men who had never even thought of receiving the honor. The story is told of President Garfield that, having very reluctantly received a committee of citizens who wished to urge the appointment of a commissioner from a certain section of the city, he ended a long hearing by not only granting the petition, but offering the position on the spot to one of the committee. In selecting an army officer as the third member the president can most easily disregard social and political influence and choose from merit alone. In some cases, perhaps, he has delegated this duty to the war department, but in others he has unmis-

takably spent time and effort in his search for the most suitable man. President Arthur, for example, with the secretary of war, went laboriously over the record of every man eligible for the detail. Particular attention is paid to the civil side of an officer's character — to his tact and affability in dealing with people. Nor does the president's vigilance relax with the signing of the commissions. His potential, if not active, influence is exerted so long as he is in the White House. Twice has the military member been removed: once because of complaints at what appeared to be arbitrary conduct in opening a street through a cemetery; and again, it is said, because of arousing the hostility of certain Congressmen and the anger of a large corporation staff. One of the early civilian commissioners also felt the sting of the same supervision, if we are to credit the chief daily paper in Washington. He was superseded before the end of his term, after "a big volume of complaints" had been made that "the board are aristocratic, bureaucratic, not easily approached and that citizens who have grievances are snubbed." Finally it was announced: "The president appears to have come to the conclusion that, on the whole, the administration of District affairs was not reasonably satisfactory to the people, and that some change should be made to secure a more popular government." Throughout the incident it was believed that the president acted solely from the standpoint of the common good. It is a long step toward ideal government when subjects have the general conviction that neither "favoritism" nor "prejudice" dictates the changes made in offices.

A man approved by the executive for the post of commissioner has still to face the judgment of the Senate — perhaps a severer test, because more public. With the Senate committee his enemies have a fair field for their assaults. At this stage three nominations have been bitterly and successfully opposed. On the first one, over ten years ago, the committee held public hearings; and a mass of accusations and charges were filed, with resolutions from civic organizations and petitions from all classes. In the second case, equal opportunity was afforded to all to raise objections. In the third, it was asserted that the

nominee was obnoxious to several senators. Moreover, scrutiny does not cease with confirmation, but even becomes sharper, as the lower house often vies with the upper in wielding the weapon of Congressional inquiry. These investigations are possible at any moment, and can reach the minutest official act. In actual practice they have involved such subjects as paving and its cost per yard, tree planting, street sweeping, removals from office and the reasons therefor, the connection of the commissioners with railway, bank or gas companies in the city, and the wisdom or legality of regulations on a variety of matters.

On account of this irregular but many-eyed vigilance the commissioners are, as a rule, men of a higher type than the average mayor in an American city. The political gamester who so often climbs by trickery and intrigue to the mayor's chair in our largest cities is an utter impossibility in Washington. Of the twelve civilian commissioners, all have been of good social standing. Most of them have been college graduates, several having been educated at the Columbian University. Though but few of them have been natives of Washington, all had acquired large interests in the city before being chosen for the post. All of them have been men of approved ability and undoubted success in private life. Nearly all have been lawyers of good practice, and acquainted with the management of large affairs. One was the author of a valuable digest of District laws. Two had, prior to appointment as commissioners, held high national positions — one as commissioner of internal revenue and the other as senator. At least two were men of means, retired on a competency, but willing to give their energies to such burdensome employment. One was a lumber dealer who was indorsed by practically all the leading merchants and men of wealth in the city. The president of the existing board was an attorney of lucrative clientage, and had served also as chairman of school trustees and as city postmaster. The capacity and attainments of the military member are vouched for by his rank and by the judgment of his superior.

In the conduct of business the commissioners are more approachable than the average American mayor. Patience and

courtesy are shown to the humblest: no "pull" or introduction is necessary. For two hours in the morning on certain days in the week the president of the board is ready for all callers. He receives them in a large room, at the end of which is his office, partitioned off by a couple of desks and book cases. Each goes to him in turn, without announcement or card or previous interview with private secretary, under the democratic rule "first come, first served." On any matter of general interest a time is set for a formal hearing; and the arguments delivered by counsel for and against the proposed measure are often supplemented by advice and testimony invited from the general public. The commissioners by law have to report to Congress on all District bills introduced in that body. For the discharge of this duty they prepare themselves by listening to discussions on all sides of the question. In all their proposed regulations they display the same desire to learn the impressions of the general public and of those most nearly affected. Thus, there were several public sessions on the bill to require all street railways to give transfers at intersections; and wide opportunity was granted the representatives of express and delivery agencies for exchange of opinion on the proposed regulation for wide tires.

Members of the District committees of the houses of Congress are often present at such occasions, and assist very materially by their comments and inquiries. While Congress is in session they constitute, in fact, a miniature city council; as they freely hear complaints and suggestions from any aggrieved element, and do not hesitate to take issue with the commissioners. For example, at one time the farmers who sell from the curbing around the Centre Market were charged with trespass by the police. They sent a delegation to appeal to the Senate committee for what they deemed their rights. The senators visited the scene of contest and took testimony on the spot. As their judgment did not agree with that of the commissioners, the farmers were troubled no more, the matter being "laid aside for further deliberation."

The commissioners are more sensitive to public opinion than an elected executive, because, though appointed for a definite

period, they are subject at all times to rebuke and removal by their superiors. Even in a case of public necessity they are not arbitrary in their methods. For example, the District has for years greatly needed a hospital for contagious diseases. Several times has a decision on a location been reached and then revoked on account of the outcry of the adjacent residents and land owners. Finally, a suburb was settled upon and the site was actually purchased; but even then the project was abandoned, as the annual report confesses, because "of the sincere and earnest opposition of the protestants."

The justification for the peculiar mechanism of municipal government in Washington is readily found in the peculiar character of the city and of its population. The city is really "a big government reservation," and has to be treated as such. It is a resort for the idle and shiftless, a paradise for negroes, a Mecca for tourists, at the same time a growing center of fashion and culture, and withal, despite civil-service reform, a vast hotel for transient office-seekers. The conjunction of such discordant elements makes popular government *a priori* absurd.

It is significant that those who are most interested are the best satisfied with the existing system, even though they discharge none of the functions of an American citizen except to pay taxes. In a pretty full postal-card vote taken by a leading paper only a minute fraction of the people favored the introduction of manhood suffrage. At the same time, it is repugnant to the political instinct of an American that the great body of people who support the government should have no voice in its management. It is true that, if he has no direct influence over the management of public affairs, he can fall back on public opinion, and by concentrating that can exert an effective pressure. But even if one has the privilege of uttering his sentiments to the authorities, and is heard as an individual with the attention that his character and standing demand, it is only when he stands forth as the agent of his fellows that he speaks with an authority that few in a free country venture to neglect. Accordingly, when the citizens of Washington saw that, by the law of 1878, they were excluded from the government that they had to

maintain, they found a lever to move their masters in the influence of citizens' associations. At the same time, they have preserved the principle of local initiative by allowing each section of the city to fight its own battles for an equitable share of the common benefits provided by all. The special needs of each locality are vigorously and persistently thrust before the officials ; and, through the play of earnest rivalry and warm criticism, fair apportionments can be made and happy compromises effected. The great success of this peculiar city government is due in no small degree to the jealous watchfulness of these citizens' associations.

The germ of these civic combinations may be found in the ringing appeal of a leading paper in Washington, just after the adoption of the present form of government, for the people to "stir themselves to secure the selection of the right sort of commissioners." Quickly did the people respond ; and in a few years every quarter of the city and the adjacent territory was represented by an association. As each new suburb was settled, another association was added, until now there are sixteen of these unofficial town councils. In constitution and general method they are all alike. Each works under a written constitution, with officers proper to a deliberative body and meetings at stated times to hear reports and hold discussions. The qualifications for membership are very liberal and the annual fees small — usually about one dollar. The main work is done by committees, in which the one-man idea is pushed to an extreme in empowering the chairmen to name their colleagues. A committee is put in charge of each special object of public interest within the local bounds, including usually sewers, paving, gas, street railways, water mains, street extensions, school facilities, the mail service, fire apparatus and police. Thus laborious investigations are carried on, and a vast amount of valuable information is gathered, which is often preserved in printed form.

The multiplication of these associations, however, engendered cross purposes, and energy was sometimes wasted in rivalries

rather than devoted to the good of all. Concerted action could have been best secured by a representative assembly; but federation of the associations, though much desired, has never been effected organically. Practically, however, its ends have been attained through the creation of the board of trade. This term is a misnomer, as the body is in no sense devoted to the interests of technical business or industry, but is really an association to promote the general welfare of the city by influence with Congress, by coöperation with the District administration and by the encouragement of united voluntary effort. A board of trade was started nearly thirty years ago on the usual lines denoted by the name; but the present board, with its clear-cut objects, only came into existence in 1889, after the failure of several similar projects. It is organized on the plan of the local citizens' associations, with a board of directors, and it meets in the heart of the city. The membership fee is ten dollars. The names of nearly all the leading residents in professional and business life are on its membership list, which aggregates over five hundred, and includes two of the District commissioners, with other municipal officials. As many of its members are actively connected with the smaller associations, it is fairly representative of the whole District. It has over twenty standing committees, including those on bridges, parks and reservations, public buildings, public health, public library, public schools, railroads, river and harbor improvement, legislation, sewerage, streets and avenues, and water supply. Through their agency the board performs a work of inestimable value in collecting statistics and acquiring detailed knowledge of municipal affairs. It publishes an annual report of more than a hundred pages, well digested and packed with trustworthy data and thoughtful conclusions.

The policy of the board of trade has been marked by solid conservatism and wonderful tact, which have won for its opinions a high standing with the city authorities. As representative of the public, it aims to work in conjunction with the authorities, assisting with advice and information. As an organ of the mass of the citizens, it can speak with some weight in

voicing the sentiments of the governed. In all its actions it aims at sympathetic coöperation, and avoids any policy such as has brought some of the local associations into sharp clashes with the District commissioners. The board of trade usually takes up only questions affecting the whole city, which its members can agitate with practical unanimity. This unbroken front increases the moral momentum of its action in any matter. The board knows the strength of social influence; and it annually invites prominent members of Congress and of the District government to meet at dinner for a frank interchange of views. It also arranges an excursion along the water front for the city's aldermen, and carries them down stream to a shadbake. The utmost cordiality obtains between the board and the commissioners. It constitutes, in fact, a spontaneous supplement to the District government. Again and again questions are referred to the board for report, and conferences are held with its committees. Lately a committee of the board was closeted with the commissioners for an entire evening on the subject of tax assessments; and other committees have labored on street extension, on street railway transfers and on the regulation of the width of tires. One of the local associations even offered to engage counsel to aid the commissioners in some fight with a railroad corporation. Special committees also are often appointed to urge measures on Congress; and they are heard at length and with respect.

The meetings of these associations, both local and general, are marked by earnestness and directness of purpose. Those attend who are interested, and no clap-trap tricks are used to draw a crowd. Difficult questions are expounded with a fullness of detail and of technical precision that would never be dared before the usual political audience. Little appeal is made to the emotions; there is no soul-stirring "eloquence" or spread-eagleism. The atmosphere is one of hard facts and cogent reasoning. These associations are a happy means for harnessing the substantial men of a community to the vexatious but noble task of civic counsel and influence. For such men—who, even if fully imbued with public spirit, would find the more common species

of municipal politics quite distasteful — they furnish a congenial theater for the exercise of their talents, and one in which their character and intelligence are appreciated. In these bodies some of the foremost men in every vocation in the city are active. Thus, the president of the board of trade is the managing partner in the largest department store in Washington; while of the two former presidents, one was a successful real-estate dealer and the other a man of large financial interests, who had once been a District commissioner.

The value of these associations is freely conceded by all, and the papers give full reports of all their doings. The District commissioners cheerfully acknowledge indebtedness to them for sound suggestions and useful information. The members of Congress rely on the genuineness and disinterestedness of their motives. A senator considered it ample recommendation for a bill that it had been indorsed by the board of trade. The Hon. William L. Wilson, during his service as Democratic leader in the lower house, gave the fullest recognition to the work of these spontaneous organizations of the people. Through their activity, in fact, municipal government in Washington has assumed in operation a very different form from that contemplated in its organization. By law, the system is a benevolent despotism; in practice, it is a representative aristocracy.

C. MERIWETHER.

WASHINGTON, D. C.

TREATIES AND TREATY-MAKING.

ONE is wont daily to hear important treaties mentioned and their provisions analyzed. Their effect upon international intercourse is a fertile topic of discussion and comment. But while acquaintance with the substance of a treaty may be widely diffused, knowledge of its form, or of the procedure observed in its creation, is rarely possessed except by those directly engaged in the affairs of diplomacy. A review of this procedure may, therefore, prove not without some interest.

In the making of an international public contract, whether designated as a treaty, a convention or an agreement, there are four distinct stages through which it must pass before it becomes a perfected instrument. These are technically known as the conclusion, the ratification, the exchange of ratifications and the proclamation. While a treaty is binding internationally — as between state and state — after the exchange of ratifications,[1] it requires the proclamation, as a general rule, before it can become binding municipally.

I.

The negotiations for a treaty are conducted by plenipotentiaries or specially empowered agents of the respective contracting governments. Usually these plenipotentiaries are the secretary of state for foreign affairs of the country wherein the negotiations are carried on and the resident diplomatic representative of the other power. Departures from this rule, however, have not infrequently occurred, especially in the negotiation of treaties of peace, when special representatives have been appointed. In the history of modern times only

[1] Unless otherwise provided, however, the treaty is held to bind the governments from the date of the signing, exchange of ratifications having a retroactive effect.

two treaties are known to have been directly negotiated and signed by sovereign monarchs in person.[1] Of these the more important was that of the famous Holy Alliance, to which the emperors of Russia and Austria and the king of Prussia attached their own signatures and seals. The other was the preliminary treaty of Villafranca, concluded between Napoleon III and the emperor of Austria, July 11, 1859. As a rule, therefore, the authority to act in concluding a treaty is a delegated power: it is a grant by the sovereign to its representative. This grant is embodied in an instrument conferring full power to "negotiate, conclude and sign" a treaty or convention with the agent who is invested with similar powers to act for the other government concerned. In the United States the great seal is affixed to this instrument, on the authority of a warrant signed by the president.

Before entering upon the consideration of a proposed treaty, the rule obtains that the agent of each government shall communicate his full power to the agent of the other government, to the end that each may determine whether the power of the other is "in due and proper form." In the case of important treaties, such as treaties of peace, these instruments are most carefully examined. It has occasionally happened that negotiations have been suspended or altogether broken off, because one or the other agent has not been clothed by his government with powers sufficiently ample. A recent instance of this kind was furnished by the Chinese-Japanese peace negotiations of 1895, which were held in abeyance for a time because of the limited powers with which the first Chinese commissioners, Chang Yen Hoon and Shao Yu Lien, had been invested, and the consequent refusal of the Japanese commissioners to treat with them. The negotiations were subsequently conducted to a satisfactory ending at Shimoneseki by Li Hung Chang, who was clothed with the necessary enlarged powers.

The initial steps of the negotiations consist generally in oral

[1] The treaty of guaranty concluded at Casr Saïd between France and Tunis, May 12, 1881, was signed by the Bey on his own behalf, but by a plenipotentiary on the part of France.

discussions (*pourparlers*), which result finally in the formulation of a draft that gradually undergoes the modifications necessary to bring about harmony of views between the agents upon the provisions to be inserted in the agreement. It was especially at this stage of the proceedings that Talleyrand was often so successful in gaining unexpected advantages over his opponents;[1] and it was here that M. Favre, by the exercise of masterly ingenuity, saved France from the necessity of ceding to Germany the entire territory of Lorraine. When each provision is finally agreed upon, the signing of the treaty follows. The act of signing is the "conclusion" of the treaty. The affixing of the signatures and seals of the respective plenipotentiaries does not mean, however, as the technical expression seems to imply, that the treaty is completed and has become operative, but only that its terms have been formally agreed upon, and are ready to be submitted to the respective governments for their sanction.

The treaty to be signed is usually made out in as many counterparts as there are contracting parties to it, each counterpart being regarded as an original. These are generally written with the pen and sometimes neatly engrossed, special care always being taken to secure legibility and to avoid the omission of any diacritical or punctuation mark that might affect the sense. Where there are a number of parties to a treaty, its counterparts may be, and now usually are, printed. This practice was followed, for example, in the convention for the protection of submarine cables, concluded at Paris, March 14, 1884, to which there were twenty-six signatory states; and in the general act for the repression of the African slave trade, concluded at Brussels, July 2, 1890, to which there were seventeen.

The Latin language prevailed in the composition of treaties until the eighteenth century. Some of the most important treaties in European history, such as those of Münster and Osnabrück, under which the peace of Westphalia was effected,

[1] Pradier-Fodéré, Cours de droit diplomatique, II, 266; Mémoires du Prince de Talleyrand, II, 280–282.

of Nymwegen in 1678, of Ryswick in 1697, of Utrecht in 1713, of Vienna in 1725, and of the Quadruple Alliance of London in 1718, have been composed in that language. The practice of employing Latin for treaty stipulations, however, fell into disuse as that language gradually sank from its position as the particular medium of expression in the sciences. Now the Holy See alone retains it in bulls and international acts. In the eighteenth century French gradually took its place as the language of diplomacy and, with more or less variation in the practice of different nations, holds that distinction to-day, notwithstanding the tacit rule that each state shall employ its own language in treating with other states.

The French language has, in recent times, been the one usually employed in the composition of treaties where the number of contracting parties has been more than two. Thus, the convention for the establishment of an international bureau of weights and measures, concluded at Paris, May 20, 1875, that for the protection of industrial property, concluded at Paris, March 20, 1883, and that for the protection of submarine cables, concluded at Paris, March 14, 1884, were written in the French language only. Where there are only two contracting parties to a treaty it has been customary for the negotiators to prepare it in the languages of their respective countries: for instance, in the case of an American negotiating with a German plenipotentiary, the English text and the German would appear in parallel columns, article by article, on the same sheet or on opposite pages of the same document. With Great Britain a single version is, of course, enough. With Russia, as an exception to the general rule, most treaties are prepared in English and French; but the convention relative to navigation, fishing and trading in the Pacific Ocean, *etc.*, concluded April 17, 1824, is in the French language only; and the declaration respecting previous treaty stipulations in regard to trade marks, signed at St. Petersburg, March 28, 1874, is in English and Russian. In the case of the Ottoman Porte, the first treaty concluded with that government by the United States, that of May 7, 1830, was signed in French by the

American commissioners [1] and in Arabic by the Turkish plenipotentiary; but all the rest are in English and French. The language of each government usually occupies the left-hand place in the counterpart which it is to retain. Where a treaty is framed in two languages the question has sometimes arisen, in case of a divergence of meaning between the versions, which language is to be regarded as authoritative. It has been held by the supreme court of the United States that, when a treaty is executed in more than one language, each language being that of a contracting party, each document so signed and attested is to be regarded as an original and the sense of the treaty is to be drawn from them collectively.[2]

In view of the differences in rank among states, the act of signing a treaty in former times often caused considerable friction among the plenipotentiaries. The question of precedence was a source of much contention, and sometimes even placed the adjustment of important international matters in jeopardy. In order to put an end to this element of discord the principle of the *alternat* was finally introduced. This may be defined as the right of each sovereign or head of a government to have his name appear first in the counterpart of the treaty which he is to retain, and to have the name of his plenipotentiary occupy the first place in the enumeration of the negotiators at the head of that document, as well as among the signatures at the end. It is, therefore, an ingeniously devised rule to solve the question of precedence among the signatory powers and their plenipotentiaries in the written formalities attending the negotiation of treaties. The general application of this device is comparatively recent, and is doubtless due to the principle of equality of states, which is of modern origin. So long as mediæval conceptions and traditions remained influential, the use of the *alternat* was exceptional. Among European monarchs the head of the Holy Roman Empire was long generally recognized

[1] The fourth article, relating to extra-territorial jurisdiction over American citizens, gave rise to a contention between the United States and Turkey as to the correspondence of the French with the Arabic version.

[2] U. S. *vs.* Arredondo *et al.*, 6 Peters, 691.

as first in dignity. Thus, the emperor was always named first in the copies of the treaties which he concluded with France; but with other princes, the kings of France assumed the precedence they voluntarily ceded to the emperor, and granted the *alternat* only from motives of expediency. This rule became established between France and Great Britain as early as 1546;[1] and it was observed between the courts of France and Russia in the original instruments for the pacification of Teschen in 1779.[2] In the execution of diplomatic instruments it was adopted at the congresses of Utrecht, London and Aix-la-Chapelle; and by the regulation of March 19, 1815 (Annex No. 17 of the final act of the congress of Vienna of June 9, 1815) it became a well-established rule.

It is of interest to note that Great Britain was the last of the European powers to adopt the *alternat* with the United States. Its earliest application by the two governments is found in the convention to regulate commerce and navigation, concluded at London, July 3, 1815; and the rule was employed only after it was insisted upon by the United States.[3] In the five important treaties of the United States with Great Britain, prior to this date, including the treaty of Ghent, the latter government assumed precedence in the preamble, in the clause designating the plenipotentiaries and in the final clause embracing the signatures and seals. On the other hand, France had already conceded the right of the *alternat* to the United States in the treaty for the cession of Louisiana in 1803; and precedence over the United States in treaties was last assumed by the Netherlands in 1782, by Sweden in 1783, by Spain in the treaty of San Lorenzo el Real in 1795 and by Prussia in 1799. With respect to Spain Secretary Adams insisted with the Spanish minister, Señor de Onis, upon the employment of the *alternat* in the treaty of cession by Spain of East and West Florida, known as the treaty of amity, settlements and limits,

[1] Pradier-Fodéré, Cours de droit diplomatique, I, 107.

[2] Martens, Le guide diplomatique, vol. ii, part i, pp. 133, 134.

[3] Mr. Monroe, secretary of state, to Mr. Adams, March 13, 1815. See Mr. Adams, secretary of state, to Mr. Rush, November 6, 1817. — MS. Inst. Ministers, cited in Wharton, International Law Digest, II, 2.

concluded at Washington, February 22, 1819. Señor de Onis, at the time, indicated that he might deliver a protocol against its use being thereafter ever drawn into a precedent, but Mr. Adams met the suggestion by declaring that thereafter the government of the United States would never conclude a treaty with Spain without the observance of this mode.[1]

Where there are more than two contracting parties to a treaty who admit of the *alternat*, article 7 of the regulations of the congress of Vienna of March 19, 1815, provides that the order to be followed in the signatures other than the first shall be decided by lot. At the congress of Vienna itself the representatives of the different governments also had recourse to the alphabetical order in signatures. Thus it was agreed in the conference held at Paris, November 4, 1815, between the plenipotentiaries of Austria, Great Britain, Russia and Prussia, concerning the form to be observed in the acts of ratification of the treaties of Paris and Vienna, that, in the formula of the ratification of the final act of the congress of Vienna, each ratifying power should take the first place in the counterpart reserved for it, and the six others should sign in alphabetical order — that is to say, according to the initial letter of the name of each country.[2]

At the present day, then, the practice is to use the *alternat* in its simple form, where there are only two signatories, or in combination with the other systems, where there are more than two. The alphabetical order seems, on the whole, to be preferred to that of the lot; it was the one employed in the treaty of Paris of March 30, 1856, in the treaty of Berlin of 1878, and in the Postal Union convention of July 4, 1891, not to mention many others.

Though the forms already described are generally followed in the conclusion of treaties, it occasionally happens that each of the contracting parties delivers to the other a copy of the treaty signed by itself alone. An example of this is the treaty of commerce and navigation, concluded between the

[1] Memoirs of John Quincy Adams, IV, 271, 272.

[2] De Clercq, Recueil des traités de la France, tome 2, 1803–15, p. 632.

United States and the Ottoman Porte, May 7, 1830. This practice, however, is of rare occurrence; and a document so executed is generally more in the nature of a declaration and counter declaration than of a treaty.

II.

Ratification is the act by which a sovereign power declares its acceptance of a treaty negotiated and concluded by its plenipotentiary: it is the approval by a government of the negotiations conducted by its agent or agents. The procedure by which this act is performed varies widely in different countries. The chief divergencies will appear in the following review.

In the United States ratification is the act of the president after the Senate has advised and consented to it.[1] It is an executive act, and the Senate's consent is given in its executive capacity.[2] The full and complete treaty-making power is vested, therefore, exclusively in the president and the Senate. In the creation of a treaty they alone take part. In the execution, however, the House of Representatives participates in certain contingencies, but always indirectly. This is the case when subsequent legislation becomes requisite to carry the provisions of a treaty into effect. Although it has been held by eminent legal authorities that it is the constitutional duty of Congress to pass the laws requisite for the execution of a treaty, Congress has, in fact, omitted or refused to pass such laws, thus rendering the treaty inoperative. An instance of this kind was that of the commercial reciprocity convention with Mexico, concluded January 20, 1883. In that case both governments failed to pass the necessary legislation, although the limit of time fixed by the convention was twice extended.[3] The convention finally expired May 20, 1887, without ever having been executed.

[1] Constitution of the United States, article II, section 2.

[2] There is some difference of opinion on this point. The weight of authority among constitutional writers, however, seems to favor regarding the Senate's consent as an executive act.

[3] On February 25, 1885, and May 14, 1886.

A singular case arose under the convention between the United States and France, concluded July 4, 1831. In that instance the fulfillment of the agreement was first delayed by a refusal of the French Chambers to provide the required appropriation. They then voted the appropriation, but inserted in the law a clause stipulating that the United States government should withdraw in writing certain strictures on France in President Jackson's message to Congress in relation to her delay in fulfilling treaty obligations. The result was a complete rupture of diplomatic relations between the two countries, with threats of reprisals and war. The incident finally terminated peacefully, however, and the French government in 1835 announced its readiness to pay.[1]

After a treaty has been signed by the plenipotentiaries, the counterpart retained by the United States government is transmitted by the president of the United States to the president of the Senate. It is received in executive session and referred to the standing committee on foreign relations, which subjects it to careful examination and discussion, and often proposes amendments. It is then reported back — favorably or unfavorably — to the Senate by the chairman. If after debate, or even without discussion arising, two-thirds of the senators present concur in advising and consenting to its ratification, an attested copy of the resolution embodying this action of the Senate, signed by the secretary of the Senate, is attached to the treaty, which is then returned to the president. If the treaty passes the Senate in an amended form, the amendments, as stated in the Senate resolution, are subsequently written in the instrument of ratification. The act or instrument of ratification, written on two sheets of the treaty document left blank for that purpose, immediately precedes the text of the treaty as originally signed. It is signed by the president and

[1] S. E. Doc. 17, 1st Sess., 23d Cong.; H. E. Doc. 117, 1st Sess., 24th Cong.; H. E. Doc. 2, 2d Sess., 23d Cong., 543; 11 Debates, part ii, appendix, 4, 5; *ibid.*, 215; *ibid.*, part i, 103, 200; H. E. Doc. 136, 2d Sess., 23d Cong.; H. E. Doc. 174, 2d Sess., 23d Cong.; H. R. 133, 2d Sess., 23d Cong.; 11 Debates, part ii, 1633–1634; for the debate, see 1531–1565, 1570–1634; Docs. with president's message, 1st Sess., 24th Cong.

countersigned by the secretary of state, and the seal of the United States is affixed thereto under a warrant from the president.

It has sometimes occurred that, after a treaty has been signed by the plenipotentiaries, the president, in the exercise of his constitutional prerogative, decides not to send it to the Senate to obtain the advice and consent of that body necessary for its ratification. He thus practically cancels the negotiations of his plenipotentiary, and the treaty is abandoned before completion. As an example, among several of this kind, may be mentioned the treaty concluded between the United States and Great Britain, December 31, 1806. It was rejected by President Jefferson without submitting it to the Senate, on the ground that it contained no abandonment by Great Britain of her claim of the right to impress American citizens. Again, a treaty, after submission to the Senate, may be withdrawn from the consideration of that body by request of the president. Several instances of this kind have occurred in recent years. The commercial reciprocity treaty with Spain, concluded November 18, 1884, and submitted to the Senate by President Arthur, was withdrawn by President Cleveland "for reëxamination" and was abandoned. Similar cases are that of the Nicaragua Canal convention with Nicaragua, concluded December 1, 1884, and withdrawn from the Senate March 13, 1885, and that of the Hawaiian annexation treaty, concluded February 14, 1893, and withdrawn March 9, 1893.

It is also not an infrequent occurrence that a treaty submitted by the president to the Senate either fails to be acted on or is acted on unfavorably by that body. Sometimes it is not reported back from the committee on foreign relations; not infrequently it is rejected by the Senate upon being submitted to a vote. An example of the latter kind was afforded by the treaty concluded April 12, 1844, providing for the annexation of Texas. The Senate, on June 8, 1844, returned the treaty to the department of state with a resolution refusing its advice and consent; and the incorporation of Texas into the Union was subsequently made by a joint resolution of Congress, approved March 1, 1845. A like case was the rejection

by the Senate, on June 30, 1870, of the Dominican annexation treaty, concluded November 29, 1869; and a most notable instance within this year was the refusal, May 5, 1897, of the Senate to give its advice and consent to the ratification of the much-discussed arbitration treaty with Great Britain of January 11, 1897.

It has sometimes happened that, even after the Senate has acted favorably on a treaty, the president has abstained from ratifying it. This was the case with the treaty with China for the exclusion of Chinese laborers, concluded March 12, 1888. The Senate gave its assent, after amending the treaty, May 7, 1888, but no further steps were taken to perfect it. In this instance, however, certain amendments were proposed by the Chinese government which were unacceptable to the president.

It is perhaps pertinent to state here that the regular method of making a treaty is departed from by the United States only in regard to postal, money-order and parcels-post conventions. Under the law of June 8, 1872,[1] the postmaster-general is vested with the power to make such conventions, which become binding without further action after they are signed by him and approved by the president. In these cases an act of Congress is once for all substituted for the advice and consent of the Senate in each separate case. The most important convention of this kind is the Universal Postal-Union convention, concluded at Vienna July 4, 1891. It was entered into by forty-three governments; and this number has been augmented by subsequent adhesions, so that at present the list of signatories includes practically all organized governments except that of China.[2]

[1] "That for the purpose of making better postal arrangements with foreign countries, or to counteract their adverse measures affecting our postal intercourse with them, the postmaster-general, by and with the advice and consent of the president, may negotiate and conclude postal treaties or conventions, and may reduce or increase the rates of postage on mail matter conveyed between the United States and foreign countries." — Section 167 of "An act to revise, consolidate and amend the Statutes relating to the Post-Office Department."

[2] Korea and the Orange Free State entered the union by convention concluded at Washington in June of the present year, on the occasion of the meeting of the congress of the union at that place. China is expected to enter soon.

In addition to this general agreement, the United States government is a signatory to two other postal conventions, one with Mexico of April 4, 1887, and one with Canada of January 19, 1888. The act above referred to provides also for the conclusion of money-order conventions.[1] The first of these entered into by the United States was that with Italy, April 20, 1877. At the present day our government is a signatory to thirty-five conventions of that character, and to thirteen parcels-post conventions, authorized under the general terms of the same law.

It is also to be observed that in certain matters the government of the United States has occasionally made a binding agreement with another government through a mere exchange of notes. This method is sometimes adopted where the matter to be agreed upon is simple in character and the arrangement is regarded as merely temporary. Such a method of procedure has the advantage — very important in some cases — of avoiding the intricacies of ratification; but its employment is nearly always based upon the authority of an act of Congress. Thus the understanding reached between the Swiss minister and the secretary of state by the exchange of notes of April 27 and May 14, 1883, respectively, concerning the registration of trade-marks in the two countries, became a binding agreement by virtue of the act of Congress approved March 3, 1881, providing for such contingency. Under the same law an agreement was also effected on the same subject by an exchange of notes between the minister of the Netherlands and the secretary of state on February 10, 1883, and February 16, 1883, respectively. In connection herewith may be mentioned the ten[2] international

[1] "That the postmaster-general may conclude arrangements with the post departments of foreign governments, with which postal conventions have been or may be concluded, for the exchange, by means of postal orders, of small sums of money, not exceeding fifty dollars in amount, at such rates of exchange and compensation to postmasters, and under such rules and regulations as he may deem expedient; and the expenses of establishing and conducting such system of exchange may be paid out of the proceeds of the money-order business."—Section 103.

[2] Brazil, Dominican Republic, Spain (for Cuba and Porto Rico), Guatemala, Germany, Great Britain (for her West India possessions), Nicaragua, Honduras, Austria-Hungary and Salvador.

agreements, commonly known as reciprocity treaties, made during the years 1891 and 1892. They were negotiated pursuant to section 3 of the tariff act of October 1, 1890, and repealed by the general terms of the tariff act of August 28, 1894. Each was consummated by exchange of notes and subsequent proclamation of the president. The question of their constitutionality has been raised, but never judicially determined. The argument advanced against their validity was that, having been made under the authority of an act of Congress, which required but a majority vote of both houses, they had not conformed to the requirement, essential in treaties, of approval by a two-thirds vote of the Senate.

In this category may be placed, although somewhat different in character from the above, the international agreements reached by declaration, protocol and *modus vivendi*. It is not customary for the executive to submit for approval to the Senate arrangements of this kind. Declarations and protocols are signed either separately or jointly by the plenipotentiaries. They are employed in relation to private claims or to mere matters of form, or are purely explanatory of provisions in a concluded treaty or convention, concerning which the contracting parties, anticipating the possibility of doubt with regard to the exact meaning, agree upon an interpretation in advance. As examples of this last kind may be cited the protocol, signed January 30–February 10, 1890, explanatory of the scope and effect of article 1 of the treaty of the United States with Greece, concluded December 10–22, 1837, relating to the reciprocal intercourse and trade of the citizens and subjects of either country; and the protocol of the conference and declaration concerning judicial procedure, signed at Madrid by the United States minister and the minister for foreign affairs of Spain, January 12, 1877. The *modus vivendi*, on the other hand, is more in the nature of a treaty, though it is not customary to submit it to the Senate for approval. It has all the characteristics of a treaty except that its stipulations are expressly provisional and tentative. It is usually agreed upon as an *ad interim* arrangement to suspend a diplomatic contro-

versy, pending a more comprehensive and permanent settlement thereof by a treaty. The question of its constitutionality has been at times raised, but never authoritatively determined.

In Great Britain the making of a treaty is the prerogative of the crown. As Blackstone has well expressed it, "what is done by the royal authority with regard to foreign powers is the act of the whole nation."[1] The queen's ratification of a treaty does not, therefore, require the sanction of Parliament, except where the provisions thereof exceed her prerogative or come within the constitutional power appertaining to Parliament. This is the case when a treaty involves either a charge on the people or a change in the law of the land. While such a treaty may be made by the queen, it cannot be carried into effect without the sanction of Parliament. Treaties of this kind are therefore made subject to the approval of Parliament, and are either submitted for its approval before ratification or are ratified under condition.[2] Such are treaties of commerce, which might require a change in the character or amount of duties charged on exported or imported goods, or those providing for an alteration in the criminal or municipal law. With the exception of treaties of this class requiring legislation, it is not usual to lay treaties before Parliament until after ratification. After the conclusion of important negotiations with the representatives of any foreign state, it is usual for the government to communicate the result to Parliament, and to declare what is the course which the government proposes to take in regard to the question involved. If either house is of opinion that the government has failed in its duty in any respect, it may then, by any line of conduct it may think proper, make known to the crown its opinion upon the subject. For while the initiation of a foreign policy is the prerogative of the crown, to be exercised under the responsibility of constitutional ministers, it is the duty of Parliament, when the result of the negotiations con-

[1] Blackstone, vol. i, bk. i, ch. vii, p. 189.

[2] Anson, The Law and Custom of the Constitution, vol. ii, the Crown, pp. 50, 51. See also Démombynes, Constitutions Européenes, tome 1, p. 11; Dicey, The Law of the Constitution, p. 391; Sheldon Amos, Fifty Years of the Constitution, pp. 387–389.

ducted by ministers has been communicated to it, to criticise, support or condemn that policy, as the interests of the nation may seem to require.

In Germany all treaties with foreign countries relating to matters which, according to the imperial constitution, are regulated by the legislature of the empire, require for their ratification the approval of the two houses (*Bundesrath* and *Reichstag*) in the forms of ordinary legislation. Through the same procedure by which ordinary laws are submitted to the emperor for promulgation, treaties are referred to him for ratification. Under the accepted theory of the constitution the approval of the *Reichstag* is the preliminary without which the *Bundesrath* cannot declare the treaty constitutionally binding; and the consent of the *Bundesrath* is the preliminary without which the emperor cannot give the foreign state the promise that the treaty shall take effect. The exceptional requirements of the constitution in case of legislation that involves modification of the organic law are, of course, applicable also to a treaty of like effect; as, for instance, if it changes the boundaries of the territory of the empire, or if it encroaches upon the reserved rights of individual states of the empire.[1] There is nothing in the constitution of the German Empire to prevent any of the constituent states from entering into a treaty with a foreign power on any matter not subject to the jurisdiction of the empire.[2] This right, however, has never been exercised; though many of the old treaties with the several constituent states remain in force.

In France, legislative sanction becomes necessary only in the cases of treaties of peace and of commerce, and of such as engage the finances of the state or relate to the personal status and the property rights of Frenchmen abroad.[3] A treaty of this class is submitted to the Senate and Chamber of Deputies, with a bill introduced by the government to authorize it to execute

[1] Laband, Das Staatsrecht des Deutschen Reiches, p. 108.

[2] *Ibid.*, pp. 115, 116.

[3] Loi constitutionnelle sur les rapports des pouvoirs publics, 16–18 juillet, 1875, article 8.

the act of ratification; and such bill is passed or rejected, like any other, by the ordinary majority in both houses. But so important a treaty as that of Berlin, concluded July 13, 1878, which gave a guarantee to the preliminary treaty of peace of San Stefano, and paved the way to the definitive treaty of Constantinople of February 8, 1879, between Russia and Turkey, was ratified by President MacMahon, without the authority of the Chambers;[1] and this act was regarded as constitutional. Protectorate treaties with uncivilized or half-civilized nations are ratified by the president without legislative action.

The Italian constitution divides treaties into two classes, according as they do or do not relate to the national finances or modify preëxisting law.[2] The procedure in ratification of the first class, foremost among which are customs treaties and treaties of commerce and navigation, is as follows: As soon as the convention is signed it is presented to the Senate and the Chamber of Deputies by the minister for foreign affairs, in conjunction with the other ministers whose departments the provisions of the treaty affect, and is accompanied by the draft of a law ordering its full and entire enforcement. When the draft is approved, it is followed by the exchange of ratifications, if these are required by the treaty or convention itself. After the exchange of ratifications the minister for foreign affairs submits the draft of the law already approved by the Chambers for the sanction of the king. Treaties of the second class do not require presentation to Parliament. After being signed, the exchange of ratifications takes place, if the text of the agreement stipulates such exchange. Following this formality the minister for foreign affairs, conjointly with the other interested ministers of state, presents for the king's signature a decree ordering the execution of the treaty.

The king of Spain needs authorization by a special law to ratify treaties of offensive alliance, special treaties of com-

[1] Lebon, Droit public de la République Française. This treaty was not in the nature of a treaty of peace to France, as that country had not participated in the war.

[2] See "Statuta fondamentale del Regno," article 5.

merce, treaties which provide for subsidies to a foreign power and all such as affect the private rights of Spaniards. In no case can the secret articles of a treaty conflict with the public articles of a treaty.[1] In Mexico ratification is the act of the president, upon approval of the treaty by the Senate, acting by simple majority of a quorum.[2] Under the other Spanish-American governments ratification requires, without exception, legislative, and not merely senatorial, sanction, several of the states having, however, only one house.

The constitution of Japan vests all matters relating to foreign intercourse in the emperor with the advice of his ministers, the diet taking no part therein. The power to make treaties is therefore an imperial prerogative,[3] and the act of ratification is an act of the sovereign alone. Each treaty is countersigned, however, by the minister president and the minister for foreign affairs. In China, as the emperor is the enactor of all laws, his sanction is all that is necessary for the ratification of a treaty. In practice, however, he has never been known to ratify a treaty against the wishes of the Tsungli-Yamen. In Turkey the sultan ratifies a treaty by merely writing on it "let it be so," no sanction other than his own being requisite to insure its operation throughout his dominion.

The refusal of a government to ratify a treaty duly signed by its plenipotentiary naturally absolves the other contracting government from all obligations in connection with it. A treaty is not, like an ordinary contract, voidable on the ground of duress; nor are the acts of its plenipotentiaries as binding on their sovereigns as they would be under the ordinary law of agency.[4] Publicists of the past held, in general, that the conclusion of a treaty by duly empowered agents made the agreement binding between the contracting governments,

[1] Spanish constitution of June 30, 1876, title vi, article 55.

[2] Mexican constitution, title iii, article 85, paragraph 10.

[3] See the constitution of the Empire of Japan, article xiii; Commentaries on the constitution of the Empire of Japan, by Count Hirobumito, translated by Miyoji Ito.

[4] Holland, The Elements of Jurisprudence, ch. xvii, p. 348.

unless subsequent ratification was expressly reserved. On the other hand, the view of modern writers on public law, such as Martens, Bluntschli, Heffter, Geffken, Amari, Pradier-Fodéré, Wheaton and others, is to the effect that only ratified treaties can be considered binding. This is clearly the safer and more practical rule, and is observed without exception by the nations of to-day. Indeed, the acts of public ministers, even when armed with full powers, have from very early times been regarded as subject to ratification.[1] A refusal to ratify a treaty, however, should be based, as Vattel has remarked, upon "strong and solid reasons."[2] Whether, in practice, the reasons advanced have always been of a character sufficiently substantial, may perhaps be questioned. As instances of such refusals may be cited the declination of the Emperor Alexander I of Russia to ratify the treaty with France, concluded July 20, 1806, on the ground that his plenipotentiary had exceeded the powers granted to him; the refusal on the part of France to ratify the treaty concluded in 1841 with Austria, Russia and Great Britain for the suppression of the slave trade, on the ground that it could not permit its vessels to be searched for that purpose;[3] and the refusal of the Chinese government to ratify the treaty of Livadia, concluded with Russia September 20, 1879.

III.

The exchange of ratifications is the act whereby each plenipotentiary formally submits to the other the proofs that the treaty has been ratified by his government. The plenipotentiaries performing this act are not always those who have signed the treaty. They are different when, as is not infrequently the case, the ratifications are exchanged at a place other than that at which the treaty was concluded. Thus, a treaty may be concluded in Washington between the secretary of state and an ambassador or a minister, while its ratifications

[1] Cf. Barbeyrac, Histoire des anciens traités, *etc.* (Amsterdam, 1739), part ii, p. 295. [2] Vattel, Droit des gens, l. ii, par. 156.
[3] Von Holtzendorff, Handbuch des Völkerrechts, pp. 17, 18.

may be exchanged at the capital of the other government, between the minister for foreign affairs of that government and the diplomatic representative of the United States accredited to it.

As before stated the exchange of ratifications is an essential formality in perfecting a treaty. For effecting this exchange there are made two copies of the treaty, including the signatures of the plenipotentiaries. Taking, for example, a convention between the United States and Great Britain, to the American copy the president attaches his ratification, which is almost word for word the same as the ratification of the American counterpart of the original treaty. The only difference is that, while the act of ratification of the original treaty precedes the text, the act of ratification of the exchange copy is divided into two parts, the text of the treaty being inserted between them.[1] To the British copy the queen's ratification is similarly attached.[2] The exchange by the plenipotentiaries

[1] Thus:

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

Know ye, that whereas a convention between the United States of America and . . . extending for a period of . . . years from . . . concerning . . . was concluded and signed by their respective plenipotentiaries at Washington, on the . . . day of . . . a true copy of which convention is, word by word, as follows:

[Here follows convention.]

And whereas the Senate of the United States, by their resolution of . . . (two-thirds of the senators present concurring therein) did advise and consent to the ratification of the said convention:

Now, therefore, be it known that I . . . President of the United States of America, having seen and considered the said convention, do hereby, in pursuance of the aforesaid advice and consent of the Senate, ratify and confirm the same and every article and clause thereof.

In testimony whereof, I have caused the seal of the United States of America to be hereunto affixed.

Given under my hand at Washington, the . . . day of . . . in the year of our Lord . . . and of the Independence of the United States the . . .

[President's signature.]

By the President:

[Secretary's signature],

Secretary of State.

[2] Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India, *etc.*, To all and singular to whom these presents shall come, Greeting!

of the copies thus ratified has the effect of placing the United States government in possession of the queen's act of ratification, and the British government, of the president's. Of the counterparts of the original treaty it was seen that each government retained its own copy, and consequently its own subsequent ratification. It will be observed, therefore, that after the exchange of ratifications has been effected, each government has in its possession, first, a counterpart of the original treaty with its own ratification, and, second, a copy of the treaty, with the ratification by the head of the other government.

The authority to exchange the ratifications is granted to each plenipotentiary by a full power from his government. The full power granted to an American plenipotentiary by the president to effect an exchange of ratifications is somewhat different in wording from that given for the negotiation and conclusion of a treaty; but, like the latter, it requires the seal of the United States to be affixed under a warrant from the president. A record of the meeting of the plenipotentiaries at which the exchange of ratifications is effected is always kept: it is

Whereas, a convention between us and our good friends The United States of America was concluded and signed at Washington on . . . in the year of our Lord . . . by the plenipotentiaries of us and of our said good friends, duly and respectively authorized for that purpose, which convention is, word for word, as follows:

[Here follows convention.]

We, having seen and considered the convention aforesaid, have approved, accepted and confirmed the same in all and every one of its articles and clauses, as we do by these presents approve, accept, confirm and ratify it for ourselves, our heirs and successors; engaging and promising upon our royal word, that we will sincerely and faithfully perform and observe all and singular the things which are contained and expressed in the convention aforesaid, and that we will never suffer the same to be violated by any one, or transgressed in any manner, as far as it lies in our power. For the greater testimony and validity of all which, We have caused the great seal of our United Kingdom of Great Britain and Ireland to be affixed to these presents, which we have signed with our royal hand. Given at our court at Windsor Castle, the . . . day of . . . in the year of our Lord . . . and in the . . . year of our reign.

(Signed) VICTORIA, R.Q.

drafted in the nature of a minute and is technically termed a protocol of exchange.[1]

As it sometimes occurs that the ratification is refused by a government and a treaty thus fails after attaining only the first stage in its creation, so too does it exceptionally happen that, after the treaty has been ratified, the exchange of ratifications is for some reason withheld, and the agreement is cancelled after reaching its second stage. An instance of this kind is to be found in the naturalization convention concluded between the United States and the Ottoman Porte, August 11, 1874, which was duly ratified, but the ratifications of which were never exchanged. So also, the treaty of peace and amity concluded between the United States and the king of Belgium January 23, 1833, was duly ratified by the United States February 15, 1833, but no exchange of ratifications was effected.

It is the recognized practice to stipulate in the final article of a treaty the time within which the ratifications are to be exchanged, or, at least, to declare that they are to be exchanged as soon as possible. It is also usual to state at what place the exchange shall be made. Although the provision fixing the time for the exchange is in general carefully observed, there are instances where it has been violated without invalidating the treaty. Thus the treaty of amity, settlement and limits, concluded between the United States and Spain February 22, 1819, stipulated that the ratifications "shall be exchanged in six months" from the time of signing, "or sooner if possible"; but the exchange was actually effected just two years after-

[1] PROTOCOL OF EXCHANGE.

The undersigned plenipotentiaries having met together for the purpose of exchanging the ratifications of the convention signed at . . . January . . . 18 . . . between the United States of America and . . . for the purpose . . . and the ratifications of the convention aforesaid having been carefully compared, and found exactly conformable to each other, the exchange took place this day in the usual form.

In witness whereof, they have signed the present protocol of exchange, and have affixed their seals thereto.

Done at . . . this . . . day of . . . one thousand eight hundred and . . . .

[Signatures of plenipotentiaries.]

wards,[1] the Senate in a resolution giving its advice and consent to the ratification a second time. An instance of even greater delay, but in connection with a less important agreement, where it was stipulated that the ratifications should be exchanged "as soon as possible," was the convention between the United States and Spain, concluded August 11, 1802, where the ratifications were not exchanged until December 21, 1818. Where a number of governments are parties to a treaty, the formality of exchanging ratifications is simplified by the designation of one of the governments to receive all the ratifications and to give notice thereof to all the other signatory powers.

IV.

Proclamation is the formal act by which the people of a country are notified by their government that a treaty has been made between it and a foreign power or powers, and are enjoined to observe and fulfill the provisions thereof. The proclamation is issued by the head of the government.

In Great Britain treaties are not formally proclaimed as in the United States. Where a treaty requires the sanction of Parliament, it takes effect from the date prescribed by the legislation on the subject. Where no act of Parliament is required, it takes effect from the date of the exchange of ratifications, and is published in the official *London Gazette* and laid before Parliament as early as possible thereafter. In Great Britain, therefore, a treaty becomes operative municipally at the same time that it does internationally.

In Germany a treaty, as an international transaction, requires neither a proclamation, in the legal sense of the word, nor publication for the purpose of making it actually known. Secret treaties have the same international force as those which are

[1] The delay occurred because the Spanish government withheld its ratification. It demanded "as a condition of the ratification that the United States should abandon the right to recognize the revolutionary colonies in South America, or to form other relations with them." (Annals, 1st Sess., 16th Cong., p. 679.) The principal reason for the delay, however, was a question which arose as to certain grants of land in Florida.

published. On the other hand, a law commanding the execution or observance of a treaty would require publication like every other law; but no law of this character is, in fact, ever framed and promulgated in the German Empire. The treaty itself is printed in the *Reichsgesetzblatt* (*Imperial Law Journal*), without any mandatory clause, without any mention of the assent of the *Reichstag* and *Bundesrath*, even without the signature of the emperor and without the counter-signature of the chancellor of the empire. The chief international act, the document of ratification, is not published: a notice that the ratification of the treaty has taken place is merely added after the printed text, without any signature or authentication. This kind of publication does not conform to the requirements of the imperial constitution[1] as to laws, and it cannot be claimed that the mere printing of a treaty in the *Imperial Law Journal* has the same force and effect as a regular publication. There is reason to doubt, therefore, whether the kind of publication which has hitherto been customary gives to the provisions of the treaty the force of law when they fall within the province of legislation. The defects of this method of publication have been generally recognized and criticised by the German writers who have discussed this subject recently, but without avail.[2]

In France the law authorizing the government to ratify a treaty is proclaimed, like all other laws, by publication in the *Journal Officiel*. The publication is made in the name of the president of France and must take place within one month after the law is passed.[3] The treaty itself, however, is usually not promulgated with the law authorizing ratification, but later and by a special decree.[4] Unless it contains a special provision with reference to the time when it is to go into effect,

[1] Articles I and XVII.

[2] Laband, Das Staatsrecht des Deutschen Reiches, pp. 108, 109.

[3] Lebon, Droit public de la République Française; Loi constitutionnelle sur les rapports des pouvoirs publics, 16–18 juillet, 1875, article 7.

[4] It reads as follows: "The Senate and the Chamber of Deputies having approved the treaty signed the . . . between France and . . . and the ratifications of this act having been exchanged at . . . on the . . . said treaty, which follows, shall receive full and complete execution."

a treaty, like any other law, is binding in Paris one full day after its publication, and in any other part of France one day after the number of the *Journal Officiel* that contains the treaty is received there.[1] This method, like many other rules of French administrative law, appears to be more systematic and practical than those adopted by other governments.

In Italy, after the king has sanctioned the law of ratification, it is forwarded by the minister for foreign affairs to the minister of grace and justice, who, after having it entered in numerical order in the official record of laws and decrees of the kingdom, transmits it to the ministry of the interior for publication in the *Official Gazette*. From that moment the treaty is in full force in the kingdom.

In Mexico a treaty is given publicity immediately after the ratifications have been exchanged. It is printed in Spanish and in the language of the other contracting party in the official journal of the Mexican federal government, and thus becomes statutory. Copies are mailed to the Congress, the Senate, the cabinet departments, the supreme court of Mexico and to the several governments of the Mexican states and territories, the latter inserting the treaty in their official journals. A similar method is observed by the other Spanish-American countries.

In Japan a treaty is proclaimed by the publication in the *Official Gazette* of an ordinance, over the sign manual of the emperor and the counter-signatures of the minister president and the minister for foreign affairs, announcing the conclusion and ratification of the treaty and commanding its proclamation.

In China treaties are not proclaimed. They are merely communicated to those departments of the government which their contents may concern. In Turkey, too, proclamation is not necessary. The treaty is published, however, but seldom *in extenso*, in the Turkish newspapers, the government having no official gazette. This absence of the full publication of the treaty has sometimes caused doubt and embarrassment as to

[1] Decree of November 5, 1870.

its provisions, and necessarily occasions disputes that otherwise might not arise.

In the United States the proclamation is a written instrument, and is attached to the American counterpart of the original treaty, but not to the exchange copy. The proclamation embodies the text of the treaty, recites its conclusion and ratification and the exchange of ratifications, and calls for the observance of its provisions. It is signed by the president and countersigned by the secretary of state, and the seal of the United States is affixed thereto.[1] The treaty is then immediately printed in pamphlet form by the state department for distribution. The courts of the United States, however, recognize a treaty as officially published only when it is printed in the United States Statutes: it is then accepted as evidence without certification. The pamphlet form above mentioned is not held as evidence unless certified as a true copy of the original treaty. The supreme court has held that a proclamation takes effect when it is signed by the president and sealed

[1] BY THE PRESIDENT OF THE UNITED STATES OF AMERICA,

A PROCLAMATION.

WHEREAS, a convention between the United States of America and the . . . concerning . . . was concluded and signed by their respective plenipotentiaries at the city of . . . on the . . . day of . . . 189 . . . the original of which convention being in the English and . . . languages, is word for word as follows:

[Here copy of convention is inserted.]

And, whereas, the said convention has been duly ratified on both parts, and the ratifications of the governments were exchanged in the city of . . . on the . . . day of . . . one thousand eight hundred and . . .

Now, therefore, be it known that I . . . President of the United States of America, have caused the said convention to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States and the citizens thereof.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at Washington, this . . . day of . . . in the year of our Lord one thousand eight hundred and . . . and of the Independence of the United States the one hundred and . . . .

[Signature of President.]

By the President:

[Secretary's signature],

Secretary of State.

with the seal of the United States, officially attested, and that its publication in the newspapers is not requisite to make it operative.[1] With the adding of the proclamation a treaty reaches its formal completion in the United States, and from that time becomes of equal force with any law thereof.[2] A treaty made conformably to the constitution of the United States in substance and form has, therefore, the legal effect of repealing all preëxisting federal law in conflict with it.[3]

It has been held that where no express provision is made, a treaty is binding upon the contracting parties from the date of its signature or conclusion, the subsequent acts required for its perfection having a retroactive effect. Where these later acts, ratification and exchange of ratifications, fail of ultimate execution by any contracting power, the mere signing of the treaty would not, of course, constitute a binding agreement. There is doubtless no government which has not among its diplomatic archives treaty documents which have failed for one reason or another to pass through all the forms requisite for their perfection. Of such unperfected treaties it is a conservative estimate to say that the United States government has about eighty, to which only historical value now attaches, but which furnish most valuable material to the student of our diplomatic history. Nor is this number great when the requirements, constitutional and customary, are considered, of which a treaty of the United States has to run the gauntlet to become perfected.

Of perfected treaties of the United States now in force there are three hundred and two, and this number is steadily increasing. The number of treaties once in force, but which for various reasons have expired in the course of our national existence, is fifty-three. Of these some have been abrogated by Congress,[4] some have expired by their own express limitation and others

[1] Lapeyre *vs.* United States, 17 Wallace, 191.

[2] Constitution of the United States, article vi.

[3] 6 Opinions of Att. Gen., 291 (Cushing, 1854).

[4] Four treaties were abrogated by this method: namely, alliance with France of 1778, amity and commerce with France of 1778, act separate and secret with France of 1778 and the consular convention with France of 1788. They were annulled by an act of Congress, approved July 7, 1798.

have ceased to have effect in consequence of notice given under the provisions of the treaties themselves. Some, too, have terminated in consequence of the absorption of the other contracting powers into other nationalities ;[1] and others have ceased to exist in consequence of the dissolution of the federations with which they were made.[2]

It is fair to say that if the United States has more than three hundred treaties in force, each of the older great powers has many more than that. Of these only approximate figures can be given, in view of the practical impossibility of ascertaining the number of secret treaties in force. That at least eight thousand treaties and conventions now place the nations of the world under contractual obligations to one another is, however, not a hazardous statement.

V.

It now remains briefly to consider how a government may become a party to a treaty without having been one of its original signatories. This is done by declaration of accession or adhesion. Accession takes place, in the opinion of Rivier, when a state subsequently joins the originally contracting states and enters into their contractual relations in the quality of a principal, acquiring the same rights and assuming the same obligations as they. Adhesion, on the other hand, is less complete, and may pertain only to certain provisions of a treaty. The adhering state does not become a principal party to the treaty, but assumes only the obligation not to hinder its execution. Adhesion, however, may eventually be transformed into accession.[3] In the United States the practice has been to employ the terms synonymously.

The manner in which governments declare their accession or adhesion is not uniform, depending partly upon the stipulation

[1] The treaties of the United States with Algiers of 1795, 1815, 1816; with Hanover of 1840, 1846, 1855; with Nassau of 1846.

[2] The convention of peace, friendship, commerce and navigation, concluded with the Peru-Bolivian Confederation November 30, 1836, terminated 1839.

[3] Alphonse Rivier, Principes au droit des gens, tome 2, p. 91.

of the treaty providing therefor and partly upon the form of government of the acceding or adhering state. The declaration, however, is always in writing. With the United States the method of acceding or adhering to a treaty resembles in most of its features that of making one. Like a treaty, the act of accession or adhesion requires the advice and consent of the Senate. The treaty to which the government proposes to accede or adhere is copied, and the president's ratification and proclamation are appended thereto. An exchange copy is also prepared, to which the president's ratification is likewise attached. The latter instrument is sent to the United States minister at the capital of that government which by provision in the treaty is authorized to receive such declarations of accession or adhesion and to notify the other signatory powers thereof. The exchange copy is communicated in a note from the United States minister to the minister for foreign affairs, and the date of that note becomes, as a rule, the date of the accession by the government to the treaty. A note of acceptance of the accession is thereupon delivered to the minister by the foreign government through which the accession is effected, and the formality is then completed.

As an example of accession may be mentioned that of the United States government, March 1, 1882, to the convention for the amelioration of the condition of the wounded in armies in the field (the Red Cross convention), concluded at Geneva, between twelve European powers, August 22, 1864.[1] The adhesion of the United States government was given, May 30, 1887,[2] to the convention for the protection of industrial property, concluded at Paris, March 20, 1883, between Belgium, Brazil, France, Guatemala, Italy, the Netherlands, Portugal, Salvador, Servia, Spain and the Swiss Confederation. Another

[1] The ratification of the act of accession by the United States, as transmitted to Berne and exchanged for the ratifications of the other signatory and adhesory powers, embraces the French text of the convention of August 22, 1864, and the additional articles of October 20, 1868. The French text is therefore, for all international purposes, the standard one.

[2] The United States minister at Berne to the secretary of state, No. 137, June 4, 1887.

instance of adhesion was that of Sardinia, January 26, 1854, to the treaty of alliance against Russia, concluded between France and Great Britain April 10, 1854. The method of accession or adhesion is universally recognized, and it may be confidently asserted that to-day there hardly exists a state that has not, at some time during its existence, become a party to a treaty by this method.

VI.

What is the goal to which the continually increasing practice of treaty-making is tending? As we have seen, a perfect network of conventional obligations holds states together. The past isolation of governments has changed into a steadily growing interdependence. To-day the slightest change in the physical condition or in the commercial or financial policy of a country sends its vibrations afar, and often makes itself keenly felt in distant communities. A heavy frost in the orange belt of Florida has the effect of increasing during the next season the cultivation of oranges in Mexico [1] and elsewhere; the prohibition of the importation of American cattle into Germany or France or Belgium at once induces a protest from American cattle dealers, setting our diplomatic machinery in motion against the obnoxious decree or order. Who, indeed, of the great leaders in statecraft of earlier times would have thought of determining the monetary system of a country by international written agreements? And yet to-day this method is suggested by many of the most enlightened men in public life as the best solution of the vexatious financial problem.

It is not the purpose of this article to analyze the cause of these phenomena. This is plainly found in the inventive genius of an age that has directed its effort chiefly to the mastery of time and space, and, as a result of its activity in that direction, has given to the world the steamship, the railroad and telegraph. That the increased facilities of communication are producing a greater dependence of one country upon another

[1] See dispatch to state department from Mr. Thomas T. Crittenden, United States consul general in the city of Mexico, May 29, 1896.

cannot be doubted. What has made for the independence of the individual has augmented the dependence of the nation.

Are we, then, advancing toward the realization — though the end is yet vague and undefined — of the idea of a *Weltreich?* When the writer, in his student years in Germany, heard this theory of a grand federation of nations advanced for the first time by Bluntschli, it appeared a bit of pure idealism or a poetic fancy. But is it such? Is a universal commonwealth — where the law of nations will have become merged in a great body of municipal law, and where arbitrations, peace conferences and Red Cross conventions will all have served their purpose and passed away — so hopeless of attainment as it once appeared? But no speculation can forecast the course of political evolution; and the effort is profitless while more tangible problems in politics are constantly demanding our best efforts for their solution.

FRANÇOIS STEWART JONES.

LEGATION OF THE UNITED STATES,
BUENOS AYRES, ARGENTINE REPUBLIC.

THE SOUTHERN FARMER AND THE COTTON QUESTION.

IN dealing with the recent agricultural depression in this country most writers have seemed disposed to seek an explanation in such economic causes and conditions as are operative alike in all sections of the country. It may be conceded that there does exist to-day a distinct agricultural question; and still more readily will it be acknowledged that many causes of a general nature have coöperated, in recent years, to produce, or intensify, the financial distress felt so keenly by the agricultural classes both in our own and in other lands. But it is a mistake to suppose that any explanation of this agricultural crisis can be adequate which does not take into consideration local conditions. In the United States alone the extent of territory is so great, the differences in soil and climate are so marked, and the characteristics of crops and of cultivators are so diverse that economic forces which are seriously felt in one portion of the country make little or no impression elsewhere.

Influences which have contributed to produce financial distress in some sections of the country have, as a matter of fact, really been of direct advantage to other localities. Compare, for example, the condition of the Southern cotton grower with that of the farmer who raises cereals in the Northwest. Each is an important consumer of the other's staple product. The low prices which have brought distress and ruin to the farmer have been of distinct advantage to the cotton grower, and *vice versa*. Again, the two are differently situated with respect to the market for their staples. The price of each product is fixed by the European market, where each comes into competition with similar crops raised in other lands. But as to the supply of this market the Southern cotton growers practically have a monopoly. Two-thirds of all the cotton produced in the world is grown in the United States, and that part of the

American crop sent to Europe bears a still larger proportion to that sent from other countries. The American wheat grower, on the other hand, feels outside competition much more keenly. Though the United States produces more wheat than any other one country, her crop has for a number of years been less than one-fifth the world's product; while much less than half of this crop finds a market abroad. On the European market our wheat comes into competition, not only with the enormous crops grown in Europe and India, but also with those raised at little expense on the virgin soils of Manitoba, Argentina, Trans-Caucasia and Australasia. The supply from these countries practically fixes the price of wheat on the European markets, and therefore the price of the American wheat consumed at home. When a short cotton crop is reported from America, the price of cotton in Europe immediately advances. A short wheat crop in the United States, however, may have little influence in determining the price of that staple: for example, the crop of 1893 brought on an average thirty cents less per bushel than that of 1891, although the United States produced in 1893 only 396,132,000 bushels as compared with 611,780,000 bushels in 1891.[1]

The Southern planter is, therefore, responsible for the fall in the price of cotton to a much greater extent than is the Northern farmer for the decline in the price of wheat. It follows that to find the source of the agricultural depression in the South, we must search for local causes rather than study those forces, international in their scope and influence, which have had such a marked effect in reducing the prosperity of the Northern farmer. And to understand the operation of these local causes, we must trace the development of Southern agriculture during the last half-century.

I.

Prior to the Civil War cotton was produced for the most part on the large plantations. Almost the only laborers

[1] U. S. Dept. of Agriculture, Synopsis of Crop Report for March, 1896, p. 4.

known in the cotton fields were slaves, and the methods of farming the land were practically the same as in colonial days. The existence of slavery, taken in connection with certain other circumstances, such as the climate and the character of Southern crops, prevented any considerable immigration from the North and from Europe, and the competition for land was slight. As a consequence the value of farming lands in the South always remained low. As late as 1850 the average value of occupied land in the South Atlantic states was only $5.34 per acre, and in the Southwestern states, $6.26 per acre.[1] Good farming land was always so cheap and plentiful that its owners scarcely regarded it as a permanent investment, and they felt that they could afford to be wasteful of it. Fertilizers were seldom used, and no system of crop rotation was adopted to maintain the fertility of the land. The "twin crops of the South," corn and cotton, were, indeed, often planted in alternate years; but as both of these were "hoed crops," their rotation possessed little value as a means of preventing the exhaustion of the soil.

Aside from these two staples, there were few crops grown in the distinctive cotton belt before the war. An investigation made by the United States Bureau of Agriculture showed that, prior to 1861, cotton occupied, on an average, forty-four per cent of the tillable area of the ten cotton states, and corn thirty-eight per cent. The corn was intended mainly for domestic use and was seldom sold outside the state in which it was produced. It served to fatten the hogs, and with bacon it constituted almost the only food used by the slaves and a considerable portion of the whites. But often not enough corn was produced on a plantation to satisfy the domestic needs, and recourse was had to the product of the North and the West. Thus, as early as 1827, South Carolina was importing annually over 100,000 bushels of Indian corn for domestic use.[2] Cotton was intended to be the only crop raised for the market.

[1] Compendium of Seventh Census, p. 175.
[2] W. B. Seabrook, *American Farmer*, X, 90, 91.

The effect of this method of farming was, of course, rapidly to deplete the soil of its fertility. Practical exhaustion resulted in a few years on the uplands, and the land was then "turned out" to grow up in briers, sassafras and scrub pines. "A purchaser looking for land, if he found a field without a stump, considered that fact *prima facie* evidence that it was worn out."[1] No planter thought of holding only such land as he wished to cultivate at one time. When he purchased a new tract he did it with the intention of farming it by fractions, "turning out" each successive tract when its cultivation became unprofitable.[2] As the land became exhausted in the old cotton states, the planters either abandoned their farms and removed to the virgin soils of the Southwest, or gave up cotton raising as a regular business and betook themselves to the breeding of slaves for the Western markets.

The methods of farming just described were not characteristic of the cotton states alone. The same system of agriculture was practiced in the Northern colonies and in the Western states during their early years of development: it is the system always pursued by the first settlers in new countries, where fertile land exists in such abundance that its marginal utility is low. But what was peculiar about Southern agriculture was that the evident injury done to the soil by the "one-crop" system had little or no effect in bringing about a change in the methods of cultivation. In the North, the "one-field" system had been abandoned when the land showed signs of exhaustion, and intensive cultivation had been adopted in its place. In New England and the Middle states it was found to be more profitable to rotate the crops and to manure the land than to abandon the farms for Western lands. There only the surplus population was sent to the new states. In the South however, several important reasons operated to prevent the adoption of a more complex and beneficial system of cultiv

[1] Report of the Commissioner of Agriculture for 1876, p. 216.

[2] Of the land in farms in the old cotton states, the Carolinas and Georgia, seventy per cent was unimproved in the decade ending with 1860, while in New England and Middle states, approximately two-thirds of the land in were under cultivation. — Compendium of the Ninth Census, 689.

tion; and it is to these reasons that we can trace the origin of many of the evils that beset Southern agriculture to-day.

In the first place, many of the crops which, like wheat and other small grains, could be successfully rotated with the hoed crops, were in the South often unprofitable on account of the rust. For other kinds of produce, such as vegetables and fruits, there was no local market. In the ten cotton states there were in 1850 but seven cities of eight thousand or more inhabitants, and in 1860 there were but eleven. With the exception of Indian corn, what the South produced was designed for the world market.

The ready sale which cotton finds at all seasons of the year has made it known throughout the South as "the cash crop"; and this fact alone influences the planter to give it the preference over other crops. Moreover, while the difference between a good and a bad cotton season is very marked, a complete crop failure is of rare occurrence; and, owing to the practical monopoly which the South possesses, the loss threatened by a short crop is often more than compensated for by the higher price which the staple then brings. Hence cotton raising has long been made by the Southern farmer a basis for securing loans.

This system, peculiar to the South, of obtaining advances in money or farm supplies on crops still growing or not yet planted, although practiced more generally in recent years, is not new in that section. It was in operation even in colonial days, before cotton had so much as given promise of becoming one of America's leading staples.[1] With the development of cotton culture, however, the credit system became correspondingly more general. Cotton possessed marked advantages over other kinds of produce as a basis for loans; the planter became more and more dependent for his profits on this single commodity; and when, as not infrequently happened, one year's crop failed to yield him a profit, he was obliged to pledge future crops in order to continue his planting operations. advances, which in colonial days seem to have been

[1] Ramsay, History of South Carolina, II, 222.

made by English merchants,[1] were, after cotton had become the leading staple, made by the cotton factors living at the port towns where the cotton was sold, although occasionally they were made by traders in New York.[2] These factors gave credit only on cotton; for they were engaged primarily in handling this commodity, and were thus familiar with the data — as to prices and markets — on which to base their loans. Thus the credit system, once established, helped to perpetuate the "one-crop" system and to cause overproduction of cotton.

A still more important cause of the continuance of the single-crop system in the South is to be found in the employment of slave labor. Slavery has always been found to be most profitable where the system of agriculture is extensive. The slave learns new methods of farming very slowly, and therefore works best when employed in cultivating only one crop. Cotton afforded better opportunities than other crops for the use of slave labor. The methods of cultivation were very simple; no machines and but few and simple tools were required. The amount of land which one person could tend in a day was small, so that it was possible to employ a large number of workers under the direction of a single overseer. The care of a crop from seed-time to harvest spread over three-fourths of the year, and, together with the clearing of new land, furnished continuous employment to the workers. The planter, who had the bulk of his fortune invested in slaves, had an almost uninterrupted use of his capital, which would not have been the case if the slaves had been employed in the cultivation of the cereals or the raising of grasses, vegetables, fruits, *etc.*

The profit in the slave depended upon the finding of a market for his labor, and the best market afforded was an extension of the area of cultivatable lands devoted, in their fresh state, to the production of a crop readily convertible into money, peculiarly suited (as the slave himself) to the climate, and in the cultivation of which muscular

[1] Ramsay, *op. cit.*, 428.
[2] J. H. Lanman, *Hunt's Merchants' Magazine*, IV, 224.

labor should count for much and intelligence and science for but little.[1]

These conditions, rendered necessary by the use of slave labor, prevented the adoption of a mixed system of agriculture or of any plan of crop rotation. Moreover, the fact that the slave, and not the land, was considered the real investment, made it profitable to continue the old methods of farming; for when the land had been cropped in corn and cotton until it had lost its fertility, the planter who decided to migrate to some other part of the country found it easy to take his property with him. There the old methods of farming were continued with the same results.

At the beginning of the war, then, seventy years of cotton culture by slave labor had brought about few changes in the methods of cultivating the soil. The land in many portions of the South had been robbed of its fertility; many of its owners were practically in a state of bankruptcy, with their chattels and future crops mortgaged to the cotton factors; and the great body of laborers had been trained to cultivate but a single crop. In spite of the fact that the South had during all these years possessed a practical monopoly of cotton-raising, the war found her in a much less prosperous condition than were the Northern states at that time.

II.

The changes made necessary in Southern agriculture by the Civil War amounted to an entire revolution, although many of them were not fully realized until some years after the close of that struggle. The large planters, who had in the loss of their slaves been deprived of almost their entire fortunes, were the greatest sufferers from these changes; but the small farmers in the hill country were not unaffected thereby, although for them there were compensating circumstances which made their losses easier to bear. Land, which had been worth little

[1] H. C. White, "The Manuring of Cotton," in "The Cotton Plant," Bulletin No. 33, U. S. Dept. of Agriculture, Office of Experiment Stations, p. 171.

enough before the war, steadily declined in value for some years thereafter, owing to its owners' lack of capital and to the uncertainty of obtaining labor. Cotton-raising had almost ceased during the war for want of a market, and because of the disorganized condition of affairs in the South. There was an abundance of labor skilled in the cultivation of this staple, but that labor had just obtained its freedom and was inclined to enjoy it in idleness for a time. Encouraged, nevertheless, by the high prices of cotton in both the American and the European markets, the planters set themselves steadily at work to revive the culture of the staple and to mend their broken fortunes.

Attempts were made at first to hire the freedmen under the wage-system, and to continue the old plantation methods of farming in other respects unchanged. The wage-system failed at that time, however, partly because the planters lacked funds for the payment of weekly or monthly wages, while the laborers were unwilling to wait for their money until the crops were harvested, but chiefly because of the unreliability and inefficiency of negro labor. The freedmen had been taught by the practice of their masters to associate freedom with idleness, and it was hard to impress upon them the necessity of steady employment. "To be free was to hunt and fish, and to lounge about the country town; to the women it was to desert outdoor employment and ape in a slight degree the fashions and habits of the more fortunate white race." [1]

The breaking up of the old plantation system soon became inevitable. By 1870 the total value of farming lands, including improvements, in the ten cotton states had fallen forty-eight per cent as compared with 1860. The crop failures had been so numerous and the decline in the price of cotton had been so great — a fall from forty-three cents in 1866 to seventeen cents five years later — that the planters were unable to meet their engagements with their factors, and were compelled to throw their land upon the market at whatever price it would bring. "The ruin seemed to be universal and complete, and

[1] Report of the Commissioner of Agriculture for 1866, p. 573.

the old plantation system, it then seemed, had perished utterly and forever."[1] The buyers for these lands came not from the North or from Europe, whence the planters had hoped to attract purchasers; nor yet from among the freedmen who, though anxious to become landowners, seldom rose to this rank in the decade following the war; but from one of the least expected sources — from out of that class of poor whites whose wretched poverty and lack of ambition had been proverbial during slavery days. The mania for cotton-growing had again seized hold of the Southern people, in spite of the repeated crop failures, and these poorer classes had become infected with the fever. The cheapness of the lands and the willingness of the merchants to give credit on the prospective cotton crops made it possible for these small farmers to take up the lands which the old planters were so willing to sell. "Never, perhaps," wrote Henry W. Grady, "was there a rural movement, accomplished without revolution or exodus, that equaled in extent or swiftness the partition of the plantations of the ex-slaveholders into small farms."[2] The number of farms of less than one hundred acres each in the ten cotton states increased from 333,058 in 1860 to 517,178 in 1870, and the average size of farms decreased during the same decade from 401.7 acres to 229.8 acres.

This increase in the number of landowners in the South brought with it a corresponding increase in the number of whites engaged in the culture of cotton. Before the war it had been supposed that white labor constituted only about one-tenth of the labor force employed in the cotton fields. By 1876 an investigation, undertaken by the United States Bureau of Agriculture, showed about thirty-nine per cent of the persons engaged in the culture of cotton to be whites. In Texas and Arkansas the whites were in a clear majority. The increase in the amount of white labor employed in the cultivation of the cotton plant has continued without interruption ever since; and when to this increase in numbers is coupled the greater effi-

[1] Henry W. Grady, *Harper's Magazine*, LXIII, 721.
[2] *Ibid.*, 721, 722.

ciency of the white laborers, it is probably safe to say that not far from three-fourths of the cotton raised in the South to-day is grown by white labor.

The freedmen, then, did not share in this agrarian movement to any considerable extent. As late as 1876 it was shown that only about five per cent of them had become owners of land.[1] Various efforts were made to induce them to take up holdings; but, although they seemed pleased with the idea, their desire for leisure and their extravagance prevented most of them from making crops large enough to pay for their advances at the store, to say nothing of keeping up their annual payments on the land. Renting the land for cash rents was also tried, but seldom proved a success in those parts of the South where the blacks predominated in numbers. The system which was finally adopted and which, with many and various modifications, has become almost universal in farming the cotton lands with negro labor, was the share system, or, as it is known in the South, "the cropping system." The general idea which underlies all the varieties of this "cropping system" is that the laborer shall be given an interest in the crop and shall be made to share the losses which are occasioned by his own idleness and neglect. The tenant under this system usually receives one-half the crop; but if he furnishes his own tools and work animals, he receives two-thirds, sometimes three-fourths, of what he produces. The land thus rented is usually divided into "one-horse" or "two-horse" farms, containing from fifteen to forty acres each; and the tenant and his family are usually left to farm the land after their own fashion, with but little supervision or direction on the part of the owner.

As a transitional method, well adapted to stimulate the industry of the freedmen and to diminish the losses which the planters suffered from the neglect of the crops by the negro wage earners, the "cropping system" seems to have been profitable; but its continuance since the days of industrial reconstruction has been a great misfortune to Southern agriculture. The interest of the owner in the land has been weak-

[1] Report of the Commissioner of Agriculture for 1876, p. 137.

ened and the farming has been left to be carried on, without guidance, by ignorant and careless tenants who have no interest in improving or even in keeping up the plantations.

III.

The change of agricultural system in the South, accomplished during the years of industrial reconstruction, rendered necessary many other changes in plantation economy and in methods of living in the cotton states. Not the least important of these changes was that in the methods of obtaining credit. I have already mentioned the fact that before the war the planters on the large estates were often obliged to seek credit of the cotton factors in the leading port cities, and to pledge their prospective cotton crops as security for these loans. The successors of these planters, the small farmers, white as well as black, who undertook to carry on cotton cultivation after the breakdown of the old plantation system, were certainly in far less favorable economic circumstances than had been the great planters whom they so largely displaced. The latter had often found it necessary to borrow money to carry on agricultural operations; the former were obliged to have credit in order to obtain the means of subsistence during the raising of the crop. True to Southern traditions and habits, these small producers looked for their profits only to their cotton, and relied mainly on other sections of the country for their food supplies.[1] But with little or no property to serve as security for loans, and with no business standing to recommend them to the money lenders at distant ports, the small farmers were not able to follow in the footsteps of their predecessors by obtaining advances from the cotton factors. Their borrowings had to come, if at all, from some source nearer home.

Simultaneously with the revolution in methods of producing cotton, a transformation also took place in the methods of

[1] Chemical manures, which had come into general use after the discovery of rich phosphate beds in the South at the close of the Civil War, also abetted the natural tendency to confine cultivation to cotton; for these fertilizers were adapted to that crop alone. — H. C. White, "The Manuring of Cotton," *loc. cit.*, 174.

shipping and marketing it. Many of the factors at the port towns had been ruined during the war by the insolvency of their planter debtors, and had been forced to retire from business. The development of means of transportation and communication had also driven the markets inland. In earlier times the planters themselves consigned their cotton to the ports to be sold for them by the factors; but now a system of interior buying developed, and cotton was collected at the inland towns and railway stations, and sent on a through bill of lading direct to the New England and British mills. The country merchant very generally succeeded the cotton factor as the purchaser of the farmer's cotton. From the country merchant the cotton passed in some instances directly to the agents of the New England and Lancashire mills, who were sent throughout the South, but in most cases it was taken by brokers.

The country merchant, moreover, succeeded the cotton factor, not only as the purchaser of cotton, but also as the furnisher of credit to the growers. The risk which the factor at the port or large market town was unable to take in lending to this class of borrowers, can be assumed by the country merchant, because of his proximity to his customers and his more intimate knowledge of their financial circumstances and business reputation. The credit which he furnishes is seldom given in the form of money loans, and there are nominally no interest charges made for his advances. These usually consist of provisions, especially corn and bacon, tools, farm animals, fertilizers, cotton ties and bagging, household utensils — in fact everything the farmer has to buy. They are almost invariably bought "on time," to be paid for when the crop is harvested and sold. As security for his advances the merchant secures from the farmer at the beginning of the crop season a "crop lien," or chattel mortgage, which is duly attested and recorded at the office of the county recorder or judge of probate. This binds the farmer to deliver to the merchant, as soon as harvested, the crops of cotton, corn, *etc.*, or enough of them to pay the merchant at the ruling market price of this produce for all the

advances which the farmer has obtained during the raising of the crop. The mortgage also covers future crops, if the crop of the current year is insufficient to pay the indebtedness. It is sometimes further agreed, if not actually specified in the mortgage, that the advancing merchant is to have the marketing of the farmer's entire cotton crop, and that the farmer is to make all his purchases during the crop year of this merchant. There is, however, little necessity for such an agreement. The entire crop is usually needed to cover the indebtedness; and the farmer with his crops mortgaged to one merchant would be unable to purchase of another, except on a cash basis.

In spite of the control over the debtor which this crop-lien system gives the merchant, the risk which he runs, with the losses which he actually suffers as a result of conducting business on such a basis, necessitates extremely high prices for all merchandise sold in this way. Most advancing merchants have two schedules of prices — one for purchasers who buy for cash, the other for "time" purchasers. Prices on a credit schedule are usually from twenty to fifty per cent higher than those on a cash schedule. Thus, flour selling at four dollars per barrel to cash buyers sells for five dollars on a credit basis; bacon selling at ten cents a pound, cash, for twelve and a half cents "on time"; calico selling at five cents a yard, cash, for seven cents, *etc.*[1] As the average length of time which these debts run before payment is not more than six months, the difference between cash and credit prices is equivalent to an annual interest charge of from forty to one hundred per cent.

The extent to which this credit system prevails varies, of course, with localities. It is less common in the more western states, especially Texas, than in the older cotton states; and it is much less prevalent in communities settled chiefly by whites than in those sections of the country where negro croppers are largely employed. But it is characteristic throughout the cotton belt, and to say that three-fourths of the cotton growers

[1] These cash and credit prices were furnished the writer by an advancing merchant in central Alabama.

are in this sort of dependence on the advancing merchants or factors would not be an extravagant estimate.

Besides its effect in impairing the independence and prosperity of the Southern farmer, the credit system has been largely responsible for overproduction of cotton, and hence for the recent fall in the price. The advantages which cotton possesses as a marketable commodity — owing to the comparatively steady demand for it, the improbability of a complete crop failure and the superb commercial mechanism which has been devised for moving and selling the crop — have given this staple a preference in the minds of the merchants, no less strong than that formerly felt by the cotton factors. Besides, the merchants make their profits largely through the sale of corn and bacon, and it is only natural that they should encourage the farmers to raise cotton rather than those commodities.

In discussing the subject of the overproduction of cotton, and in urging the Southern farmers to reduce their cotton acreage and to grow their own supplies, most Southern writers have, strangely enough, failed to see the real connection between this credit system and the excessive production of the great Southern staple. In this matter the great majority of the cotton growers are helpless: they are obliged to submit to the dictation of the advancing merchants as to what crops they shall grow. Occasionally, when the price of cotton has sunk so low that even the merchants are threatened with losses, as was the case in 1895, the merchants themselves press the farmers to raise other crops, such as corn and cow peas; but usually the merchants' preference for cotton causes them to refuse to accept other crops as security for advances.[1] As a correspondent to the Senate committee on agriculture and forestry of the Fifty-third Congress writes:

Cotton-raising has grown to be a necessity more than a choice. As a general rule, supplies cannot be obtained from the merchants

[1] "In some sections, even of the black prairies of Texas, tenants have been notified by merchants that they could not advance to them in 1895, if they paid a money rent exceeding three dollars an acre." — Harry Hammond, "The Culture of Cotton" in "The Cotton Plant," *loc. cit.*, 267.

on any other crop than cotton; consequently, they [the planters] are forced to raise it to get credit.[1]

The preference of the merchants for cotton is in harmony with the desires of many of the planters themselves. This is partly due to the speculative interest which cotton production awakens, but it is partly due also to the liking of the negro "cropper" for this crop and his apparent inability to raise any other.

It is, indeed, a commonplace at the South that the negro can only grow cotton — that he cannot grow corn. Corn will not bear neglect; to fail to plough at the proper time means loss of the crop. Though cotton must be worked much more, it bears the delays incident to negro methods much better.[2]

In spite of falling prices, therefore, the acreage and production of cotton have pretty steadily increased during recent years. Even the smaller yields of some years are to be explained rather by poor crop seasons than by any considerable reduction in the acreage. Before the war ten cents a pound was thought to be the minimum price at which it was profitable to raise cotton; and even now ten cents is looked for in the South with much of that eager expectancy with which the Northern farmer awaits dollar wheat, although it is probable that eight-cent cotton is to-day as profitable as ten-cent cotton was in 1860. But ten cents has not been known in the South as an average price for the year since 1890, when a crop of 7,300,000 bales was raised. After that date the acreage and production increased so rapidly and prices fell so quickly that in 1895 "middling upland" sold in the South for less than five cents per pound. The commercial crop for that year was nearly 10,000,000 bales, although its total selling value was $84,000,000 less than that of the crop of 1889–90. A reaction, supplemented by a poor season, reduced the crop in 1896 to 7,150,000 bales, and a corresponding advance in prices took

[1] Report of the Committee on Agriculture and Forestry on Condition of Cotton Growers in the United States, *etc.*, Fifty-third Congress, third session, report 986, pt. i, p. 317.

[2] Van de Graaf, *Forum*, XXI, 330.

place, the average New York prices being 8.16 cents per pound. Another increase in the acreage has brought forth another large crop, which from present indications will be not far from 8,500,000 bales. This has caused another decline in prices, until cotton can now hardly be profitable to the great majority of its cultivators.

IV.

The "crop-lien system" has not been the only influence operative in producing the agricultural depression in the cotton states, although it is chiefly responsible for the backward condition of Southern agriculture. Like the farmers in the Northwestern states, the cotton growers of the South Atlantic and South Central states have felt the effects of Western competition, but they have made less effort than have the farmers to adjust themselves to the new conditions.[1] Before the war, comparatively little cotton had been grown in the great state of Texas, and even as late as 1880 this state was below Georgia and Mississippi in the production of that staple. But in recent years Texas has made great strides in this direction, and for the year 1894 her crop was nearly one-third the total amount of cotton grown in the country. A comparison by years since 1890 shows, indeed, that there has been comparatively little increase in the production of cotton outside of Texas, the annual rate of increase being less than the annual increase in the world's consumption.

The superiority of Texas as a cotton-growing region is to be explained partly by her new and fertile lands, which, without fertilizers and with relatively little labor, will produce more cotton to the acre than land east of the Mississippi on which large quantities of guano and intensive methods of cultivation are applied. The cotton planters of Texas, furthermore, have not become the victims of "the crop-lien system" to so great an extent as have their competitors in other states; and it is

[1] L. G. Powers, Fifth Biennial Report of the Bureau of Labor of Minnesota, 1895–96, 399.

therefore worthy of notice that, in spite of cheaper production in Texas, nearly the whole reduction in the acreage and yield of cotton in recent years, as a result of the low prices, has been effected in this state. Cotton can be produced in Texas at a cost from one and a half to two cents less per pound than in the Eastern states;[1] and this fact is likely to give Texas an advantage over other cotton states for many years to come.

Texas has another advantage in her more reliable and efficient labor. The negroes have always been in a minority in that state; and since the war their proportion to the whites has been steadily decreasing, until now cotton is raised there chiefly by white laborers. The climate and resources of the state and the absence of negroes have made Texas an exception to the general rule in the South, and have enabled her to attract large numbers of immigrants from the North and even from Europe. Her more progressive and intelligent laborers have enabled the cotton growers to take advantage of all the improvements in implements and modes of cultivation.

The inefficiency and unreliability of the laborers have been great drags on the prosperity of the Southern states, especially of those sections where negroes are most largely employed. The Southern negro is usually a docile worker, but he lacks energy and ambition. His standard of living is low, perhaps not higher than it was in slavery days, and with this bare subsistence he seems hopelessly content. All Southerners are agreed that his efficiency as a worker is far below what it was before the days of freedom; and it is a matter of common remark in the South that the best workers among the blacks are not the younger hands, but the ex-slaves—men and women perhaps fifty or sixty years of age, who were trained to work in their days of bondage. On the big plantations along the Mississippi, where the managers exercise an authority little short of compulsion, and the plantation economy and management are not unlike those of slavery days, the negroes are fairly successful workers. There are also to be found in every community throughout the cotton belt negro farmers who are independent, industrious,

[1] Report of Senate Committee on Agriculture and Forestry, *loc. cit.*, I, 351–371.

thrifty and progressive agriculturists. But they are only the notable exceptions to the general rule of negro shiftlessness and idleness. Poorer farming can scarcely be found than exists in those parts of the cotton belt where the absentee proprietor has rented out his land to the negro "croppers" and has left them free to manage the plantations in their own way.

V.

At the outset of this discussion, mention was made of the fact that international competition plays a much less important rôle in the determination of the price of cotton than it does in the price of wheat or of many other agricultural commodities. International competition is not, however, wholly insignificant; and it is perhaps of more importance in the dangers which it threatens for the future than in the difficulties which it causes at present.

Although cotton can be and has been grown in almost every tropical and semi-tropical region of the earth, there are few countries where its culture has become widespread or has met with much success. The small quantities of cotton used in England before the introduction of the factory system came from the countries of the Eastern Mediterranean or from the West Indies. Even the domestic manufacturers of the American colonies made use of West Indian cotton for the spinning and weaving of the rough garments worn by all but the wealthier classes. With the growth of machine production, the English manufacturers, finding that the supply of cotton from the old sources would not suffice to meet the new demands, besought the East India Company to import cotton from India, where it had been grown for centuries. But the Indian cotton was much inferior in staple to that which at the close of the eighteenth century began arriving at Liverpool from the United States; and, although the Surat cotton continued to be sent to the European markets in small quantities, it never succeeded in competition with that from America. Egypt began shipping a high grade of cotton to England about the middle

of this century, and small quantities also came from Brazil. But before 1860 neither of these countries was regarded as a serious competitor of the United States.

During the Civil War, however, when the blockade of the Southern ports had cut off the Southern states from communication with the outside world, the absence of American cotton in Europe acted as a great stimulus to other cotton-producing countries to increase their production and export of this staple. It was feared that the opportunity thus offered to other countries to establish cotton culture on a firm basis might prove disastrous to the industry in the South; but these fears proved groundless at the time, and a decade after the close of the war the position of American cotton on the European markets seemed as secure as ever. The importations of Indian cotton into England reached their highest point in 1866, when 1,866,000 bales were received; Egypt reached her high-water mark in 1865 with 413,000 bales; Brazil's largest exportation was 700,000 bales in 1872; and the West Indies gave up the struggle after increasing their shipments to 166,400 bales in the same year.

But while the shipments of cotton from other countries to Great Britain in recent years has not, in fact, been sufficient to cause any alarm to Southern cotton growers, the competition of these countries has taken a new turn which may in time make itself felt by the American producers. India has for nearly a century been an important market for English cotton goods; and as the Indian cotton has been used to but a slight extent in the British mills, the Indian trade has furnished an important outlet for American cotton. But in quite recent years India has begun to manufacture her own cotton. In 1869 she had but 400,000 spindles and consumed in her mills but 80,000 bales of cotton. By 1895 the number of spindles had increased to nearly 4,000,000 and the mill consumption amounted to 1,375,000 bales. So extensive has this Indian manufacture become that it not only supplies a large part of the home consumption, but it has enabled Indian merchants to make large shipments of cotton goods to China and Japan. It

has to this extent reduced the manufacture of American cotton into goods intended for those markets. The development of cotton manufacturing in other countries has likewise lessened somewhat, relatively speaking, the demand for American cotton. Great Britain, although still the chief cotton manufacturing country of the world, no longer stands so far ahead of all other lands as she did before the Civil War. More cotton is now consumed on the Continent than in the mills of Great Britain; and much of this cotton comes from other countries than the United States. France and Germany use a great deal of Egyptian cotton. Austria uses a considerable amount from India; and nearly one-third of this staple consumed by the rapidly expanding Russian manufacture comes from Asiatic countries, especially Trans-Caucasia.

The use of other than American cottons in these countries is due, not to any inferiority in the American staple, but largely to the better care with which the other cottons are prepared for the market. Even the despised Surat of war days, which, besides its short staple, was poorly cleaned and poorly baled, now comes to the European market in much better condition than does the American cotton. The same is true of the Egyptian product. On the other hand, the American cotton is sent to the mills in much worse condition than it was before the war. For this the decrease in the size of the plantations is partly responsible. Before the war each plantation had its own gin-house, and the cleaning and the packing of the cotton were more carefully attended to. "The different pickings were ginned separately, each picking on the large plantations being sufficient to make a run for the gins, and the different grades of cotton were thus kept distinct." [1] But with the advent, since the war, of cheaply constructed toll-gins and gin-houses, and with more rapid ginning, cotton is put up in dirty packages, with the fibers often cut or broken, and full of knots and fragments of seeds.[2] In the methods of

[1] H. Hammond, "The Handling and Uses of Cotton" in "The Cotton Plant," *loc. cit.*, 354.

[2] "In the gin itself no radical change or improvement has taken place since the days of Whitney, its inventor."—*Ibid.*, 358.

baling cotton, too, there has been no advance, but rather a retrogression. Improvements that have readily been adopted in foreign countries have usually been neglected here.

> Taken altogether, it is generally admitted that the American bale is the clumsiest, dirtiest, most expensive, and most wasteful package in which cotton, or in fact any commodity of like value, is anywhere put up. It has no friends either among manufacturers, buyers, shippers, insurers or producers. Custom seems alone responsible for this incubus on the industry.[1]

A new method of baling and compressing cotton, known as the Bessonette system, by which the cotton is put up into cylindrical bales, has within recent years come into use in some sections of the Southwest. The cotton thus baled is more compact and better protected, and there is a saving on compressing, handling, insurance and transportation estimated at $4.25 per bale.[2] It is earnestly to be desired that planters and shippers should turn their attention to this question of preparing cotton for the market, not only for the direct benefits that would accrue to them, but also in order that America may be placed at no disadvantage in her competition with other cotton-producing lands on the European markets. A little insistence by our own manufacturers on having better prepared cotton would no doubt be influential in hastening a change that would be beneficial to manufacturers and planters alike.

In the recent discussion of the monetary question in this country attempts have been made to show that the Southern farmer has suffered seriously from competition with silver standard countries that produce cotton for the European markets, and some plausible arguments have been brought forward in defense of this thesis. The two chief competitors of the cotton states on the European markets are Egypt and British India. Each of these countries is on a silver basis, and in each prices have adjusted themselves to the silver standard. Now it is a well-known fact that prices of food and labor do

[1] H. Hammond, *loc. cit.*, 362. [2] *Ibid.*, 364.

not adjust themselves so readily to fluctuations in the value of the standard metal as do commodities which enter to a large extent into international trade. It is even questioned whether in the interior of British India there has been any rise in the price of labor and articles of food.[1] Certainly the rise has not corresponded to the fall in the price of silver. The Indian grower of cotton who can, therefore, purchase the same, or nearly the same, amount of labor and provisions with a given amount of silver as in 1873, and who can obtain for his product a proportionally larger amount of silver than he could at that date, has an undoubted advantage over his competitor from the Southern states. He

> can better bear the unusually low price of cotton than can the American producer, who must pay wages, living expenses and other costs in gold or in some form of credit money equivalent to gold. Since the Indian product must be subjected to the severe competition of the world market, the seller by no means as a general 'rule' obtains an unusually high rate of profit, or premium on effort; but he is enabled by the favorable rate of exchange to procure sales through a lowering of his price, and still make the normal rate of profit, while his competitor reckoning on a gold basis can under the same scale of prices perhaps no longer cover cost of production.[2]

It is questionable, however, whether this advantage which silver-standard, cotton-producing countries are supposed to possess over the Southern states is anything more than a theoretical one. The shipments of Indian cotton to Europe show little or no increase since 1873; and since 1890 there has been an actual decline in the exportations. Egypt has increased her shipments; but in her case the increase is due to the peculiar character of the Egyptian cotton which has made it in great demand for the manufacture of "thread, fine yarns, fine underwear and hosiery (such as Balbriggan, *etc.*), and for goods requiring smooth finish and high lustre,"[3] for which American upland cotton is unsuited, rather than to any advan-

[1] Andrews, An Honest Dollar (1896), pp. 80, 81.
[2] Lexis, "The Present Monetary Situation," *Economic Studies*, I, 227.
[3] Shepperson, Cotton Facts (1895), p. 95.

tage, real or supposed, which Egypt may derive from her present double standard.

It may be claimed with fairness, however, that India by consuming her own cotton has in the manner already described come into direct competition with the British cotton industry, and has thus competed indirectly with the American cotton growers. Yet we do not find that India has in recent years, corresponding to the years of decline in the prices of silver and of cotton, made strenuous efforts to increase her production of this staple. According to the estimates of the eminent cotton statistician, Mr. Thomas Ellison, the total production of India, in thousands of bales of 400 pounds each, has since 1890 been as follows:

1890–91	2959	1893–94	2837
1891–92	2509	1894–95	2621
1892–93	2575	Normal	2777 [1]

At most, therefore, the only argument that can be made is that, if the United States were on a silver basis, she would soon drive her competitors in cotton growing entirely out of the European markets — an argument which, considering the force of custom operative in these competing countries and the peculiar character of the cotton which they export, must be regarded as extremely fanciful.

VI.

Legislation can do little towards providing a remedy for the agricultural depression in the South; for the causes of this depression are to be found in the unwise economy and bad husbandry prevailing on the cotton plantations, rather than in the demonetization of silver, the existence of a protective tariff or dealings in "futures." It doubtless savors of the commonplace to repeat the often made assertion that a great many farmers are improvident and thriftless, but there is no portion of the country where the statement is more applicable to-day

[1] "The Cotton Trade of India," in Latham, Alexander & Co.'s Annual Report for 1895, p. 43.

than it is in the South. This many of the Southern people are themselves willing to admit. It was an Alabama planter who wrote:

> I am unable to say that this depression or distress is produced by causes coming from the action or non-action of Congress or of our state legislatures. The trouble arises from bad management and want of proper economy at home.[1]

It is true that the Southern farmers are, in a large measure, blameless in this matter, for they have been made unwilling victims of much of this unthrifty management. The burdens thrown upon the South by the Civil War; the loss of much property and the decline in value of what remained; the necessity of maintaining agriculture on lands almost exhausted by years of reckless cultivation; the raising of cotton on such lands without adequate capital and with ignorant and careless laborers — these burdens have not yet ceased to weigh heavily on the South, and they suffer no danger of being overestimated. The two greatest hindrances to the advancement of Southern agriculture, "the cropping system" and "the crop-lien system," were imposed upon the South during reconstruction days; and escape from them has been difficult, if not impossible, to most of their victims.

How to free the cotton states from these obstacles to agricultural progress is a serious problem, for which no satisfactory solution has yet been offered. They are indissolubly bound together, and are further so complicated by their relation to the race problem and to the question of absentee proprietorship, that the difficulties which one meets in attempting to find a solution for the problem are well-nigh insurmountable. Wherever in the cotton states we find an increase in the number of small farms, we also find a decrease in the average size of these farms; a decrease in the number of farms occupied by their owners; an increase in the number of tenants farming on the share system; usually, though not always, an increase in the percentage of colored to white farmers; an

[1] Report of Senate Committee, *loc. cit.*, I, 312.

increase in the amount of land given over to cotton; and, finally, an increase in the number of crop mortgages.[1]

As respects the share or "cropping system," it is now generally admitted that the abandonment of this method of land tenure and a return to the wage-system would be a change most beneficial to agriculture in the cotton states. The causes which led to the failure of the latter at the close of the war and necessitated the adoption of the former have nearly ceased to be operative; while the results of recent investigations show plainly that in those localities where the two systems are in operation side by side, better cultivation and more prudent management result when the farming is carried on by hired laborers than when it is left to "croppers." Even where the proprietor does not occupy his own plantation and himself conduct the farming, experience, as in the "Delta region,"[2] has shown that under efficient managers, farming under the wage-system can be made fairly successful, even with negro laborers.

More uncertainty is manifest when we come to seek means for removing the other great impediment to agricultural reform, "the crop-lien system," although we here come to the root of the whole evil. The late Henry W. Grady, one of the greatest men the South has produced since the war, saw clearly sixteen years ago that in "the crop-lien system" was to be found the source of nearly all the evils with which Southern agriculture was afflicted. Speaking of the tendency, which he then supposed to exist, for the plantations of the advancing merchants to swallow up the little farms of the mortgage-burdened debtors, he declared that, "the remedy for this deplorable situation is first of all the establishment of a proper system of credit."[3] Elsewhere[4] I have ventured to suggest that one means of relief from the present methods of obtaining credit in the cotton states might be found in the establishment of coöperative credit societies, such as exist in

[1] *Cf.* H. Hammond, "The Culture of Cotton," *loc. cit.*, 242, 243, 249.

[2] The alluvial lands lying along the Mississippi, Red and Yazoo Rivers.

[3] *Harper's Magazine*, LXIII, 719 ff.

[4] In a monograph soon to be published by the American Economic Association.

nearly every country of Continental Europe. Possibly such a measure as that proposed in the last Congress, permitting the establishment in small places of national banks having a less capital than $50,000, might be found at least partially successful as a remedy. There are comparatively few banking institutions in the South, and there is no one but the merchant who is able and willing to assist the small borrower. Without some reform in the present system of agricultural credit in the cotton states, there is little hope that the small farmer will follow the well-meant advice of numerous writers and speakers who urge him to diversify his crops and raise his own supplies.

The small farmers working on a narrow margin are always in imminent need of cash, and cotton is the only crop that never fails of a ready cash sale. Every pound of it can be readily disposed of by the producer for cash, and at the prices quoted in the markets of the world. All other crops, unless grown upon a scale suitable for shipment in bulk — a scale seldom within the reach of the small farmer — are subject to the vicissitudes of the local market, easily overstocked, and often inflicting heavy loss on the producer of perishable commodities.[1]

In this connection it is to be noted that those sections of the South where agriculture has made most rapid progress, and where the farmers are most prosperous, are in the neighborhood of the cities where manufacturing and mining industries have recently shown rapid development. The expanding markets of such cities as Atlanta, Birmingham, Chattanooga and the cotton-manufacturing towns of the Carolinas and Georgia, have exercised a good influence in diversifying the crops and improving the methods of tillage in the surrounding country. Possibly another quarter of a century may show as great changes in the rural economy of the planting states as have taken place there in manufactures and commerce since the fetters fell from off the negro slave and labor obtained its proper reward and recognition.

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[1] H. Hammond, "The Culture of Cotton," *loc. cit.*, 268.

INSURANCE AGAINST UNEMPLOYMENT.[1]

THE purpose of workingmen's insurance is to make provision for the assistance of workingmen when, through any incapacity, they are unable to earn their usual wages. A workingman may be unable to work as the result of any of four contingencies — accident, sickness, old age or invalidity, or inability to obtain employment; and a complete system of assistance must necessarily cover all four of these cases. It is now very generally admitted that insurance of some kind, mutual or state aided, voluntary or compulsory, offers the best means of providing for the first three contingencies — that is, for those involving physical disability. Within recent years, however, the desirability of extending the field of insurance to the fourth contingency, where inability to earn wages is the result of involuntary idleness, has been strongly urged. It is the purpose of this paper to consider to what extent a system of insurance can be profitably employed in this last case.

Fortunately, we need not study this problem from the purely theoretical standpoint. The fact that during the widespread industrial depression of recent years many workingmen have been forced to remain in involuntary idleness has led to attempts in various countries to make provision against unemployment through some system of insurance. Conspicuous among them are the out-of-work insurance institutions that have been created in several of the cantons of Switzerland, at Cologne and at Bologna. Of these the Swiss organizations are of much

[1] The literature of insurance against unemployment is already extensive. For the best account of the Swiss experiments with which this paper chiefly deals, the reader is referred to two *Circulaires* of the *Musée Social*, Nos. 2 and 5 of Series B; the report of the French *Office du Travail*, *Documents sur la question du chômage*, 1896; and the paper by Eugéne Rostand, "*De l'assurance contre le chômage involontaire*," contained in the report of the Third Session of the International Congress in Relation to Accidents to Labor and Social Insurance, Milan, 1894. The *Circulaires* of the *Musée Social* give the most complete bibliography of the question that has been prepared.

the greatest importance, and for that reason most attention will be devoted to their operation. A consideration of the efforts there made will serve not only to illustrate the principles involved in the organization of this kind of an insurance system, but also to show the practical difficulties with which its administration is attended.

The first attempt under government auspices to provide for insurance against unemployment was made by the town of Berne. On January 13, 1893, the town council provided for the creation of a municipal institution for the insurance of workingmen against unemployment. Though under municipal authority, membership in the institution was left entirely voluntary. Practically the only condition of membership was the payment of monthly dues of forty centimes ($0.077). To the fund thus accumulated the town agreed to add a subsidy, the maximum amount of which was limited to five thousand francs ($965) a year. The constitution also provided for the receipt of gifts from employers and other individuals.

The value of the out-of-work benefits was fixed at one franc ($0.193) per day for an unmarried and a franc and a half for a married man. This relief was to be granted only during the months of December, January and February. To be entitled to receive it a member must have paid his dues regularly during at least the six months next preceding, and must have been unable to obtain work during at least fifteen days. Relief, when granted, however, began to run after the first week of unemployment. Various conditions were placed upon those receiving benefits, in order to protect the institution against imposition. Thus, members out of work had to present themselves twice a day in a room set aside for that purpose, where they might spend the day if they desired. A workingman who refused work of any kind lost all right to aid of any kind: a member thus had no right to refuse work because it was not in his trade. There were various other cases in which the workingman lost his right to a benefit: for instance, when lack of unemployment was the result of his own fault, and especially when he had engaged in a strike. The administration of the fund was

entrusted to a commission of seven members, of whom three were to be named by the municipal authorities, two by the employers contributing to the fund and two by the workingmen.

This institution has now been in existence a sufficient length of time to furnish some indication of the character of the results. The number of members during the first year, 1893–94, was 404. Of these 166 were aided during the year, receiving $1319.16, or an average of $7.95 each. The highest sum paid to any one person was $20.27. The total expenditure of the year was $1508.30. The receipts for the year were: dues of members, $212.30; gifts from employers and others, $382.14; and municipal subsidy, $913.86. It will be seen that the members contributed but fourteen per cent of the total receipts, and that they received in actual benefits six times the amount paid in by them as dues. One would think that under such exceptionally favorable circumstances membership would increase rapidly. Such, however, has not been the case. During the second year, 1894–95, there were but 390 members, or 14 less than the preceding year. Aid was given to 219 persons, or more than half the members, to the extent of $1869.06, or an average of $8.53 each. But $263.79 out of total receipts of $2249.86 came from dues of members. The ratio of this sum to the amount paid out in benefits is fourteen per cent, the members thus receiving on an average seven times the amount contributed by them.

The institution was first established for but two years as an experiment. In 1895, the two years having elapsed, the town council determined by an almost unanimous vote to continue it in operation. Some modifications were, however, introduced in its organization. Dues were raised from forty to fifty centimes per month, and the maximum amount of the municipal subsidy was raised from $965 to $1351. Daily benefits were also increased to one and a half francs for single and two francs for married members. In addition, the administration of the municipal employment bureau, which had until then been an independent institution, was attached to that of the insurance fund.

The result of these changes was to increase the operations of the system. On December 31, 1895, there were 605 members enrolled, of whom 169, or 49 more than during the preceding year up to the same date, had been aided. The total receipts during the year 1895–96 were $2,213.99, of which $312.70 were derived from dues. The total expenditures were $2,121.30, of which $1,932.22 were for benefits. In this third year, therefore, slightly over six times the amount received as dues from the members was paid in benefits.

Saint Gall, a town of about 30,000 inhabitants, was the first to follow the example of Berne in providing for the insurance of workingmen against unemployment. Its policy, however, differed radically from that of Berne, in that it adopted the principle of compulsory insurance. By the law of May 14, 1894, the canton of Saint Gall authorized any of its communes to create a compulsory unemployment insurance institution, and provided further that several communes might combine to organize a general insurance system. It was on the basis of this law that the town of Saint Gall, after an abortive attempt to unite with the neighboring communes of Tablatt and Straubenzell, founded its unemployment insurance fund by act of June 23, 1895.

The principal features of this institution can be summarized as follows: Membership was made obligatory upon all workingmen whose daily wages did not exceed five francs, excluding youths and apprentices earning less than two francs a day. Weekly dues were fixed at fifteen centimes for members earning three francs or under, twenty centimes for those earning from three to four francs and thirty centimes for those earning more than four. The amount of the benefit was likewise proportioned to the wages of the recipient, being 1.80, 2.10 and 2.40 francs per day respectively for the three classes. Benefits could not be paid to any person for more than sixty days in any one year. In order to be entitled to benefits a member must have paid dues uninterruptedly for at least six months, and had to show that for at least five days he had not been able to secure work suited to his occupation at the usual wages of the season. Any

man who was without work as the result of his own fault, who had participated in a strike, or who refused without a good reason work assigned to him by the employment bureau which was operated in connection with the insurance fund, was debarred from any right to benefits. Workingmen incapacitated for labor through sickness or accident were not entitled to benefits, since they were otherwise insured against these two contingencies. In addition to dues, the revenue of the fund included a subsidy from the town, which, according to the law, could not exceed a maximum of two francs for each person insured, and a subsidy from the canton. No account was taken, apparently, of gifts and donations from employers or other persons. The fund was administered by a commission of nine members, two of whom were appointed by the municipal authorities and seven by the workingmen.

This institution commenced operations July 1, 1895. The law being obligatory, the first duty of the commissioners was to see that all persons to whom the law applied became members. As the result of the first notice 1535 persons joined; a new call a month later added 579 names; and, as the result of further efforts, the total number of persons enrolled during the first year was increased to 4220. This total was secured only after securing over 150 convictions of persons who had neglected to answer the summons to enroll. Of the total number secured, 2895 were members of the first class, or those earning not more than three francs; 1179 of the second class; and but 146 of the third.

During the year 430, or about ten per cent of the members, registered themselves as without work. Of these only 363 received benefits, since many had not made the required contributions for six months. To the beneficiaries was paid a total of $4536.30, or an average of $10.55. The highest amount received by one person was $24.32, and the lowest $1.74. The receipts and expenditures during the year were as follows:

RECEIPTS.

Contributions of members	$4183.14
Municipal subsidy, cash	772.00
Municipal subsidy, payment of operating expenses	1084.44
Interest	21.81
	$6061.39

EXPENDITURES.

Benefits	$4536.30
Operating expenses	1084.44
	$5620.74
Balance on hand	$ 440.65

It will thus be seen that the year closed with a surplus in the bank, in spite of the fact that the city paid only a portion of the maximum sum that it could be required to pay. It should be remembered, however, that, as this was the first year, no benefits were paid during the first six months, since no member could before that time have made the required number of payments. Accordingly, the officials estimated that future charges would be much heavier, and that it would be necessary either to increase contributions or to reduce the benefits.

This institution, like that at Berne, was created for a provisional period of two years. Before the end of the second year, however, the city council on November 8, 1896, by a decisive vote ordered the suspension of the fund after June 30, 1897. The first experiment in compulsory insurance against unemployment was thus declared a failure. It is worthy of note, also, that this suppression was accomplished on the motion and through the votes of representatives of the working classes in the council.

A detailed account of the organization and operations of the institution at Saint Gall has been given, even though its suppression has been definitely decided upon, since in matters such as this information can be gained from failures as well as from successes. It is worth while, therefore, to examine some of the objections that were raised against this scheme. The

first was that which inevitably arose from the members who were forced to make contributions without receiving any benefits in return. This is a fundamental objection. The liability to lack of employment varies greatly in the different trades; so that to require all workingmen earning less than a certain sum to become contributors to an insurance fund, as was done at Saint Gall, results in positive injustice. Employees having steady employment, such as factory operatives, are made to contribute to the insurance of workingmen, such as those in the building trades, who are certain to be unemployed more or less during the year. The experiments at Berne and at Saint Gall have shown that it is the workingmen in the building trades who suffer most from lack of employment. Thus, in the former city, though membership is open to men of all occupations and the benefits are six or seven times the dues, only day laborers, for the most part in the building trades, and other employees in the same trades have availed themselves of the fund. Out of the 226 persons registered the second year as out of work, there were 163 day laborers, 18 plasterers or painters, 13 roofers, 10 masons, 9 carpenters, 4 stonecutters, 3 cabinet-makers, 2 locksmiths, 1 woodsawyer, 1 cement worker and 1 fireman. It will be observed that factory employees proper were absolutely unrepresented. Turning now to the experience of Saint Gall under compulsory insurance, it is found that, though both factory and building-trades employees were required to be insured, practically all the persons aided belonged to the latter class. Of the 430 persons registered as out of work during the first year, there were 205 day laborers, excavators, *etc.*, 47 masons, 18 porters, 17 housepainters, 14 public messengers, 13 dressmakers, 12 plasterers, 11 carpenters and 10 roofers; while no other occupation was represented by as many as ten persons.

A second objection was the great difficulty experienced in enforcing membership. The administrators of the fund found it almost impossible to compel persons to become members or afterwards to pay their dues, even though they resorted to prosecution in a great many cases. In the December following the commencement of operations they found it necessary

to send notices to 1110 persons who were behind in the payment of their dues. On April 1 over 4000 francs were owing by about 1300 persons.

Finally, it was complained that the indemnities were much too high. It was found that the efforts of those out of work to gain employment were sensibly relaxed. Many seemed to use every effort to obtain as much relief as possible, seeking work earnestly only after they had been aided the maximum number of sixty days. In a word, self help seemed to have been lessened in just the proportion that assistance was granted.

In spite of the check that the movement for the insurance of workingmen has received in Switzerland through the suppression of the institution at Saint Gall, efforts in this direction have not been abandoned. Though it is generally admitted that both the Saint Gall and the Berne systems had defects, it is claimed that they were such as lack of experience rendered inevitable, and that they can be eliminated by a more scientific organization. At Basel a plan is now under consideration that is of especial interest, since it involves an attempt to meet the objections which have been urged against the two older schemes. The proposed system is beyond doubt in every way a more detailed and a more carefully worked out plan of insurance than any that has yet been put into operation.

In 1894 the council of state of Basel submitted to the general council a proposition for the municipal insurance of workingmen against unemployment. This measure, after discussion, was first referred to a committee of experts, the leading spirit of which was M. Adler, professor of political economy at the University of Basel. The commission reported in April, 1896, a modified plan. After a full discussion, this report was referred to a committee of the general council, which, after further consideration, reported a specific bill, differing in but slight details from the proposition of the committee of experts. In its final form the plan provides for the compulsory insurance, through a municipal fund, of all masons and excavators and all workingmen subject to the federal factory law who do not earn

more than 2000 francs a year, excluding, however, young people and apprentices earning less than 300 francs a year. In adopting the principle of compulsion, however, the important option is given to the workingmen of insuring themselves through voluntary organizations, instead of through the municipal system. This permission was granted in order to meet the objection that was urged against the bill as first framed by the committee of experts, that certain classes of workingmen had already voluntarily insured themselves through their labor organizations, and that it would be unjust to compel them to become members of the city organization. This was notably true of the members of the "Typographia," an organization of the printers of the city.

The receipts of the fund consist of (1) dues from members, (2) contributions from employers, (3) a subsidy from the city, and (4) gifts and legacies. For the payment of dues and the determination of the amount of benefits to be given, members are first divided into three categories: factory employees, workingmen in the building trades who are the least subject to unemployment, and other workingmen in the building trades. The object of this division is to take account of the differences in the degree of probability of unemployment. Within each of these categories there is a further division of members into three classes, according as their weekly earnings are fifteen francs or under, from fifteen to twenty-four francs, or twenty-four francs or over. The weekly contributions demanded of these classes are ten, fifteen and twenty centimes, respectively, for members of the first category; twenty, thirty and fifty centimes for members of the second; and thirty, forty-five and sixty centimes for members of the third. The contribution of employers is fixed at ten centimes per week per workingman insured in the first category and twenty centimes for workingmen of the second and third categories. The city assumes all the expenses of management and agrees to grant an annual subsidy of 25,000 francs.

The benefits granted to members out of work vary from eighty centimes to two francs a day. They are graduated in

an ingenious manner according to the class to which the recipients belong and according to their needs. Thus, the unmarried man, the married woman, and the widower or widow without children under fourteen years of age receive from 0.80 to 1 franc a day; the widow or widower with children under fourteen years of age, and the married man if he has not more than one child under fourteen years of age, receive from 1.20 to 1.50 francs per day; and, finally, the married man with several children under fourteen years of age receives from 1.50 to 2 francs. The benefits of the married man are reduced twenty or thirty-three per cent if his wife is also employed, or if she receives a benefit from the insurance fund. The maximum length of time during which benefits can be paid is ninety days. An important provision is that there may be paid, in place of the above indemnities, traveling expenses for so great a distance as two hundred kilometers, and an indemnity of one franc to a single or two francs to a married man who desires to leave the city to obtain work elsewhere. This is to prevent a workingman who has an opportunity of finding work elsewhere from remaining a charge upon the fund. No benefits are payable when the lack of employment is the result of a dispute of employees with their employer concerning the amount of their wages; when the member voluntarily quits his employment; when he has been dismissed for breaking the factory or other regulations; when the lack of employment is the result of sickness or accident against which the workingman is elsewhere insured; or when, without a valid excuse, the person insured refuses work offered to him.

The question of insurance against unemployment has also received attention in other Swiss cities, notably Zurich and Lausanne. As yet, however, the discussions have not resulted in any distinct propositions; and it will, therefore, be unnecessary to consider them. The institutions that have been actually created at Cologne and Bologna offer few points of interest. That of Cologne was created in 1896, and is under municipal management. Insurance under it is purely voluntary. Any workingman over eighteen years of age and a resident of the

city during two years can become a member by paying a weekly contribution of twenty-five pfennigs. He thus acquires a "right to work" in case he is unemployed during the period from December 15 to March 15. If work cannot be found for him, he is entitled during the first twenty days of unemployment to a benefit of two marks if he is married, or one and a half marks if single. A large guarantee fund has been created through gifts and the contributions of honorary members. In addition, the city itself has granted a subsidy of several thousand dollars as an encouragement to workingmen to become members. At Bologna a voluntary unemployment insurance institution has been created which affects only employees in building trades. Members must pay an annual contribution of 3.30 francs if they are under twenty years of age, or five francs if over that age. The out-of-work benefits are sixty centimes a day for members of the first and one franc for members of the second class, during a maximum of forty days, commencing with the sixth day of unemployment.

The experiments that have been made in Switzerland and elsewhere, while they are not sufficiently extensive to furnish conclusive evidence regarding the practicability of insurance against unemployment, are fully adequate to bring out the chief considerations that must be taken into account in any attempt to organize such a system.

An examination of the nature of the problem of unemployment shows that insurance principles are ill suited for its solution. Insurance presupposes that the risk involved shall possess two characteristics: it must be well defined and it must be the consequence of a chance that can be estimated with some degree of certainty. The risk of unemployment conforms to neither of these conditions. It is not well defined, since there is no fixed criterion as to what work the unemployed should be required to accept. It does not depend upon calculable chance, because the personal element involved in seeking and retaining work, to say nothing of the uncertainty of the employers' action, enters so largely. Though lack of employ-

ment is often unavoidable on the part of the workingman, the latter's will and energy play such an important part in the matter that any attempt to distinguish unavoidable idleness is futile. Insurance concerns itself with a risk that can be calculated and provided for in advance; but this cannot be done in regard to lack of employment. The study of the various systems that has just been made shows that, in spite of the fact that the term insurance has been employed, the attempt has not really been made to create insurance systems. In no case has the attempt been made to calculate risks and to adjust contributions accordingly, or indeed to make the system self-supporting. Only nominal contributions have been required from members, while the great burden of expense has been borne by the government and by voluntary contributors. In reality, therefore, it is scarcely proper to speak of these institutions as insurance organizations. What has been created is really a more methodical system of granting relief to the unemployed.

Turning now to the actual organization of the Swiss systems, it will be seen that the radical mistake was the failure to recognize the essentially different conditions obtaining in different industries. The problem of lack of employment in the factory trades, for example, is quite different from that in the building trades or among ordinary day laborers. It may be confidently stated that any attempt to introduce even a modified form of insurance against unemployment should follow strictly trade lines. In this respect the Basel proposition shows a marked advance over the other systems.

This, however, brings us to the consideration of the out-of-work benefit features of labor organizations. If unemployment insurance should follow trade lines, every argument would seem to indicate that such efforts should be made through existing organizations of workingmen. The great work done by these organizations in the way of aiding their members is well known. For example, the chief labor correspondent of the British Board of Trade stated, in his report on trade unions for 1895, that one hundred of the principal unions expended during the

year $2,121,775 in relief of the unemployed. In the United States a large part of the expenditures of the trade unions likewise go for this purpose, though it is not possible to make any exact statement of the amount. This method of granting relief possesses manifest advantages over the use of a municipal organization. The work of unions is not charity, but the highest order of mutual aid. Labor unions, moreover, are in a peculiarly favorable position to assist their members in obtaining work, and are able to guard themselves against imposition. Finally, as we have seen, unemployment is not a condition beyond the control of individuals, and does not happen with a regularity that can be calculated. Insurance proper affords little room for discretion in granting relief; while each case of unemployment should be considered upon its particular merits. Labor organizations can exercise this necessary discretion in a way that is utterly beyond the power of a municipal institution.

The logical conclusion is that in America, at least, provision against lack of employment can best be made for the established trades by the men themselves through their organizations; and that this provision cannot be made according to hard and fast insurance principles, but must allow for a certain elasticity or discretion in the granting of relief, according to the circumstances of each case and the amount of funds available for this purpose.

Though the Swiss systems must be regarded as faulty, in lacking the character of true insurance, it is not desired to give the impression that such municipal institutions cannot be made to serve a useful purpose. On the contrary, there are involved in their organization principles which, when properly applied, can be of great assistance in solving the problem of unemployment. They may not provide scientific insurance, but they constitute a vast improvement over the old methods of indiscriminate and uncertain relief. They require employees to register and to make some personal sacrifice in order to be entitled to relief; they insure that relief shall be granted only to *bona fide* residents of the city; and they bring the unemployed under the supervision of the public authorities. This

last feature greatly facilitates finding work for idle men, either through a public employment bureau or in the immediate service of the government. To accomplish their work in the best way, however, the municipal institutions should cease to lay emphasis upon the idea of insurance. The principle of registration, accompanied by the requirement of small monthly contributions, is the really valuable feature of their work. They should seek chiefly to reach those classes which do not possess labor organizations. Finally, they should make assistance to the unemployed in finding work the most important part of their duties. Only after they have failed in this effort should they grant pecuniary relief.

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THE SOCIOLOGICAL THEORIES OF GABRIEL TARDE.

GABRIEL TARDE, the French sociologist, is rapidly gaining in popularity, both in his own country and abroad. An attempt to consider the value of his contribution to the advancement of social science may, therefore, be found worthy of interest. Such an attempt has not yet been made, Tarde's theories on "imitation" having until now been discussed only in a fragmentary way, and in connection with the particular points of view of competing conceptions.

The man who is now regarded as the most prominent leader of the French sociological school, and to whom his countrymen, after many years of somewhat envious distrust, are at last doing justice, is a self-made scholar, grown up in solitude and self-communion, far removed from any contact with the powerful university and academic conventicles of the French metropolis. The greater part of his life has been spent in an obscure corner of France, at Sarlat (Dordogne). There he was born in 1843, and there he remained, after having completed his studies, for nearly eighteen years, on account of his professional duties of *juge d'instruction.* He began to contribute to Ribot's *Revue philosophique* in 1880–81. At that time the infatuation of sociologists for the Spencerian conceptions, however misapprehended, was at its height. The metaphor of the "social organism" was the motto of the day. After his *début,* the unknown magistrate from Sarlat took a firm stand against the dominant doctrine, according to which sociology was called upon to ascertain the substantial identity of social and biological facts. He claimed, on the contrary, that the rising science ought to aim at determining the differential element of social phenomena. On this solid basis Tarde gradually built up his theory of social life in a series of suggestive papers, and finally gave it out in the *Lois de l'imitation,* published in 1890.

Through this fascinating book Tarde has won fame even beyond the field of specialists, the originality of his views being such as to strike the fancy of sociological *dilettanti*. But the importance of his work goes farther and deeper. If we carefully look through the whole series of his writings, so as to grasp the ultimate meaning and to appreciate the remotest consequences of his speculations, we may be able fully to recognize the fact that Tarde has succeeded in bringing together the elements for one of the most fruitful conceptions of social life that has ever appeared in the history of philosophy.

I.

According to Tarde, social intercourse in its essential nature — that is, divested of every complication of mechanical and biological elements, as, for instance, an epidemic contagion or the suffocation of a man in a too compact crowd — is elementally "the influence of one brain upon another brain." [1] Such an influence presupposes: (1) a model and a copy, that is to say, an idea which tends to reproduce itself by suggestion; and (2) an act of imitation by which the reproduction is accomplished. We have thus, on the one hand, the element owing to which social facts differ, namely, invention — the manifestation of creative genius in all its degrees, from which proceeds every improvement, however insignificant, in any kind of social phenomena, linguistic, religious, juridical, æsthetic; and we have, on the other hand, the element through which social facts repeat themselves, namely, imitation, in all its forms, forced and spontaneous, elective and unconscious.[2] In so far as imitation determines the repetitions and similitudes that exist in social life, it plays a part which is analogous to that of heredity in the living world and to that of undulation in the physical world.[3] We must not confound the repetitions and similitudes which have their origin in imitation with those others which

[1] Études pénales et sociales (Lyons, 1892), p. 357: essay on "Les maladies de l'imitation."

[2] Lois de l'imitation (Paris, 2d ed., 1895), pp. 2, 3.

[3] *Ibid.*, pp. 15, 16.

might be found among nations risen by separate ways to a certain degree of civilization. The latter are the result either of biological causes, such as the fundamental identity of human nature and of its organic wants, or of physical causes, such as the uniformity of the external *milieu*, by which like wants find like means of satisfaction.[1] All that in the phenomena of human aggregations is social and not vital bears the stamp of imitation, which, as M. Tarde says,

> Est la pierre de touche la plus nette pour distinguer ce qui est social de ce qui est vital. Tout ce que l'homme fait sans l'avoir appris par l'exemple d'autrui, comme marcher, crier, manger, aimer même, dans le sens le plus grossier du terme, est purement vital; tandis que marcher d'une certaine façon, au pas gymnastique, valser, chanter un air, préférer à table certains plats de son pays et s'y tenir convenablement, courtiser suivant le goût du jour une femme à la mode, tout cela est social.[2]

But what now is the law that determines the unequal and variable diffusion of inventions? Or, what amounts to the same: What is the law of imitation?

Tarde makes a distinction between logical and extra-logical laws of imitation. The logical laws are to be discovered whenever an invention is imitated solely because it is found to be truer or more useful than any of its competitors. There are inventions and discoveries that are destined by their reciprocal incompatibility to replace each other, and there are others that not only can coexist, but can be combined and accumulated. Hence we have in every order of social phenomena, from language to art, a double series of logical conflicts and logical copulations representing the two directions, critical and synthetical, through which is attained social progress, or, in Tarde's conception, "the ascent of human societies to the most intense energy of faith, and to the most nearly perfect equilibrium of appetites."[3]

The conflict arises at the appearance of a new invention, whenever this satisfies the same wants or has the same object

[1] Lois, pp. 40–46.
[2] Logique sociale (Paris, 1895), preface, pp. vi, vii.
[3] Lois, p. 160.

as preceding inventions: in languages, between the accepted expression and the neologism; in religion, between the official dogma and the heretic creed; in science, between the ruling theory and the hypothesis of the new inquirers. The conflict terminates when one of the two contending elements has been eliminated. Union, or as Tarde puts it, "*l'accouplement logique*," is accomplished when the inventions in contact are, by their nature, capable of being combined and of reinforcing one another. We must discriminate between the inventions that can stand an indefinite superposition of others of the same nature and those which, beyond a certain limit of accumulation, have to yield to substitution should progress continue. The material of a language can be augmented without limit by the addition of new words responding to new ideas; but the grammar cannot be modified on its fundamental lines, beyond a certain limit, without profoundly impairing the organism of the language itself. Thus it is with the religious creeds: in them the narrative and legendary element, capable of infinite augmentation and development, is faced by the dogmatic and ritual element, which by its very nature is relatively unchangeable. Thus also science admits of unlimited accumulation, so far as the enumeration and classification of natural facts is concerned; whereas scientific theory is the most unyielding of human products, and the interpretation of facts *per causas* is perfected only by the substitution of new theories for old.[1]

But the logical causes, as described above, very seldom operate apart from some other factor in the choice of examples to be imitated. Tarde formulates the following laws:

Examples of equal logical and teleological value being given:

1. *Internal are imitated before external models*, which means that the imitation of ideas precedes the imitation of their external manifestation, and that ends are imitated before means. A proof of this may be found in the fact that envy, *i.e.*, the desire of external imitation, never precedes obedience in the intercourse of the different social classes, but is always the sign and the consequence of an anterior obedience. In

[1] Lois, pp. 154–204.

being gradually attenuated, social inequalities become more unbearable to inferiors, cease to produce obedience — a form of internal imitation — and give birth to envy, which ends by completely eliminating the inequalities themselves. This law, according to which imitation proceeds *ab interioribus ad exteriora,* reproducing first the most intimate and hidden elements of the living model — aims and ideas — and then its exterior aspects, may explain why legislative reforms follow at a distance, without ever preceding, the intellectual and economic changes to which they correspond. The same law gives us the reason for the *survivances coutumières* in every kind of social facts, — linguistic, juridical, ritual, æsthetic, — showing us in these survivals the external imitation, that is, the imitation of expressions or means, outliving the disappearance of the internal model, namely, ends and ideas.[1]

2. *The examples of persons and classes judged superior are imitated in preference to those of persons and classes reputed inferior.* Whatever may be the organization of a society, aristocratic, theocratic or democratic, imitation propagates from above to below, because the imitative intercourse is that of model to copy. This means that imitation is commonly unilateral. The idea of social preëminence is intimately connected with the fact of power and wealth. At all times and in every society the class which enjoys power and wealth is that from which examples descend to the lower classes. Of course invention may spring from the lower ranks of a society, but in order to spread out and to become an efficacious factor of progress, it must be received by the leading classes, "*cime sociale en haut-relief, sorte de château d'eau social d'où la cascade continue de l'imitation doit descendre.*" In connection with changes in social condition and with the diffusion of power and wealth from one class to another, the series of social preëminences develops itself in the line of historical evolution; and the center of imitative impulse gradually passes from the ancient theocracies to the aristocracy of blood, and later to the plutocracy, against which arises, to triumph in the future, the aristocracy

[1] Lois, pp. 211–232.

of the intellect. This law may explain the fascination that towns in general exercise over country-folk, and that the capital of a country has over other cities.[1]

3. *An assumption of superiority makes conspicuous either ancestral models or those furnished by contemporaries.* This law is of the greatest importance to Tarde. Imitation develops itself in history in two directions: that of habit (*imitation-coutume*) and that of fashion (*imitation-mode*). These alternate during the life of human aggregations, without, however, permitting the spontaneous element of fashion to overthrow entirely the traditional element of habit, which is almost the warp into which the variations suggested by contemporary models weave themselves. The entire history of civilization may be divided into epochs of tenacious tradition, in which the imitation of ancestral models dominates, and epochs of invading fashion, in which the secular series of ideas and rules increases through the experience and the inventions of contemporaries. To each period of fashion succeeds one in which the recent acquisitions unite and become a definitive social patrimony through the formation of habits.[2] The alternation of these two modes of imitation cannot be clearly perceived by looking at human history in its entirety, because very seldom do the crises of foreign imitation occur simultaneously in the different fields of social activity. They appear now in the domain of language, now in that of politics, and again in that of literature and art. One cannot seize in detail the individual action of these two factors without studying separately each one of the various groups of facts in which the life of human societies is realized. Tarde proceeds to such a study in what concerns religion, politics, law, economy, ethics and art. This part[3] of the *Lois de l'imitation* — a review of which cannot here even be attempted — is doubtless the most brilliant and the most suggestive portion of a work which is justly described as "fascinating" by so competent a critic as Professor Giddings.

[1] Lois, pp. 232–264. [2] *Ibid.*, pp. 265–276. [3] *Ibid.*, pp. 277–394.

II.

In *La logique sociale* Tarde endeavors to state the laws of invention. He says that it is impossible to understand how and why an invention is produced without taking into consideration, on the one hand, the mental activity of genius, and, on the other, the external causes. The latter consist principally of the various influences, linguistic, religious, economic, political and æsthetic, all of which operate in conformity to the logical and extra-logical laws of imitation, and lodge the elements of a future invention in the brain of a genius. The internal causes are to be sought, according to Tarde, in the mental activity of a genius.

> Genius [says he], a very peculiar vital invention, is, at the same time, the highest blossom of life and the highest source of society. Without attempting to violate the secret of its solitary meditation, of that mysterious elaboration whence flow the sources of the social stream, one may say that genius consists in a mental conflict of judgments, or of ways of action, formerly believed to be connected, which now, for the first time, reveal their contradiction; or in a mental union of judgments, or of ways of action, till now considered unconnected, which suddenly disclose the possibility of mutual confirmation. In genius the tendency towards destructive criticism exists as well as the tendency toward inventive creation, but the former is ruled by the latter. Its critical spirit breaks the habitual links of thought only to utilize the fragments. What constitutes the most typical feature of genius is its aptitude to perceive the possibility of contradiction or of association among notions or rules till now considered as reënforcing or as eliminating each other.[1]

Thus, in the mind of the inventor takes place the same conflict or the same union of aims and of ideas which arises in the mind of the imitator, and which causes the logical conflict or the logical union of imitations. The difference between the two cases is, that the feeling of the possibility of union or of conflict is only vague in the imitator's mind, especially in the first case, while the same feeling is most intense

[1] Logique sociale, pp. 166-173.

in the inventor's mind. Thus, whereas in the brain of an imitator the encounter of two inventions susceptible of association results only in an intensification of both, the same encounter, in a brain of genius, terminates in a new invention, a result of their combination.[1]

Inventions and discoveries do not, however, follow one another at random: the order of their appearing is in general irreversible. From this point of view Tarde distinguishes the inventions that are capable of combining or of coexisting without damaging one another from those that are destined by incompatibility to a substitution of one for another. If the former should be found in an almost identical order among people of different nationalities which did not communicate with one another, the possibility of their appearing in an inverted order might still be conceivable. But the inventions of the second species appear to us in an irreversible series. Consequently we cannot conceive the possibility of the invention of the rifle before that of the arquebuse, or suppose the inversion of the inventions which bring us from the chariot of ancient days to the locomotive. The reasons for this irreversibility, says Tarde, are twofold: logical, that is, tending towards a systematization of inventions, and teleological, *lois du moindre effort.*[2]

How is the unification of different inventions accomplished in a society? By the same process, answers Tarde, by which every single invention is produced. The systematization of elementary inventions is nothing but a more complex invention, which is produced by the same alternation of conflicts and unions assumed by him to be the condition of social progress. The critical spirit, eliminator and purifier, and the inventive genius, constructor and accumulator, collaborate to create that nucleus of principles which we find in every developed society, and in which, under the different names of catechism, constitution, ethical and legal precepts, economic laws and æsthetic rules, we find what we could term a religious, a juridical, an industrial or other grammar. It is only after the grammar is

[1] Logique sociale, pp. 173, 174. [2] *Ibid.*, pp. 180–185.

constituted in its typical features that the dictionary of any social institution can without limit increase through the accumulation of secondary inventions, assuming what Tarde calls the "grammatical livery," as, for example, legends conforming to dogma, facts explained by theory, sentences according to legislation and artistic productions responding to a dominating formula.[1]

The same process of unification is accomplished in three separate phases. The first corresponds to that which in the brain of a single inventor precedes the birth of an invention. Inventions appear and propagate themselves in the still virgin social *milieu*, each in its own field, which is limited where the conflict arises or where the affinity with other inventions reveals itself. Then begins a second and most important period, in which are remarked both the contrasts and the possibilities of accumulation; and the work of unification begins. In the third period, the essential features of social institutions having been fixed by the unification of the various groups of inventions, the accumulation of secondary inventions begins. This is the epoch when the martyrology of a religion enriches itself and its theology develops into a subtile casuistry — the epoch in which the applications of a law or of a ruling scientific conception multiply until the moment when that progression is stayed by the shock of some greater new invention that turns the stream of imitation into another channel.[2]

While the different groups of inventions are organizing themselves, a more complex elaboration is gradually accomplished by the coördination of the groups themselves into a larger unity. Progressively the various social institutions and all the groups of men in which they are incarnated — all the organized and living powers of a society, factories, armies, convents, churches, academies, corporations of every kind — blend their dissonances into one superior harmony under the empire of one common ideal. Lastly, the national unification tends toward a system of nations, federations or gigantic empires, which represent the highest production of social dialectic. As Tarde expresses it:

[1] Logique sociale, pp. 192, 193. [2] *Ibid.*, pp. 193–195.

In the far distant past, perceived with difficulty but nevertheless appearing in glimpses, we discover embryos of nations, boroughs or villages scattered at great distances on a vast tract of uncultivated territory, resembling stars in the sky. These primitive communities had in the beginning as little intercourse with one another as France and Japan in the Middle Ages or as Rome and China in ancient times. However, this golden era of foreign politics does not last. The cities, in growing, draw nearer; they take up arms and fight, or unite to struggle against a common foe. This era of close and bloody or astute and insidious dialectic terminates only by dint of wars and alliances, conquests or annexations, when a vast empire is by this means created, portion by portion, resting at last, well ordained and peaceful in its uncontested power. The novel type of civilization born of this progressive union soon breeds and surrounds itself either with colonies, thus repeating and consolidating itself, or with examples of every kind that continue to enlarge the domain of its activity. . . . Such is the law of the normal development of nations, so often, however, interrupted by warlike catastrophes.[1]

III.

Such is, in its prominent features, the sociological theory of Tarde — a theory far more interesting in its details and applications than will be supposed from the rough sketch which limits of space make necessary now. It seems difficult at first sight to determine how Tarde may have been brought to conceive its fundamental lines. Before him, imitation, although a matter of great familiarity to all, had usually been neglected, not only by sociologists, but even, as Professor Baldwin states, by psychologists. We find it superficially mentioned in one of the most suggestive works of Walter Bagehot, *Physics and Politics*, which can have been known to Tarde only in the French translation published in 1877,[2] when, it is to be supposed, the general outlines of his theory were already formed. Yet, on reflecting well, it is not really difficult to discover the point of departure in the formation of Tarde's theories. We possess evidence of

[1] Logique sociale, pp. 195, 196.

[2] In Bibliothèque scientifique internationale, Germer Baillière & Cie., éditeurs, Paris.

the greatest importance on this point in his first philosophical writing, an essay on *La croyance et le désir*, published in 1880 in Ribot's *Revue philosophique*. In this essay, which is particularly suited to reveal the typical features of Tarde's philosophical temperament, he endeavors to demonstrate the possibility of explaining all mental phenomena as incidental to the distribution of the raw material furnished by sensations into the two mental channels of *croyance* and *désir*, conceived as two Kant-like forms or schemes. Tarde adds that the appetitive power of the soul (*désir*) tends exclusively to the increase of belief (*croyance*), which constitutes the specific content of theoretical activity. Thus he is brought to give an absolute predominance to the intellectual or logical factor in mental development.

> Certainty — the maximum of belief — is always the objective point of desire (*désir*). . . . Men must have passions . . . but why that summer heat if not to mature the fruits of the spirit — the ultimate conclusions, of whatever kind, in which a long life of turmoil finds its consummation? It is the same with peoples. From age to age knowledge accumulates and is added to the teaching of the senses, which themselves go on multiplying indefinitely through the growing diversity of life. But the passions, fortunately, are far from developing on a like scale; and if civilization multiplies our needs, it distributes among them only an equal or diminishing current of desire. A people among whom should prevail perfect security, unlimited credit and the most extensive and complete knowledge, would still of necessity labor, but would manifest little ambition, little emotion, save in respect to preserving their happy state; and for the precise reason that they would have reached the limit of all desire. Consider the hatreds, the ferocity, the vices that civilization destroys, the knowledge and the rights that it produces. On the other hand, the savage, uncontrolled and ignorant, a prey to unceasing doubt and disquiet, puts faith only in the teachings of his senses. . . . Such are the two extremes of history.[1]

Here we find the germ of that conception whence will later develop the plan of the *Logique sociale*, in which Tarde

[1] Essais et mélanges sociologiques (Lyons, 1895), in which was included the paper cited above. See pp. 298, 299.

claims that the logical tendency to unification is the true organizing factor of social institutions and of social development. In connection with such views, Tarde advances the following proposition, containing, if I am not mistaken, the embryo of his sociological theory: "All social changes, small or great, spring ultimately from individual initiative, from fragments of more or less shattered personal projects."[1] It is hardly necessary to point out that such a conception is idealistic in character. It is a fact that the idea of human thought and human will as being the most essential factors of historical transformations is the corner-stone of that movement of speculation whence, in the middle of the eighteenth century, sprang the first attempts towards a scientific contemplation of human history. We find it at the basis of the so-called theory of the organic unity of the historical world, as first divined by Vico, taken up by Herder and his school, accepted by Goethe and the Romanticists, and afterwards developed in a more comprehensive synthesis by Georg Hegel.

But the Germans had ended by more and more identifying the unity revealed by historical groups with a transcendent and metaphysical entity. German idealism underwent a transformation in England, where, as Taine discerningly remarks, Thomas Carlyle gave his compatriots an English transcription of the German conceptions. By the mental habit of his race abhorring the vagueness of abstractions and of merely speculative data, the author of *Heroes and Hero Worship* was led to identify the unity of "historical species" with the concrete and living element, the "hero"—that is, to consider the historical species as the result of the action of a genius upon the social *milieu*, by means of which the unique type gradually develops itself from an original discordant multitude of separate and hostile groups —raw material on which the ideal model stamps its mark. Where the Germans place an "idea," Carlyle places a "hero." The fixed species of the German metaphysics is transfigured by the Anglo-Saxon brain into a concrete, almost a palpable, fact.

There was but one step from Carlyle's conception to Tarde's.

[1] Essais et mélanges, p. 307.

In the place of the "hero" Tarde sets "invention," meaning by that word any improvement whatsoever, traced back to an anterior innovation, in any kind of social phenomena. In his conception of the social process the power of transformation is attributed not only to genius, the appearance of which is to be considered as a revolutionary event, but to each idea, great or small, easy or difficult to conceive, which comes to life in the social *milieu*. In this view the action of genius appears to be a single manifestation of a more general law — namely, that ideas and inventions of every kind, no matter whether important or not, are causes of historical transformations.[1]

In Tarde's theory the element of imitation appears to be a datum, furnished by biology, in support of this fundamental idealistic conception. It must not be forgotten that this theory was gradually outlined during the decade 1870–80, at a time when the great movement proceeding from Comte's positivism and Spencer's evolutionism was at its height. We must remember, moreover, that the dominating philosophy of that time was, by its very nature, forced to attenuate the importance of the mental factor in historical evolution. By not sufficiently appreciating the qualitative and specific difference between social and biological fact, that philosophy necessarily conceived progress and civilization as results of a fatalistic process, not unlike that through which the living organism grows from its cell. It is nevertheless true that the idea of the transmissibility of thought and of its consequent power to modify the social *milieu* was germinating with renewed vigor in that philosophy; for experimental psychology and mental pathology were beginning to reveal the miracles of hypnotism and suggestion. Doubtless the marvelous results of experimental research in mental biology must have suggested to Tarde the thought of turning the fact of imitation to account as a firm support for his idealistic conception of history. It is through hypnotism that Tarde succeeds in seizing the influence of one brain upon another brain, in which is revealed to him the true propagation of ideas in the social *milieu*.

[1] Lois, p. 3.

IV.

Such a combination of the merely biological datum of imitation with the Carlylian idealistic conception of history is effected in a crucible furnished by a polygenistic view of cosmical origins. Tarde emphatically denies the initial homogeneity postulated by Spencerian evolutionism, and asserts the plurality of the lines of development. "Evolution," he declares, "is not a single path, but a network of communicating roads (*voies anastomosées*)."[1] To a critic who accused him of being hostile to the true spirit of evolutionary philosophy, Tarde objected that the conception of a unilineal evolution is by Herbert Spencer's disciples arbitrarily made to pass as the only possible deterministic conception of transformation. One may deny, he observes, that that which is normal is uniform, and at the same time admit, in every order of phenomena, the necessity of a genesis by transformation.[2] This does not compel one to admit the intervention of a free will — of a free caprice, divine or human, upon which should depend the choice of a multiplicity of possible developments; for, as Tarde explains:

> It suffices to believe in the heterogeneity and initial autonomy of the elements of the world — elements which contain potentialities that before their realization are unknown and profoundly unrecognizable, even to an infinite intelligence, but that, nevertheless, are realized and determined according to their own law, and project from the depths of being to the phenomenal surface true innovations, impossible to have been foreseen.[3]

Here it appears that Tarde understands evolution in the wide, vague sense of development from preëxisting principles — the *Entwickelung* of post-Kantian idealism. The scientific conception of evolution, in so far as it results from the analysis of single sciences, implies the principle of the persistence and convertibility of matter and motion, that is, of those two aspects of reality that constitute the termination of any possible inquiry. This assumption of the unity and identity of cosmical substance

[1] Les transformations du droit (Paris, 1894), p. iii.
[2] *Ibid.* [3] Logique sociale, p. 158.

excludes the possibility of multiple and heterogeneous substances. The scientific doctrine of evolution is essentially monistic; and the initial heterogeneity presupposed by Tarde, in breaking the continuity of cosmic development, will doubtless find itself in open contrast with that doctrine.

Starting from a polygenistic conception of cosmic development, Tarde necessarily assumes the non-identity of social and biological phenomena, and regards their typical and differential elements as irreducible, so breaking the continuity of the phenomenal series. In these assumptions he finds the possibility of a general or "abstract" sociology, called to study the characteristic element of social facts apart from every other concurrent factor. This possibility has been repeatedly affirmed by Tarde, and the idea appears in the preface to the second edition of the *Lois de l'imitation*, where he declares it to have been his intention "*de dégager des faits humains leur côté sociologique pur, abstraction faite, par hypothèse, de leur côté biologique, inséparable pourtant du premier.*" Thus a distinction is presupposed between a general, or, as Tarde says, an "elementary" sociology — tending to establish the typical laws of society, independent of every concrete form whatsoever — and the particular social sciences, devoted to a study of the social organizations actually existing or having actually existed in the past. The antecedents of these dualistic conceptions must be looked for in Comte's classification, wherein the abstract, general and fundamental sciences, having as their object the discovery of laws in the various orders of phenomena, contemplated in all imaginable cases, are discriminated from the concrete, particular, secondary or descriptive sciences, consisting of accounts of the manifestations of those laws in objective reality.[1]

It is useless to take up again the discussion of Comte's classification of the sciences or to repeat the reasons why Spencer's theory seems to be more acceptable and to respond better to the requirements of a monistic conception of the universe. It will be sufficient to adduce the acute and conclusive objections that Vanni, in one of his best works, raised against

[1] A. Comte, Cours de philosophie positive, leçon ii.

Comte's conception in its application to sociology.[1] Whence, argues Vanni, could the laws of general or "elementary" sociology be inferred, if not from the observation and comparison of the different societies that effectively have contributed and still contribute to human history? It is always a concrete existence that furnishes the data for scientific researches in the field of social phenomena. It is impossible to generalize without abstracting, that is, without gathering from the various single histories of human groups that which is common and essential to all. In this sense, however, abstraction is a mental process presupposed by every science, by every knowledge, by every idea, and accordingly cannot be assumed as the criterion of a classification of the sciences. Abstracting from merely accidental characters of a concrete group or aggregation is a very different matter from abstracting from the reality of the aggregation itself. By the latter method one could have mathematics or physics, but never a social science. The theory that asserts the possibility of an abstract science in the field of social phenomena confuses precisely these two different moments or aspects of the abstraction, and forgets that the basis of the classification ought to be objective. When one reflects that one can rise to the generalizations of sociology, that is, to laws, only after having viewed social life in its entirety, the essentially concrete nature of sociology appears to be incontestable. Vanni very justly observes that to claim that concrete sociology, namely, particular social sciences, ought to be founded on so-called "abstract" or general sociology, is to contradict the spirit of positive research. Is it history, then, that is founded on sociology, and not sociology on history? For these reasons we cannot agree with Tarde in admitting the possibility of a "pure" sociology, that is, of a sociology which does not take into consideration all the elements that we find in reality in social fact, but which assumes, as a matter of inquiry, only one element, mentally isolated from the whole.

Certainly the search after a typical and differential element

[1] Icilio Vanni (now Professor in the University of Bologna), Prime linee d'un programma critico di sociologia (Perugia, 1888), pp. 79, 80.

of the social phenomenon is quite legitimate. We admit with Tarde the speciality of social in distinction from biological facts. Evolutionism, if kept within the limits of a relative and critical philosophy, cannot be interpreted as a system of universal identity. Evolution, being a change from homogeneity to heterogeneity, implies the process of differentiation. The difference does not arise *ex nihilo:* it is the product of anterior conditions, but cannot be identified with them. Consequently, the characteristic features of each new fact are not looked for in its antecedents. In every group of the cosmical series we find not only the essential elements of all anterior groups, but also the elements which specifically belong to the new group and not to any other. The fundamental problem of sociology does not consist in the investigation of the biological affinities of social facts, but in the determination of the conditions from which arises a new fact, not comprised in the merely biological phenomena. This analysis made by Tarde cannot by itself constitute a sociology either abstract or concrete, because the explanation of social facts, which is the only object of every sociological inquiry, cannot be attained without taking into consideration all the factors, physical, biological, historical, which in reality concur in determining social results. A separate analysis of these various factors is imposed by necessity of method — by a logical reason; but it is only to be admitted as a step, or preparatory measure, to a synthesis reproducing the real complexity of the phenomena. Not one of these single researches can stand by itself as an "abstract science," because, as Vanni so justly remarks: "Abstraction, when assumed as a criterion of the classification of the sciences, must have an objective foundation." In the case of sociology the abstraction from the physical and biological conditions of social fact can be conceived only as a subjective means of inquiry, while the concrete representation of the phenomena cannot be attained without reuniting the elements dispersed by analysis. Tarde's theory, while limiting itself to the determination of the only typical element of social fact, mentally isolated, is not sociology: it is merely

a chapter of the new science, although extremely interesting and brilliantly conceived.

V.

The capital importance of the methodological problem in the present state of our science will account, it may be hoped, for the somewhat pedantic prolixity of the preceding discussion. It was absolutely necessary to eliminate any possible misapprehension in respect to the position taken by Tarde on such fundamental problems as those concerning the logical character of the science itself. We may now ask ourselves the question: Has Tarde succeeded in his purpose to determine the characteristic element of social fact?

After the splendid and unequaled studies of imitation by Professor Baldwin, one of the most prominent psychologists of our time, it is hardly possible to deny that, in pointing out the influence of imitation in social life, Tarde has made a real discovery, which is to be regarded as one of the greatest conquests of contemporary thought in the field of sociology. The Princeton professor, in his work on *Mental Development in the Child and the Race*,[1] brings, in support of Tarde's intuition, the best resources of experimental psychology. He generalizes and completes Tarde's statements, above all resolving and determining the limits of the fact of imitation; and then establishes, with subtile analysis, the origin and the mode of formation of the imitative instinct which Tarde has accepted as the point of departure of social intercourse. In the general biological law according to which every living being tends directly to secure the repetition or maintenance of useful *stimuli*, and the suppression of damaging or useless reactions, Professor Baldwin shows us in a masterful way the most profound and obscure manifestation of that force which, in its highest degree of development, becomes the plastic element of social aggregations, that is, the force by which is accomplished the transmission of thought from one individual to another within the limits of

[1] Second edition, 1897.

the same group, and from one generation to another in the course of time.

It is hardly necessary to remark that Professor Baldwin's conclusions not only support Tarde's theory, so far as imitation is concerned, but also indirectly justify his conception, as outlined in the *Logique sociale*, that the logical factor is the original cause of social organization; for imitation, proved by Professor Baldwin to be the permanent substratum of mental and social development, necessarily presupposes a model and a copy. This means that social intercourse must begin, just as Tarde claims, by being unilateral. This means also that leaders of every kind are the agents of social transformations through imitative instinct.

Whatever may have been the developments that Professor Baldwin, in his special and technical competence, has been able to give to Tarde's conceptions, it is nevertheless true, as Professor Baldwin loyally recognizes, that it is the French scholar who has the merit of being the first to point out the efficacy of the factor of imitation in social life. Tarde has revealed to us the means by which the transmission of the products of social activity is accomplished. This means had always been vague, uncertain and undetermined in the various sociological theories issued from the great womb of positive philosophy. The fundamental principle—true, legitimate, irrefutable—which underlies all those conceptions, is that of a movement, vesting and animating the life of human aggregations, forcing them from one condition to another, each connected with its antecedent by the subtile and hidden link of an intellectual continuity, a tradition of ideas, that is, a history. But none of those theories succeeded in formulating that vague intuition. The true and indisputable merit of Tarde consists in having solved the enigma of social dynamism.

VI.

This great soul of truth, which rigorous analysis discovers in Tarde's speculations, is so fitted to become an active ferment of advancement in social science, that it deserves to be purified

from metaphysical decay. In other terms, we must carefully separate the sociological conception of Tarde from its metaphysical background by bringing it within the limits of strictly scientific philosophy. Whatever the discoverers of the so-called *banqueroute de la science* may think, it is nevertheless true that by the means of positive research human thought has best succeeded in tearing down the greater part of the veil which hides from us the mystery of universal life.

It is above all necessary to eliminate the neo-Leibnitzian conception of cosmical origins to which Tarde is becoming more and more attached, as is shown in the essay on *Monadologie et sociologie*,[1] judged by the author himself to be a "metaphysical revel," and by his recent volume on the *Opposition universelle*.[2] It is quite possible to admit the truth of Tarde's sociological conception, based on imitation and on the predominance of logical factors, without therefore being compelled to agree with Tarde's polygenistic view of cosmical origins. Polygenism, however, if divested of the Leibnitzian involucrum, which includes the existence of heterogeneous substances and breaks the continuity of the phenomenal series, can be perfectly harmonized with the monistic philosophy, on the condition that the many centers of human procreation and social development be conceived as the results of the same causes, operating with a different degree of intensity.

But polygenism, thus conceived, is not in contradiction with the Spencerian law of progressive differentiation. Whatever may be the conditions in which the growth of social aggregations is accomplished, whatever may be the difference in the degrees of development owing to the different intensity of inventive energy and imitative instinct in each, it is true that the multiplicity of human aggregations that Tarde perceives in the origins of history shows an undeniable homogeneity in the inferiority of conditions whence each advances to its destinies. The difference, and in several instances the divergence, of the lines of development from the common lower level begins with

[1] Essais et mélanges, p. 309.

[2] L'opposition universelle: essai d'une théorie des contraires (Paris, 1897).

the appearance of such a degree of mental activity (invention) as renders possible the gradual and, in some respects, voluntary transformation of the conditions of life. Thus, while the homogeneity of mental inferiority is found at the origin of history, the progressive differentiation produces itself in the course of evolution through invention. The progressive unification, opposed by Tarde to the Spencerian law of differentiation, ends in a differentiation of the highest degree. Through the assimilation and the absorption of minor groups — families, tribes, cities — into more complex unities, invention by its progressive manifestations marks the advance of difference.

After eliminating the metaphysical interpretation of Tarde's polygenism, it is the duty of critics to remove all ambiguity from his conception of the predominance of logical factors in social development, as outlined in his *Logique sociale*. This means the necessity of determining, with rigorous analysis, the interdependence of the logical or intellectual and the other concurrent physical and biological factors of social life. An effective essay in this direction has been made by Professor Giddings in his *Principles of Sociology*.[1]

As a great admirer and a faithful disciple of Gabriel Tarde, I would, in concluding this summary sketch of his sociological theories, express the hope that the conceptions of the French master may be the germ destined to be developed by the work of scholars who, like Professors Giddings and Baldwin, still remain true to the spirit of positive and scientific philosophy. Tardian sociological theory — if reconnected with scientific monism — does not give to social fact the character of an explosion, interrupting the continuity of the evolutionary process; does not show it as something extraneous, in its deepest roots, to biological activity; but exhibits it as a development of biological factors, combined in a product of a superior order. For the domination of social naturalism, inaugurated by careless interpreters of Herbert Spencer, Tardian theory, if purified of its metaphysical surroundings, might substitute a determinism

[1] F. H. Giddings, The Principles of Sociology (New York, The Macmillan Co., 1896).

connected with an ideal aim, set forth by inventors as the proper means to transform and to ameliorate the conditions of social existence. In recognizing that thought, in general, and the impulse proceeding from it, can, like the forces of nature, spread by way of imitation, be transmitted, be communicated, now remaining concealed, now being revived, now being multiplied in virtue of their concentration, Tarde restores to the ideal factor its true value in the progressive renovation of social conditions, and opens for us the way to understand the possibility of the most radical transformations in social conditions, thus restoring in our souls the faith in the destinies of humanity, and in its progressive ascension "above the plane of physical necessity into the freer air of liberty and light." [1]

NEW YORK CITY. GUSTAVO TOSTI.

[1] Giddings, *op. cit.*, p. 422.

REVIEWS.

Die Getreidehandelspolitik der Europäischen Staaten vom 13. bis zum 18. Jahrhundert, als Einleitung in die Preussische Getreidehandelspolitik. Darstellung von W. NAUDÉ. Acta Borussica, herausgegeben von der Königlichen Akademie der Wissenschaften: Getreidehandelspolitik, Erster Band. Berlin, Verlagsbuchhandlung Paul Parey, 1896. — 443 pp.

At the request of the Academic Commission for the Publication of the Acta Borussica, Dr. Naudé has undertaken in this introductory volume to give a general exposition of the corn laws of the several European states from the thirteenth to the eighteenth centuries; for in the opinion of the Commission it was "only with such a background and in comparison with neighboring states that the Prussian corn laws of the eighteenth century and Frederick the Great's policy could be rightly understood and properly appreciated." Though thus written as an introduction to an official publication, Dr. Naudé's present volume is eminently self-sufficing and forms a very valuable contribution to the history of commerce.

In the first book a brief outline is given of the corn laws of Athens, Rome and the early middle ages. Athens being of necessity a corn-importing state and relying upon commerce for her wealth, every effort was made by the government to provide a steady supply of grain for the people at regular prices. To this end state storehouses were erected, all exports of grain were forbidden and the imports were regulated by the city authorities; but, in spite of these precautions, private speculation and corners in grain continued to interfere with the government's efforts to protect the consumers. After the ruin of the Italian farms and with the development of the Empire, the grain trade of Rome was likewise taken in hand by the government in order to feed the populace at home, to support the armies on the frontiers and to equalize the effects of good and bad harvests in different parts of the Empire. Thus the Roman Empire, as Naudé expresses it,

> extending from the Euphrates to the British Isles, and from the Sahara to the steppes of the Volga, constituted one immense economic unit, having a unified system of weights and measures, a common law, a unified monetary system, freedom of trade and, at least during the second century before Christ, a universal right of emigration.

This extended commercial system was of course broken up with the downfall of the Roman Empire, and, in spite of the efforts of Charlemagne, mediæval Europe became disintegrated into a great number of small and precariously self-supporting sections. During the twelfth and thirteenth centuries the mediæval towns instituted commercial relations with the surrounding country to supply themselves with grain, and each city thus developed its own corn laws. Feudal and provincial corn laws grew out of these; and, with further unification, the grain-trade policies of the several European states were gradually developed.

Taking up these policies in turn, the author passes on in the second book to consider the corn laws of France. It was the effort of the French monarchs to break down the barriers between the provinces and to institute internal freedom of trade. This was done for the *Pays d'Élection* under Henry IV and his famous minister Sully. France was then preëminently an agricultural country, and not only internal freedom of trade, but also the free export of grain was to her advantage. Sully's policy was, therefore, directed to this end and met with success during his life. We are accustomed to regard Colbert, on the contrary, as the oppressor of the French agriculturists; but this view must be considerably modified after reading Dr. Naudé's exposition of the subject. According to him, French agriculture was already on the decline when Colbert assumed control, and in the interest of self-preservation France had therefore necessarily to become an industrial state. Thus Colbert's whole purpose was to provide a cheap and regular food supply for the French industrialists from French soil. But inasmuch as the agricultural lands lay on the sea-coasts and were cut off from the industrial sections of the interior, it was more profitable for the agriculturists to export their grain over sea than to send it inland. The exportation of grain had therefore to be prohibited in order to build up an export trade in French manufactures, which alone could allow France to compete successfully with the rival states of Europe at that time. Thus, by limiting the free exportation of grain and encouraging the internal corn trade, Colbert succeeded, in the author's opinion, in preventing speculation and providing a regular and cheap food supply for the French industrialists upon whom France had then to rely—and that, too, without working any injury to the agricultural classes. Dr. Naudé is supported in his point of view by material that seems thus far to have been left out of account in French economic history, and his analysis of the period is both thorough and convincing.

The main interest of the third book, which deals with the early English corn laws, centers around the export bounty instituted in 1689 under William III. Up to 1393 the policy of the English government had been to protect the consumers and to provide a sufficient food supply for the people. Under the Tudors, on the contrary, the yeomanry was sacrificed to the landowners, and the wool industry was encouraged at the expense of agriculture. Having always grown enough grain for her own needs, England had thus far not concerned herself with the grain trade; but the exportation of wool, bringing with it the ruin of agriculture, necessitated the importation of grain from the Continent. Thus the English found themselves paying out large sums for their own wool to be exported and for foreign grain to be imported in foreign ships. Something, it seemed, might be saved by building up a marine of their own. So a policy was instituted under Elizabeth, and carried out under the Navigation Acts of Cromwell, to encourage English shipping. To add to the export tonnage, attempts were made to send out grain as well as wool in English bottoms, but the agricultural lands failed to respond until the bounty was given under William III. The strange experiment proved successful. Agriculture was again profitable, and the grain exports aided in the development of the British marine. Thus, when England was ready in the eighteenth century to pass over to industrialism, she was in a position to maintain her commercial supremacy. The effect of the corn-export bounty in establishing England's commercial supremacy is brought out with striking clearness in Dr. Naudé's book; and here again we have a distinct addition to economic history.

The fourth book describes the corn-law politics of the various cities and states of Italy during the period under consideration; and shows how the agricultural population was everywhere exploited by the various governments in favor of the townspeople — industrialists, merchants and capitalists — and the government officials, feudal, republican or ecclesiastic, as the case might be.

The Spanish-Portuguese policy forms the subject of the fifth book. After the expulsion of the Moors, little attention was paid to agriculture in the Iberian peninsula; for much of the land was unfertile, and the kings needed soldiers rather than peasants. Thus Spain and Portugal were importers of grain, and drew their food supply from northern Europe in return for their colonial products.

In the sixth book the scene is changed to northern Europe, and the author begins by tracing the development of the grain trade of

the Hanse cities and the Teutonic Orders. The Knights collected grain by way of taxes from the countries under their control and attempted to maintain their monopoly over against the towns. The Hanse merchants bought grain from the peasants and landowners of the great northern plains and shipped it down the rivers to the Baltic for export in their vessels to the countries of northern, western and even southern Europe. Theirs was the monopoly of the Baltic during the thirteenth, fourteenth, and fifteenth centuries, until the Netherlands finally fell heir to their commerce in the sixteenth century. Dr. Naudé gives an interesting account of the struggle of the Hansard merchants with their Dutch rivals, under the leadership of their famous organizer and diplomat, Jürgen Wullenweber.

The growth of the commercial supremacy of the Netherlands is given in some detail in the seventh and last book of Dr. Naudé's present volume. Amsterdam became the center of this commerce, and free trade was the unalterable policy adopted. After gaining their desired supremacy in the Baltic, the Dutch bought grain from the monarchs and landowners of the surrounding countries wherever good harvests gave low prices. They stored it up in Amsterdam, and thus always possessed a supply of corn to export to southern and western Europe, or even back again to the grain countries of northern Europe, wherever the harvests had failed. Thus Amsterdam became the trade center of Europe during the seventeenth and eighteenth centuries; and though the commerce of the Dutch branched out thence in every direction, it was always the grain trade of the Baltic which formed the trunk of the system. And so it was that when England developed the grain fields of America later on, the roots of Holland's commercial supremacy were undermined.

Dr. Naudé's work is careful and thorough even beyond the German standard of exactness. It warns one anew in the reading of the danger of drawing general conclusions from the tendencies of great economic periods without taking into account the geographic conditions of each land. Mercantilism, the doctrines of the Physiocrats, and the theories of free trade, protection and export bounties—all become more intelligible when taken thus in detailed connection with the immediate needs of each country at definite periods of its development. From the present book, however, may be drawn one economic conclusion: namely, that there seems to have been no period in European history when the desire for individual gain did not lead to evasions of all regulations made in the interest of the consumers or for the welfare of the state. Speculation in grain appears, in short,

to be the one phenomenon common to all the countries described, from the times of Greece down to the nineteenth century; and there is evidence enough to show that the phenomenon is still existent.

For the work that the Commission has in hand it may have been necessary for the sake of comparison to neglect chronology and to deal with each of the European states separately from the thirteenth to the eighteenth century. But one cannot help feeling that better results would have been secured if the general course of European events had been kept in mind, and an account of the growth of the corn laws of Europe as a whole had been given. In that case we should have been able to grasp the reciprocal commercial relations of the various states during the period described; whereas, according to Dr. Naudé's arrangement, each state is treated in isolation from its neighbors and we must continually refer back in order to follow the course of the general development. Tables and figures form a large portion of the book; and these, though they add to the accuracy of conception, make the work somewhat difficult for the general reader. A well-compressed summary here and there, and especially at the end of the book, would have added immensely to its general usefulness.

LINDLEY M. KEASBEY.

BRYN MAWR COLLEGE.

Die Handelspolitischen und sonstigen Völkerrechtlichen Beziehungen zwischen Deutschland und den Vereinigten Staaten von Amerika. Von DR. GEORGE M. FISK. Stuttgart, 1897. — xiv, 254 pp.

This work forms the twentieth number of the *Münchener Volkswirtschaftliche Studien*, published by Brentano and Lotz. It is mainly historical, only one chapter having the character of a distinctly statistical study. The subject-matter of most of the book is the "commercial relations," to which ten out of the twelve chapters are devoted. Only two other topics are treated at any length, "Naturalization" and "Extradition," to each of which a chapter is given.

The first seven chapters fall quite naturally together, covering the years from 1776 to 1852; and take account of treaties in regard to commerce concluded between Germany and the United States, all of which fall within this period. This is in some respects the most satisfactory portion of the book, since it lends itself to a more systematic treatment than the later parts and contains more original

work. Chapters VIII and IX, forming something of a digression as to subject, though next in order chronologically, consider the treaties of 1853–57 in regard to extradition and those of 1868 with reference to naturalization. These two chapters could, perhaps, better have been placed in some other part of the book. Chapter X returns to the subject of the earlier chapters and takes up at length the development of the tariff policies of the two countries in the period from 1846 to 1894. This chapter is a clear and concise summary of the subject, but contains little that is new to students of either nationality. It prepares the way for a study in the next chapter of the more recent, in some cases still pending, questions, being an account of negotiations since the establishment of the German Empire. The chronological order is here abandoned on account of the general chaos of the subject-matter, and a brief section is devoted to each of the following topics: consular regulations, trade-marks, copyrights, patents, the "Saratoga convention" regarding the prohibition of the importation of American pork, the Samoa question, salt duties, sugar duties, prohibition of the importation of American beef and present treaty relations. Chapter XII is a study of the statistics of exports and imports between Germany and the United States, taking up each important article in detail, and including a comparison of German with English and French trade with the United States. This is by no means the least interesting portion of the book, especially for American readers, for it presents some very suggestive figures as to the German market for American goods, particularly agricultural products.

Dr. Fisk has not only given us an account of negotiations and treaties, but has presented them in their relations to economic and political conditions in the two countries. The first part of his task is most satisfactorily performed; but the last part, though not open to serious criticism, leaves something to be desired, since little that is not already familiar is found therein. How much more in this direction is possible may be a question; but a more complete study of motives and causes, giving more prominence to the broader tendencies of the facts chronicled, seems desirable. The arrangement of topics, too, might have been improved, though it is a fair question whether a more satisfactory arrangement than the simple chronological one followed is possible with the subjects treated. The author has preserved an admirably judicial attitude throughout, displaying a degree of impartiality quite in keeping with his position as an American writing for publication in Germany. Written originally

in English, the book has been fortunate in the translation, displaying very few of the defects which too frequently mar translated works. For the American student Dr. Fisk's monograph can but prove a valuable contribution to the as yet largely unwritten diplomatic and commercial history of the United States. LEONARD W. HATCH.

POINT CHAUTAUQUA, N.Y.

Industry in England: Historical Outlines. By H. DE B. GIBBINS, M.A. With maps, tables and plans. New York, Scribners; London, Methuen, 1896. — 479 pp.

This book is not only several times bigger, but also several times better, than the little *Industrial History of England* by the same author, out of which it has grown, and which has "gone through several large editions" since 1890. At that time Mr. Gibbins' qualifications for the task of the historian consisted in a great enthusiasm and an ardent sympathy with the working classes, and above all in an intimate knowledge of and a thorough confidence in the historical teachings of the late Professor Thorold Rogers. The success of the earlier book was due in a considerable measure to the craving of extension classes in England and teachers with "large courses" in American colleges for a book which, as the phrase goes, should "cover the ground" without being expensive. Some teachers who incautiously embarked upon it were not a little taken aback, perhaps, by what Mr. Gibbins now handsomely apologizes for as "the errors of fact and of expression" they soon came across. Since writing that *opuscule*, however, Mr. Gibbins' reading has taken a wider range; and he has now produced a work which will be very serviceable in academic instruction. It is not only systematically arranged and lucidly written, but it succeeds in being — what some recently issued works on the subject can hardly be called — actually interesting, if not taken in too large doses.

To criticise its contents at any length is hardly necessary — if for no other reason, because it is in the main a compilation, though an excellent one, from a comparatively small number of writers, most of whom, such as Rogers, Cunningham and even the present writer, have already been reviewed at length in this QUARTERLY. But in the interest of the new editions which the book certainly deserves and will probably reach, attention may be called to a few details. Page 40: "extensive and intensive culture" needs definition. Page 44, n. 4: "passed" is misleading as applied to a Saxon "doom."

Page 75 : Domesday Book hardly "calls" the socmen "free." Page 84 : the diagram is inadequate and misleading; why not reproduce in outline one of Mowat's maps? Page 148 : "pleasant" is part of the old idealization of the middle ages; the difficulty about the present organization of labor is that the employer is not sufficiently intimate with the employee even to cuff him. Page 230 : it is an exaggeration to say that "London took the place of Antwerp"; so far as any city did, it was Amsterdam. Page 396 : an odd use of "cogency." Page 397 : a mixture of constructions — "lead the question." All these can be changed by the substitution of other words. There are some other pages which call for a more heroic treatment, if the publisher can be induced to agree to it. Thus, the sneer at "historians," which has unfortunately survived from the earlier book (page 111), is rather juvenile; and the prophecy about India (page 22) hardly rests on sufficient knowledge to be worth retaining. Pages 379, 380 also dangerously approach mere rant.

The student must be warned that Mr. Gibbins is still so far dominated by the teaching of Thorold Rogers as hardly to realize the importance of some of the considerations which he derives from other authorities. Thus, like Rogers, he fails to bring out the relation of the stock-and-land lease to the normal constitution of the Midland manor of the later middle ages : to speak, for instance, of the landowner who let his land on the stock-and-land lease as still "a cultivator" is misleading. In spite of his classification of the forms of industrial organization, he fails to grasp the characteristics of the "domestic" industry of the eighteenth century, and altogether clouds the figure of the capitalist "undertaker." The characteristic Rogerian assertions, as to the causes of the Black Death and the confiscation of gild lands, are reasserted. As to the former, Mr. Gibbins has a long note (p. 172) in reply to the present writer, who still finds himself unable to see the force of the evidence to which Mr. Gibbins alludes, and can but refer once more to his article in this QUARTERLY (IV, 381).

Consideration of these disputed points, however, had best be left to the reader's own judgment. Mr. Gibbins has given us a very convenient treatise, which, though it proceeds on rather conventional lines and has little regard for that morphology of economic history or that quantitative estimate of economic phenomena which has still to be attempted, will be of a good deal of use for several years to come.

W. J. ASHLEY.

HARVARD UNIVERSITY.

La politique commerciale de l'Allemagne. Par M. ÉMILE WORMS. Paris, 1895. — 305 pp.

Professor Worms' present work is a supplement to his *L'Allemagne économique, ou histoire du Zollverein allemand*, published in 1872, and embodies the tariff history of Germany from 1879 to date.

The first chapter covers the period from 1879 to 1891; while the second and third are devoted to a study of the results of the protective policy, the former noting the effects on prices, the latter the financial and general economic effects, with the conclusion that that policy "*ne se recommande guère par ses fruits de nature économique.*" In the next chapter the author reviews the development of economic and political conditions in Germany as compared with other European countries; and explains the course taken by German commercial policy, especially the more recent changes therein. This chapter really forms an exceedingly interesting and suggestive outline of the industrial and commercial history of Europe, and prepares the way for the history of recent years in the next four chapters. Of these the first points out the *nouveau cours* taken by Germany, that is, the movement toward free trade by way of international commercial alliances, inaugurated by treaties with Austria-Hungary, Italy, Switzerland and Belgium in 1891. The following chapter is perhaps the most interesting to the reader of to-day, as it considers at length the present agricultural problem in Germany. The proposition to relieve the German farmer from foreign competition by means of tariff duties is canvassed in all its phases, with a decision in the negative. To the question whether this foreign competition with resulting low prices is but a temporary phenomenon, the answer, after careful examination, is unfavorable to the agriculturist. A discussion of the way out of the dilemma leads to the conclusion that, while other European countries may abandon the cultivation of cereals for other products, this way of escape is closed to Germany because of her peculiar soil and climatic conditions. The sum of the whole matter finally is that theory dictates a revision of tariff duties as to cereals in the direction of free trade, a more intensive system of land cultivation, and the reform and development of agricultural credit agencies. This whole chapter is of peculiar interest to Americans, in view of the similar problems of farm indebtedness and depressed prices of agricultural products which face the United States. The final chapter is given up mainly to the history of the Russo-German commercial treaty of 1894, a further step in the new movement toward free trade. In a rather extended epilogue the author gives a glance to the future,

discussing at some length the question of an extension of the policy of commercial alliances, and the relation of free-trade England to the other countries of Europe in that connection. The possibility of a commercial union of the British Empire and the effect of such an alliance upon the other nations receives considerable attention; and the epilogue closes with a brief consideration of the commercial relations and possible alliance of Germany and France.

The general scope of the work is summed up by Professor Worms himself in the statement that he planned to show how the German Empire, after having followed an exclusive policy of protection, has turned from that and is moving toward free trade (its own older policy) through commercial treaties—an example he would gladly see imitated by others. The announced intention of the author is to make the work purely historical, but he manifestly conceives history in the broad sense as involving an analysis of cause and effect as well as a chronology of facts. The work is philosophical in spirit, and gives us not only tariff history, but also its relation to other branches of history. He frankly declares himself an advocate of *libre-échange*, with concessions to protection as a temporary measure; but this confession of faith does not prevent a very fair-minded treatment of his subject. Nor does his French blood prevent an unprejudiced attitude toward German affairs. The work is timely in view of present problems; and is so scientific and scholarly that it must be of great interest to the student of European and German commercial history.

LEONARD W. HATCH.

POINT CHAUTAUQUA, N. Y.

The Physiocrats. Six Lectures on the French *Économistes* of the Eighteenth Century. By HENRY HIGGS. London and New York, The Macmillan Company, 1897. — x, 158 pp.

Adam Smith thought that it would not be worth while to examine at great length the errors of a system of political economy not adopted by any nation, but existing only in the speculations of a few men of great learning and ingenuity, and destined never to do any harm in any part of the world. English economists, apparently agreeing with him, have been satisfied for more than a century with the somewhat one-sided account of Physiocracy, which, in spite of his misgivings, he appended to his description of the Mercantile system. Meanwhile, the labors of Lavergne, Oncken, Schelle and Bauer, not to mention others, have largely modified the traditional

view of the *Économistes*, while the recently published *Lectures* of Adam Smith have abundantly confirmed the suspicion that he himself owed to them far more than he ever realized. It is Mr. Higgs's misfortune that his own lectures, delivered before the London School of Economics, were given at a date just too early for him to take account of Mr. Cannan's find; but even so, his concise and attractive book well deserves the attention of English-reading students of the history of political economy.

Mr. Higgs's method is historical rather than analytical. His first lecture, devoted to "The Rise of the School," describes briefly the industrial condition of France, and especially the French system of taxation, in the middle of the last century, indicating the influence of these external facts upon the development of Physiocracy. The chief intellectual influence exerted upon the *Économistes* Mr. Higgs traces, as might have been expected, to Cantillon. It cannot be disputed that Mirabeau was deeply influenced, before he became an *Économiste*, by the study of Cantillon's unpublished *Essai sur la nature du commerce en général*. By his subsequent acquaintance with Quesnay, however, "he was converted," Mr. Higgs says, "into a lifelong disciple and friend" of that thinker. The doctrines of the school were, therefore, Quesnay's, not Mirabeau's; and it is by no means clear that Cantillon's *Essai*, though published in 1755, exercised a determining influence over Quesnay himself. Upon this crucial point Mr. Higgs has elsewhere suggested[1] that

> The debt of Quesnay to Cantillon is not a borrowing of detail, but an influence of spirit. It was not upon questions of *grande* or *petite culture*, of oxen or horses, of productive or unproductive labor, that he found help in Cantillon, but in the scientific attitude which he adopted when he approached the distribution of wealth.

Such an influence of spirit it is as difficult to prove as to disprove. It may be equally possible to attribute Quesnay's scientific attitude to the effect of his medical studies. Meanwhile, Mr. Higgs brings out clearly that intimate personal connection between the members of the school, and that general devotion to a common oracle, which distinguishes the Physiocrats from all other economic schools, even from the Austrians.

The second and third lectures are devoted to "The School and its Doctrines." They describe at some length the career and the writings of Quesnay, Mirabeau, Dupont de Nemours and Mercier de la Rivière,

[1] *Quarterly Journal of Economics*, VI, 454.

and mention briefly a number of minor Physiocrats. The treatment of Turgot, who never considered himself a member of the sect — or indeed of any sect — is reserved for the following lecture, on "The Activities of the School." In this lecture the reader is led to see that Adam Smith was not absolutely correct in characterizing the Physiocratic system as "never adopted by any nation." Compared, however, as Adam Smith would have wished to compare them, with the immense vogue of the Mercantile system, the triflings of Leopold of Tuscany or of Joseph II with Physiocratic precepts, or even the more persistent efforts of Carl Friedrich of Baden, were virtually nothing. "The Opponents of the School" are treated in the fifth lecture, but the great figure of Adam Smith is reserved for the next and last lecture — that on "The Influence of the School." Had Mr. Higgs been able to use Adam Smith's *Lectures on Justice, Police, Revenue and Arms*, he would doubtless have given the first third of his lecture, devoted to Adam Smith, a somewhat different content. It is therefore unfair to criticise his treatment. Perhaps, for the purpose in view, nothing else was practicable at the time than to recapitulate, almost in Adam Smith's own words, the five criticisms which he passed upon the "agricultural system." But to some points in the remainder of the sixth lecture attention may fairly be invited.

McCulloch's remark that Adam Smith's refutation of the system of the *Économistes* is unsatisfactory because Adam Smith did not recognize the existence of no-rent land, Mr. Higgs characterizes as "a shallow criticism." Poor old McCroudy has become so pitiably shallow in these profound days that it were less than Christian to refuse recognition of any rudimentary idea that he may by chance have had; and in this case the root of the matter appears to be in him. The Physiocrats regarded the *produit net* sometimes as a surplus of commodities, sometimes as a surplus of values. As a surplus of commodities it was most conspicuous in agricultural production, and appeared to be due to the characteristic element in such production, the soil. As a surplus of values the *produit net* was naïvely supposed to be due to the same cause; and this transcendence was supported by the fact that the surplus of value flowed generally to a separate and identifiable landlord. In other words, a distributive result, affecting values and manifesting itself because of the system of land tenure, was confused with a result of production affecting commodities. In non-agricultural industry the surplus of commodities is less obvious: it frequently does not exist. The surplus of values, however, does exist. Buildings and machines yield a rent as truly as lands. But

this rent becomes conspicuous only when the buildings and machines are loaned. It is concealed so long as they remain in the hands of their owners. This distributive accident enabled the Physiocrats generally to shut their eyes to the fact that the *produit net*, considered as a surplus of values, results from non-agricultural, as well as from agricultural industry. But Turgot, at any rate, saw the difficulty (so far, at least, as concerns the rent of money) and he sought to meet it by calling interest a reward for abstaining from investment in land and for giving up the net product — surplus of values — to be secured thence.[1] Considering the *produit net*, therefore, as a surplus of values — and as such the Physiocrats regarded it when they thought it the sole source of taxation — they were able to conceive it as they did only because they lived under conditions where land generally, even universally, afforded a rent; and McCulloch's suggestion is not altogether shallow. This matter is now treated at such length, not because it is especially important in itself, but because it serves to bring out an important difference between the Physiocratic and the Ricardian views of rent — a difference which a reader of Mr. Higgs's book must keep firmly in mind.

After discussing the relation of Henry George and the single tax to the Physiocrats, Mr. Higgs says:

> It is in the main on principles like theirs that Mill proposed the taxation of the unearned increment of land, and that philosophers like Professor Sidgwick regard unearned increment of every kind as a preëminently suitable object of taxation.

The way in which this passage may intimate a persistence of Physiocratic influence depends on the meaning of "principles like theirs." As a matter of economic principle, the Physiocrats advocated the *impôt unique* because they believed that other taxes are shifted upon rent; Henry George advocates the single tax because he believes that other taxes are not so shifted. Mill and Sidgwick, too, propose taxes on unearned increments, not because taxation of the same economic effect is inevitable, but because the proposed taxes are expedient. It appears, however, that by "principles like theirs" Mr. Higgs means to indicate rather the notion of Mercier de la Rivière, eloquently ridiculed by Voltaire, that the sovereign is co-proprietor of the soil, and as such entitled to a share of the *produit net*. This principle appears to be political, not economic at all, whereas Mill and Sidgwick argue on the distinctly economic grounds

[1] *Réflexions*, lxi (Daire's ed., I, 39).

of what they believe to be distributive justice. If this be so, it is straining a point to find traces of Physiocratic influence in modern attempts to socialize the unearned increment. Similarly forced is the following passage:

> Fanciful as it may seem that they proposed to limit the royal power within the vague circle of what was "advantageous to the nation," or consonant with reason (*l'ordre naturel*), under pain of forfeiting all claim to obedience, such a limitation is not far removed in principle from the constitutional check of the supreme court on legislation in the United States (p. 142).

Surely the supreme court of the United States recks as little of *l'ordre naturel* as do the courts of England herself. Like them, it is a court of law, and the first paragraph of the Declaration of Independence is not law.

These, however, are but minor matters, the results of Mr. Higgs's enthusiasm for the ideas of the men concerning whom he writes. Taken all in all, his unpretentious book is marked by competent knowledge, care and a good sense of proportion. An exhaustive treatise upon the Physiocrats it does not profess to be; but it seems excellently adapted to the purpose for which it was originally prepared, and its permanent merits are abundantly sufficient to justify the author in offering it to a wider public. As a book, its flow is inevitably somewhat interrupted by the retention of the form originally given the separate lectures, but its style is simple, clear, and easy to read.

CHARLES H. HULL.

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Éléments d'économie politique pure. Par LÉON WALRAS. Troisième édition. Lausanne, F. Rouge, 1896. — pp. 495.

Études d'économie sociale. Théorie de la répartition de la richesse sociale. Par LÉON WALRAS. Lausanne, F. Rouge, 1896. — pp. 464.

When the first edition of Professor Walras's *Elements of Pure Political Economy* appeared in 1874 he was entirely ignorant of the fact that three years before almost the identical theory had been expounded by Jevons in England and Menger in Austria; and it was at a somewhat later date that he began to read his still earlier German predecessor, Hermann Gossen. That the scientific world has learned to appreciate the value and independence of Walras's work is shown by

the fact that the third edition now appears. This edition differs from the second only in arrangement. The *Elements* now forms the first of a series of three volumes, of which the second is to be devoted to applied economics under the title of *Économie politique appliqué;* while the third, which has already appeared, bears the title of *Études d'économie sociale.*

In this third and definitive edition of the *Elements* the author has omitted the sections on money in its practical aspects, which are to be put in the second volume of the series; but he now adds three short appendices, one on the geometrical determination of price, another on the theory of Auspitz and Lieben, and a final note on Wicksteed's theory of rent. The main body of doctrine is so well known to students that it calls for no further comment in this place.

While the *Elements* forms a well-rounded whole, the *Studies in Social Economics* (which bears the sub-title *Theory of Distribution of Social Wealth*) is more fragmentary. It is not a new book, except in arrangement, for it is composed of chapters which have already seen the light in other books and periodicals. Part I, entitled *Recherche de l'idéal social,* contains a chapter on "Socialism and Liberalism," originally published in 1866–7, and several chapters on the general theory of society, which formed a course of lectures delivered in 1867–8. In Part II, on "Property," we find a chapter on the theory of private property, published in 1896, and two earlier chapters on intellectual property and the social question. Part III, entitled "Realization of the Social Ideal," contains a long chapter on the mathematical theory of the price of land and of its purchase by the state, as well as an account of Gossen. Part IV is devoted to taxation.

In all this work there is very little mathematics — in fact, none at all except in a portion of Part III. M. Walras has attempted to put his conclusions in a popular form. Perhaps he has tried to make the solution a little too simple. The outcome of his social theory he sums up in the words: "Liberty of the individual, authority of the state. Equality of conditions; inequality of positions" (p. 200). It is evident that this in itself affords but little assistance. If, however, we search for any positive doctrines, we find in Part II our old friend, the nationalization of land; for here M. Walras agrees with his father and with Henry George in making a distinction between "the price of the service of the land" and "the price of the service of personal faculties." But we search in vain for any new or strong arguments. Nevertheless, the question of principle

seems so clear to M. Walras that he proceeds to prepare for practical politics by devoting a long and elaborate study to the working out of a plan for universal land purchase. In his theory of taxation, also, M. Walras virtually reproduces what he published several decades ago, without seeming to be aware that the science of finance has made some progress in the meantime. Thus, he again advances the rent-charge theory of the land tax, which is true only on the assumption that the tax is an exclusive tax. And when he discusses the principle of justice in taxation he takes for granted that contribution to the expense of public services must be in proportion to the degree in which the individual derives a benefit from the services.

On the whole, it is more than likely that the fame of the author will be based on his work in the pure theory of price, as it has been expounded to us for twenty-five years and as it is substantially contained in the present *Elements*. That work he has been among the first and most successful to develop; and now that he has retired to private life, after being in the harness for many decades, he may rest assured that his work has not been in vain, and that even if he could point among his disciples only to the two Italians now filling the economic chairs at Geneva and Lausanne (Professors Pantaleoni and Pareto), his reputation would be safe and his influence abiding.

EDWIN R. A. SELIGMAN.

Storia delle dottrine finanziarie in Italia. Col raffronto delle dottrine forestiere e delle istituzioni e condizioni di fatto. Seconda edizione, intieramente rifatta. Di GIUSEPPE RICCA-SALERNO. Palermo, Alberto Reber, 1896. — xvi, 550 pp.

The appearance, after fifteen years, of a second edition of Professor Ricca-Salerno's elaborate *History of Financial Theory in Italy* would seem to indicate a more extensive interest in the subject of his investigations than might, upon the surface, have appeared possible. But, in fact, the considerable reputation which the book has attained, together with the restriction necessarily imposed upon its separate sale by the circumstances of its publication (it formed part of the "proceedings" of a society), may well create an adequate demand for the revised edition now independently placed upon the market. Those students who already possess the first edition, however, may hesitate before purchasing the second. The process of revision has not materially changed the plan or scope of the work; and, save by additions, even its details are, for the most part, substantially unaltered.

The new matter of the second edition pertains in large part to the history of facts and institutions; and also, though to a proportionately less extent, to the history of theory. This unequal distribution of the additions constitutes a chief merit of the new edition, in that the theories are thus brought more closely into connection with the facts out of which, at least in part, they took their origin. The first book, especially, has been enlarged by the addition of a number of pages which trace the actual development of mediæval taxes, and especially of the general property tax. Throughout this addition the influence of Seligman's *Essays* is strongly apparent. The same authority, together with Cunningham, has been the author's chief dependence for the new matter on the later development of English and American taxes which he has introduced into his second book.

The additions that have to do more directly with theory consist partly in the fuller treatment of a few of the authors already mentioned, and partly in the insertion of numerous paragraphs upon writers previously passed over. Such additions are most numerous in the chapters on Venice and Piedmont and on the territories of the Este. But it is in the treatment of financial theory in non-Italian countries that the most conspicuous changes have been made. What was previously one chapter on this subject has now grown into two. In the first of them, chiefly devoted to England, Petty and Davenant, who were not mentioned before, receive especially full treatment; while the second is given to the excise controversy in England and in Germany. Following Leser, the author describes at some length the discussions connected with Walpole's excise, but he does not make it clear that the foreign writers mentioned exercised any noteworthy influence upon Italian theory or practice.

The book is exhaustive — so exhaustive that the reader wonders whether all the accounts of obscure writers are given at first hand — and also exhausting. Had the author kept the promise implied by the caption of this last chapter — "Financial Theory in the Latest Treatises on Political Economy" — and discussed living writers on the same scale that he has the dead, readers are few who would have made their way through the resultant book. In fact, he stops in the middle of the century with Bianchini and Placido De Luca. But, even at that, five hundred and fifty pages devoid of index constitute a burden which neither author nor publisher has any right to inflict upon the public.

CHARLES H. HULL.

CORNELL UNIVERSITY.

Corporation Finance. A Study of the Principles and Methods of the Management of the Finances of Corporations in the United States, with special reference to the Valuation of Corporation Securities. By THOMAS L. GREENE. New York, G. P. Putnam's Sons, 1897. — 180 pp.

In this small volume Mr. Greene has rendered a valuable service to every serious student of the economic aspects of corporate development, by formulating for concise presentation the principles which govern modern financial enterprise. His experience as a financial writer and as a corporate official has prepared him for a piece of work which, to say the least, he has done well. He has made no attempt to treat of the historical or the legal development of corporate finance, except so far as may be incidentally necessary for the main purpose of the subject. The eight chapters may be classified as having a general and a special bearing on corporate financiering. Of the former character are the chapters on "Bonds and Stocks," "Forms of Corporate Enterprise," "Corporation Accounting" and "Public Policy toward Corporation Profits." These occupy a good deal less than half of the book. The other chapters are given up to an expert study of railway financiering in the United States during something less than the past twenty years.

In the general chapters the author starts from the point of view of borrowing money to extend the volume of trade and thus to make business profitable in spite of the continuous tendency of the rate of profits to fall. Borrowing having called into existence the surplus loan capital of the business world, a principle defining the relation of borrower and lender is wanting. As here stated, the practical test of safe borrowing and lending is to be found in the consensus of commercial opinion on the question: To what amount can commercial paper or bonds be floated at par and at about the ruling rate of interest for such borrowings? The bonds issued should not exceed in amount the minimum worth of the property, and the shares of stock (capitalized interests held by the members of the corporation) should fairly represent the capitalized value of the fluctuating gains remaining. In other words, the risks of utilizing trade forces should be localized with the managing investors, and the certain but limited returns should be guaranteed to those whose capital has made the volume of business large enough to make surplus profits possible. This differentiation of corporate securities, into bonds entitled to the highest certainty of returns and stocks as claims upon the variable

surplus, accounts in a large measure for the extraordinary growth of the corporate form of investment under limited liability.

In view of the decided tendency toward repressive legislation of various kinds, it is held that the frankest publicity is the only sound policy of corporate conduct in the face of the popular temper which is gradually feeling its way toward a better understanding of the factors involved. There is a whole code of business ethics in the following quotation :

> The history of a company, its early losses and struggles, the price of the commodity when the business was begun compared with prices now, the cost of production per pound or gallon or barrel, showing the reduction, and in view of such facts the moderate profits of to-day — statements such as these will prove to be the best defense against drastic legislation before the bar of public opinion. But a company relying upon such a defense must be sure that its course as regards prices and policy is one which cannot be fairly attacked (p. 26).

The more special portion of the volume is taken up with railway financiering — railroad property as a field of investment and as a basis for borrowing capital. The treatment is more recent and less occupied with administrative aspects of the question than the one found in Hadley's *Railroad Transportation.* The chapter on "Railway Bonds" presents a concise analysis of our most important financial experience with railway securities during the last fifteen years. Under "Subsidiary Companies and their Securities" the method of intercorporate financiering is described as it grew out of the policy of constructing and absorbing branch lines into comprehensive systems. The guaranteeing of interest to the branch lines by the main lines, the practice of crediting branch-line deficits to "investments," "assets," "loans," *etc.*, in the hope of developing the volume of business to set things right, are clearly described in their bearing on investment values. The chapter on the "Examination of Railway Reports" is one of the most lucid pieces of difficult exposition to be found in railway literature. The final chapter, on "Reorganizations and Receiverships," is the most timely feature of the book. The position of the stockholder upon whom the risk elements in the enterprise fall, of the bondholder whose claim is virtually upon the net income of a depreciated, mismanaged or overvalued property, and of the public to whom transportation has become a necessity — these interests are carefully worked out in the attempt to give the *rationale* of reorganization and to explain how the receivership came to have its peculiar development in American railway practice. In the author's

opinion the receivership is likely to be extended to other departments of industry than transportation. If industrial competition continues to concentrate the production of necessaries in large corporations, so that in case of their failure there is no other source of supply, the most natural thing, Mr. Greene conceives, will be to resort, as in the similar case of railroads, to a judicial trusteeship pending reorganization; for thus might be conserved both the primary interests of the public and the apparently secondary interests of the investor. This is only a conditional tendency in corporate finance; but, nevertheless, it is not to be lost sight of.

SMITH COLLEGE. JOHN FRANKLIN CROWELL.

La proprieta fondiaria a la questione sociale. Studi di ACHILLE LORIA. Verona, Fratelli Drucker, 1897. — 321 pp.

The books of the brilliant and eloquent Paduan professor follow each other with a rapidity that is astonishing to a foreigner. But when one has come under the spell of Professor Loria's language; when one has felt the charm of his sympathy with everything that is noble, and of his opposition to all that is mean and hypocritical; when one has followed with almost breathless interest the unfolding of his ideas from page to page and has laid down the book with a sigh of regret that it has come to an end — then his immense popularity is comprehensible; then it becomes clear that his is a master mind, with the power always to fascinate, even if not always able to convince.

The present volume is composed of four essays. Two of them — those on "The Law of Population and the Social System" and "The Land and the Social System" — are the inaugural lectures at the Universities of Siena and Padua, respectively. Published several years ago, they have long been out of print. The third essay, on "Charles Darwin and Political Economy," appeared originally in a scientific periodical in 1884. The fourth essay, on "Land Nationalization," is entirely new.

With the exception of the essay on Darwin, the whole book is devoted to a reiteration of Loria's views on land reform, which are now well known all over the Continent, and which will soon be made familiar to the English-reading public as well. The essay on Darwin is interesting as a strong plea for the inapplicability of the theory of natural selection to social life. But the chief interest in the volume consists in the passage in the last essay, where, after

taking issue with the single-taxers, the land-nationalizers, and the socialists, Professor Loria for the first time sketches in clear outline his own plan for solving the social problem. It seems best to give this in his own words:

> For us the reform does not consist in perpetuating rent and profit in favor of the state, but in eliminating rent and profit in favor of the worker. We must not preserve the landed monopoly by transferring it from the individual to the government, but we must abolish it beyond all chance of resurrection. To accomplish this, all that is necessary is that each producer be enabled to occupy a tract of land sufficient to employ his labor force — that to each individual who is ready to produce there be accorded the right of establishing himself on his own account on a definite plot of the national territory. Thus there will be assured to every laborer the possibility of starting an occupation which will of itself free him from the necessity of offering his labor for hire, and which will enable him either to start an independent economy or to associate himself as co-worker and equal with the producer who has so started. In this way the re-constitution of free land will break down capitalist relations, will abolish both rent and profit and will effect the distribution of the total product among the producers in proportion to their respective contributions of labor [p. 316].

As to how such a result is to be brought about we are indeed not told. It is much to be feared that those who have not yet been convinced by the diagnosis of social unrest that is contained in his previous works will be left equally unconvinced by the projected remedy, as outlined in this work. Professor Loria is at great pains to differentiate his doctrine from socialism or any other "ism" whatever. But in reading his works we cannot help experiencing at times the same sense of unreality that affects us in the books of Karl Marx or Henry George. Here, as in his other works, it is not so much the construction as the critical exposition that arrests attention; and nowhere else does his own scheme come out so clearly as in the above quotation. But those who really wish to catch the spirit of the author must go to the work itself. Even if it is not an economic classic, it is certainly a literary masterpiece.

EDWIN R. A. SELIGMAN.

The History of Mankind. By Professor FRIEDRICH RATZEL. Translated by A. J. BUTLER. With introduction by E. B. TYLOR, F.R.S. Colored plates, maps and illustrations. Vol. I, The Macmillan Co., 1896. — 486 pp.

This outwardly attractive volume is the first translated installment of the second revised edition of Ratzel's *Völkerkunde.* Originally

published in 1885–88 in three volumes, the work is now condensed into two. It appeared after the second volume of his *Anthropo-Geographie* in 1891, and is therefore enriched in several places by drafts upon that scholarly work. The changes from the first edition are considerable, but they are not always improvements. Thus, the newly added chapter (pp. 65–76) on "Science and Art" is transparently thin as regards science; and the art is already adequately treated elsewhere under the caption "Clothing and Ornament."

This work is not comparable with the *Anthropo-Geographie.* It contains nothing new: it is a compilation, although an able one; and bears witness in a marked degree to the prodigious industry of this prolific writer. The book is really a treatise upon ethnography. It is intended for a semi-popular account of the stages of culture attained by the various savage and barbarous peoples of the earth. Accordingly, it is almost entirely descriptive, falling into the same class with the anonymous volume on *Man* in the *Riverside Natural History*, or with Réclus's *Géographie universelle.* It is, however, better than either of these. By means of its fine illustrations it portrays the technical skill of primitive people in their pottery, fabrics, weapons and ornamentation; and may, therefore, be of use to the serious student, until he is prepared to take up original studies like those in Schmeltz's *Internationales Archiv für Ethnographie.* Rarely does the author pass beyond the descriptive stage. There is little comparative study, and almost no evidence of detailed research. In a few places, as in the excellent map of the distribution of certain arts and customs in the Pacific, some really good work is evident; but there is everywhere a lamentable deficiency in the line of physical anthropology. This, as has already been pointed out in reviewing his other book (POLITICAL SCIENCE QUARTERLY, IX, 321), is perhaps the most serious defect in all of Ratzel's geographical work; for it invalidates many of his conclusions.

The volume before us really consists of two distinct parts, parallel perhaps, but not bound together in any sense: in other words, illustrations and text are entirely independent of one another. The illustrative material is copious and exceedingly good, forming the most permanently valuable portion of the book. To have made such a collection is in itself a distinct service to science, for it is an incentive to comparative study. At times, however, the pictorial zeal outruns all bounds of tolerance — as in the fancifully colored "Family Party of the Australians." This is more the pity; since, as thus flaunted forth, these serve at once to prejudice the

discriminating reader. Such devices have in the past done more than almost anything else to bring the science of man into disrepute. On the other hand, the lithographic colored plates of ethnographic collections are worthy of all praise. With their index sheets of outlines they comply with the most rigid demands of the self-respecting reader; and they may be of great value to those students to whom access to the grand collections of Europe has been denied.

Several serious defects in this volume cannot be passed over in silence — defects due to the translator and publishers alike. Thus, there is no excuse whatever for the English title given to the book, for it in nowise corresponds to the very proper German title of *Volkerkunde.* It is mere bait for the vulgar reader and is derogatory to the learned and distinguished author. This work is no more a "history of mankind" than Tylor's *Anthropology* or Keane's recent *Ethnology* are really treatises upon the subjects implied in their respective titles. All quibbles about nomenclature aside, it will be generally acknowledged that this work covers but a single chapter in the history of mankind; for there is no word in it about prehistoric archæology, somatology, linguistics or any of those other departments which at Paris, for example, are represented in the *École d'Anthropologie.* It is a work on ethnography or ethno-geography, exclusive of the peoples of Europe. If the material had been sufficiently digested, if it had become concisely comparative instead of descriptive, if its details had been crystallized into well-ordered generalizations or laws, if physical man had been made co-equal with cultural man as a means of ethnic classification — then it might have been advanced to the dignity of a work upon ethnology. Or if every detail of man's existence — his physical origin, his relative variations, his arts, his religions, his social and political institutions — had been included, then this might indeed have been a work worthy of the title anthropology. But to overload this treatise on ethnography with the heading "History of Mankind" is absurd.

The translator is sometimes at fault in using a slovenly English style. Even supposing the author to be partly to blame, — and Ratzel's German is not always simple, — what excuse can be offered for this kind of work:

The population of Africa has undoubted affinities with that of Asia, but shows no trace of any relations with America. But this connection extends farther, beyond the limits of the mainland of Asia to the great Asiatic islands; it forms a great region of civilization between the northern and southern borders, which may be regarded as the western counterpart of

that more easterly region extending across the Pacific into America. The great mark of distinction between the two portions lies in the use or non-use of iron. In the north, indeed, the western region encroaches upon the eastern; but the contrast between north and south, ever increasing, remains persistent past the point where it crosses the boundary between east and west.

The use of the word lady (p. 118) is oftentimes rather out of taste. And what excuse is there nowadays for retrograding from the metric system, employed by Ratzel, to feet and inches? Most of all it is to be hoped that future translators will not render kilogram as "stone" — a process which in one case leaves an American uncertain whether the average weight of a people was 96 pounds (meat) or 168 pounds (by law).

WILLIAM Z. RIPLEY.

COLUMBIA UNIVERSITY.

Tratado de derecho administrativo segun las teorias filosoficas y la legislacion positiva. By ADOLFO POSADA, Professor of Political and Administrative Law in the University of Oviedo. Vol. I. Madrid, Victorino Suarez, 1897. — xxiii, 514 pp.

In this work Professor Posada has attempted to give a description of the administrative institutions and law of Spain as compared with those of the other important countries of the world, and at the same time to examine the general subject of administration and administrative law from the purely scientific and theoretical point of view. He is acquainted with, and has made use of, almost all the more recent general treatises on this subject; and his book contains a most excellent bibliography of the general subject of administration. It is on this account, if on no other, an extremely valuable piece of work — one that students of administration can by no means afford to pass over without examination.

His work is, however, valuable also because of the conclusions which he reaches with regard to the general position of the subject of administration. Heretofore most writers on this subject have regarded administration, when treating it from the purely theoretical point of view, as practically a part of the executive power. Professor Posada protests very strongly against this treatment of the subject, and believes that administration is to be found among the attributes of the judicial and the legislative powers as well as of the executive power. He defines administration as that function of the state which attempts to procure, preserve and develop the organization —

that is, the different institutions — by means of which the state realizes its ends. A large part of the earlier portion of the book is devoted to the defense of this thesis. Its importance, according to Professor Posada, consists in the fact that if administration is confounded with the executive power, the administration is apt to be sacrificed to politics, which of necessity must exercise an important influence over the actions of the executive authority. Professor Posada believes that, if we could once incorporate into our law and political opinion the conception that administration is not in theory a part of the executive power, but has to do with the more technical part of government, government would be much more efficiently conducted, and it would be easier to divorce politics from the purely administrative work of the government. As he says: "Administration, strictly speaking, as a science and as an art, has a technical character which demands from the administrator a special preparation and a special aptitude" (p. 65).

Without a doubt, this is a valuable contribution to the science of administration — a contribution whose value in this country can hardly be over-estimated. Our entire administrative history is evidence of a struggle to separate politics from administration. In our early history the attempt was made in the state government to make the various branches of administration practically independent of the chief executive, so that for a time the chief executive had very few administrative powers; and at the present time this is largely true of our state governments. This change in our system of government did not have as good results as were expected, not because the theory was false, but because there was practically no administrative head to the government after the chief executive, the governor, had been deprived of administrative powers. In our national government, on the other hand, where the constitution does not permit of such a change, the same attempt has been made through the civil-service reform movement. This attempt has been more successful, because the power of the president as head of the administration has not been undermined, and because the reform has had in view merely the separation of politics from administration and the formation of a permanent force for the discharge of the latter functions. It is believed that Professor Posada has stated a distinction which is of the utmost value and which no writer on administration should fail to emphasize.

F. J. GOODNOW.

Journal of the Society of Comparative Legislation. Vol. I, No. 1, August, 1896; No. 2, March, 1897. Printed for the Society by Rivington, Percival & Co., London. — 8vo, xxxii, 422 pp.

Jahrbuch der Internationalen Vereinigung für vergleichende Rechtswissenschaft und Volkswirthschaftslehre zu Berlin. I. Jahrgang, 1. & 2. Abtheilung, 1895; II. Jahrgang, 1896. Berlin, Hermann Bahr's Buchhandlung (K. Hoffmann), 1895–97. — 8vo, 652, 716 pp.

Questions concerning the Law Customs of the African Natives. Submitted by the International Association for Comparative Jurisprudence and Political Economy of Berlin. [No imprint or date.] — Folio, 8 pp.

Der Staatsbankerott und die moderne Rechtswissenschaft. Vortrag gehalten in der Internationalen Vereinigung für vergleichende Rechtswissenschaft und Volkswirthschaftslehre zu Berlin. Von DR. FR. MEILI, ord. Professor an der Universität Zürich. Berlin, Puttkammer & Mühlbrecht, 1895. — 8vo, iv, 82 pp.

In 1894 steps were taken, first in Berlin, later in London, for the organization of societies of comparative jurisprudence. In both cases the efforts were successful. By 1897 the London Society of Comparative Legislation had obtained nearly two hundred members, and the International Association for Comparative Jurisprudence and Political Economy of Berlin nearly six hundred. Each body has now published one or more substantial volumes; and from these the character of the work likely to be accomplished by each may be fairly estimated. It is of interest to compare the aims and work of each of these new associations, not only with the other but with the older French Society of Comparative Legislation, and to see how far these three organizations are doing the same work and how far they are tending to differentiate from and supplement one another.

The field of comparative jurisprudence is broad enough for a dozen such societies to labor side by side without interference. The comparative method may be applied to the study of legal history, transforming that branch of legal science into a study of the evolution of all human law. So far nearly all the work along this line, whether associated with ethnology or with jurisprudence, has been confined to early law — to that period which the Germans call *Volksrecht.* The excellent Austrian *Zeitschrift für vergleichende Rechtswissenschaft* is chiefly devoted to this period. Little has been

done for the following period — that period which Maine designates as "fiction" and which the Germans, in apter phrase, call *Juristenrecht*. For the next period, that of "equity" or *Amtsrecht*, when government, in the form of prætor, king or chancellor, overrides established law with commands and prohibitions based on administrative power, comparative work is almost entirely wanting. It is only when we reach the period of "legislation" that we again find the comparative method actively employed.

In the comparative study of legal history there is opportunity for further differentiation. Special stress may be laid upon public law or upon private law. One special branch of property law, the law merchant, has already proved peculiarly attractive to students of the historical-comparative school by reason of its cosmopolitan development. International law, of course, cannot be studied from any other than a cosmopolitan point of view.

In the comparative study of law in its latest developments — in the study of comparative legislation — differentiation is possible by subjects, as indicated above, or as a result of the different aims with which the study is prosecuted. Modern laws may be regarded as links in that chain of development whose beginnings have faded from the memory of our race and whose end we cannot foresee; and the investigator may concern himself mainly with the causes and effects of legal change. Again, the point of view may be less sociological and more juristic, and the effort may be to ascertain how far the rules established by modern legislation modify the traditional theories of legal dogmatics. Again, the point of view may be less scientific and more practical. Before university professors or learned societies occupied themselves with the comparison of laws, and long before the term comparative legislation was coined, men who had laws to make studied the laws existing among divers peoples. Something of the sort was going on two centuries before Christ, when the edict of the Foreign Prætor took shape at Rome; something of the sort has been going on in our own time in the British Empire, with its analogous variety of local and racial customs and laws. In modern Europe important legislation is regularly preceded by a ministerial or parliamentary investigation of the laws made in other countries *in simili casu*. The reports of English parliamentary commissions are often valuable studies in comparative legislation; and the "Motives" which accompanied the first draft of the German civil code constitute one of the most important modern contributions to comparative jurisprudence.

From the outset the aims and the labors of the French society have been practical: working in touch with and aided by the French government, it publishes, in French, the most important foreign laws of each year. It publishes also a smaller *Annuaire* of French legislation. It is publishing a series of French translations of foreign codes. At its monthly meetings papers are read which are sometimes mere notices of legislative action in this or that country, sometimes elaborate studies in the comparative law of special subjects. These papers are printed in the *Bulletins* of the society. The *Annuaires* and the *Bulletins* have long been indispensable to the student of comparative legislation.

The English society is attempting a more intensive cultivation of the field of English legislation. This field is certainly wide enough for its energies. As was pointed out in its prospectus, in 1895, the English race and the races living under English rule have about one hundred and ten legislatures — sixty in the British Empire and fifty in the United States. The acts of these legislatures need not be translated, for they are nearly all promulgated in English. (It appears that the laws of Jersey are published in French only.) They need not be republished, for they are all obtainable, with more or less trouble. What is needed is something in the nature of a guide to the various channels of this enormous stream of legislation. Such a guide the *Journal* of the society aims to supply. In its first number, that of August, 1896, it gives a review of the legislation of the British Empire in 1895. This review covers, in 133 pages, the work of no less than fifty legislatures. It represents the coöperation of ten editors and correspondents. Such an achievement in the first number of the *Journal* implies a thoroughness of preliminary organization which inspires confidence in the future work of the society. The "notes" on American legislation in the same number are readable, but thin. They are based on Dewey's *Bulletin of Legislation.* Perhaps they may be taken as a hint that we Americans should do for ourselves what the London society is doing for the British Empire.

Another evidence of careful preparation is furnished by the articles in the first and second numbers on "Modes of Legislation in the British Colonies." This is the beginning of an elaborate inquest not merely into modes of legislation, but into the existing law of all the colonies. A carefully framed series of questions has been drafted by the officers of the society and has been transmitted by Mr. Chamberlain, secretary of state for the colonies, to the respec-

tive colonial governments. It is inquired, among other things, what is the existing common law of each colony; whether special law exists for particular races or creeds; in what form the statutory law is published; and what steps, if any, have been taken towards revision of statutes or toward codification. Answers from eighteen colonies have thus far been published. These are interesting reading; and the full set of answers will be most valuable. Articles throwing light on the same general question, namely, the existing law of the British Empire, are contributed to the first number by Sir Courtenay Ilbert and Mr. L. B. Clarence, who write on the application of European law to the natives of India and of Ceylon.

Another inquest into "Methods of Legal Remuneration in Contentious Matters" has been set on foot by Mr. John Macdonell, and the results are given in an article of 137 pages in the second number. Inquiries were addressed to, and answers received from, competent authorities, not merely in the British colonies and in five representative commonwealths of the United States, but in ten of the leading countries of Continental Europe.

Other special articles deal with the new German civil code and with the recent controversy in Egypt concerning the payment of the expenses of the Dongola expedition. Under a strict construction of the term "comparative legislation," it would be difficult to defend the admission of either of these articles. Under a broader construction, any information regarding foreign law or foreign judicial decisions may be welcomed as "material."

"Comparative jurisprudence and political economy" is a broader title, and in assuming it the Berlin association stakes out a broader field than that which either the French or the English society attempts to occupy. Even this broad title, however, fails to justify the insertion of several articles published in the first *Year-Book*, because the element of comparison is wanting. Were we to judge the enterprise by this volume alone, it might be queried whether any useful purpose was subserved, in a country so abundantly supplied with technical periodicals, by collecting in a new journal articles that might as well be published in the existing journals devoted to law or to economics. In the second number of the first volume, however, there is a marked improvement, not in the leading articles indeed, but in the addresses (*Vorträge*) delivered before the association. These are really comparative. In the second *Year-Book* there is even more improvement. All the leading articles save one are comparative. In both volumes the articles, with few exceptions,

are of real value to the student of jurisprudence. In the introductory article by Professor Bernhöft, the association takes formal possession of the entire field of comparative jurisprudence, but announces that more attention will be paid to modern problems than to legal history. The article further emphasizes the intimate connection between law, ethics and economics; and declares that on this triple basis only can we properly estimate the trend of things in the present period of social restlessness and conflict. In the field of legal history the most noteworthy contributions are Professor Wesnitsch's article on "The Collective Liability of the Village for Crime in Ancient and Modern Servian Law" (vol. i, p. 14), in which it is shown that the individualistic rules which obtain in Western Europe are inapplicable to Servian conditions; and Professor Jolly's article on the ceremonies attending the attainment of puberty in India, which he compares with those practiced by other Indo-European peoples (vol. ii, p. 575). Excellent studies in comparative law and economics are contributed by Dr. Hirsch, who writes on the trades-unions of Great Britain and of Germany (vol. i, p. 513); by Professor Foinitzky, who discusses the Russian draft criminal code from the comparative point of view (vol. i, p. 588); by Dr. Burchard, who treats of the modern law of salvage; by Dr. Heilborn, who discusses jurisdiction over merchant-ships in foreign waters and pleads for the subsidiary application of the law of the flag (vol. ii, p. 1); and by Professor Lehmann, who examines the English, Dutch and German laws respecting colonial companies, criticising the German legislation (vol. ii, p. 20). Suggestive articles concerning the exchange of governmental publications are contributed by Professor Meili (vol. i, p. 25), whose manuscript should have been edited into one-third of its bulk, and by Dr. Maas (vol. ii, p. 122). Of particular interest to Americans is Dr. Kaufmann's temperate and judicial article on "The Bering Sea Fisheries controversy and the Paris Arbitration of 1893" (vol. i, p. 459). Dr. Kaufmann thinks that the decision of the tribunal was justified by existing international law, but that the American contention represents the law of the future.

Like the English society, the German association is making no attempt to duplicate the work of the French society in collecting and publishing texts. Like the English society, it confines itself to sketching the progress of legislation in various countries. Unlike the English society, it aims to follow the movement of legislation everywhere, and to include the development of legal literature. In the first volume this department was quite inadequate. In the

second there is a great improvement. Reports are published from twenty-eight countries, and the review fills 424 pages. Particularly good relations appear to have been established with the Slavic states of southeastern Europe, and the *Year-books* promise to give far more information regarding Slavic law than is elsewhere easily obtainable.

Another department which is most inadequately represented is that of judicial decision. A few interesting cases are reported in each volume. They are, for the most part, cases of conflict of laws. It seems hardly worth while, however, for the editors to make any especial effort to strengthen this department, which is already covered by the admirable *Journal de droit international privé.*

Like the English society, again, the German association has started an inquest, but in a very different field. A committee has been created to investigate the legal customs of the natives of Africa, and a list of questions covering eight folio pages has been printed in German and in English. The questions are well chosen, and are so framed as to make clear, even to persons unfamiliar with ethnological investigations, the precise points on which information is desired. These papers are to be sent to colonial officials, missionaries, traders and explorers, and the results secured should be valuable.

It should be noted, finally, that by the assistance of the German Imperial Foreign Office and of the German Colonial Society, the Berlin association is enabled to offer a prize of 1600 marks for the best treatise on "the principles which have been observed in the colonies of the most important states regarding acquisition and settlement of land, and the economic result of the same." Manuscripts may be written in French, German or English, and must be sent in before April 1, 1898. For the further conditions of the competition see the *Jahrbuch*, vol. ii, p. 714 *et seq.*

Not all the addresses delivered before the Berlin association find their way into the *Year-Book.* Professor Meili's treatise on *State Bankruptcy* comes to us as a separate publication. The pamphlet deals with the relation of foreign creditors to states which borrow and fail to repay. There is here, the author insists, a perfect legal right against the defaulting state — only it cannot be enforced. (Professor Meili's conception of a legal right, it will be observed, is not that of the Positivists.) In earlier theory, the creditor's state was entitled to enforce this right against individual members of the defaulting state, by seizure of their property or attachment of their claims. This course was justified, at first, on the theory that every

subject of a state, by reason of his allegiance, was subsidiarily responsible for all the acts and defaults of his state (Grotius); later, on the theory of legitimate reprisal (Puffendorf). In modern times the theory that property rights are human, not civil, rights has caused these remedies to fall into desuetude. There remains nothing but state action in behalf of creditors against the defaulting state itself, by seizure and administration of its territory and revenues; and this remedy is actually resorted to only as against weak and half-civilized communities. Meili argues for an international court which shall be empowered to investigate the claims of creditors and the resources of defaulting states, and to decree, in any needful case, such measures as the great European states have taken in the case of Egypt. That such a court can at present be established he does not assert; but he thinks that the way may be paved for its eventual establishment by special arbitration conventions. From every state that borrows, the lenders should exact a pledge that in case of default, the state will submit to the decrees of a tribunal of arbitration. How the decrees of the arbiters are to be enforced he thinks it needless to discuss, since no instance has yet occurred in which a state has consented to arbitration and has then refused to abide by the decision.

It is evident that both of the new societies whose work we have been examining deserve support from all who are interested in comparative jurisprudence. Their publications will be indispensable to the student, and should find a place in every important university library and law library in the United States. In the list of members of the English society there seem to be, at present, but two American universities — Columbia and Michigan. Applications for membership in the English society may be addressed to Albert Gray, Esq., 2 Paper Buildings, Temple, London, E.C. Applications for membership in the Berlin society may be sent to Dr. F. Meyer, W. Lützow Ufer, 32. The annual subscription to the English society is a guinea; to the German association, twelve marks.

MUNROE SMITH.

The English Constitution. A Commentary on its Nature and Growth. By JESSE MACY, M. A., Professor of Political Science in Iowa College. New York, The Macmillan Co., 1897. — 534 pp.

This book consists of two parts. The first contains an exposition, compressed within the limits of one hundred pages, of the English constitution as it is at present. The second part is a commentary

on the historical development of that constitution from the Norman conquest to the present time. Viewed as a whole, the work lies within the domain of political science and constitutional law more truly than in that of history. The object of the author has been to expound the modern English constitution and to explain historically its origin. Therefore, to speak after the manner of the clergy, the text is to be found in the first part and the illustrative commentary in the second part. The volume, then, is in conception and execution a unit, and the history contained in it is written with a purpose — with the view of showing a distinct outcome and conclusion. The author has kept the end of his journey in sight from its beginning. Material has been selected and arranged, and the emphasis laid upon it with a view to illustration and exposition.

The book is, moreover, the outcome of class-room work and has a distinct pedagogical purpose. The author designs it to aid American students to a clear understanding of the English constitution. Two cardinal facts in American constitutional development have been the existence of the formal written document and the separation of powers. Hence Professor Macy has made prominent the opposite characteristics in the English system — the concentration of powers and the substitution to a large extent of custom or understanding for the written constitution. This comparison, more implied than expressed, is wrought into the substance of the book, and to a considerable extent determines its character.

Finally, the author lays no claim to the merit of original research. He has simply used with diligence and judgment the material contained in the standard secondary authorities. In his pages their views are reflected, but in such a way as to show that in the author's mind they have been carefully sifted and analyzed, and that from them he has drawn his own independent conclusions. In the expository part of the volume Professor Macy fully acknowledges his indebtedness to Bagehot. The spirit of Bagehot's realism, his keen search for the substance which lies beneath and behind the form, is caught and reproduced in many passages. But Dicey, May and the other standard writers, both on the law and the history of the constitution, have been used with care. It would seem that in the historical part of his book Professor Macy is as much indebted to material and suggestions contained in May's chapter on the influence of the crown as in the expository part he is indebted to Bagehot and Dicey.

As the history contained in this book is of special interest to the reviewer, he may be excused for dwelling particularly upon it. The

originality and intrinsic merit of the view of English constitutional development presented in the volume will also justify this course. Though Professor Macy devotes himself chiefly to the task of showing how the democratic elements in the society and constitution of England have developed, one of his excellencies is that he does not attribute too great antiquity to this phenomenon. He is inclined throughout to emphasize the prominence of the crown in the constitution. He realizes that prior to the Tudor reigns Parliament, and especially the House of Commons, occupied a precarious position, and, had it seriously opposed royal policy, might have been abolished. In those ages, as *Magna Carta* shows, the king could be effectively coerced only by war, and not by political action. Professor Macy's view of English history hinges more perhaps than that of any other writer on the Tudor period. The central thought of the historical part of his book may apparently be found in the following passage.

> The Tudor rulers had championed the unrepresented English people as against privileged classes, and in so doing they had nursed into life a representative assembly capable of competing on equal terms for the support of the nation. From the political contention thus joined has been developed the modern constitution (p. 245).

His treatment of English history, particularly since the Revolution of 1689, is an elaboration of the idea contained in the last of these sentences. On its practical side, says he (p. 320), the ideal of the Tudors and the Stuarts was a unified system wherein legislation was an incident of government, and harmony was secured by committing legislative business to the control of administrative officers. He implies that if Parliament in its conflict with the Stuarts had fully triumphed, it, as distinct from the crown, must have assumed control, and some sort of a formal constitution providing for a separation of powers must have resulted (p. 319). But, instead, by the gradual development of the cabinet the characteristics of the Tudor system of government have been preserved, only that the voting constituency has taken the place of the monarch as the center of control. This has made it possible "for the individual and absolute form of government perfected by the Tudors to be transmuted into a modern, absolute democratic cabinet." Thus the ideals both of the crown and of the hostile House of Commons have in a sense been realized; but in order to secure this both king and Parliament have been compelled to forego personal preferences and "to make of themselves deliberate and conscious agencies for carrying into effect the will of the nation."

The chief merit of the book lies in the forcible manner in which its author has traced the history of this change as it was wrought out during the century between Walpole's administration and the first Reform Bill. The treatment of George III is particularly successful. By omitting details and ignoring irrelevant subjects, Professor Macy has thrown into strong relief the commanding power and position of the king. He was able to appoint, control and remove ministries, because he could always secure a majority in the Commons and because the cabinets were not units. The first ministry that was able to stand together and assert its policy was that of Earl Grey, and it did so because it was backed by the imperious demand, especially of the unrepresented part of the nation, for Parliamentary reform. At this crisis the king lost his power of appointing and removing ministers at his will and of dictating their policy, while the ministry itself became a unit under the headship of the premier. At the same time the House of Lords lost its position of equality with the Commons, and the latter definitely assumed the leadership as the mouthpiece of democracy within the nation. By this process the power of the Tudor monarch — that power which George III had come so near recovering — passed to the cabinet, and under its leadership Parliament again found its strength — and that in enhanced degree. Though the material in the book is not in all respects well arranged, Professor Macy has made a contribution to the literature of his subject which should commend itself to thoughtful students on both sides of the Atlantic.

H. L. OSGOOD.

Southern Statesmen of the Old Régime: Washington, Jefferson, Randolph, Calhoun, Stephens, Toombs and Jefferson Davis. By WILLIAM TRENT, M.A. New York, Thomas Y. Crowell & Co., 1897. — xv, 293 pp.

The writer of this attractive series of lectures is a Southerner "who cannot recollect ever seeing a slave, and who has never believed in the doctrine of state rights *per se*." He is one of the younger men of the South who as authors and scholars are bringing to their section a new fame and a more worthy name than that begotten in the old *régime* by the contributors to that "farrago of pathetic nonsense known as pro-slavery literature." The lectures included in this volume were delivered at Madison, Wisconsin, before an audience of students and townsmen; they are popular in form and character, without lacking dignity, accuracy, or literary finish. Their

main purpose is to sketch the lives of leading Southern statesmen before the war and to give them their proper place in our history.

The task was well worth undertaking, and for its successful accomplishment Professor Trent is in some respects peculiarly fitted. He is known as a writer of grace and vigor, having first distinguished himself by his charming book on William Gilmore Simms, the literary lion of the old *régime*. He is unusually free from cant or prejudice; his mind seems as simple and clear as the style in which he writes; and he approaches his subject with rare candor and open-mindedness. One feels constantly, as he reads, that the writer is absolutely without petty fear of Southern opinion, and quite as free from a desire to propitiate Northern sentiment. He looks at all the matters under discussion directly, and sees them face to face. As a result, we have a calm, rational account of men, some of whom have been worshiped at the South and execrated at the North: the judgments of the book are, therefore, valuable to the student of history who is desirous of reaching sensible conclusions. It may be said, too, that the book appeals to one as an indication — in itself an historical fact of no mean value — that the day has come when sober-minded men of the new South can look upon the *ante-bellum* heroes as less than demi-gods.

For the general reader or listener the lectures are well suited, and are likely to stimulate to further reading and investigation. The special student, on the other hand, regrets that Professor Trent did not seek to accomplish something more than the characterization of seven statesmen of the old South. The book would have been more valuable had he sought at all times to interpret these men as exponents of Southern thought and ideas, or had he shown us what qualities in each were the essential results of environment, the natural products of a peculiar civilization. Perhaps this is assigning him, after the fact, an impossible task; but it must be said that no one is better fitted to do it. In the lectures on Randolph, Stephens, Toombs and Davis he has in part accomplished this very thing, and these lectures are the most valuable and suggestive portions of the book.

The lecture on Washington is one more attempt, of which there have been several within a twelvemonth, to rescue the father of his country from the quicksands of mythology, under the belief that a man tempted like as we are is a more potent figure in the life of a nation than a being of whom men speak with bated breath, and whose noble example is shrouded by the halo that surrounds him.

That a strong, sober, energetic man of action like Washington should stand out before the public mind as either divine or priggish is indeed to be lamented; but it is doubtful if Professor Trent has succeeded in humanizing, although he may have masculated his subject. Like Mr. Ford, who flatly tells us that Washington could veer from the simple line of truth, and ends his book by asserting that he admires the real George Washington more than ever before; or like Woodrow Wilson, who begins his volume with a picture of an actual young Virginian with human passions and earthly impulses, and ends with a portrait of a saintly old man, of whom he speaks in charmed words with a far-away and mystical rhythm — so Professor Trent begins with the sturdy purpose of cool criticism, but soon falls under the spell of his own spirit of reverence and does its bidding. Probably the real George Washington is now less real than the ideal: the traditional George Washington has become a reality.

Jefferson, to whom the second lecture is devoted, needs to be rescued from his friends almost as much as Washington. His name is bandied about by political orators, who cover him, almost beyond recognition, with the foolish blandishments of rhetoric. On the other hand, federalistic historians have wholly failed to appreciate his genius. As a consequence the real Jefferson is little known. Professor Trent has done something in a brief lecture to show us the founder of the democratic party in proper light and perspective.

In some respects the chapter on Calhoun is the least satisfactory, although the subject is treated with great fairness and with a certain breadth and freedom. Nowhere can be found a better portrayal of the typical planter of the old *régime*, for whose necessities Calhoun invented his intricate dialectic subtleties:

> All he wanted was to be let alone; but if he were not let alone, he would peaceably withdraw from a partnership made for him by his ancestors, when times were better than now; if any one tried to stop him he would fight.

But when the author treats of Calhoun's constitutional theories he seems at times to go astray and to fail to appreciate the fundamental doctrine of the great leader. He warns the reader of Calhoun's works that it

> is not safe to approach these books unless he has thoroughly disabused his mind of the notion that sovereignty can be divided and a government founded on compact. If one starts with these notions in one's head, the sure grip of Calhoun's logic will end by making one a nullifier or a lunatic, it matters little which (p. 191).

One might well wonder how the person innocent of the lore of political philosophy could better prepare himself to be gripped by the logic of the honest nullifier than by following Professor Trent's advice; for surely the cunning argumentative snares are set in vain for the man who believes that sovereignty is divisible and a government can be based on agreement. In fact, he who believes that Calhoun's philosophical principles were sound and agrees with him in considering sovereignty a unit needs warning; for he can escape nullification or the madhouse only by seeing that the great Southern logician made false historical assumptions and could quote the scriptures of history to his purpose.

Of the seven statesmen whose lives are sketched in this volume, the first two belong to the nation; Jefferson was scarcely less of an American than Washington, and the two were in large measure free from the limitations of a narrow environment. The other five, Randolph, Calhoun, Toombs, Stephens and Davis are typical Southerners, whose manners and ideas illustrate the course of Southern history and the development of the pro-slavery spirit. Professor Trent has written an interesting and helpful book; but perhaps it is not too much to hope that he will sometime give us a more complete study of slavery as it showed itself in politics and statesmanship.

UNIVERSITY OF MICHIGAN. ANDREW C. MCLAUGHLIN.

Nicaragua: War of the Filibusters. By Judge DANIEL B. LUCAS, late President of the Supreme Court of Appeals of West Virginia, with introductory chapter by Hon. LEWIS BAKER, United States Minister to Central America; *The Nicaragua Canal*, by Hon. W. A. MCCORKLE, Governor of West Virginia; *The Monroe Doctrine*, by J. FAIRFAX MCLAUGHLIN, LL.D. Richmond, Va., B. F. Johnson Publishing Company, 1896. — 216 pp.

Such is the titlepage of a volume the various contents of which relate chiefly to Nicaragua. The part contributed by Judge Lucas, which forms about half of the book, possesses a certain historical interest, though it can scarcely be said to add anything to our knowledge of its subject — the filibustering expeditions of William Walker. Perhaps a better commentary could not be written on Walker, whom Judge Lucas calls "this Central American John Brown," than that which is furnished by Mr. Baker's introduction. On the 1st of May, 1896, Mr. Baker was awakened at San José, Costa Rica, by the firing of cannon and the noise of a brass band.

He subsequently learned that the demonstration was intended to celebrate the capture on that day, thirty-eight years before, of "el filibustéro Yankee William Walker." A man whose career was such that the people of Costa Rica have for nearly forty years continued to celebrate the anniversary of his capture and execution should scarcely need to be called "John Brown" in order to render him odious. The designation does not, however, appear to have been employed for precisely that purpose, but, rather, for the purpose of suggesting that both Brown and Walker are to be ascribed to the same cause, the one directly and the other indirectly. Brown was the product of "Abolitionism," and "Abolitionism," we are told, bred the "Slave Propaganda"; hence Walker, as a slave propagandist, was also the product of "Abolitionism." This course of reasoning, however, seems to be unnecessary to an explanation of Walker's career. He was of a restless disposition, fond of adventure and of notoriety, and reckless as to the means of gratifying his inclinations. That he believed himself to possess the sympathy of some persons of influence is not strange; but his lawless career produced, not only in Central America, but in all Spanish America, a feeling of distrust toward the United States, the traces of which appeared in many subsequent transactions. Nor were the ill effects of his course confined to the relations of the United States with Spanish America.

The chapter on the Nicaragua Canal, by Governor McCorkle, is, as he states, based on information "derived from general and official sources"; and he expresses his especial indebtedness to several persons, the first of whom is ex-Senator Warner Miller, president of the Nicaragua Canal Construction Company. The work advocates the construction of the canal with the assistance of the United States and the maintenance of its control by our government.

Dr. McLaughlin's discussion of the Monroe doctrine is brief, and is chiefly devoted to the Venezuelan question as it stood immediately after President Cleveland's special message of December, 1895, on the subject. The author's view of the message is expressed in the remark: "Certain individuals who haunt the stock markets have expressed dissent."

J. B. MOORE.

BOOK NOTES.

THE latest additions to Professor Charles Letourneau's long list of volumes upon different aspects of human progress are two bulky works entitled *La guerre dans les diverses races humaines* and *L'évolution de l'esclavage dans les diverses races humaines* (Paris, Vigot Frères, 1896, 1897). Like the volumes on political, juridical and moral evolution, these works recount the usages of savage hordes, barbaric tribes and half-civilized peoples in a painstakingly methodical way; and then, in like manner, survey the development of more highly organized nations. It is cheering to find that Professor Letourneau, after his extensive examination of warfare in all parts of the world and in all centuries, is able to discover some ground for hope that war is really decreasing in the world. He lays much stress upon the rapid growth of a strong feeling against war as a means of settling international disputes, and expects that, in course of time, public opinion will become strong enough to be really influential in a large number of cases of threatened war. The concluding chapter of the volume on slavery discusses the past, present and future of labor. This chapter will naturally be compared with the concluding chapters of the third volume of Mr. Spencer's *Principles of Sociology*, in which the same topics are discussed. While Mr. Spencer's individualism is as stalwart to-day as it was when he began his sociological writings half a century ago, M. Letourneau has strong sympathies with many phases of communistic and socialistic aspiration. He believes that the time will come when the wages system will disappear and when the more dangerous and deadly kinds of work will be done by mechanical means. He expects that the actual aims of socialism and communism will in a large measure be realized, probably through a greater degree of social control over industry than is exercised at present, but probably not as a result of any of the revolutionary measures that socialists have advocated. The change will come about through evolution, and the wisest cannot now see just how the details will be worked out.

Some of the most careful and suggestive studies of social conditions in East London in recent years have come from the pen of Miss Helen Dendy. Miss Dendy, now Mrs. Bernard Bosanquet, has lately offered a somewhat longer and more consecutive account

of these conditions in a volume entitled *Rich and Poor* (London, The Macmillan Co., 1896). This work is divided into two parts, the first descriptive, the second consisting of suggestions for workers. In the first part are brief but accurate accounts of the parish, its institutions and its people, the family income and its expenditure, the women of the East, *etc.* In the second part there are discussions of the natural links between the rich and the poor, of work among the children, of local responsibilities and of charity. No better book than this can be found by one who desires to know the truth, stripped of all sensationalism, about the East London population, as presented by one who has for years taken a deeply sympathetic interest in all that pertains to the lives of the poor, and who yet has never been carried away by any of the socialistic or philanthropic fads of the age. Mrs. Bosanquet shows very clearly both that the population of East London has much to make life worth living and that the population of West London is far from being the heartless and luxurious class which it is so often pictured to be. Speaking of the economic condition of the sewing woman and of the difficult question whether customers should refuse to purchase the products of the sweat shop, Mrs. Bosanquet regards it as an almost infallible rule that good work is fairly paid, while bad and hurried work is almost sure to mean starvation wages to the worker. In this remark there is a thoroughly practical suggestion. Under ordinary conditions it is impossible for the customer to know with certainty whether goods are actually made where they purport to be manufactured, and it is a debatable question whether it is economically wise to attempt to limit purchases to goods supposed to be produced under particular conditions; but the rule of purchasing good work, and good work only, is one which, if followed, can have only good consequences, economic, social and moral. Mrs. Bosanquet has long been an active worker in organized charity, and her chapter on charity may be commended as wise and informing.

In the excellent series of small volumes on "Social Questions of To-day," edited by H. de B. Gibbins, we find an admirable little book on *The Problem of the Unemployed*, by John A. Hobson (London, Methuen & Co., 1896). Mr. Hobson has studied this difficult question from many points of view, and has made himself thoroughly familiar with the facts and statistics, as well as with the economic theories pertaining to the subject. He analyzes the meaning of unemployment, attempts to discover the measure of unemployment and to answer the question whether the evil is increasing. It is his

conclusion that, while it is impossible to answer this last question positively, the character of employment in England — and probably also in most other countries — is one of increasing irregularity. Turning, then, to the causes of unemployment, Mr. Hobson attempts to show that the ultimate cause must be found in a lack of adjustment of consumption to production. He believes that all suggested remedies which fall short of an increase of aggregate consumption in the community are mere palliatives; and that attempts to cure unemployment by making new employments will of necessity prove futile unless the conditions are such as to throw an increased power of consumption into the hands of those who will use it to raise the general level of consumption in the community. Mr. Hobson neglects to consider the very important fact that under modern conditions of industry it is necessary that the workman be so trained that he can pass quickly and successfully from one machine-tending employment to another.

Le Comte d'Haussonville contributes to the *Bibliothèque contemporaine* a little volume of studies of *Socialism and Charity*, in which he vigorously defends a view of the vices, crimes and poverty of modern society which will surely call down upon him the abuse of all sentimental people. He thinks that altogether too rosy a view of the future of humanity has become popular, as a result of the general acceptance of the philosophy of evolution. It is, in his opinion, a great fallacy to argue that because there has been progress in human well-being, as well as evolution in the animal kingdom, we may therefore look for the elimination of evil and suffering. Suffering can be diminished, but not extinguished. Le Comte d'Haussonville does not believe that the time will ever come when such evils as drunkenness, illegitimacy, prostitution and pauperism will have disappeared from human society; and in his judgment the notion that they can be suppressed leads individuals and governments to attempt experiments which are sure to result disastrously and to increase the very evils that are complained of. Only by studying each particular plan of amelioration that has been tried, criticising its defects and improving its methods, can we hope to secure such diminution of misery as is really possible.

Professor E. C. K. Gonner has put together in a volume of 251 small pages a large amount of information, exposition, criticism and good sense on *The Socialist State: Its Nature, Aims and Conditions* (London, Walter Scott, 1896). He describes his book as an introduction to the study of socialism, and hopes that it will serve to convince

its readers that the problem of socialism cannot be ignored, and yet that a final judgment upon it must be arrived at, not on any one aspect or presentment of the case, but after an even-minded review of the whole complex medley of interests, difficulties, dangers and advantages. The work is worthy of the author's purpose. The fairness and good judgment shown throughout are very well indicated in the conclusion that it would be presumptuous to say that no socialistic scheme will ever be realized in practice; that probably most socialists, and certainly most socialistic leaders, themselves believe that no such scheme is capable of immediate realization; and that any system which is to meet with success will have to take into more vital account than has yet been done the variable elements in human nature and the settled conditions which are necessary to the security of society, to progress and to the growth of the state.

Shortly before his death in 1893 the famous French socialist, Benoit Malon, summed up his previous writings in the two volumes *Le socialisme intégral.* These have now been issued in a new edition in two volumes by Félix Alcan and the *Revue socialiste.* The first volume contains a history of socialistic theories and tendencies; the second deals with possible reforms and practical methods. A third and last volume, which was never completed, was to treat of probable results and to give the general synthesis. But the volumes as published will give a good idea of the French socialists and of the man who founded and till his death edited their chief periodical.

The *Handbuch des Socialismus*, by Drs. Carl Stegmann and C. Hugo (Schabelitz' Verlags-Magazin, Zurich), of which the first installments were noticed in this QUARTERLY (IX, 183), has just been issued in completed form as a portly volume of 878 pages. Attention may be particularly called to the review, brought down to date, of the socialistic movement in each separate country as well as to the articles on the lesser lights of socialism from the beginning of the century. Altogether the *Handbuch* contains a copious repertory of facts which will be sought for in vain in other publications.

The publishing house of P. V. Stock in the Palais Royal at Paris has lately begun a *Bibliothèque sociologique*, including the works of some of the important French and foreign socialists. Perhaps the most interesting volume to American readers is that which contains the less-known and manuscript works of Michel Bakounine (or Bakunin, as we are accustomed to spell it). The chief contents are his "Federalism, Socialism and Anti-theologism," his letters on "Patriotism" and "God and the State." Other numbers in the series

are devoted to Jean Grave (*La société mourante et l'anarchie* and *La société future*), Hamon (*Psychologie de l'anarchiste-socialiste*, *Le socialisme et le congrès de Londres*), Kropotkine (*L'anarchie*), L. Lacour (*Humanisme intégral*) and Ch. Malato (*De la commune à l'anarchie*).

Les problèmes sociaux contemporains, par Achille Loria (Paris, V. Girard et E. Brière, 1896), is an application of Professor Loria's well-known opinions upon the relations of private property and economic phenomena to social evolution, the problems of liberty, property, population, socialism, social Darwinism, social evolution and revolution. There is little chance that Professor Loria's opinions will be extensively adopted by economists and sociologists in the United States; but his discussions are always suggestive, and the present book, while its treatment of social questions is nowhere profound, is interesting and at times helpful.

Those who do not read German with ease will welcome the French translation of Rümelin's *Problems of Political Economy and Statistics* (Paris, Guillaumin, 1896). In the German original they are well known as his *Reden und Aufsätze*, written between 1867 and 1881. The translator, Mr. de Riedwatten, has included in the French version the various essays on population, and the more general articles on social laws, ethics, politics and statistics. The volume is the fourteenth of Guillaumin's *Collection d'auteurs étrangers contemporains*, of which the three preceding numbers are translations of Westermarck, W. A. Shaw and Schulze-Gävernitz. This is the first of the series which is not to be found in English dress.

A good beginning in the detailed study of the social conditions of the individual American industries has been made in the two monographs by Dr. Carl Kindermann, privat-docent in Heidleberg, under the general title *Zur organischen Gütervertheilung* (Leipzig, Duncker und Humblot). The first, published in 1894, is devoted to a study of the laborers in the pig-iron industry; the second, to a study of those in the glass industry. They form installments of a larger work dealing with a comparison between American and European industrial conditions. Dr. Kindermann is fond of high-sounding classifications, and speaks of the "centralistic, organic and pluralistic" tendencies in modern development; but what he really writes about is the problem of government interference with industry. The monographs were composed under difficulties inseparable from only a short study on the spot; but they contain some interesting statistics and conclusions. The comparison with German conditions appears only in the second volume, devoted to the glass industry.

Among the strikes that have attained international importance, that of the glassmakers at Carmaux in 1895 has been of peculiar interest, not only because it became a political question in France, but also because it resulted in the starting of a coöperative factory by the strikers themselves, aided by a popular subscription. The whole story is now told in an attractive way by Léon de Seilhac in his *La grève de Carmaux et la verrerie d'Albi* (Perrin et Cie., Paris, 1897). It is in the main an objective statement, and the author does not indulge in any illusions as to the success of the new scheme. His fears have only recently been realized. The failure of the scheme, however, does not rob it of its value as an object lesson. A large part of the book consists of appendices containing the decisions of the courts on various phases of the conflict.

The well-known *Katechismus der Volkswirthschaftslehre* of Hugo Schober has now appeared in a fifth edition (Leipzig, J. J. Weber, 1896). The editor, Dr. Ed. O. Schulze, who has made a bulky little volume of it, has based his alterations chiefly on the recent German and Austrian text-books. The work, while of great practical value to German students, will be of interest to English and American readers only as giving in a convenient and compact form the general German view of economic theory and practice.

The *Cours d'économie sociale* by R. P. Ch. Antoine, professor of moral theology and social economics (Paris, Guillaumin, 1896), is of interest as the latest effort to expound economics from the point of view of the Roman Catholic divine. As was to be expected, far more stress is laid on the ethical than upon the economic aspects of each problem; and everywhere an effort is made to comment on actual burning questions in the light of the recent papal encyclicals on labor and other allied topics. Incidentally considerable information is given about the practical work of the church in the social movement.

Under the title *Economic Science and Practice* (London, Methuen & Co., 1896), Mr. L. L. Price collects thirteen essays on a variety of topics. Seven of the essays deal directly or indirectly with the question of industrial peace and with the English machinery for its maintenance and restoration. Of boards of conciliation, boards of arbitration and sliding scales Mr. Price speaks with balanced hopefulness. This machinery is not new in the United States; for in January, 1897, twelve states had established boards of arbitration. The public, therefore, seems to have done its share. It is less certain that those directly interested — the employers and the employees — have done all that might be expected of them. It

is possible, of course, that a mistake may have been made by attempting to solve the question by the creation of *official* boards of arbitration. It is more likely, however, that the defect lies in the private boards of conciliation, which are by no means so numerous or so well organized here as they seem to be in England. In his account of Adam Smith and his relations to recent economics, and in his review of the *Principles of Economics*, Mr. Price's work is careful and thoroughly appreciative. The criticisms, when there are any, are the silent negative criticisms of selection and emphasis. Nevertheless he is able to maintain throughout a certain independence of standpoint. The essay on "The Theory of Rent" contains some interesting and timely applications and extensions of the theory.

Students of French finance will welcome the *Éléments de la science des finances et de la législation financière française*, by Max Boncard and Gaston Jèze (Paris, V. Girard et E. Brière, 1896). As the title indicates, the work is devoted mainly to the administrative features of the fiscal system; and its distinguishing characteristic as compared with many previous works is the fullness with which it handles the administration of the public debt. In the matter of the public revenue the book contains a useful review of the development since the Revolution.

Among the handiest books on recent fiscal tendencies in France are to be mentioned the three volumes by P. Bidoire and G. Simonin entitled *Les budgets français*. They form numbers 15, 18 and 21 of the *Petite bibliothèque sociale, économique et financière* published by Girard et Brière in Paris. Each volume has two parts, dealing with the principles of the projected scheme for the ensuing year and the actual results of the budget for the current year; and they take up in turn the budgets of 1895, 1896 and 1897. As most of the important political discussions of recent years have turned on budgetary schemes, students of finance and students of politics alike will find in the little volumes much of interest and value.

In a monograph entitled *L'imposta successoria* (Turin, Bocca, 1896), Professor Alessandro Garelli presents a comprehensive treatment of the inheritance tax, especially complete as regards the theory of the subject. After discussing the theoretical bases of the tax and deciding to regard it as a payment in lieu of annual taxes, he gives a list of its virtues which almost serve to describe an ideal tax. Economically considered, he pronounces this form of taxation harmless in that it is not oppressive to industry, does not disturb prices or the action of competition by any process of shifting, does not

diminish any reward of labor or abstinence or disturb the normal distribution of wealth, and may make possible the lightening of indirect taxes on consumption. He finds combined in this tax the advantages of direct and indirect taxation, including not only ease of payment, security and small cost of collection, productiveness and elasticity, but universality, uniformity and adaptibility to progressive rates. He denies that it has the effect of driving away capital; and maintains that, when heavy enough, it makes for social peace by conforming to the demands of the modern social conscience. A chapter is devoted to the specific questions of detail which confront the legislator; and the monograph closes with a sketch of the development of inheritance taxes in the principal countries of the world and a discussion of proposed amendments in Italy.

The last three numbers of the admirable series known as the *Petite bibliothèque économique* (Paris, Guillaumin) are devoted to two of the first and one of the latest of the French economists, Quesnay, Lavoisier and Léon Say. *Quesnay et la Physiocratie* is edited by Yves Guyot, whose preface of eighty-nine pages is quite of the *intransigeant* kind and defends the Physiocratic conception of the natural order against the wicked protectionists and socialists. The body of the little book is devoted to a selection of Quesnay's more important writings. The volume on Lavoisier is edited by Messrs. Schelle and Grimaux, of whom the latter gives a good biographical notice, and the former furnishes an interesting introduction. The little work contains Lavoisier's chief essays on agriculture and finance, and is thus far the only collection of his strictly economic writings. Of greater interest to the modern student is the volume *Léon Say*, to which Mr. J. Chailley-Bert contributes a clear and appreciative introduction. From among the many writings of the celebrated statesman and economist, the editor has selected part of the famous report on the payment of the war indemnity of 1871, a memoir on budgetary administration and the notable speeches on the budget of 1883 and the tariff changes of 1891. The bibliography occupies twenty closely printed pages.

A laborious contribution to the history of economic literature has been made by Dr. R. v. Erdberg-Krczenciewski in his monograph on *Johann Joachim Becher* published as the second number of the sixth volume of Professor Elster's *Staatswissenschaftliche Studien* (Jena, Fischer, 1896). Becher has long been prized by the Germans as one of the ablest as well as one of the earliest Mercantilists. The author devotes almost one-fifth of the monograph to an introduction

on the Mercantile system in general, which is neither very new nor very profound. But the details of Becher's life have been industriously collected, and the methodical account of his views will be convenient to those who do not possess the original essays.

Professor Guillaume De Greef, of the *Université Nouvelle de Bruxelles*, continues his elaborate exposition of historical and social progress in a volume on *Croyances et des doctrines politiques* (Bruxelles, 1895), in which we find an interesting and suggestive review of political thought from the most ancient times down to the present. Peruvians, Mexicans and Egyptians, no less than the mediæval thinkers and the modern philosophers, have come in for examination. The volume is hardly to be described as a profound treatment of the subject, but, like all that Professor De Greef writes, it is well filled with suggestions, interpretations and flashes of insight that render it valuable to any student of this subject.

The title, *The Council of Trent*, given to the late Professor Froude's last published work (Scribner's, 1896) is somewhat misleading. Considerable space is devoted to a general review of the Lutheran Reformation, and only the earliest period of the Council can be said to be treated at all, as the concluding summary contains the only references to the decisive sessions of 1562–63. The fresh, independent treatment of a subject so badly handled by both the friends and foes of the movement is, however, most welcome. The book possesses the peculiar charm for which its author is noted, and no one, whether scholar or layman, will put it down without feeling that he has been carried into the very midst of the momentous struggle of the fifteenth century, and has gained much from Mr. Froude's shrewd suggestions. It is a pity that circumstances did not permit exact references to be given to the authors upon whom the writer has relied; it would be interesting to know the *rôle* that Erasmus, Sarpi, Pallaricini and the rest respectively played in determining Mr. Froude's conclusions.

Professor A. B. Hart is laying teachers of American history, especially in schools and colleges which are not well supplied with books, under great obligations. Channing and Hart's *Guide to the Study of American History*, which appeared some months ago from the press of Ginn & Co., has now been followed by the first volume of Hart's *American History as told by Contemporaries* (The Macmillan Co., New York, 1897). The first-mentioned volume contains an excellent bibliography, prefaced by judicious observations on the method of teaching history. The new series, of which Professor Hart is sole

editor, contains nothing but extracts from contemporary writers. It will consist of four volumes, the first of which, just published, is on the *Era of Colonization, 1492 to 1689.* The extracts illustrate the history of the discoveries, the conditions in England which facilitated and guided colonization, and life and growth in the English-American colonies themselves. The selections are made from a large number of representative writers. They are intended to illustrate the social and political life of the colonists in all its leading phases. The extracts have been judiciously selected and arranged, and probably accomplish the purpose intended as well as any such collection could do it. The series must prove a valuable aid to teachers, and should result in a wider reading of the original authorities.

It is very unfortunate that training in the use of books regarded merely as instruments is not yet recognized as a regular branch of our college instruction. The want of such technical training is nowhere more apparent than in the many slovenly works upon history which are written and read with the same serene faith that what is printed is right. In the hope of encouraging a more enlightened use of books M. Ch.-V. Langlois has recently introduced a course in historical bibliography in the *Faculté des Lettres* of Paris. His excellent *Manuel de bibliographie historique* (Paris, Hachette) is partially, at least, the outcome of his instruction. The earnest student or teacher of history will find this little volume a most useful addition to his works of reference. It is, evidently, the result of much careful and discriminating thought and investigation. The author has compressed into a little volume of less than two hundred pages an extraordinarily complete account of the bibliographical apparatus now essential to intelligent historical research. The book shows a cosmopolitan acquaintance with the work carried on in the libraries of the world, including those of the United States. It is encouraging to see the Boston Public Library and the Athenæum termed "*deux bibliothèques modèles.*" The second part of the work is to be devoted to a comparative account of the scholarly activity in the field of history in the various countries of the world, and will describe the great coöperative undertakings which are doing so much to advance the science. It is to be hoped that the completion of this useful and original essay will not be long delayed.

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POLITICAL SCIENCE QUARTERLY.

THE FINANCIAL RECORD OF THE SECOND CLEVELAND ADMINISTRATION. II.[1]

ONE influence, and probably only one, could have saved the Cleveland administration from the unfortunate results of the party rupture over the repeal of the silver-purchase act. If trade had instantly improved, after the vote of October 30, 1893, if prices had continued to recover, if credit had been restored — the people would probably have ascribed the merit to the president's policy, exactly as the entire political benefit of the trade recovery of 1879 accrued to the sound-money wing of the Republicans.

But no such result was possible. All markets had risen, it is true, since the worst midsummer paroxysm relaxed. European capital had for two months returned to this country as a buyer. This was, however, only because, with the extreme collapse of domestic credit, our own markets had fallen below the level of the outside world. The sales then made by domestic holders of grain, securities and merchandise were made at heavy sacrifices, often to avert bankruptcy. When, therefore, the foreign buying ceased and home demand was left as the sole support of the market, the consequence of the wholesale wreck of capital was evident. A period of prolonged liquidation followed, and the markets lapsed again into stagnation and declining prices.

This, it should be observed, is a phenomenon common to all corresponding periods in the aftermath of commercial

[1] *Cf.* POLITICAL SCIENCE QUARTERLY for June, 1897.

panics, home or foreign. Events pursued exactly the same course in 1873, for instance, and in 1857. But in 1893 the results were, for two reasons, specially unfortunate. Reaction from the short-lived movement of recovery came, to begin with, almost at the moment when the repeal bill passed, and the opponents of repeal therefore claimed that their stand in Congress was vindicated. In the second place, the delusive recovery of the early autumn had encouraged among administration leaders, to an almost incredible degree, a belief that the ill effects of panic had vanished permanently. This, as we shall see, influenced all the government's plans of revenue legislation, which were upset completely in the later returning trade stagnation. The necessity for some reconstruction of the revenue was imperative. We have already seen that the reckless laws of 1890 were by this time causing such heavy monthly deficits as to menace even the reserve against the legal tenders. Let us now see what had actually happened since the April crisis in treasury-note redemption.

On March 7, 1893, when the Harrison treasury administration surrendered office, the surplus gold fund stood at $100,982,410.[1] It would, however, have fallen far below the hundred-million mark during the Harrison administration, and would thereby have anticipated by at least two months the disturbances of April, but for the help of outside institutions. Mr. Harrison's secretary of the treasury, even while making his preparations for a bond issue under the act of 1875,[2] came to New York in the first week of February, and made an urgent personal appeal to the banks to give gold to the treasury in exchange for notes.[3] They did eventually turn over to the government, from their own gold holdings, $6,380,000,[4] and this is all that saved the Harrison administration from the consequences of its own mischievous legislation.[5]

[1] Secretary Carlisle, Annual Treasury Report for 1893, p. lxxii.

[2] Secretary Foster, letter of instructions to chief of Bureau of Engraving and Printing, February 20, 1893.

[3] *New York Financial Chronicle*, February 11, 1893. [4] *Ibid.*

[5] During February, 1893, the treasury's gold reserve fell from $108,181,713 to $103,284,219, a net loss of $4,897,494 (Annual Treasury Report for 1893, p. 75).

We have seen that the declarations of April 20 and April 23 pledged the new administration to continuance of gold payments on all the government's legal-tender notes alike, so long as the treasury held gold "lawfully available for that purpose." But as to what the secretary would do in case the surplus gold fund were to be exhausted he gave no intimation; decision was simply postponed. A bond issue in emergency was feasible, but, as will presently appear, the administration was very reluctant to resort to it. At the time, two administration measures of the first importance were about to come before Congress — repeal of the silver-purchase act and reform of the revenue system. It was perhaps only human that the secretary should shrink, pending the action on these measures, from so unpopular a move as increase in the public debt.

Postponement, whether wise or not, left only one alternative, and this, unfortunately, was the adoption of Secretary Foster's makeshift. A so-called patriotic movement to "reimburse" the treasury was started among the banks throughout the country; as a result the government obtained, through use of its surplus legal tenders, $10,000,000 additional gold. This makeshift raised the treasury gold reserve by March 25 to $107,462,682, against the $100,982,410 when Secretary Carlisle entered office.[1] But in April gold exports again grew heavy, with consequent presentation of legal tenders for redemption, and the secretary again turned his eyes to the banking institutions.[2] A more disquieting spectacle in government finance was never witnessed in this country.

So far as it affected the treasury's gold reserve, the panic in the summer of 1893 had a curious double influence. It put an end, of course, to the loan of gold by banks to the government. But at the same time, through the violent fall in foreign exchange, it checked gold exports and therefore relieved the

But withdrawals of treasury gold for export at New York that month were $12,250,000. If, therefore, the city banks had not helped out Secretary Foster, the gold reserve on February 28, four days before Mr. Cleveland's administration began, would have stood at $95,931,000.

[1] Secretary Carlisle, Annual Treasury Report for 1893, p. lxxii.

[2] *Ibid.*

treasury from the strain of note redemption.[1] Indirectly, it did more. The excessive fall in prices led to the inflow of European capital, as already noticed; this movement, combined with the artificial currency contraction, caused during the autumn months an import of fifty millions of gold from Europe. A good part of this gold was paid directly into the treasury; hoarding of currency in the panic had temporarily made imported gold almost the sole available medium for large payments.[2] During September fifty-nine per cent of the New York customs revenue, or $4,762,888, was paid in gold coin; in the four months ending with November, gold customs payments at that city aggregated $13,819,917.[3]

It is reasonable to suppose, although no official figures have been published, that gold payments cut a similarly large figure in the federal revenue at all other receiving centers. It would therefore seem, at first consideration, that, since no gold was taken after July for export, and since the greater part of the $123,000,000 federal receipts in the next five months was paid in gold, the treasury's gold reserve, between July and December, should have increased very heavily. Yet nothing of the sort occurred. On July 31 the treasury's gold balance footed up $99,202,933;[4] its highest level of the season, $103,683,290, was reached on August 10;[5] and from this figure it steadily declined, touching as early as October 19 the unprecedentedly low level of $81,551,385.[6]

[1] See POLITICAL SCIENCE QUARTERLY, IX, 1, 23, 24, 25. [2] *Ibid.*, p. 30.

[3] In the first six months of 1893 less than five per cent of the total New York customs payments were made in gold coin or certificates; in May and June none was thus paid. During the last six months of 1893 payments ranged as follows:

	Total Payments.	Gold Coin and Certificates.	Per Cent Gold.
July	$10,220,733	$1,741,740	17.1
August	8,188,032	4,233,212	51.7
September	7,964,839	4,762,889	59.8
October	7,537,386	2,841,595	37.7
November	6,312,807	1,982,221	31.4
December	5,645,908	1,642,759	29.1

— Annual Treasury Report for 1894, p. 121.

[4] Annual Treasury Report for 1893, p. 96. [5] *Ibid.*, p. lxxiii. [6] *Ibid.*

What was the cause of this depletion of the gold reserve by $22,000,000 at the very moment when the commercial community was paying the bulk of its taxes in gold coin? Mr. Carlisle, writing December 19, 1893, declared that the gold reserve after August 10 "had been diminished by redemption of currency and otherwise."[1] But presentation of notes for gold redemption could not possibly have caused this enormous loss of gold. No gold was exported between July and December, 1893, and much less than a million legal tenders were presented monthly for redemption.[2] The truth of the matter is that the treasury's gold reserve was reduced from $103,683,290 to $81,551,385, in the face of heavy gold receipts in revenue, simply because the government itself was using gold for ordinary payments. Between January and July, 1893, the treasury's payments, made in settlement of New York clearing-house balances, did not include a single gold coin or gold certificate.[3] In the entire fiscal year ending June 30, 1893, out of $224,218,402 aggregate payments on this account only $10,583,000 was paid in gold.[4] But from July, 1893, to January, 1894, inclusive, the treasury paid to the clearing house in gold no less a sum than $98,200,000, which was actually ninety per cent of the total payments made.[5] Between

[1] Annual Treasury Report for 1893, p. lxxiii.

[2] In August $2,348,222 legal tenders were thus redeemed in gold; in September, only $340,727; in October, $695,392; in November, $516,372; in December, $517,418: total redemptions for the five months, $4,418,131, as against $72,138,269 in the seven months preceding. (Annual Treas. Rep., 1896, p. 130.) These redemptions after August, 1893, are all accounted for by the ordinary demand for assay-office bars for use in the jewelry trade.

[3] Annual Treasury Report for 1893, p. 41. [4] *Ibid.*

[5] Annual Treasury Report for 1894, p. 119. The subjoined table will show the distribution of the payments:

Paid in	U. S. Notes.	Treas. Notes of 1890.	Gold Coin.	Total Payments.
July . . .	$1,968,450	$1,047,625	$4,940,000	$7,096,075
August . .	98,140	591,780	2,475,000	3,164,920
September	149,765	5,420	15,395,000	15,550,005
October .	41,384	55,055	27,645,000	27,741,439
November	967,252	132,040	15,150,000	16,249,292
December .	13,729	64,565	13,570,000	13,648,294
January .	3,336,919	2,943,000	19,015,000	25,294,919

August 10 and October 19, as we have seen, the treasury's receipts of gold were enormous; yet it paid out, as its balances clearly proved, $22,000,000 more gold than it received.

There has been plenty of random criticism of this wholesale gold disbursement when the maintenance of a large reserve of gold in the treasury was of the first importance. Yet there was nothing mysterious in the operation. In effect, the government had nothing left but the gold reserve with which to meet its bills. The deficit in revenue — caused, as we have seen, by the reckless financiering of the three preceding years — had by August reduced the treasury's total available supply of cash, including the gold reserve, to $122,058,213.[1] Out of this total sum there were only $22,855,280 legal tenders or silver currency, and by October 31 the holdings of such money had been further reduced to $12,796,459.[2] At least that much of paper currency was needed for the treasury's own daily exchanges and remittances. Yet the excess of government expenditure over income, from August to the end of 1893, averaged $7,000,000 monthly.[3] Clearly, then, the treasury had, in the early autumn of 1893, only three courses before it — to raise a loan at once, to stop payment on regular government appropriations[4] or to use its gold holdings for every-

[1] Annual Treasury Report for 1894, p. 55. National bank notes held for redemption and fractional coin are of course excluded from this computation.

[2] *Ibid.* At that date the total available cash holdings, including the gold reserve, were $97,181,322.

[3] Deficit in August was $9,414,343; in September, $895,254; in October, $5,035,397; in November, $7,322,626; in December, $7,746,234.

[4] It is important to notice that such "holding up" of appropriations as an alternative to using the $100,000,000 gold for ordinary payments would not have been open to the conclusive objection against a similar policy when the gold reserve had been trenched upon only through redemption of legal tenders, as was the case in April, 1893. There is nothing in the statutes or in official opinion to justify refusal to reissue legal tenders thus redeemed. But the use of the gold itself for ordinary payments was a different matter. The House Judiciary Committee of 1892 reported officially "that it was the intention of Congress to fix the minimum amount of this reserve fund at $100,000,000 gold and gold bullion, and that it should be maintained at that sum." — Congressional Record, July 6, 1892. See also the opinions of Secretary Sherman, Annual Treasury Report of 1879, p. x; 1880, p. xiv; Secretary Folger, Annual Treasury Report of 1881, p. x; Secretary McCulloch, Annual Treasury Report for 1884, p. xxxi; Secretary Foster,

day disbursements. Mr. Carlisle chose the third of these courses.

The secretary's hesitation to issue bonds partly reflected a prevalent and not unreasonable view that, with a session of Congress near at hand, the legislators ought to be consulted. But it is also plain that Mr. Carlisle, despite the official opinion already cited, mistrusted his legal powers. To the plan of stopping payment on appropriations he made no official reference, proposing, instead, that Congress authorize issue of three-per-cent exchequer bills, running one year, to meet a serious deficiency in revenue.[1] In regard to the expedient of issuing bonds under the act of 1875, to restore the gold reserve, an appeal was made to Congress for more definite instructions. "The authority now vested in the secretary of the treasury," President Cleveland wrote in his annual message, "is not as clear as it should be";[2] and the secretary asked in his own report "not only that he should be clothed with full authority to procure and maintain an ample reserve in coin, but that the purposes for which such reserve is to be held and used should be made as comprehensive as the duty imposed upon him by the law";[3] and with this request the matter rested. The administration had made a dignified and statesmanlike appeal, had proposed fair substitutes, and had emphasized its wish to act both in concert with the legislative branch and subject to its approval.

We shall presently see what manner of reception this appeal obtained from Congress. But meantime another problem rose to notice. The question of reconstructing the budget of revenue and expenditure demanded immediate attention. The ruinous influence of the deficit — $32,350,000 for the last six months of 1893[4] — was evident to all observers. Continuance

Annual Treasury Report for 1892, p. xxix. Other secretaries did not explicitly notice the gold reserve, but acquiesced in the interpretation of the law already made.

[1] Annual Treasury Report for 1893, p. lxxi.

[2] December 4, 1893.

[3] Annual Treasury Report for 1893, p. lxxii.

[4] Annual Treasury Report for 1894, p. 22.

of such a deficit for nine months more would leave the treasury literally without a dollar on hand to pay its bills.[1]

This question of an increase in the revenue was complicated by the fact that radical change in the revenue system was proposed. Such a change was inevitable. The platform of the St. Louis Democratic convention of June 22, 1892, on which the Cleveland administration was elected, pledged reduction in the import duties. Mr. Cleveland's letter of September 26, 1892, accepting the presidential nomination, and his inaugural address of March 4, 1893, emphatically reaffirmed this promise. In his message to Congress December 4, 1893, he not only urged "reduction in the present tariff charges on the necessaries of life" and "removal of restrictions upon the importation of the raw materials necessary to our manufactures," but declared that "only the necessity of revenue justifies the imposition of tariff duties."

This declaration was consistent, and the policy which it foreshadowed was entirely compatible with a proper increase in the revenue. A protective tariff is, indeed, by its very theory and nature less suitable for the procuring of a revenue than any other kind of tax. Whatever may be argued regarding the merits of protection, its purpose is exclusion of competing foreign goods; therefore, so far as such a law achieves its end, it necessarily strikes off a possible source of revenue. This is so obvious a principle that it needs no argument. But it did not follow, in 1893, that haphazard reduction of the duties, or even their scientific adjustment to the needs of the consumer, would bring the next year's customs revenue to a proper figure. Mr. Carlisle himself admitted frankly that the exact effect of lower import duties on the volume of importations "is of course impossible to foresee";[2] and the problem was further complicated, at the close of 1893, by the increasing after-panic trade depression.

The situation called, therefore, for the greatest possible

[1] December 31, 1893, the treasury held $80,891,600 surplus gold, $5,965,261 silver and $6,289,086 legal tenders: total available balance, $93,145,947.

[2] Annual Treasury Report for 1893, p. lxxxii.

caution, for the most conservative judgment, in reckoning the probable yield of altered taxes. That the subject did not receive this calm expert examination and that, instead, the besetting sin of optimistic estimates governed the plans of cabinet and Congress alike, is without question the most just and the most serious adverse criticism which can be passed on the Cleveland treasury administration. There have been blundering estimates before and since: the predictions by the authors of the tariff act of 1890 are one instance, and we are witnessing in the present Dingley Law what is possibly the worst of all. But neither in 1890 nor in 1897 were conseqences of a wide misjudgment so certain to be serious as they were in 1893. Yet in his very first estimate, drawn up with material for prediction in his hands, Mr. Carlisle made such extraordinary blunders as to show that his basis of judgment was completely warped. "Conditions will be much more favorable hereafter," he wrote in December, 1893, "for the collection of an adequate revenue for the support of the government." "The worst effects of the recent financial disturbances and consequent business depression have been realized."[1] Therefore, the secretary "estimated a probable deficiency of $28,000,000 at the close of the [fiscal] year."[2] Now in the five months already elapsed in that fiscal year the revenue deficit had been $29,918,095;[3] the visible December deficit was $250,000 daily. The first six months of 1893, with import trade extremely heavy, had netted a deficit of $1,984,396;[4] the revenue law was still the same, and imports, towards the close of 1893, were decreasing thirty per cent from the year preceding; yet the secretary's December estimate actually reckoned on a surplus for the seven ensuing months of nearly two million dollars.

As a matter of fact, the fiscal year for which, with half its operations ended, Mr. Carlisle had estimated only $28,000,000 shortage, resulted in a deficit of $69,803,260. This rather glaring misjudgment had no special influence in itself, because Congress could not control the revenues of that period. But

[1] Annual Treasury Report for 1893, p. lxix.
[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*, p. 26.

the fatal optimism which underlay the blunder of December affected, in the end, every subsequent estimate, whether prepared by the treasury or by Congressional committees. The Wilson tariff bill, laid before Congress December 19, 1893, provided, aside from readjustment of the import duties, for increased internal taxes on spirits and tobacco and for a one-per-cent tax on incomes over $4,000. In his annual report of the same day Secretary Carlisle reckoned that these internal schedules would increase the annual revenue $50,000,000 over that for 1893.[1] Seven months later, with the schedules under consideration exactly what they were in the law as eventually passed, the Senate finance committee raised this estimate of increased internal revenue to $53,000,000.[2] Yet, in the outcome, annual internal revenue, which in 1893 had been $161,027,623,[3] was only $143,421,672.[4] Instead of increasing fifty millions over 1893, the returns decreased by more than seventeen millions—a difference of sixty-seven millions.

Now, it is true that the estimates, both of the treasury and of the finance committee, reckoned in the projected income tax, which the Supreme Court on May 20, 1895, declared unconstitutional and from which, therefore, no revenue was ever drawn. But the best expert authority, reasoning from experience of our own and other governments, had estimated $39,000,000 as the highest possible yield under the income tax, while concluding that the first year's yield could hardly run as high as $15,000,000.[5] Even assuming, therefore, that the income tax would, if confirmed, have brought at once the maximum of

[1] Annual Treasury Report for 1893, p. lxxxii.

[2] Report Senate Finance Committee, 1894 (No. 559), p. 323. This estimate was submitted in July, 1894.

[3] Annual Treasury Report for 1893, p. xxvii.

[4] Annual Treasury Report for 1895, p. xix.

[5] "My investigations lead me to conclude that the possible revenue under that income tax would range from $12,000,000 at the lowest point to $39,000,000 at the highest. I also conclude that in the first year of its operation the lowest rather than the highest possibility will be attained. In other words, I should fix the revenue for the first full year somewhere below $15,000,000." — Worthington C. Ford, Chief of Bureau of Statistics, in letter to Senator Hill, April 3, 1894. (Senate Misc. Document No. 232.)

thirty-nine millions annually, the internal revenue estimate was some twenty-eight millions in excess of actual results.

Estimates on the customs revenue, under the pending bill, were almost equally astray. The Senate finance committee estimated from the import taxes, virtually as they passed that body, a yield of $179,251,142.[1] When half the fiscal year covered by this estimate was passed the treasury reduced the reckoning to $160,000,000.[2] In actual result the customs yield for the twelve months ending June 30, 1895, was only $152,158,617.[3]

To sum up, then: the official estimates on which the tariff and internal taxes were constructed — even after allowing $39,000,000 for the loss of the income tax — were $57,000,000 in excess of actual results for the ensuing fiscal year and nearly $30,000,000 in excess for the fiscal year 1896.[4] With this in mind, the failure of the law as a revenue-producing measure will not appear at all mysterious. That failure did not in any respect arise from the mutilation of the original tariff bill in Congress. There was, indeed, the usual display of selfishness and sectionalism, such as always attends deliberation on a tariff bill. In the Senate some of the proceedings were particularly scandalous. More than one protectionist senator borrowed the tactics of the free-silver obstructionists in the repeal debate of 1893, and inflicted on his colleagues, often through the medium of an unlucky clerk, volumes of inane and senseless twaddle, simply for dilatory purposes. These particular achieve-

[1] Report Senate Finance Committee, July 19, 1894. (Senate Report No. 559, p. 323.)

[2] Annual Treasury Report for 1894, p. xxix.

[3] Annual Treasury Report for 1895, p. xix.

[4] The estimates of July, 1894, and of December, 1894, compared with results, may be thus summed up:

	Fiscal Year 1895.		Fiscal Year 1896.	
	Estimate.	Actual.	Estimate.	Actual.
Customs . . .	$179,251,142	$152,158,617	$185,000,000	$160,021,751
Internal revenue	213,000,000	143,421,672	190,000,000	146,762,864
Total	$392,251,142	$295,580,289	$375,000,000	$306,784,615

Estimates for 1895 are those of the Senate committee; estimates for 1896, those of the treasury. (Annual Treasury Report for 1894, p. xxix.)

ments were the work of opposition senators; but members of the majority made little better showing. The Democratic Party had in the Senate a clear majority committed on the tariff question. Yet every Senatorial alteration of the schedules of the House bill was made primarily in the interest of protected industries — notably in the Senate's iron, coal and sugar schedules, all of which openly violated the public pledges of the party. The session characteristically ended with the discovery that several senators, whose vote controlled Congressional action on the sugar duties, were speculating in Wall Street in the stock of the refining company chiefly interested. When the amended bill went to a conference committee, President Cleveland wrote a letter, which was read in Congress, criticising some of the Senate schedules as "outrageous discriminations and violations of principle";[1] and when the Senate measure finally prevailed intact, the president refused to put his name to it, leaving the bill to become a law without his signature.

The episode throughout was humiliating; but the sacrifice of principle in the Senate must not be allowed to disguise the fact that, from the simple point of view of a revenue-producing measure, the Senate bill was superior to the House bill. The Senate finance committee, estimating $179,251,142 revenue under their own customs provision, allowed a yield of only $124,657,429 to the measure as it passed the House.[2] This statement probably exaggerated the difference in productiveness between the two measures. Yet the sugar duties alone, which the House struck off entirely and which the Senate succeeded in restoring at the rate of forty per cent on raw sugar, with a still heavier and highly protective tax upon refined, yielded during the fiscal year 1895 no less a revenue than $15,354,290 and $29,808,140 in 1896.[3] Twice as much might have been

[1] Letter to W. L. Wilson, July 2, 1894. This letter also said: "You know how much I deprecated the incorporation in the proposed bill of the income tax feature." The letter's criticism of the Senate bill was specially directed against the Senate's action on iron ore and coal. Both were on the free list in the House bill; the Senate put on both a duty of forty cents per ton.

[2] Report of Senate Finance Committee, p. 323.

[3] United States Statistical Abstract for 1896, p. 285.

secured had the duties existing prior to 1890 been restored.[1] The truth of the matter is that neither branch of Congress gave really serious weight to the question of a deficit. The House of Representatives devoted all its labors to relieving the consumer; the Senate, which succeeded in forcing the conference committee to adopt its schedules, was laboring to restore as much protection as it dared. The upshot of the season's revenue legislation was that, at a time when restoration of a surplus revenue was indispensable to preserve the credit of the treasury, a revenue law was framed which resulted, during its first year of operation, in a deficit of $42,805,223 and whose second year produced a shortage of $25,203,245. Whatever the excuse assigned for this failure to repair the mischief of the past, the fact remains that the party and its leaders had let slip one of those golden political opportunities which do not return.

Meantime, long before Congress had finished its deliberations over the revenue schedules, the treasury was approaching a serious crisis. I have already noticed the secretary's appeal, at the opening of Congress, for some distinct authority to avert impending bankruptcy. It will forever remain one of the most discreditable traditions of American legislation that in the face of the situation of 1894 Congress turned its back on the treasury. In the entire session one measure was introduced to authorize the issue of exchequer bills, one to permit the issue of three-per-cent bonds, and one to change the provisions of the act of 1875 regarding the character of the bonds.[2] These measures, which were the sole response to the secretary's appeal, were perfunctorily referred to committee, where they died; not one of them was even debated.[3] On the other hand,

[1] United States Statistical Abstract for 1896, p. 285. In 1887 the sugar duties yielded $56,885,915.

[2] See Index to Congressional Record, Fifty-third Congress, second session, p. 118. Regarding the last of these measures, its introducer, Senator Voorhees, indifferently remarked: "In one sense it is offered as a bill. It is a bill prepared and submitted to the committee on finance by the secretary of the treasury. It is not a bill introduced into this body and referred to that committee." (Congressional Record, January 16, 1894.) The bill was never heard of again.

[3] *Ibid.*

seven bills were introduced to revoke the bond-issue clause of 1875, one to stop interest on such bonds as should be issued, and a number of resolutions, which were hotly debated, were proposed, declaring such sales unlawful.[1] That the free-silver coinage faction, exasperated by the president's victory in the repeal-bill struggle of 1893, should have resorted to such tactics is not perhaps surprising. But the cowardice of the conservative members in Congress, their silence when such propositions were debated, their shuffling attitude in and out of the capitol on this question of the public credit, present, in my judgment, the most disgraceful picture since Congress cringed in Pierce's administration before the Southern agitators. Indeed, the comparison is much to the advantage of the Thirty-fourth Congress; for in 1856 there were at least individual Congressmen to stand out for principle against an arrogant majority. In 1894 the agitators were left unanswered. Whatever wrong may have been done by public sentiment in other directions, history will record against it no mistake for its verdict of November, 1894, on the Forty-third Congress. The Democratic legislators had been allowed their opportunity; we have seen what use they made of it. The turning of the party's plurality of 96 in the House of Representatives into a Republican plurality of 144 was summary justice.

The secretary of the treasury had not yet at any time officially declared that in an emergency he would issue bonds under the treasury's existing powers; even the president, in his message of December 19, 1893, had made no such declaration. But by January 12, with the available silver and paper currency in the treasury at the low ebb of $15,599,614, with the gold reserve down to $74,108,149 and with an estimated deficit of $18,400,000 for the two first months of 1894, delay was no longer possible.[2] In an official communication to the

[1] See Index to Congressional Record, Fifty-third Congress, second session, p. 118. See also the debate on the Peffer resolution, Congressional Record, January 22, 1894.

[2] Letter of Secretary Carlisle to Senator Voorhees, chairman of the Senate finance committee, January 13, 1894. In this letter the secretary repudiated as follows the revenue estimate of his annual report published less than a month

Senate finance committee, January 13, 1894, Mr. Carlisle, after expressing his disinclination to a bond issue under existing laws, announced that "unless authority" for more economical bond issues "is granted by Congress at a very early day, I shall feel constrained by a sense of public duty to exercise the power already conferred." [1] Congress again ignored the secretary's appeal; accordingly, on January 17, the treasury invited bids for $50,000,000 five-per-cent bonds, redeemable after ten years. Bids were to be opened February 1, 1894, and no bid at a lower rate than 117.223 was to be considered. A bitter and angry controversy in the Senate followed, in the course of which resolution and denunciation were hurled at the secretary by the free-silver-coinage Congressmen.[2] Not one speaker took the floor to defend the action of the secretary. The appeal to Congress was thus early proved to be a complete delusion; all that the friends of the administration succeeded in doing was to pigeon-hole the hostile resolutions.

The secretary's notice left two weeks in which to float the bonds. It was plainly his idea that the public would subscribe in numbers sufficient to cover the issue. People outside of Washington seemed to entertain the same belief; the newspapers were full of tales of financiers who called at Washington to assure subscriptions to the entire issue.[3] There was no truth whatever in these stories and no reason to expect such action. The Jay Cooke loans of 1863, which were "popular loans" and notably successful, were issued through expert canvassers, to whom a commission was paid by the government; the resumption loans of 1877 and 1879 were floated through banking syndicates. Mr. Carlisle resorted to neither device; he issued his circular and simply awaited results.

before: "When my annual report was prepared . . . it was hoped that no additional deficiency would occur; but the receipts and expenditures during the month of December and up to the 12th day of the present month show that the estimate of a deficiency of $28,000,000 at the close of the [fiscal] year was much too low."

[1] Letter to Senator Voorhees.

[2] Congressional Record of January 18, 22 and 23, 1894 — especially the speeches of Senators Peffer, Allen and Stewart.

[3] Press dispatches in the daily newspapers January 17 and January 18, 1894.

It was soon evident that this policy was not well chosen. Bids came in very slowly; of the unsolicited subscriptions on which the secretary reckoned, there were less than $9,000,000 on hand when the bids were opened.[1] On Saturday, January 27, four days before the closing of the bids, the assistant secretary of the treasury, then in New York City, telegraphed to Mr. Carlisle at Washington that failure of the loan was threatening. The secretary then for the first time came to New York to present the matter personally to the banking community. Eventually, under extreme pressure, a syndicate of banks was organized in a hurry to subscribe for the issue.

Mr. Carlisle's reluctance to enter on personal negotiations with the bankers had its origin, obviously enough, in a wish to stand aloof from Wall Street. By deferring, however, to such an instinct, the secretary ran the risk of total failure of his enterprise, and placed himself in the attitude of a bargainer who refuses to bargain. The bonds were not in all respects an inviting field of investment. Times were hard; securities of all kinds were difficult to market; railway bonds of the highest grade were selling at prices where the net interest yield was four and five per cent.[2] Yet the minimum price announced by the secretary for the new 5-per-cents was equivalent to a three-per-cent bond at par.[3] This was asked for a ten-year bond at a time when the French government 3-per-cents, a perpetual issue, were selling at 97 and when the 2¾-per-cent consols of the British government — the safest security on any market — brought only 98¾. The outstanding four-per-cents of our own government, which had longer to run than the proposed new bonds, were selling at 113, a price which made them at least as cheap an investment as the proposed new 5s.

It is true that the recent immense redemptions of its own debt

[1] Boston thus subscribed for $5,362,550, Philadelphia for $731,500, Baltimore for $691,150, Cincinnati for $646,800, New Orleans for $7,000, St. Louis for $275,050, San Francisco for $110,000, Washington for $357,550, Chicago for $228,050, miscellaneous points for $205,200: total, $8,614,800.

[2] Thus Lake Shore Railway first mortgage 7-per-cents of 1900 sold in January, 1894, at 118; Chicago, Milwaukee and St. Paul R.R. first 7s of 1905, at 126½; Chicago and Northwestern R.R. first 7s of 1905, at 126½.

[3] Circular of January 17, 1894.

at a premium favored high credit for the United States upon the markets. But against this factor must be placed the critical situation of the treasury in 1894, the knowledge of observant financiers that the revenue deficit would continue, the free-silver agitation and, still more important, the actual pendency of bills and resolutions in Congress to declare the entire projected issue of bonds unlawful. These facts, along with the depression in the markets, sufficiently explain the hesitation of financiers.

Such facts were not conclusive reason for the fixing of a lower issue price by the treasury; but they certainly suggested the need of business-like negotiation. Mr. Carlisle adhered to his policy of seclusion during the whole of the ensuing year; as a result, he was eventually forced in 1895 to appeal to a banking syndicate on the syndicate's own terms. When John Sherman was secretary of the treasury he came repeatedly to Wall Street and bargained personally with the bankers.[1] By so doing he of course incurred the obloquy of his political enemies; but, what was of infinitely greater importance, he succeeded in advancing the government's interests in the very direction where Mr. Carlisle subsequently failed. Congress made as determined an effort to block Mr. Sherman's bond negotiations as it did to upset the plans of Mr. Carlisle; the currency inflation sentiment was as rampant among voters in 1877 and 1878 as it was in 1894 and 1895. Yet the chapter of Secretary Sherman's resumption negotiations, when he pitted the London bankers of 1878 against the New York bank presidents and thereby placed his bonds at figures which the experts had declared unattainable,[2] is pretty safe testimony to the proper policy for a finance minister to pursue in his relations with the financiers.

When the subscriptions to the bonds, including the forty million odd subscribed by the New York bankers, were paid over, another embarrassment arose. The secretary's circular

[1] Specie Resumption and Refunding of the National Debt, pp. 291, 510, 665. (Annual Treasury Report for 1877, p. viii.)

[2] *Ibid.*, pp. 279, 281, 283, 294. See Recollections of John Sherman, II, 638.

required payment in gold, and all of the $58,660,917 subscriptions were thus paid. But to make these payments $24,396,459 in legal tenders were presented to the treasury to be redeemed in gold, and the gold thus acquired was used for subscription to the loan.[1] I have never been able to see that this transaction was either fair or proper. That the subscribers had a legal right to obtain their gold in this way cannot be questioned, but a legal right is not always a moral right. It has been contended that since the redundant supply of legal tenders on the markets was a chief cause of trouble, legal tenders ought to have been welcomed in subscription to the bonds. But this was scarcely a question over which subscribers to the bonds had jurisdiction. If the secretary was willing to take legal tenders indirectly, it was for him to say so; but this was precisely what he did not say or intimate. The bonds, indeed, were issued under a law explicitly declaring that their purpose was "to enable the secretary of the treasury to prepare and provide for the redemption in this act authorized or required";[2] and the redemption thus referred to was redemption "in coin, of United States notes then outstanding."[3] But if bonds were to be sold explicitly to enable the treasury to redeem the notes in coin, it is surely a violent stretch of inference to contend that payment in legal tenders, even indirectly, would subserve the statutory purposes of the bond issue.

On the day when the loan was issued, February 1, the government's gold balance stood at $65,438,377; its total money holdings, exclusive of national bank notes and minor coin, were $77,969,993.[4] On the 6th of March the gold reserve reached $107,446,802, while the total cash surplus rose to $131,337,147.[5] Something had been accomplished. But then two adverse influences began to operate. First, the deficit in revenue increased. The excess of government expenditure in March, 1894, was $6,294,762; in April it was $9,380,472.

[1] Muhleman, Monetary Systems of the World, Appendix, p. 221.

[2] Laws of the United States, Forty-third Congress, second session, ch. xv, January 14, 1875. [3] *Ibid.*

[4] Daily reports, United States Treasury. See also Annual Treasury Report for 1894, pp. lxviii, lxix. [5] *Ibid.*

Checked temporarily by the heavy customs payments in September — for sugar, particularly, on which the duty was about to be increased — the deficit rose to $13,573,800 in October; and by the close of that month the total treasury surplus of gold, silver and legal tenders had fallen to $100,259,042,[1] a decrease of thirty-one millions since the February loan was placed.

This renewed collapse of the general reserve was bad enough, but it was further emphasized by another very serious development. The narrow escape of the February loan from failure, and the evident disposition of Congress to block the administration's efforts, had spread alarm among foreign investors in American securities. They sold on our markets, during 1894, in quantities so enormous that the increasing merchandise trade balance in our favor was completely offset. American merchants and consumers were struggling honestly to get the better of the situation; merchandise exports exceeded imports during the twelve months ending June 30, 1894, by $237,145,950, which was a balance in our favor $185,000,000 greater than that of the same period a year before. But the remorseless liquidation of American securities reached a total far exceeding the merchandise export balance. Let it be kept in mind that European capital to the amount of many hundred millions had been invested in American stocks and bonds, in our banking and manufacturing enterprises and in our city discount markets, during the period of high credit following specie resumption.[2] Many of these investments were salable instantly on the markets. It was no unusual phenomenon, during 1894, for the New York Stock Exchange to witness in a single day sales of twenty or thirty thousand shares, traceable to the foreign bankers. Such liquidation, continued for one week, would at a low estimate bring upon the sterling

[1] Monthly treasury reports of revenue and expenditure; daily statement of balances.

[2] The estimate of A. S. Heidelbach is $2,400,000,000. (*Forum* for February, 1895; New York *Financial Chronicle*, April 6, 1895, p. 585.) Of course such an estimate must be based on very extensive guesses.

market demand for foreign remittances of nine or ten million dollars, which is more than the weekly excess of our exports over imports in any month of 1894.[1] At the same time the crowding of timid and idle capital from depressed interior enterprise into the city discount markets displaced European capital already loaned. The revenue deficit, throwing back five millions every month upon the general currency supply, similarly choked the avenues of exchange into which, under normal circumstances, gold from abroad would have been attracted. It is a matter for small wonder, under such conditions, that the strain on the treasury's gold reserve continued.

At the end of October, 1894, as we have seen, the treasury's total available reserve had fallen again to $100,259,042 and its gold balance to $61,361,826.[2] This decrease in the gold fund came in spite of the fact that the reserve, in the secretary's words, had in the meantime been "replenished by voluntary exchanges of gold coin for United States notes by the banks."[3] The treasury did, in fact, get from the New York banks, during the summer months, some ten or fifteen millions of gold, virtually begged from them on the plea of patriotism[4] — an expedient as futile then as it was in 1893 and as it was destined again to be in 1895. In November came another loan of $50,000,000 ten-year five-per-cents, out of which the treasury realized $58,444,900.[5] The bulk of the subscribers repeated the expedient of February and recouped themselves by subsequent gold withdrawals from the treasury. This time the spectacle of the treasury depleted in the very process of repletion spread quick alarm throughout the entire financial community. Something much resembling the traditional run upon a bank began. In December, 1894, $31,907,221 legal-tender notes were presented for redemption in gold; in January, 1895, the redemptions rose

[1] The largest excess of merchandise exports in any month of the fiscal year 1894 was $43,626,862 (in December, 1893). Taking the excess for the fiscal year, the average weekly excess of exports was less than $5,000,000.

[2] Treasury daily reports of balances.

[3] Annual Treasury Report for 1894, p. lxix.

[4] New York *Financial Chronicle*, June 23, 1894.

[5] Muhleman, Monetary Systems, Appendix, p. 223.

to $45,117,738; and of this two-months' total of $77,024,959 only $35,000,000 was withdrawn for export purposes.[1] By February, 1895, the gold reserve was down to $41,340,181; and with suspension of gold payments immediately impending, the famous contract with the Belmont-Morgan syndicate was closed, whereby the government, under an old act of 1862, bought with its bonds a little over $65,000,000 of gold.

This remarkable episode of 1895, with its unique provisional contract of the bankers to protect the treasury's gold reserve, I have previously treated in this magazine.[2] To that discussion I have nothing to add, except to repeat the conclusion that the operation, though technically a failure, did in reality save the government from suspension of gold payments. It gave domestic industry a chance to breathe again, and for a time stopped the mouths of the Congressional conspirators against the public credit. In the interval the nation seemed to regain its financial sanity.

Responsibility for the "bond contract" was individually accepted by President Cleveland, who declared to Congress ten months later that he had "never had the slightest misgiving concerning the wisdom or propriety of this arrangement," and that he was "quite willing to answer for his full share of responsibility for its promotion."[3] This very bold move, from which his own secretary would undoubtedly, left to himself, have shrunk, really marked the administration's final victory in its contest to maintain the gold standard and the public credit. It is not likely ever to be repeated, because only the critical nature of the emergency and the determination of Congress to block any measure of relief which did not lead to free silver coinage made such an operation necessary. It was not an expedient which an executive trained in the theory and

[1] Gross exports of domestic gold from the entire United States were $9,796,989 in December and $25,451,174 in January. The January exports went to pay for American securities, which London threw on the New York market in enormous quantities.

[2] "The Treasury Reserve and the Bond Syndicate," POLITICAL SCIENCE QUARTERLY for December, 1895, p. 573.

[3] Annual message to Congress, December 2, 1895.

practice of finance would probably have adopted. Mr. Cleveland had not been thus trained; but he was apt, having made up his mind, to ride roughly over obstacles in the way of the achievement of a purpose. It was this habit of achieving ends regardless of political obstacles which stopped the "private pension" jobbery of Congress in the first Cleveland administration. The practice made enemies for the president then, and it made many more when applied to the financial question in the Fifty-third Congress. The flat-footed veto of the bill of March, 1894, which undertook to add $55,000,000 silver currency to an already inflated circulation, under the shallow pretext of "coining the seigniorage," was one such instance — a veto issued when hardly a public man of the administration party was facing the matter squarely. But the "bond contract" was undoubtedly the strongest example of the kind. By recourse to a most uncommon and unexpected procedure, the trap which had been laid with confidence for the administration's plans was broken down. That this sort of bold directness of purpose and method was not employed by the president in his financial expedients during the first and most critical year of his administration, was a misfortune which probably resulted, first, from belief that some honest support could be obtained from Congress and, second, from the fact that the rather timid political instinct of the secretary of the treasury was for the time allowed to guide. It must be remembered that, although the treasury has of recent years become wholly subordinate to the chief executive, the head of that department in the cabinet has under nearly all administrations been left to formulate methods, if not policies, in the government's dealing with finance.

The government bond operation of 1895, then, saved the public credit. It did little more. Prices advanced on the relaxation of the strain, and an outbreak of speculation in almost every market carried them much higher. But the apparent trade revival was built on a very artificial basis, and by autumn the weakness of the operation was disclosed. The undertaking to suppress and hold in check natural forces might

have succeeded if the harvest conditions of 1879, of 1891 or of 1896 had been duplicated. But they were not. Our corn crop of the preceding season had been a disastrous failure; even the rise in wheat during 1895 was chiefly due to the partial destruction of our own winter wheat crop. Outflow of gold began again in August; the treasury reserve declined; the revenue was still deficient. The ominous cry for "voluntary reimbursement" by the banks began again, and again these institutions turned over some twenty millions of gold. But meantime fifteen to sixteen millions monthly were withdrawn from the treasury and exported — a movement which was utterly unseasonable and forced by reaction from the artificial exchange-market conditions earlier in the year. By the 5th of January, 1896, the treasury's gold reserve was down to $61,251,710. It was then that the treasury tried a third experiment in bond-issues by announcing, on January 6, 1896, a $100,000,000 four-per-cent loan, redeemable in 1925 and open to public bids without an "upset price." This loan succeeded — partly because of the open competition, partly because a month's notice was given, which enabled financial agencies to work effectively, but chiefly because the check to the movement of demoralization during 1895 had given strength and credit to the treasury. Some of the features of the loan subscription were absurd: thus, no deposit was required from bidders, a fact which brought a quantity of "straw bids" and speculative subscriptions from irresponsible parties. The use of the bond subscription made by some newspapers in search of vulgar notoriety was similarly grotesque.

But the loan was covered, nevertheless: on the books it was covered nearly six times over, and it was awarded at prices ranging from 110⅝ to 120.[1] Subscriptions to this loan so effectively contracted the redundant circulating medium that at one time gold exports had to be postponed through lack of legal tenders sufficient to obtain the gold. A week before the

[1] Proposals were 4600 in number, aggregating $568,269,850. The syndicate of 1895 made a bid for the whole issue at 110.6877, but $63,788,650 bids were made at higher rates. The total yield of the issue was $111,378,836. — Monetary Systems, p. 229.

closing of the bids a premium of ⅝ of one per cent was bid in New York City for large blocks of gold coin or legal tenders.[1]

Of course the precedent of 1894 was followed, and prospective subscribers resorted to the treasury with legal tenders to obtain the gold in advance for their subscriptions. From $61,251,710, its total on the day when the secretary's bond-issue circular was announced, the treasury's gold reserve fell by the 8th of February to $44,563,493. This was a net decrease of $16,688,217, whereas gold exports within the period had been only $8,873,000.

Withdrawals from the treasury continued even after the bids were opened and awarded; postponement of the full subscription until June, by a supplementary treasury circular, made this operation somewhat easier. Meantime, also, gold exports began again. If the entire subscription to the loan had been paid in gold, without resort to the treasury reserve, and if no gold had been taken out for export, the government's net gold holdings, on the first of June, would have amounted to $155,942,329. As a matter of fact, the gold reserve touched its maximum on April 9, and this maximum was $128,291,327.

By August 30 it had fallen again to $100,957,561; but before it crossed the hundred-million mark again, the high domestic rate for money and the enormous grain export trade had turned the sterling market. Gold imports were resumed; the presidential campaign of 1896 ensued. For a time during October, when the issue of that fight between sound money and silver was in doubt, the treasury reserve again decreased rapidly. But with the victory of the sound-money candidates announced, imported gold again began to pour into the treasury. When such payments began in 1893, as we have seen, the treasury's available reserve, outside of gold, was little more than thirteen million dollars. At the close of August, 1896, the treasury's available surplus of legal-tender notes alone was $111,800,038. In addition to this, the deficit in revenue, which in the summer of 1893 was averaging six million dollars monthly, had been reduced in 1896 to a monthly average of less than three mil-

[1] New York *Evening Post*, January 25, 1896.

lions. Such a comparison shows why the treasury was now able to increase its gold reserve through the application of gold importers to obtain, in exchange for gold, legal tenders for use in the autumn harvest trade, and why, therefore, the Cleveland administration, which received from its predecessor a treasury gold reserve of only $100,982,000 and a total available cash balance of only $132,485,000, turned over to its successor, on March 4, 1897, a total balance of $209,644,000, including $150,975,000 gold.

I have criticised impartially the actions and policy of Mr. Cleveland's second treasury administration and have pointed out such mistakes as it actually made. The salient fact remains that this administration preserved the public credit under conditions which made such preservation apparently no longer possible. It inherited a treasury fast approaching bankruptcy, with the revenue and currency governed by two of the most reckless laws ever placed on our statute books. It was confronted immediately with wreck of the country's commercial system, a situation needing the most prudent and public-spirited legislation. For such legislation the president had to appeal to a Congress in which a controlling influence was wielded by financial agitators and political jobbers, and in which the attitude of at least one branch was determined by personal feeling against the administration because it would not surrender offices to senatorial distribution. In the face of such odds as this, with the help only of laws conflicting in themselves and framed by makers of double-meaning compromises, the second Cleveland administration overthrew the most mischievous legislation of 1890, maintained the currency against depreciation and saved the treasury from bankruptcy. I do not believe that any ministry of our time, American or foreign, has fought its battle against such overwhelming difficulties. A ministry with a legislative majority behind it can procure at least a test of its own remedial measures; a ministry backed by the people can impose its will on legislatures. But the Cleveland administration, as a result of the inexorable law of politics which I noticed in opening this paper, lost its hold not only on Con-

gress, but on the people. Yet with all this handicap, inheriting from its predecessor one of the most tangled financial problems in our history, it left a simple and easy task to its successor.

There is something singularly striking and melancholy in the beginning and the end of this second Cleveland administration. Its predecessor had encouraged and approved the laws which forced the treasury, later on, to the verge of bankruptcy. Had it been left two months in power after March 4, 1893, the Harrison administration would have been confronted with the full embarrassment under which the treasury was already sinking. Fortune, however, guided circumstances otherwise; the administration which had approved the laws through which the national finances were undermined left the structure to collapse on the shoulders of its successor. On the other hand, the administration which inherited this wreck and which, during four years of almost unprecedented struggle and vituperation, sustained the tottering public credit, retired from office at the very moment when an accident of nature had at length made successful achievement possible. If Mr. Harrison's term had continued until March 4, 1894, he would have surrendered office with the discredit of a treasury crippled through the undertakings of his own ministers, entered upon with his own express approval. If Mr. Cleveland's second term had run until March 4, 1898, he could not possibly have failed to obtain the political advantage accruing now to the present administration from the return of industrial prosperity. To such degree does chance sometimes sport with history.

The two chief misfortunes of the second Cleveland administration, apart from the industrial distress, were the blunders in revenue legislation and the failure of the currency reform propositions. For the first, as we have seen, the treasury was in some part responsible; for the second the administration deserves no blame whatever. Mr. Carlisle's official reports on the currency question have been equaled for soundness and cogency by no state papers since the reports of Secretary Hugh McCulloch in 1865 and 1866; and it will be remembered

that Mr. McCulloch's plans for currency reconstruction were blocked by Congress as completely as were Mr. Carlisle's. But Mr. Sherman, who in 1866 was one of the bitterest critics of Mr. McCulloch's financial program, found himself borrowing the chief expedients of those very plans in 1875 and 1879. Similarly, the very political party which laughed at Secretary Carlisle's projects in 1894 has in 1897 proposed to go as far as it dares in exactly the same direction.

It is possible that the mistakes of routine policy into which Mr. Carlisle fell would have been avoided by some of his eminent predecessors. But, whatever his mistakes of policy or judgment, President Cleveland's secretary of the treasury made no such stupid blunders and pursued no such weathercock methods as Secretary Boutwell and Secretary Richardson did under very similar conditions in an earlier panic year. That Mr. Carlisle was unfitted by his training and prejudices for the peculiar responsibilities forced on him by circumstances will hardly be questioned in the light of the facts which I have submitted. And yet the test was unusually severe. Secretary Manning and his associates in the treasury applied their skill with singular success to unraveling a tangle in the currency; Secretary Fairchild's estimates of future revenue were phenomenally accurate; Secretary Sherman was one of the most adroit masters of financial negotiation who ever occupied the treasury. But Mr. Manning did not have to deal with $152,000,000 treasury notes, or with a deficit of sixty-nine millions; Mr. Fairchild based his estimates on the same general trade conditions as had governed the two or three preceding years; and it is possible that, with all his skillful bond negotiations, Mr. Sherman's resumption plans would have broken down but for the foreign crop failure of 1879 and this country's consequent command of foreign capital through its export grain.[1]

[1] Mr. Sherman himself half admitted this fact in a speech of October 27, 1879, at Cooper Institute, New York: "Now that resumption is a success, Democrats say the Republican Party did not bring it about, but that Providence has done it; that bountiful crops here and bad crops in Europe have been the cause of all the prosperity that has come since resumption. We gratefully acknowledge that Providence has been on the side of the Republican Party; or, rather, that, having sought to do right, we find ourselves supported by Divine Providence."

Furthermore, it must be remembered that Mr. Cleveland's administration not only guarded the public credit through a period when it seemed no longer possible to protect it, but fixed the maintenance of the gold standard so positively as the administrative policy of this nation that no one except a political agitator is likely hereafter to assail it. The Harrison administration left this vital question of public policy, as it left most other critical questions of finance, in absolute uncertainty; the issue was so plainly defined by Mr. Cleveland, in the face of a Congress which sought out every expedient to cripple him, that in the campaign of 1896 a presidential candidate of the opposite party, with an exceedingly doubtful record on the money question, was forced to take the stump personally in behalf of the very principle maintained by the Cleveland administration. I know of no other way in which the policy and achievements of an administration could be more completely vindicated.

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THE SCHOLAR'S POLITICAL OPPORTUNITY.[1]

A feature of recent presidential elections has been a distrust of the educated class. It is the day of the plain people; and a claim to superior knowledge often injures a man's chance of gaining a hearing. It may seem, then, that this attitude of the public makes the scholar in politics a superfluity. What I hope to show, however, is that it creates a demand for scholarship of a high order, and that it offers to scholarship of this superior grade a larger field of influence than has ever before been open to it. The uprising of the plain people is the opportunity of the true scholar.

The knowledge that is to be a political power is not, indeed, of a kind so advanced that it cannot be imparted to the public. As there can be no esoteric politics, no knowledge that is worth anything in politics can bear a label of exclusiveness. Government is by the people. There should be a certain communism in the holding of intellectual property that is needed for public uses. Yet knowledge that is not at present common property must in some way make itself effective in the politics of the future. If it comes in the form of clear demonstrations it will be welcomed. The great democratic power that rules the state — except when bosses rule it and the state — is still ready to welcome one thing from any one who may offer it, namely, light. It knows its own interests and is glad to learn how to promote them. If any man is able to reveal the occult forces that, when they are understood, make for prosperity, he has something to offer that is as welcome as are compass and chart to a navigator. To the man who really grasps principles and understands what to the multitude are, as yet, mysteries, there is now open a larger field for political influence than any historical situation known to me has offered.

[1] An address delivered at the celebration of the fiftieth anniversary of the founding of a chapter of the Delta Kappa Epsilon Fraternity at Amherst College.

The political system is taking its color from the industrial. The contests of the factory and the shop are more and more often fought over again in the larger field of party warfare. There are facts about our industrial system, some of which have recently been discovered, that will take some of the bitterness out of such contests. These are accessible to the men of the school and they are important to the men of the shop. I wish to point out a few of these things that genuine scholarship now sees, and that it can enable any one to see, if he will fairly examine the proofs.

The first fact that needs to be known is all-comprehensive. It is nothing less than the truth as to whether the present industrial system is worth keeping. Is the competitive system of creating and distributing wealth legitimate? Does it promise much for the future? One is startled by the assertion that so general a question has become a political issue; and yet it has become so. Socialism is no longer a mere speculation: it has emerged from the study in the shape of certain concrete and radical demands. Behind these are powerful bodies. We are asked to take industries, one after another, into the hands of the state, till, in the end, the government shall be the only employer of labor. Deep in the hearts of the men who make these daring and revolutionary demands is a conviction that the competitive system of industry is at bottom bad. From this theoretical view a whole genus of political movements takes character. It is the people as a whole who must meet the practical issue that this theory involves. Shall we strengthen the industrial system or shall we weaken it? Shall we keep it forever and let it evolve after its own nature, or shall we sweep it away and substitute a different system? It is the people who have to decide. The fundamental character of the social system is in debate, and the policy of nations is to be determined by the verdict that the common people will render on this subject.

Concerning the social system there are three views, any one of which a reasonable being may hold. That society is all that it ought to be, is not one of the three. That it

is tolerable, and is very good when it is let wholly alone, is one of them. This is the extreme *laissez-faire* position. Again, that society is wholly bad is not a possible view. That its fundamental tendencies are evil, however, is possible, and is the opinion held by socialists. The system, they say, has incidental features that are good; but the forces that at bottom control it are making it worse and worse. The great abuse alleged is the systematic plundering of laborers. Competition, it is said, causes this; and so long as competition continues, the plundering cannot be stopped.

Finally, it may be held that society, while full of evils, is fundamentally sound. The forces that at bottom dominate it, one may say, are working rightly. They work against the evils of the system and will steadily reduce them. Ultimately they will redeem the social state if we only secure for them a free field. This is a view the grounds of which I wish to indicate.

The first and second of the views that I have stated preclude much effort at reform. They make society, in the one case, so good that it does not particularly need to be reformed; and, in the other case, so bad that there is no use in trying to reform it. The third of the views that I have cited — the one that I regard as the true one — makes every man a reformer. It gauges his moral quality by the amount of energy that he is willing to spend in trying to remove evils; but it gauges his intellectual quality by the intelligence that he uses in the operation. If the social state is at bottom sound, there is something to be done for it. There are things to be cast out and things to be rescued. What, as I claim, educated men may know and ought to teach, is that society is fundamentally sound and therefore worth reforming. This first article of faith for an active citizen is not to be proved without intelligent thinking. Educated men need, further, to know and to teach how to reform it. Socialism is fascinating and dangerous because it promises, not to reform, but to regenerate society, and to do it in a cheap and rapid way. It has the advantage of telling us just how this is all to be done, namely, by letting the state become the sole employer of labor.

Almost any movement is strong if it proposes a definite remedy for public evils. "We intend to tax land up to its full rental value," says one party. If you object, there comes the quick retort: "What do you propose?" If you say "Nothing," you are lost. "We intend to debase the currency," says another party. If you say: "That will rob creditors, paralyze credit and drive gold into holes in the earth," the rejoinder is: "What is your remedy? We must do something." "I think," says the old-time doctor, "that your liver is out of order. I will bleed you and give you calomel." "But," protests the patient, "that will derange my system and make me weaker." "Have you, then, a remedy to suggest?" demands the doctor. "Alas, nothing but the curative forces of nature." In such a case pill and lancet carry the day. Similar results follow on a large scale when some men have violent cures for social diseases, and we suggest no alternative except waiting and depending on nature. *And yet nature is all-powerful.* There is no cure of disease, individual or social, that does not come through the action of her forces. Sick men are slowly learning to depend on them. Society has the same lesson to learn.

Particularly is the power of positive demands noticeable when what is proposed is the putting of all industries into the hands of the state. No other plan can possibly promise as much for the immediate future as does this one, and nothing can appeal with so much of positive force to working people. The violence of this remedy does indeed prevent us from adopting it; it is much as if what the doctor proposed were to take out the patient's heart and liver and to put them back again in reversed positions. We are deterred by the risks of the operation, yet the itching to do something is irresistible. The world doctor of the quack species, with his bold diagnosis and his promise of a cheap and rapid cure, is the fascinating and dangerous man. For trained thought there is, as the first difficult task, the detecting and the pointing out of the socially curative forces of nature — of the tendency of a society, as well as of a man, to get well if the laws of the system be

allowed to work. The task does not, indeed, end with this. There are positive things to be done in the way of reform. The socialist has no monopoly of definite proposals. The evils of the world may be understood, forces that pervert nature may be detected and repressed, and prosperity may be secured — though not in any cheap and instantaneous way.

Before speaking of these specific reforms, however, I wish to name a few more things that need to be generally known about the existing system of industrial society. This system is founded on competition, and its nature is to make the world as a whole rich. It has given to the American people what averages a thousand dollars apiece for men, women and children. Competition is called a war, but it is a rivalry in serving the public : that business man survives who can serve society best. If a man offers goods cheaper than others — if he is what we call a sharp competitor, what he is really doing is to give to people, in return for a given service on their part, more than others are offering. He outdoes his rivals in conferring benefits. If one's point of view is that of a business man contending for his position and having rivals who are trying to get away his trade, he may regard competition as a warfare. He may say that his rivals are trying to destroy him, and that self-defense compels him to try to destroy them. But how can he do it? Only by offering the utmost that it is possible for him to offer to the public. He must give all the goods that he can give for the money. Economics does not study the moral quality of the motive that is back of competition. Self-interest may set it working ; but what it does to the public is beneficent — and that we all need to know. If the world shall ever become an economic New Jerusalem, a city of literal gold, it must come about in this way. More and more perfect becomes the machinery that competition employs to gain its ends. It multiplies a hundredfold the product of labor. More and more automatic grow the engines; and more rapid, accurate and strong becomes the work of the tool. Touch the electric button and the machine shall work wonders for you ; and this effect is all traceable to that system of industry which enlists

every business man in a breathless race to outdo his rivals in serving the rest of the world.

The benefits of these services are, however, distributed unequally. What if they are apportioned unjustly? We have rich and poor; and it is said that these classes consist of plunderers and the plundered.

The first question here is not whether robbery exists, but whether it is due to competition. If the competitive process tends to stop it, our course is clear: we should make way for the forces of nature — let competition go on. This is one of the points at which a modern type of economic science can render a large service to humanity. It can meet, as an earlier science was unable to meet, the charge that the society in which we live is based on a principle of robbery. It has not always been possible to show how much labor can claim by right of creation; and the charge that the laborer creates all wealth, and that the capitalist filches away a part of it, has not been adequately met.

There is always a definite amount that labor can claim as its own separate product. The man creates something and the machine creates something. If we could see it, these amounts are definite. Labor owns a distinct fraction of the output of industry. It may, however, seem very difficult to decide what proportion of a product is due to labor alone. Send a man fishing with a canoe and fishing tackle owned by another man, and there is clearly a divided ownership in the catch. The fisherman owns a part of it and the capitalist — the owner of the canoe and the fishing tackle — owns the remainder. The part owned is in each case the part produced. But how much does the man alone produce, and how much do the canoe and tackle produce? Bring the fish to the shore and put them into two piles. Can you say of one, "This was caught by a man without canoe and tackle," and of the other, "This was caught by a canoe and tackle without a fisherman?" Every fish is in reality a joint product: every fin or scale of a fish is such. What this means in the business world is that down to the finest tissues in the products of social industry there is

joint production. Every thread in a piece of cloth and every peg in a shoe owes its existence to labor and capital acting together: neither of them creates anything without the other.

There is a definite part of the product of industry, I have said, that is distinctly imputable to labor. With a little more time at my disposal, I could make an effort to prove this proposition, and to show, further, that the tendency of competition is to give to labor the share of the products that it creates. This is a momentous proposition, but modern political economy is able to prove it. If competition has its way, the men who run the machinery of the future will get their natural share of the goods that will result from the process. I do not say that they will, in fact, always get them; but that is because competition does not work without obstructions. What we do know is that, if they fail to get them, it is because competition sometimes fails to do its work. Upon the obstacles in the way of competition, not upon competition, are we prepared to charge the dishonesty that attends modern industry. We are working according to a system that is at bottom fair in its dealings.

The indictment against society is, however, not yet fully met. What if, even with perfect honesty, it deals hardly with the working man? It may give him what he creates and still give him little, because it only permits him to create a little: it may restrict his opportunities. Keeping still in mind what competition tends to do, we say that the system is widening the opportunities of labor. The workman's share of gains, being an honest share, tends to become larger. The amount of wealth imputable to mere labor tends to increase; and with this increase there is a basis for an increase in wages.

What an employer can pay is limited in the long run by what he can gain by the workman's presence. Not for a long time is it possible for him to give to a laborer more than the laborer gives to him. The question of rising wages is a question of increasing productive power on the worker's part. Competition is putting the workers of the world into more and more fertile fields for labor. Fertility means not only that the

whole crop is large, but also that the part which is imputed to a working man is large, and that the man's wages increase correspondingly. The industrial world, with its whole equipment of farms and mills and shops and railroads and ships and canals and stocks of goods, is like a field which men till for a living. If this whole environment is rich and fertile, mere labor will signify much and get much. When competition adds shop to shop and machine to machine, it is multiplying the wage-paying power of society and making society pay laborers according to its new power.

There is a final count in the indictment against the social state. At best, it is said, its tendencies are undemocratic. Here is seemingly one point to be surrendered; for nothing if not plutocratic is the business world. It has its captains of industry — and they are captains indeed, for they command their followers in the most autocratic way. They have a power over them which no governmental official could possibly have. Their millions of dollars are growing toward the limit of billions: the gulf between the extremes of society is widening.

Is even that true? In a sense the world is plutocratic, and I believe that it will be so to the end of time; but in a finer sense it is democratic. If every man's possessions, small and great alike, were to be multiplied by ten, there would be less to choose between the status of a worker and that of a multimillionaire than there is to-day. Not in mere possessions, but in the well-being that comes from possessions, such a multiplying of the means of production would have a leveling effect. As capital increases, wages rise. A Vanderbilt cannot have a thousand millions instead of a hundred, unless the country gets more and better railroads and more goods for the railroads to carry. An Astor cannot become a billionaire unless cities have more and better buildings. A Stewart or a Wanamaker cannot do it unless the buildings contain more and richer merchandise. All this means a more fruitful world for the workman to labor in. It means that he will produce a larger wage and get it. If he does get it, he will be the chief beneficiary of progress. He will never catch up with the billionaire

in possessions, but in the good time coming he may go far toward catching up with him in genuine well-being. Though he ever remain a mere wage earner, dependent on his toil, he may find that he gains on the rich man in the race for the actual enjoyments of life. The gulf between the richest and the poorest may in reality become a small one when the richest is a billionaire.

I was once passing a summer on Somes' Sound, at Mt. Desert ; and for recreation I hired a rowboat, fitted it with a sprit sail, and, with members of my family, voyaged from point to point on the island. One day there passed us a steam yacht that looked like an Atlantic liner for stateliness. There were fifty men sailing it and about five enjoying it. The latter was the number of passengers in my own little craft. As the proud steamer passed us it looked disdainful ; but it woke the echoes from the cliffs with its beautiful gong whistle, and it could not prevent us from enjoying them. I reflected with pleasure that I had not the coal bill to pay ; and I further reflected that there was little to choose, for real pleasure, between the condition of the party in the yacht and that of the one in my boat. Out of the breeze, the dancing water, the sunshine, the scenery, the echoes and the social pleasure that made up the total enjoyment of that summer's day, my own share was as great as the multi-millionaire's. If I had had no boat at all, the case would have been very different. I saw persons on the shore with no means of sailing, and I pitied them indeed. Between their state and mine there was a gulf ; between my state and that of the money prince there was no gulf worth mentioning.

Now, it is well within reason to hope that the worker of the future may reach the rowboat-and-sprit-sail level. At present he has no boat and may well envy the man who has one. But if he gets a modest craft, he will not need to envy the man with a steam yacht. The man with an assured and comfortable living is not greatly below the status of the man of uncounted wealth. "The abundance of the rich will not suffer him to sleep," says the Bible. We may look with equanimity on the

accumulating billions of the future. What their owners will get out of them is care. What we cannot help getting out of them is comfort and well-being. No possible condition can so far excel that of a workman of the future on four dollars a day as that condition will excel the present state of a man on two dollars. If the goods that a workman can enjoy be the test of wages, it is not beyond reason to expect them to be doubled and even quadrupled within a century or two.

It strains no one's credulity to claim great things for the effects of invention and discovery. What may not mechanical forces do? Old earth is still a sleeping giant. He has done some things for us: he has given us water power, steam and the crude first uses of electricity; but all this is as nothing to what he can give. He has, as it were, lifted one drowsy finger to serve us. Fully wake him and your wildest imagination cannot take in the things that will happen. The waves that beat on the shores shall one day move our engines. The very turning of the earth on its axis shall give electrical energy, and nerves of copper shall carry that energy whither we will. It will be much as if the revolving earth were itself a driving wheel moving the smaller wheels of industry. The new machines will be embodiments of intelligence, and will become more and more automatic. Touch then the electrical buttons, and forms of utility and beauty will spring out of non-existence in Oriental profusion. They will fill the humbler homes of the world. Palaces will be built, of course, and the passers in the streets will get the benefit of them. Parks and pleasure grounds will multiply, and electric cars will take any one to them for a penny. All the world will travel. A journey around the earth will not count as a long one. Sojourning among the mountains or by the sea will not rate as a rare luxury. We shall democratize the finest pleasures. Withal we shall democratize culture. The school will keep its pupils till they reach maturity. Art and music will be at their command. With such things for enjoyment, the pupils will have the capacity to enjoy them. As recurring summers shall take us over the sea to strange and historic scenes, the traveling

will do for every one what it now does only for the *élite* and appreciative.

Pull down, then, the barns and build larger, capitalists of the twentieth century! Add mill to mill, railroad to railroad, bank to bank, ship to ship. Your billions will do something for you; but they will do more for us — the democracy of the future. But pause! between us and all that is written one tremendous *if*. *If* only natural law works, *if* the world develops after its kind and unperverted, *if* forces of evil and of ignorance do not blight the prospect — then these things will happen. Here lies a second practical work that the state demands from scholarship; and the task is big enough to tax its full power. As a first service, scholars are to know and to make known the good forces and tendencies of our social system; as a second, they are to point out and help to remove obstructions, and so to let nature work.

This is not saying that we are to create prosperity by act of Congress. *Fiat* prosperity is elusive indeed. Hard times and good times must long alternate like the seasons; and an administration can create what is called a business boom only as Columbus created an eclipse of the sun — by waiting for it to occur and then claiming the credit of it. It is dangerous to suggest that anything that will quickly usher in a prosperous season can be done by the government. If what we refer to is the slow and sure improvement that is made, as one decade with its alternations of business conditions follows another, there is something to be done. Not a quick turning of hard times into good ones, but the making possible and real of the more general improvement that extends through a century — this great work is within human power.

We may enable competition to do its work and to lift humanity, not as quickly as though a mountain range were tossed into the air, nor yet as slowly as a mountain range actually rises by geological causes, but rapidly enough to inspire all who see and understand the process. Natural economic law must have its way, if it is to do this work. It is now interfered with. The task of the state is to stop these interferences.

Positive reform is a new and higher type of *laissez-faire*, for it is compelling powers of evil to let beneficent nature alone. "Hands off from competition in industry," is the word. Hinder not the grand dynamics of nature, but lay hands on whatever perverse agent may now presume to offer hindrances. The work is not simple; for it is not obvious what is natural and what is not. It is hard to see what task can be imposed on human thought which is more important than that of making a clear separation of what is natural from what is unnatural in organized life.

We have, for instance, a trust problem to solve. This can be accomplished only by the finest discriminations. A blind rush at the supposed enemy will not do it. Shall we simply say that the whole principle of combination is abnormal? Shall we bid our citizens to charge at a trust, wherever they see one, like a herd of bulls at a red cloth? That would be using the amount of intellect that a bull uses. The problem calls for the most careful thinking. There is that in the trust which is good, and there is evil also. The difficulty is to separate them and to secure the good only. It is not easy, but with enlightened thought it is possible. We have also a railroad problem to solve, and we can solve it only in the same discriminating way. Zeal must be according to knowledge. All of the power to make cheap rates and to give good service that comes through combination must be left. The power to cripple some industries and to build up others — to show favoritism and to play into the hands of monopoly — must be taken away. This is a hard task; but it is within the power of men who think.

Again, we have to meet a many-sided labor question which is changing its shape under our eyes with much rapidity. Trade unions for fixing wages are the salvation of labor. On no account should we repress them: we should aim rather to extend them. Yet a perfectly free hand to do whatever unlawful things their interests or wishes may here or there dictate, the state cannot possibly leave to them. What shall be allowed and encouraged? What shall be prohibited? If we make prohibitions, how shall we enforce them? This task will tax the

utmost sagacity of statesmanship. Optimism says the issue can be successfully met, because it must be met if society is to survive. Scholarship confirms the opinion, but it does not belittle the difficulties in the way of successfully solving this problem.

There are factory laws to be made and enforced. Working in the mills that supply us with goods there are helpless classes to be protected. A guardianship over women and children has been assumed by the state, and it must be exercised with great wisdom. There are the ever-recurring problems of taxation, and they become more serious and baffling as personal property becomes greater. Bad taxation is a perpetual incentive to communism. Of inheritance taxes we shall hear more than we have yet heard. I do not say they are necessarily bad; but it is clear, without saying, that they are capable of going to lengths that would mean disaster. You can always confiscate a property if you tax it at a high enough rate. Here there is a line to be drawn with difficulty between good and evil. We are starting on a course the farther stretches of which are perilous, and we must call a halt when impulse would carry us farther.

We have a general corporation problem to solve. This stands first in the order of time. The thing to be done is not merely to protect the public from the corporation as a whole: it is to protect the owners from the managers. "Director" must not be a tainted word: it must not even suggest a subtle and modern form of iniquity. Not till the stock of a railroad is a good investment for a workman's savings — and that is some time in the future — will society be all that it should be. Can we make stockholders safe? Not by mere reformatory zeal; possibly we can do it through zeal and knowledge.

Is this not enough? The things that I have enumerated are not all. More and yet more will the state demand of the men who are trained to look below the surface. There must be many such men. Schools must everywhere do their best to furnish them.

We are misled by the success with which we do things that

chiefly demand crude strength. "A nation that can put down the rebellion can settle a question of currency," said a statesman. If strength or even patriotism were all that such a problem requires, our sixty-six millions of people would find the task light. There is energy enough available when an evil really threatens us and force alone can avert it. Call for a fighting body to repel an invasion, and you will get a million men in a day; but generalship may be lacking. Call for a following of voters to repel a perfectly obvious and dangerous attack on the state, and you will get the men; but the statesmanship that would tell them just what to do may be wanting as before. In either of these cases they will

> Come as the winds come when forests are rended;
> Come as the waves come when navies are stranded;

but if the way be not clear, — if the nature of the evil and the mode of removing it be doubtful, — impulsive patriotism may be about as destructive as winds and waves. As against the evils that are growing up in the modern state, humanity appeals to the school. As against impulsive and blind reforms that try to attack the evils, but would actually rend the state in the effort to save it, humanity appeals also to the school. Before men who can see there is a vision of the future that nature, if she had her way, would give to us. It is bright beyond the pictures that socialism presents. It is assured by the forces of evolution that have made society what it is — *if* only we will let them work. Shall the vision become reality? The insight that makes this possible is the gift of scholarship to the people.

JOHN BATES CLARK.

THE SILVER SITUATION IN INDIA.

SILVER has never, so far as I am aware, been mined in India. This, of course, has not been the case with gold: southern India, which is now contributing over £1,500,000 to the yearly production of the world, was in prehistoric times undoubtedly the scene of very active mining. Under these circumstances it is not surprising that at one time, before commercial communication with India was easy and secure, silver was held in greater esteem than gold in the East. Even up to the middle of the last century it was rated more highly, as compared with gold, in Eastern markets than elsewhere. Such a state of things could not, however, continue; for from the early days of Venetian activity in trade Europe has been pouring silver into India, and from the time of the Mogul Empire this metal has been in effect the standard of Indian currency.

After a few spasmodic attempts, made about one hundred years ago, to introduce gold again into the monetary system of northern India, the various silver currencies were unified and the present rupee introduced in 1835. In the early sixties the modern commercial history of India may be said to commence. The suppression of the Sepoy revolt in 1857 gave security to British rule. The era of railway building began, and a large and systematic expenditure upon roads and communications was inaugurated. Even more important in its effects upon India's industrial development was the Civil War in the United States. Cotton being no longer procurable in the quantities needed, India was called upon to meet the demand and at once responded. The trade of Bombay doubled in five years. Times became good and prices rose. The usual result of over-trading followed, and the panic of 1866 worked widespread disaster. Yet the impulse given to India's export trade can hardly be over-estimated, and the effect remained when confidence was restored. When excitement was at its highest and loans were practically unattainable

at market rates of ten and fifteen per cent, the government, at the instance of the trading classes, attempted to give relief by offering to receive gold in payments at its treasuries. The experiment was, however, unsuccessful, for the reason that gold was over-valued in the notification. The finance minister of the time, Mr. Wilson, an orthodox though somewhat narrow-minded economist, declined to grapple with the difficulty, and contented himself with the establishment of our present system of paper currency. Up to this point all attempts to introduce gold were made with the idea of easing prices by increasing the media of circulation. Gold was sought for its cheapness, not for its scarcity.

In the next decade the conditions were entirely changed. Silver, in the course of expulsion from the currencies of the West, poured into India in an ever-broadening stream, and new financial troubles began. In twenty years the rate of exchange fell from 1*s.* 11½*d.* to 1*s.* 3*d.*, and the burden of the gold debt of India became oppressive. Each finance minister found it increasingly difficult to maintain an equilibrium. Merchants realized that a turn in the exchange was enough to convert a carefully calculated profit into a loss. Government officials — always an important body in a tropical country where Europeans are few — became discontented, finding that they could no longer remit sufficient to maintain their wives and children in the manner customary in their station of life. In 1892 the outlook became peculiarly threatening. Austria was found to be formulating a scheme for a gold currency, Russia was absorbing gold to rehabilitate the paper rouble, France and Germany seemed bent on accumulating huge war-chests, and America appeared to be on the verge of suspending her monthly purchases. The need for decided action was pressing, and the opportunity for taking it was ripe. The momentum necessary for the change was supplied by public, commercial and official opinion; and in 1893 the government decided to defend itself by closing the Indian mints to silver.

In connection with this step two questions naturally suggest themselves. First, what were the objective of the Indian

government and the methods taken to secure success? Second, what is likely to be the outcome? Unquestionably the aim of the government was the attainment of a gold standard — not necessarily because the members of that government were agreed that that was the best or the final solution of India's currency difficulties, but because it seemed the one easiest of attainment under the conditions then prevailing. Opinions were divided about the desirability of declaring any par as the goal aimed at; but the secretary of state was of opinion that, just as the bullion value of the rupee afforded a minimum limit to its value, so the declaration of the par of 1*s.* 4*d.* would afford a maximum. A certain section of the Indian government and an independent but uninformed body called the Indian Currency Association (which took a large part in educating public opinion and in advocating the change) held the unsound view that the rupee would rise at once to the par which it was desired to reach. The market inclined to the same view, and in consequence the rupee rose from 1*s.* 2½ *d.* to 1*s.* 4*d.* on the passage of the act. It was soon seen, however, that Sir David Barbour and the more instructed of the India council in England were right, and that the process of appreciating the rupee must be slow. Though the rate of exchange was 1*s.* 4*d.*, the secretary of state at once found that he could not sell at that rate the drafts by which India's yearly gold liabilities of seventeen millions sterling are met. The ignorant party thereupon asseverated that, if he held out, the market must buy; and he gave way, desiring to allow the Indian government a free hand and thinking that this policy was approved by the Indian minister of finance. Events soon showed the unsoundness of the quaint idea that a government can pay its debts by selling drafts at a valuation fixed by itself, and the secretary of state resumed the usual weekly sales. The catastrophe was naturally the worse for the delay; and the rupee, having remained at an artificial level, fell to a lower point than it would probably have reached had drafts been sold consistently from the first at market rates. Not content with the evident proof of their failure to realize the position, the same

party, both within and without the government, changed their vote, declaring that the competition of silver with the council drafts was at the bottom of all the mischief and clamoring for an import duty. Fortunately their entreaties were not heeded, and the government has ever since steadily adhered to the policy of inaction, waiting for the rupee to rise by contraction of supply. The final objective of the government, however, has not been declared : in fact, it has never been settled. If the rupee rose to-morrow above 1*s.* 4*d.*, the sovereign would undoubtedly enter our treasuries; but no steps have been taken to secure its retention or the maintenance of this par.

It remains to discuss the chances of success presented by this experiment. Long and very laborious researches during the last seven years have led to the conclusion that the number of rupees circulating in India has been remarkably constant, and may for the ten years preceding 1886 be put down at about 120 crores. From 1886 to 1893 the circulation was, in my opinion, slightly expanding; and at the time the mints were closed it was perhaps nearer 130 crores. The average yearly coinage during the decade when the circulation was approximately constant was seven crores, and during the next few years, in which the circulation rose by ten crores, the average yearly coinage was nine crores. A consideration of these figures would lead a hasty observer to conclude that on the closure of the mints the circulation would shrink by about eight crores yearly. Such a conclusion, however, would be highly erroneous. The industrial demand for silver has hitherto fallen almost entirely upon the rupee, as is evidenced by the fact that nearly the entire import of silver used to pass through our mints. This state of things must clearly be ultimately arrested by a measure which tends to enhance the value of the rupee by contraction.

It is, indeed, probable that at first rupees continued, and will for some time to a diminishing degree continue, to be melted by the peasants for conversion into ornaments. Upon this point the ignorance of even the cultivated native is extraordinary. A friend of mine, a rajah of good education and intel-

ligence, told me a few months ago that he was quite unaware of the fact that the rupee was worth some eighteen per cent more than its weight in silver. Still, though the purchaser may be ignorant and may as of old give his rupees to be melted, it is not likely that many silversmiths will continue to use them when they can buy bullion.

The effect upon hoarded coin cannot be so easily disposed of. Many thought (and among them were Sir David Barbour and myself) that on the whole the closure would not bring out hoarded rupees, and that the tendency would rather be to hoard further a coin of rising value. Others argued that holders of hoarded rupees would bring them out either to realize a profit by exchanging them for silver or to take advantage of the higher value of the rupee, the permanence of which they would distrust. In reality, it seems probable, judging from the facts — so far as they can be deduced from examining the composition of the circulation — that at first hoarded rupees did, on balance and in small amounts, reënter the circulation. This movement was no doubt stimulated by those who bought silver in large quantities after the closure, and has, I think, now ceased, although the present famine must be to some extent calling out coin that has been stored against bad times.

Matters are, however, now settling down. In spite of the famine, I believe that last year the circulation commenced to contract and that hereafter the progress in this direction will be steady. I do not for a moment mean to say that the yearly loss is anything like eight crores; but that on balance rupees are now being hoarded and are still to some extent melted; and that these causes, coupled with losses due to natural causes, are contracting the circulation. Moreover, when it is remembered that since 1893 the volume of transactions has been increasing with an increasing population and trade, it is clear that, in the absence of any change in the methods of business by which its use is economized, even a constant circulation must tend to the appreciation of the rupee. These views are illustrated graphically by the appended diagram.

THE FORT, MADRAS. J. C. HARRISON.

THE DECREASE IN THE PROPORTION OF CHILDREN.

IN respect to the increase or decrease of different classes of the population the figures of the Eleventh Census present certain variations from previous or recognized proportions. Some of these peculiarities have been commented upon by various writers, who generally accept the fact and advance opinions more or less hypothetical as to the cause.

Of the analytical results of the census, those relating to mortality and vital statistics disclose in the greatest degree the effect of variations in the population figures, and direct attention to details not apparent in any study of the latter by themselves. Particular importance attaches to a peculiarity in the figures showing the age distribution of the population, because of its effect upon the computation of birth rates, of life tables and of death rates among children. This peculiarity is a great decrease in the proportion of children under five years of age during the decade 1880–1890, the proportion of this class in each 100,000 of total population having fallen from 13,786 in 1880 to 12,223 in 1890. The extent of this diminution may perhaps be better appreciated when it is stated that there is an apparent loss of over 1,000,000 children under five years of age, as compared with the proportion in 1880. The loss is general throughout the country, every state being affected to a greater or less extent, excepting some of the western states and territories which in 1880 were of comparatively recent settlement and had, naturally, a small proportion of children. There are, however, great differences in the ratios of decrease in contiguous states of more settled conditions and in different classes of population in the same state.

The proportions of children under one and under five years of age, per 100,000 population of known ages, on June 1, 1880, and on June 1, 1890, with distinction of color, are shown in the following table:

	Under One.			Under Five.		
	Total.	White.	Colored.	Total.	White.	Colored.
1880 . . .	2,887	2,808	3,394	13,786	13,364	16,502
1890 . . .	2,508	2,477	2,733	12,223	11,993	13,887
Decrease . .	379	331	661	1,563	1,371	2,615

According to these figures, there were 1563 less children under five years of age in each 100,000 of population in the United States on June 1, 1890, than on June 1, 1880. The whites show a loss of 1371 and the colored of 2615 in each 100,000. The corresponding losses in the proportions under one year of age were : total, 379 ; white, 331 ; colored, 661. The greatest loss at each age in both white and colored occurred in those states and divisions having the largest percentage of colored population.

The following table shows, by grand divisions, the loss in the proportion of each class per 100,000 of the population from 1880 to 1890 :

	Under One.			Under Five.		
	Total.	White.	Colored.	Total.	White.	Colored.
No. Atlantic Div.	219	215	511	1084	1066	2182
So. " "	557	488	659	2261	1870	2824
No. Central "	319	313	575	1355	1329	2596
So. " "	609	566	729	2116	1855	2612
Western "	254	337	56	1215	1569	499

The population figures also show, not only that the proportion has decreased generally, but also that in twelve of the states—namely, Delaware, District of Columbia, Indiana, Maryland, Mississippi, New Hampshire, North Carolina, Ohio, South Carolina, Tennessee, Vermont and Virginia—there is an absolute decrease in the number of children under five years of age as compared with 1880. These states show as to total population a positive gain of 1,800,478, or 13.15 per cent ; and, at the same time, as to children under five, an actual loss of 48,827, or 2.53 per cent. Of this loss 21,437, or 43.90 per cent,

were under one year of age. The figures for these states are given in the following table :

STATES.	POPULATION — ALL AGES.			POPULATION — UNDER FIVE.		
	1890.	1880.	Increase.	1890.	1880.	Decrease.
Aggregate . .	15,497,141	13,696,663	1,800,478	1,928,045	1,976,872	48,827
Delaware . . .	168,493	146,608	21,885	17,957	18,335	378
Dist. of Columbia	230,392	177,624	52,768	20,303	20,635	332
Indiana . . .	2,192,404	1,978,301	214,103	254,441	257,633	3,192
Maryland . . .	1,042,390	934,943	107,447	120,976	122,954	1,978
Mississippi . .	1,289,600	1,131,597	158,003	191,815	195,876	4,061
New Hampshire	376,530	346,991	29,539	30,321	30,573	252
North Carolina .	1,617,947	1,399,750	218,197	233,014	233,117	103
Ohio	3,672,316	3,198,062	474,254	399,617	405,427	5,810
South Carolina .	1,151,149	995,577	155,572	169,941	173,551	3,610
Tennessee . .	1,767,518	1,542,359	225,159	244,522	249,993	5,471
Vermont . . .	332,422	332,286	136	29,873	34,091	4,218
Virginia . . .	1,655,980	1,512,565	143,415	215,265	234,687	19,422

It is evident that a diminution in the proportion of children might be caused by either a decrease in the birth rate or an increase in the death rate. Upon the face of the census returns both these causes seem to be revealed. But such a marked falling off as the table shows in the number and proportion of children during a single decade involves a change in the death rate or birth rate, or both, of a most alarming character. Yet the fact of such change has generally been accepted, and much speculation has been indulged in as to the causes underlying it. Attention may perhaps be more profitably devoted to the statistics on which the fact itself depends.

Of the two factors concerned the birth rate has been more generally discussed, although it is the most incomplete and unsatisfactory of all the branches of vital statistics. Births were not specifically reported by the census enumerators in either 1880 or 1890, no inquiries relating thereto being included in any of the schedules. The number of births, as stated in the census reports, was *estimated* by adding to the living population under one year of age on June 1, 1890, as shown by the population figures, the number who were born during the year preceding that date,

but who also *died* before June 1, as shown by the return of deaths. The correctness of the estimate as to the number of births, and consequently of the birth rate, depends therefore upon the completeness of the returns of both of these items. The return of deaths, however, except where secured by copying local registration records, is known and acknowledged to be very incomplete, and more so in 1890 than in 1880. This known deficiency in the return of deaths has been generally regarded as the principal cause of the incompleteness in the estimate of births.

The number of births in the United States, as estimated in 1880 and 1890, is shown in the following table :

Years.	Population under One.	Born and Died.	Births.
1880	1,447,983	104,314	1,552,297
1890	1,566,734	104,087	1,670,821

Considering the figures for 1890, as given in this statement, a short calculation shows that the "population" factor represents about ninety-four per cent and the "born and died" about six per cent of the whole, the ratio being about 15 to 1 ; hence a small percentage of deficiency in the enumeration of children of this age would have a much greater effect on the estimated number of births than a larger percentage of deficiency in the return of deaths. It will also be seen that, as the population under one year of age constitutes nine-tenths of the dividend in computing the birth rate and all of the divisor in computing the death rate at this age, any deficiency in the number would give too low a birth rate and too high a death rate for this class.

Regarding the population generally, there are but few data available for determining the error in the census returns ; but for the children under one year and under five years of age the registration records of births in certain states and cities furnish an independent but parallel line of data for testing the accuracy of the figures as given for those places ; and, while it is possible

that an exact knowledge of the facts for the whole country would show a slightly increased rate of infantile mortality and a somewhat diminished birth rate, a careful analysis of the figures and a comparison of the population at certain ages with the births and deaths registered in localities maintaining a fairly accurate system of registration, will show that there are also very decided omissions in the enumeration of children.

Bearing in mind the fact, familiar to all who have made any study of vital statistics, that the registration of births is always less complete than that of deaths, it would seem to be a logical conclusion that the number of children under one year of age upon a certain date in any locality should not be less than the number of births registered during the year preceding that date *minus* those who died before the date fixed.

Of the several states Massachusetts has probably the most complete registration records. The machinery of the enumeration was practically the same, so far as supervision was concerned, as that employed in 1880 and in the intervening state census; and it is probable that the defects in the enumeration in that state are at least as slight as in any other. For these reasons the registration records of births and deaths in Massachusetts, in connection with the census compilation of deaths, based on copies of the same records, are used in the comparisons made herein.

The following table shows for the state of Massachusetts the deaths and death rates under one and under five years of age, with the births and birth rates per 1000 of population, as computed upon the United States census figures for 1880 and 1890:

Births, Deaths and Rates.	United States Censuses.	
	1880.	1890.
Births	41,338	48,156
Birth rate . . .	23.18	21.51
Deaths under 1 . .	5,891	8,792
" " 5 . .	10,219	13,336
Death rate under 1	156.73	204.26
" " " 5	56.99	65.45

Taking these figures as they stand, they show an increase in the death rate for both ages and a decrease in the birth rate.

The following table shows the number and proportion of children under five years of age in Massachusetts, according to the census figures of 1880 and 1890, with the variation in proportion :

Ages.	Population.		Number at each Age in 100,000 of all Ages.		Difference in Proportion.
	1880.	1890.	1880.	1890.	
All ages	1,783,085	2,238,943			
Under 5 years . . .	179,307	203,758	10,056	9,101	— 955
Under 1 year	37,587	43,043	2,108	1,922	— 186
1 to 2 years	33,051	28,462	1,854	1,271	— 583
2 " 3 "	36,424	46,726	2,043	2,087	+ 44
3 " 4 "	35,989	44,367	2,018	1,982	— 36
4 " 5 "	36,256	41,160	2,033	1,838	— 195

From these figures it would appear that, while the aggregate population of the state increased 25.57 per cent in the decade, the increase in the number of children under five years of age was but 13.64 per cent, and the increase in the number under one but 14.52 per cent, while the proportion of children under five fell from 10,056 in each 100,000 in 1880 to 9101 in 1890.

The forty-ninth registration report of Massachusetts gives the number of births in the state during the year ending May 31, 1890, as 57,813, and the number of deaths under one year of age, exclusive of stillborn, as 9330. By taking the census return of deaths, based upon copies of the same registration records, and making a tabulation to show, for those who were born during the year, the month of death by the month of birth, it becomes possible to approximate closely the number of survivors on June 1 out of those born in each month of the year, and the actual number under one year of age on the day of the enumeration. The data available are therefore sufficient to determine very nearly the amount of error in the census figures given above, showing the population under one year of age in Massachusetts, the births as estimated, the birth rates and the death rates at this age. The following table shows

the number of births registered in each month of the census year, with the number of deaths and the survivors out of those born in each month :

BIRTHS, DEATHS AND SURVIVORS.	BORN IN												
	Total.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mch.	Apr.	May.
Total Births	57813	4635	5070	5174	4944	4858	4712	4901	4947	4488	4891	4436	4757
Died in June	145	145											
" " July	336	150	186										
" " Aug.	458	116	165	177									
" " Sept.	478	80	110	121	167								
" " Oct.	388	41	65	68	76	138							
" " Nov.	333	18	29	42	55	56	133						
" " Dec.	369	17	29	36	41	38	57	151					
" " Jan.	538	34	32	37	49	48	56	89	193				
" " Feb.	425	19	31	22	29	28	36	48	59	153			
" " Mch.	552	31	36	30	42	47	29	49	60	74	154		
" " Apr.	549	18	32	32	25	33	20	52	58	58	72	149	
" " May	527	25	19	27	21	22	28	35	28	38	45	73	166
Total deaths	5098	694	734	592	505	410	359	424	398	323	271	222	166
Survivors	52715	3941	4336	4582	4439	4448	4353	4477	4549	4165	4620	4214	4591

The number of births registered includes only those born in the state; while the "born and died" includes a small number (41) of children of foreign birth, not distinguished by month of birth or death, which should be excluded; and the population returns also show a small number (498) of children of foreign birth which must be added to the survivors out of those born in the state, to give the living population under one year of age on June 1, 1890. The results are shown in the following statement :

CENSUS YEAR 1890.

Births registered		57,813
Born and died	5098	
Less foreign born	41	5,057
Survivors of native birth		52,756
Foreign-born children under 1 year		498
Total under 1 year		53,254
Population reported as under 1 year .		43,043
Deficiency		10,211

From this statement it appears that the number of children under one year of age, as given in the census reports, is less by

10,211 than the number of survivors out of those born during the year, the deficiency being equal to 23.72 per cent of the population reported.

In this statement no allowance has been made for any deficiency in the registration of births; hence it is reasonable to suppose that the deficiency in the population presented in the table represents the minimum. Interstate migrations, being a small factor in this class of population, may be held to balance. It is claimed by the registration officers that the deficiency in the registration of births does not exceed two per cent; if the number of births be increased by that amount, the gross deficiency for children under one year would be 11,367, or 26.41 per cent. It is probable that the actual deficiency in the population of Massachusetts reported as under one year of age is not less than twenty-five per cent in round numbers.

The same registration report gives the number of births during the census year 1880 as 42,053. Deducting from this the number of the "born and died" (exclusive of stillborn), namely, 3751, and adding 649 children of foreign birth, the total number of children under one year of age on June 1, 1880, would be 38,951. The number reported in the population was 37,587, showing a deficiency of 1364, or 3.62 per cent, in the population as compared with the survivors out of those born in the census year 1880. Assuming the same deficiency as above in the registration of births, the deficiency in the population under one year of age for 1880 would be about five per cent.

There is always considerable error in the age distribution of the population as reported, of adults as well as of children, owing to the universal tendency to state ages in round numbers; and a deficiency in the number of children under one year of age is generally expected, upon the theory that children of ten or eleven months will be reported as one year old. The estimated deficiency of twenty-five per cent in the population of Massachusetts reported as under one year of age, is perhaps partly due to the tendency mentioned. The effect of this would be to increase the number between one and two years of age be-

yond its normal proportions; and if such an increase were apparent in the figures, it might be held conclusive of the theory referred to. In fact, however, it appears from the table of proportions given for single years that there is a greater loss for those between one and two years than for those under one.

The registration reports also afford a means of determining the deficiency in the population under five years of age, not, indeed, so accurately as in the case of those under one — since the census returns were made only for the single year ending May 31, 1890, and because the data concerning those who were born and died in each of the other years are lacking — but still sufficiently to show the error within certain reasonable limits. The error in the age distribution by single years, however, cannot be calculated from the data available.

The children under five years of age on June 1, 1890, were necessarily the survivors out of those who were born during the five years preceding that date. The number of births in the state during this period and the number dying each year from birth to five years of age are shown in the registration reports; and these numbers, together with that for the foreign-born population under five, as shown by the census figures, furnish the data for our comparison, some correction being necessary to make the registration figures for calendar years correspond in time with the census results.

The following table shows the births during the years 1886–1890 and the deaths at ages which would bring the births within the five-year period, excepting the highest age in each year, for which a correction is necessary:

Years ending May 31st.	Births.	Deaths under 5 Years, with Ages at Death.					
		Total.	Under One.	1–2.	2–3.	3–4.	4–5.
1886	49,021	7,721	7,721				
1887	52,060	10,210	8,137	2,073			
1888	53,437	12,000	8,668	2,232	1,100		
1889	56,175	13,037	8,972	2,208	1,113	744	
1890	57,813	13,743	9,330	2,173	1,037	688	515
Total	268,506	56,711	42,828	8,686	3,250	1,432	515

The number of deaths shown in this table is not strictly comparable with the number of births in the five years: first, because a part of those dying in the year 1886 under one year of age were born in the previous year (1885); second, because part of those dying in 1887 between one and two years of age were likewise born in 1885, and so on for the highest age in each year; and, finally, because the deaths include children born in other countries or in other states. It may be assumed, however, that the proportion of these classes was much the same in each year; and the general effect may be calculated by applying the known proportion in the census figures, without making corrections for each detail.

Summing up the numbers at the highest age in each year, we have included in this table 12,153 deaths of persons born either in 1885 or 1886; and, as the number of births in each of these years was about the same, 6000 would approximate with sufficient accuracy the number of these that were born in 1885, and must therefore be excluded from the deaths.

According to the census returns for 1890 there were 387 children of foreign birth who died during the census year at ages under five; and as the proportion of living children of this class was almost identical in 1885 (state census) and in 1890, it is a reasonable presumption that the ratio of deaths of foreign-born children in each year was about the same as in 1890. Applying this ratio to the deaths stated in the table above, we have a total of 1329 deaths also to be excluded, as not occurring out of the stated number of births.

The population reported as under five years of age on June 1, 1890, was 203,758, of whom 8029 were of foreign birth.

The deficiency in the population of Massachusetts reported as under five years of age thus appears to be 23,396, or 11.48 per cent; and this is the minimum, no allowance having been made for any deficiency in the return of births with which it is compared. If, as in case of those under one year of age, the estimated deficiency of two per cent in the registration of births is allowed, the percentage of deficiency in the popula-

tion under five years would be 14.12 per cent. It is certainly not less than fourteen and probably exceeds fifteen per cent.

The tabulated statement of the results of the foregoing is as follows:

YEARS 1886–1890.

Births			268,507
Deaths under 5 years. Total		56,711	
" of those born previously	6,000		
" " foreign born	1,329	7,329	
" corrected			49,382
Survivors			219,125
Foreign born, living			8,029
Total under 5 years			227,154
Population reported			203,758
Deficiency			23,396

The corresponding deficiency in the census figures for 1880 appears to be about the same, proportionally, as in case of those under one year of age, which would make it 2.80 per cent.

The following table shows the result of applying the deficiency percentages determined above to the figures for Massachusetts, as given in the census reports:

POPULATION, BIRTHS, DEATHS AND RATES.	REPORTED.		CORRECTED.	
	1880.	1890.	1880.	1890.
Population	1,783,085	2,238,943		
Under 1 year	37,587	43,043	39,466	53,804
" 5 years	179,307	203,758	184,328	232,284
Propor. per 100,000				
Under 1 year	2,108	1,922	2,213	2,403
" 5 years	10,056	9,101	10,338	10,375
Births	41,338	48,156	43,217	58,902
Birth rates	23.18	21.51	24.24	26.31
Deaths, under 1 year	5,891	8,792		
" 5 years	10,219	13,336		
Death rate per 1000 pop.				
Under 1 year	156.73	204.26	149.27	163 41
" 5 years	56.99	65.45	55.44	57.41

From this table it will be seen that, when the numbers of children under one and under five years of age are increased by the amount of the deficiency calculated above, the proportions at each age show an increase over the proportions in 1880, this increase being greatest in respect to those under one. There appears also an increased instead of a diminished birth rate for the census year 1890, which difference accounts for the increase in the proportion of those under one in that year. The death rate remains for both ages slightly higher than in 1880, but the difference is probably due more to the conservative estimate of the deficiency in the population of these ages in 1890 than to any actual increase in the death rates.

Upon the basis of a fourteen per cent deficiency in the number of children under five in 1890, the correct number at this age appears to be 232,284; and if we apply the corrected proportion in 1880 (10,338 per 100,000) to the aggregate population of the state in 1890, we get 231,462 as the number under five years of age — which is a very close approximation.

At the beginning of this discussion it was stated that there was an apparent loss of 1,000,000 under five years of age in the reported population of the United States, in comparison with the proportion existing in 1880; and it was assumed, on reasonable grounds, that the actual deficiency would not be less for the whole country than it was in Massachusetts. In the following table an application of the results obtained for Massachusetts is made to the figures reported for the United States.

Population and Proportion.	Reported.		Corrected.	
	1880.	1890.	1880.	1890.
Population	50,155,783	62,622,250		
Under 1 year . . .	1,447,983	1,566,736	1,520,382	1,958,420
" 5 years . . .	6,914,516	7,634,693	7,108,122	8,703,550
Proportion:				
Under 1 year . . .	2,887	2,502	3,031	3,127
" 5 years . .	13,786	12,192	14,172	13,898

From this table it will be seen that the difference between the number of children reported as under five years of age (7,634,693) and the number estimated upon the basis of the fourteen per cent deficiency shown for Massachusetts (8,703,550) is 1,068,857. If we calculate the deficiency upon the basis of the corrected proportion in 1880 (14,172 per 1,000,000), we get a difference of 1,240,132, indicating a greater deficiency in the remainder of the United States than is found in Massachusetts.

The deficiency in the return of deaths for the greater part of the United States precludes any determination of the comparative death rates of children for the country as a whole, or in most of the states. This deficiency is admitted, and is guarded against in the analysis of the census figures relating to mortality and vital statistics, the death rates being computed only for localities in which the return of deaths was secured from registration records — such as the New England states (except Maine), New York, New Jersey, Delaware, the District of Columbia, and the larger cities of the country, which cover, generally, the areas having low birth rates and a high rate of mortality among children. The conclusions derived from the comparisons herein made indicate, however, that the defects in the return of deaths are overshadowed by the defects in the enumeration of the population, and that with a correct enumeration the seeming decrease in the birth rate and the increase in the death rate of children would disappear.

The foregoing discussion has been confined to a test of the accuracy of the census enumeration of the population in the early years of life. The registration data with which the census figures are compared must be admitted to be more accurate than any enumeration of the population can be made under the present system, and the figures presented justify the conclusions reached as to the percentage of children omitted. No analogous conclusions, however, are to be drawn as to other periods of life. It is probable that the omission is much greater in the case of those under five years than for those of any similar period above that age.

If the conclusions reached above are accepted, the questions will naturally arise: Why was the enumeration more deficient in 1890 than in 1880? and why was the omission greater in the enumeration of children than of adults?

Of a variety of causes operating to produce the effects noticed, the most potent, comprehensive and simple was that too much was expected of the enumerators for the compensation accorded them. The schedules were too numerous, the inquiries too extended, the enumeration districts too large, the supervisors too remote, the time for preparation too short and the pay too small. The enumerators speedily discovered that there was no money in their task. This being the case, it was natural that in an army of 45,000 enumerators, selected in the way they were, there should be many who were inclined to skip the difficult or unpleasant parts; and an inclination to slight the work for any cause would naturally be exercised against unhealthy, unsavory localities — the dwelling places of the poor. It was among this class of population that the greatest omissions undoubtedly occurred, and it is this class which has the greatest proportion of children. It is safe to say that until the system and conditions of our census-taking are changed or the inquiries largely restricted the enumeration cannot be made accurate.

It will be observed that the deficiencies noted above are not due to defects in the office work of compilation. As heretofore organized, the census office has had faults enough — inevitable faults — arising from the lack of experience in the working force; but these have tended principally to delay the results and increase the expense of compilation. After the necessary experience has been gained, the work has generally been all that could be expected; but the most efficient force, properly organized and capably directed, can do no more than make a correct compilation of the returns.

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COMMENTS ON FEDERAL TRUST LEGISLATION.

PART FIRST.

ON July 2, 1890, Congress passed "an act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Trust Act. This act relates to both foreign and domestic trade, but I shall consider only its bearing upon the latter. The act is general in its terms, and is aimed at all unlawful restraints and monopolies which fall within the jurisdiction of Congress. This jurisdiction must be based upon Article I, section 8 of the constitution, which invests Congress with the power to regulate commerce among the states. In one direction the jurisdiction is conceded — the right of Congress, by virtue of this section, to regulate interstate transportation was established many years ago, and has been maintained in the face of every attempt to restrain or embarrass transportation by state regulations or other means. It is now declared that Congress has the additional right to regulate the subjects of transportation, — the articles of commerce among the states, — at least to the extent of forbidding their subjection to monopolies, trusts and contracts in restraint of trade, and that this right is asserted in the general Trust Act. Furthermore, a bill lately reported to the Senate makes it a misdemeanor to

> monopolize or engross the trade or commerce in any commodity, product or manufacture of any kind among the several states or with foreign nations, for the purpose of unduly enhancing, affecting or controlling the price of such commodity, product or manufacture to the consumers of this country.

I shall not consider whether anti-trust legislation of which the Trust Act is a type is altogether expedient from an economic standpoint — whether it can be enforced so discriminatingly as to destroy great combinations without impairing the faculty of coöperation which plays so important a part in our industrial system. These considerations must

give place to the primary question whether Congress has the power to make anti-trust laws which shall be valid and effective so far as they relate to the subjects of interstate commerce.

I.

The prime object of the monopolist is to control production, and the most powerful industrial trusts are those which so nearly control the output of a given commodity that they are able to fix its price without fear of competitors and in deference only to the ability of consumers.

After the passage of the Trust Act the government instituted proceedings against several trusts for the purpose of thwarting their efforts to control production. The lower courts decided that the act did not authorize the government to interfere with transactions looking to the acquisition and control of property within a state. The principle of the decisions was clearly stated by Justice Jackson in Greene's case [1] (Distilling and Cattle Feeding Trust).

> Congress certainly has not the power or authority under the commerce clause, or any other provision of the constitution, to limit and restrict the right of corporations created by the states or the citizens of the states, in the acquisition, control and disposition of property. Neither can Congress regulate or prescribe the price or prices at which such property or the products thereof shall be sold by the owner or owners, whether corporations or individuals. It is equally clear that Congress has no jurisdiction over, and cannot make criminal, the aims, purposes and intentions of persons in the acquisition and control of property, which the states of their residence sanction and permit. It is not material that such property or the products thereof may become the subject of trade and commerce among the several states or with foreign nations.

A suit against the Sugar Trust was finally carried to the supreme court, which decided, Justice Harlan alone dissenting, that it could not be maintained, because Congress had not, and did not claim, the power to regulate production within a state.[2] In the course of the opinion Chief Justice

[1] 52 Fed. Rep. 104.

[2] U. S. *vs.* E. C. Knight Co., 156 U. S. 1.

Fuller repeated substantially the views of Justice Jackson in Greene's case, saying:

> It was in the light of well-settled principles that the act of July 2, 1890, was framed. Congress did not attempt thereby to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the states or the citizens of the states in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property should be sold; or to make criminal the acts of persons in the acquisition and control of property which the states of their residence sanctioned or permitted.

It is settled, therefore, that Congress is powerless to prevent monopoly of production within a state.

II.

The opinion in the Sugar Trust case makes it plain that transactions in commodities, in order to lie within range of a federal trust act, must be subsequent to production; and we are led, therefore, to inquire as to the jurisdiction of Congress over the sale of commodities and contracts relating thereto.

In Gibbons *vs.* Ogden,[1] Chief Justice Marshall said of "commerce":

> It describes the commercial intercourse between nations and parts of nations. . . . The mind can scarcely conceive a system for regulating commerce between nations which shall . . . be confined to prescribing rules for the conduct of individuals, in the actual employment of buying and selling or of barter.

This and other judicial observations of like tenor are of the most general import, and do not throw any light upon the novel question whether Congress may condemn transactions which tend to create monopolies or restrain trade in articles of interstate commerce.

The jurisdiction assumed by the federal courts, in cases coming to them by reason of the residence of the parties, to

[1] 9 Wheat. 189.

decide questions of commercial law without reference to the decisions of state courts, has no bearing on the question we are considering. This jurisdiction originates in a rule of court, and is unrelated to any legislative power over interstate commerce. The Judiciary Act of 1789, chapter 20, declares that

> the laws of the several states, except where the constitution, treaties or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply.

This is a plain declaration of a constitutional limitation imposed upon federal courts. But the supreme court holds that the decisions of a state court are not "laws," within the meaning of the Judiciary Act. In Swift *vs.* Tyson,[1] Justice Story said that the act applied to

> state laws strictly local, that is to say, to the positive statutes of the states, and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate, and other matters immovable and intraterritorial in their nature and character,

and that it did not apply to "contracts and other instruments of a commercial nature." When the federal courts disregard state decisions in matters of commercial law, they exercise a permissive jurisdiction, which is terminated whenever a state passes a law governing the subject. The fact that the jurisdiction is permissive dissociates it from the federal power over interstate commerce; for that, like all federal powers, is absolute and independent. Hence, when, in Myrick *vs.* Railroad Co.,[2] the supreme court defines the liability of a common carrier on a contract for carriage between Chicago and Philadelphia differently from the rule apparently laid down by the courts of Illinois, we must bear in mind that it is not declaring the federal power over interstate commerce, but is merely reaching an independent conclusion in a matter of commercial law.

[1] 16 Pet. 1. [2] 107 U. S. 102.

A contract of sale made within a state and completed therein by delivery is not interstate commerce, although the purchaser may buy for export. The transaction is a matter of state concern only, and is recognized as such in the Sugar Trust decision. The fact that the purchaser resides in another state is wholly immaterial. Said Justice Field, in Paul *vs.* Virginia: "They [certain contracts of insurance] do not constitute commerce between the states any more than a contract for the purchase and sale of goods in Virginia by a citizen of New York whilst in Virginia would constitute a portion of such commerce."[1] A trust may, then, sell and deliver its product within the state of production without subjecting its action to federal scrutiny and interference.

We come now to acts and agreements respecting articles of commerce which are done or made within a state and do not involve interstate transportation, yet affect market conditions elsewhere. We may discover whether these are subject to federal or to state regulation by determining whether they fall within the jurisdiction of federal or of state courts. In either case the jurisdiction must be complete, including both civil and criminal control; a transaction subject to exclusive state regulation cannot be declared criminal by Congress, nor can a state uphold that which Congress has lawfully condemned. Further, the jurisdiction must, in either case, be exclusive. This position is sustained by two settled propositions of the law of interstate commerce. One is that federal power over such commerce is exclusive, although in some matters of primarily local interest in which uniformity is not requisite the states are permitted to act until Congress chooses to act for itself. Thus, in the absence of federal legislation a state may make pilotage regulations[2] and regulate elevator charges[3] and railway rates,[4] although the charges and rates may affect interstate commerce. If the acts and agreements in question do restrain commerce among the states in the constitutional sense, they cannot be classed among matters of

[1] 8 Wall. 168.
[2] Cooley *vs.* Wardens, 12 How. 299.
[3] Munn *vs.* Illinois, 94 U. S. 113.
[4] Railway *vs.* Iowa, 94 U. S. 155.

local interest in which uniformity is unnecessary. They involve general principles of commercial law; and we have seen that the supreme court is so impressed with the desirability of a standard commercial law that it declares and enforces a uniform system, except as it may be restrained by the acts of state legislatures: *a fortiori*, should the principles of the constitutional law of interstate commerce be uniform in statement and application.

The second proposition on which the doctrine of exclusive jurisdiction is based is this : that, in the absence of any federal regulation to the contrary, commerce among the states shall be free. This makes it doubly clear that the contracts mentioned are not properly cognizable by state courts when they suggest a federal question. If, then, a contract is alleged to be monopolistic or in restraint of trade, and it appears that if the allegation is true there must be a restraint on commerce among the states, in the constitutional sense, there is a question determinable only by the federal courts, to whom is confided the whole duty of defining and maintaining federal powers.

In Diamond Match Co. *vs.* Roeber,[1] the plaintiff, a foreign corporation, sued upon a covenant made by the defendant with plaintiff's assignor in connection with the purchase of his match factory in New York. By this covenant Roeber agreed for valuable consideration to refrain from making or selling matches in every state save two, except in the company's service. The New York Court of Appeals held that the covenant was not in restraint of trade, and decided in favor of the plaintiff. It was not suggested that a federal question was involved, although the court recognized the wide effect of the covenant, saying :

> The boundaries of the states are not those of trade and commerce, and business is restrained within no such limit. The country, as a whole, is that of which we are citizens, and our duty and allegiance are due both to the state and nation. Nor is it true, as a general rule, that a business established here cannot extend beyond the state, or that it may not be successfully established outside of

[1] 106 N. Y. 473.

the state. There are trades and employments which, from their nature, are localized; but this is not true of manufacturing industries in general.

The transaction on which this case rested was indistinguishable from thousands of others which, carried on within a state, affect market conditions elsewhere, yet are governed by the law of place — the place being the state, not the United States. The covenant did not affect commerce among the states, for Roeber simply agreed in New York to refrain from selling matches in certain states. Congress could not have condemned the contract, had its effect been limited to New York, or, by parity of reasoning, similar contracts in other states. Now, when a contract made in New York to refrain from selling within the state may be duplicated in New Jersey, for example (and therefore in other states), without interfering with interstate commerce, there can be no interference when a contract made in New York covers other states; for, from a federal standpoint, the single and duplicate contracts effect precisely the same result — restriction within the limits of states.

Justice Lamar said, in Kidd *vs.* Pearson:[1] "The buying and selling and the transportation incidental thereto constitute commerce; and the regulation of commerce in the constitutional sense embraces the regulation at least of such transportation." This sentence suggests the exclusion of the transactions in question from the jurisdiction of Congress. The transportation of commodities among the states is a matter of federal concern, to the extent, at least, of keeping the ways clear; the buying and selling within a state is not, except in the obvious sense that a state cannot restrain the sale of a commodity because it is imported or for the purpose of preventing its exportation.

Chief Justice Fuller said in the Sugar Trust case: "Contracts to buy, sell or exchange goods to be transported among the several states . . . form part of interstate trade or commerce." In Robbins *vs.* Shelby Taxing District,[2] Justice Bradley said: "The negotiation of sales of goods which are in another state,

[1] 128 U. S. 20. [2] 120 U. S. 497.

for the purpose of introducing them into the state in which the negotiation is made, is interstate commerce" ; and so the court decided that the agent of an Ohio firm selling goods by sample in Tennessee could not be subjected to a license tax in the latter state.

We understand, then, that the contracts and negotiations under discussion cannot be hampered by the states ; but the supreme court has not yet been called upon to decide whether trust agreements involving the transportation of goods from one state to another so restrain interstate commerce in the constitutional sense as to fall within the scope of the Trust Act. This question has been considered in U. S. *vs.* Addyston Pipe Co.[1] The government sought to enjoin the Associated Pipe Works, composed of six corporations, located in several states, which had agreed to divide the business of selling cast-iron pipe in the states and territories west of Pennsylvania and south of Virginia. The court refused the injunction, upon the authority of the opinion of the supreme court in the Sugar Trust case, and said :

> If every private enterprise which is carried on in part or chiefly by interstate shipments, or by a mode of business which makes this necessary, is to be regarded as thereby so related to interstate commerce as to come within the regulating power of Congress, it is obvious that this power could at once be extended to almost every form of business in the country which is conducted on anything like an extensive scale. So liberal an interpretation as this would obviously, in a large sense, obliterate the lines between federal and state jurisdiction, and, as an act of Congress is paramount in authority, would strike down the autonomy of the states.

III.

After considering the relation of the federal power to transactions involving the acquisition and disposition of articles of commerce, it is material to determine its relation to the articles themselves.

I shall not attempt to define an article of interstate commerce

[1] 78 Fed. Rep. 712.

categorically. Generally speaking, it is a thing which is the subject of traffic — usually but not necessarily tangible.[1] But everything which may be bought and sold is not within the definition. Thus, a state may impose a tax on local dealers in foreign bills of exchange. In the language of the court: "A bill of exchange is neither an export nor an import." It is "an instrument of commerce."[2] Again, when a foreign insurance company issues a fire insurance policy within a state, it is not engaged in interstate commerce; the policy is simply a contract of indemnity against loss.[3] Moreover, a state may have a peculiar right in a thing by virtue of which it may control its disposition. Thus, in Geer *vs.* Connecticut[4] the supreme court sustained a state law forbidding the exportation of quail, woodcock and ruffed grouse, although these birds could be lawfully killed in certain seasons and sold within the state. The ground of the decision was that a state may

> preserve a food supply which belongs in common to all the people of the state, which can only be the subject of ownership in a qualified way, and which can never be the object of commerce except with the consent of the state and subject to the conditions which it may deem best to impose for the public good.

Who shall decide, upon occasion, whether a particular thing is an article of interstate commerce?

In Peirce *vs.* New Hampshire[5] Justice Catron, after saying that the state court had assumed that a state may "declare what should be an article of lawful commerce in the particular state," continued:

> If this be the true construction of the constitutional provision, then the paramount power of Congress to regulate commerce is subject to a very material limitation; for it takes from Congress and leaves with the states the power to determine the commodities or articles of property which are the subjects of lawful commerce. Congress may regulate, but the states determine what shall or shall not be regu-

[1] A state law taxing interstate telegrams would be void as a restraint on commerce. — Telegraph Co. *vs.* Texas, 105 U. S. 460.

[2] Nathan *vs.* Louisiana, 8 How. 81.

[3] Paul *vs.* Virginia, 8 Wall. 108.

[4] 161 U. S. 519.

[5] License Cases, 5 How. 600.

lated. Upon this theory, the power to regulate commerce, instead of being paramount over the subject, would become subordinate to the state police power; for it is obvious that the power to determine the articles which may be the subject of commerce, and thus to circumscribe its scope and operation is, in effect, the controlling one. The police power would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power, as the power to regulate is dependent upon the power to fix and determine upon the subjects to be regulated.

Justice Catron thus shows that the states are not at liberty to say what shall or shall not be articles of interstate commerce.

It was, indeed, said in Peirce *vs.* New Hampshire that a state may forbid the sale of imported liquor, provided Congress has made no regulation on the subject. This view was supplanted, however, in Leisy *vs.* Hardin[1] by the proposition that a state cannot close its doors to a commodity because Congress has not expressly declared that they shall be kept open, but must, in the absence of federal regulation to the contrary, permit the importation and sale of articles in their original packages. These decisions present other features which will be considered later; but they serve at present as authorities for the statement that whether a particular thing is an article of interstate commerce, is a federal question.

When does a commodity produced within a state become an article of interstate commerce?

Chief Justice Fuller said, in the Sugar Trust case:[2] "The fact that an article is manufactured for export to another state does not of itself make it an article of interstate commerce." This was the governing principle of Kidd *vs.* Pearson,[3] where it was held that a state law forbidding the manufacture of liquor extended to manufacture for export. But, although a state is not compelled to exempt articles intended for export from the burden of its prohibitory laws, it cannot single out such articles for the purpose of prohibiting their production or exportation.

[1] 135 U. S. 100. [3] 128 U. S. 1.
[2] U. S. *vs.* Knight Co., 156 U. S. 1.

The movement of a commodity preparatory to its actual shipment for export does not bring it within the description of an article of interstate commerce, and it is subject to local taxation until it is in course of transportation to another state.[1] Once in transit from one state to another, it becomes an article of interstate commerce, and retains this character until it is disposed of in the state of destination and becomes merged in the mass of property subject to the local law.[2]

What is the extent of the federal power to "regulate" commodities?

As in most subjects in the law of the federal constitution, the answer here turns on the peculiar relation between the United States and the states. The first point to be determined is whether the federal power to regulate is qualified by state power. One of the most potent incentives to federal union was the inclination of each of the loosely confederated states to seek its selfish interest by imposing commercial restrictions intended to promote its own well-being at the expense of the others. The states relieved the situation by abandoning their restrictive powers and investing Congress with the power to regulate interstate commerce. The supreme court has on occasion maintained federal supremacy by annulling state laws that restrained or embarrassed commerce; and the sum of the decisions is that commerce shall be free.

In one direction, however, the state of the law permits the suggestion that the last word has not been said. I refer to the right claimed at times by states to exclude, by virtue of the police power, articles deemed to be injurious to health or morals. It is clear that a state cannot exert this power so as to discriminate against imported articles. Thus, a statute prescribing that certain meats should not be sold unless the animals had been examined by resident inspectors before slaughter, was declared invalid because it would shut out foreign meats.[3] But when the manufacture and sale of a particular article is forbidden by state law, there is something to be said in support of

[1] Coe *vs.* Erroll, 116 U. S. 517. [2] Leisy *vs.* Hardin, 135 U. S. 100.
[3] Minnesota *vs.* Barber, 136 U. S. 313.

the state's right to forbid the sale of the same article when imported. The point of difference between Peirce *vs.* New Hampshire and Leisy *vs.* Hardin was, as we have seen, on the question whether a state could forbid the sale of imported liquor in the absence of federal legislation recognizing it as an article of commerce. Both decisions approve the proposition that Congress may compel the reception of liquor by an unwilling state.

The principle underlying this proposition is, in my opinion, severely damaged in Plumley *vs.* Massachusetts.[1] The Massachusetts legislature prohibited the sale of oleomargarine that resembled butter. Plumley was indicted for selling such oleomargarine which had been consigned to him as agent for a Chicago manufacturer. The state court sustained the indictment and the Supreme Court of the United States approved the decision on writ of error. It was urged on behalf of Plumley that according to Leisy *vs.* Hardin he could not be indicted for selling imported oleomargarine in "original packages." The supreme court held, however, that Leisy *vs.* Hardin

> must be restrained in its application to the case actually presented for determination, and does not justify the broad contention that a state is powerless to prevent the sale of articles manufactured in or brought from another state, and subjects of traffic and commerce, if their sale may cheat the people into purchasing something they do not intend to buy and which is wholly different from what its condition and appearance import.

Suppose a state should forbid the sale of all liquor on the ground that adulteration is so common that a purchaser is likely to be deceived. Would such a law differ in kind from the oleomargarine law of Massachusetts? A state may punish vendors of fraudulent or unwholesome articles and condemn the articles, whether imported or domestic. It may condemn oleomargarine which is offered for sale as butter and fusel oil which is offered as whiskey; but, if it can exclude all oleomargarine because some of it may be sold as butter, why can it not exclude all whiskey because some of it may be adulterated?

[1] 155 U. S. 474.

It is true that much of the whiskey may be pure, and that the buyer may receive the worth of his money; but it is equally true that oleomargarine is usually wholesome, and that it may be sold for what it is. According to Leisy *vs.* Hardin and Plumley *vs.* Massachusetts, a state cannot exclude liquor which its people may consider injurious to morals, but can exclude wholesome oleomargarine because it may be sold as butter. The distinction suggested by these cases is, in my judgment, untenable. Indeed, it is rather shocking to hold that a state must receive something which in its best form is deemed injurious to the welfare of the people, and yet may exclude a thing harmless in itself because it may be palmed off for something else.

Leisy *vs.* Hardin is not in accord with Plumley *vs.* Massachusetts; and, when it is said in the latter case that the rule laid down in the former must be "restrained in its application to the case actually presented for determination," the decision is evidently discredited as a guide. It must be admitted that Leisy *vs.* Hardin went to the very edge of state rights; and, in my opinion, it trespassed on state rights. Plumley's case suggests the proposition that if a state may forbid the sale of an article, it may enforce the prohibition against the imported article; and this will afford just protection to the state without qualifying unduly the federal power to regulate commerce.

In Justice Catron's opinion in Peirce *vs.* New Hampshire, already cited, he says that if the states should have the power to designate articles of commerce,

> the police power [of the states] would not only be a formidable rival, but in a struggle must necessarily triumph over the commercial power [of Congress], as the power to regulate is dependent upon the power to fix and determine the subjects to be regulated.

When these words were written the power of a state legislature to enact laws affecting property was limited only by the local organic law as defined by the local courts, except so far as federal restraint was imposed specifically, as in the case of laws impairing the obligation of contracts. The state constitutions usually declared that no one should be deprived of property without due process of law, but what was "due proc-

ess" in a particular case was not a federal question. In these circumstances, an admission that a state could exclude a commodity by asserting its police power, while it was the sole judge whether the power was abused or not, might have provoked the conflict suggested by Justice Catron.

The circumstances are now materially changed by the adoption of the Fourteenth Amendment, which forbids the states to deprive any person of property without due process of law. What is "due process" is now a federal question; and, though the supreme court has declared emphatically that the amendment is not intended to restrain the police power of the states, it is nevertheless true that the court may unmask and annul a state law which, under the guise of a police regulation, effects an arbitrary deprivation of property. Said the court in Mugler *vs.* Kansas:[1]

> If, therefore, a statute purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relation to these objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge and thereby give effect to the constitution.

Although the supreme court has found it necessary to repulse a crowd of litigants, who have besieged it with appeals to annul state laws on the ground that they contravened the Fourteenth Amendment, and has wisely refrained from defining a deprivation without "due process" by hypothetical illustrations, it possesses the power to annul, and will exert it in a proper case.[2] There is, therefore, no danger of conflict between the police power of the states and the commerce power of Congress; for, if the supreme court decides that a state is not justified in forbidding the manufacture and sale of a particular article, it follows that the state cannot exclude it. If, however, the court finds that the state is justified on the ground of public health, safety or morality, how can it find also that federal power over commerce permits this laudable policy to be damaged by any one who chooses to send the article into the state?

[1] 123 U. S. 661. [2] See Allgeyer *vs.* Louisiana, 165 U. S. 578.

The proposition derived from Plumley's case does not admit a state's right to exclude articles for any reason save their objectionableness — either essential, as in infected things, or imputed by statute, as in liquors or lottery tickets. Therefore, assuming that a state may forbid the production and sale of commodities by trusts or combinations, it cannot prevent the importation of goods produced by trusts beyond its jurisdiction. The powers of Congress over interstate commerce would be damaged irreparably, if a state could bar out a consignment of sugar, for example, merely because it had been produced by agencies which were disapproved by the local economic policy.

Many years ago Judge Story inquired:

> Can Congress, under the power to regulate commerce among the states, prohibit the transportation or export of goods or products from one state to another? *Ex gratia*, can Congress prohibit the exportation of slaves from one state to another for sale?[1]

The specific question is now of historic interest only. The general question is yet unanswered.

During the Civil War our government declared a blockade of the Southern ports. This action, however, like the non-intercourse legislation of the same period, was the exercise of a belligerent right, not a regulation of commerce.[2] Again, the action of Congress in excluding lottery matter from the mails is justified, not by the power to regulate commerce, but because the government has such control over the postal system that it may decline "to become an agent in the circulation of printed matter which it regards as injurious to the people."[3] As to the liquor traffic, it has been decided that Congress may permit a state to forbid the sale of imported liquor in the original packages,[4] provided the action of the state is in harmony with a local prohibitory law and does not operate to relieve domestic traffic from foreign competition.[5]

[1] Commentaries, 2d ed., section 1075, note 3.

[2] See Prize Cases, 2 Black 635.

[3] Rapier's Case, 143 U. S. 110. [4] Rahrer's Case, 140 U. S. 545.

[5] Scott *vs.* Donald, 165 U. S. 58 (South Carolina Dispensary Case).

The permissive act was passed in 1890 to enable prohibition states to do what the supreme court had declared in Leisy *vs.* Hardin they could not do without the consent of Congress. This act was necessary in order to place the states in a position to make the police power over liquor thoroughly effective; but it is unfortunate, nevertheless, that the efficiency of the power should depend upon the grace of Congress. We have seen, however, that the rule of Leisy *vs.* Hardin has been closely limited to the facts in the case; and if, as I have suggested, Plumley's case indicates a liberal recognition of state rights, Congress is not likely to be called upon to pass another permissive act. In any event, the principle of Rahrer's case does not admit a power in Congress to permit a state to close its markets against each and every article which Congress and the state legislature may unite in condemning. The federal permission can be granted only in respect of such articles as the state can prohibit by a proper exertion of the police power.

The Supreme Court of the United States has never been required to decide whether Congress, by virtue of the power to regulate interstate commerce, may authorize federal officials to prevent the transfer of articles from one state to another or to seize them in transit. Such authorization was given by Congress in the Trust Act of 1890, under the sixth section:

> Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section 1 of this act, and being in the course of transportation from one state to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure and condemnation of property imported into the United States contrary to law.

Does this section express the constitutional power of Congress over interstate commerce? By Article I, section 8, of the constitution, Congress is invested with power "to regulate commerce with foreign nations, and among the several states and with the Indian tribes." From the identity in the

terms of the grant it has been argued, or rather presumed, that the three powers involved are coextensive; but it will not be difficult to show that this position is erroneous, and that the power over interstate commerce is substantially less than that over commerce with foreign nations and with the Indians.

The assertion of identity between the power over interstate and that over Indian commerce might be dismissed almost summarily. The Indian tribes are, in the language of Chief Justice Marshall,

> in a state of pupilage. Their relation to the United States resembles that of a ward to its guardian. They look to our government for protection; rely upon its kindness and power; appeal to it for relief to their wants; and address the President as their great father.[1]

Whatever relation the states may bear to the federal government, it is not this. The dependent position of the Indians justified the supreme court in saying:

> As long as these Indians remain a distinct people, with an existing tribal organization, recognized by the political department of the government, Congress has the power to say with whom and on what terms they shall deal, and what articles shall be contraband.[2]

Whatever power Congress may have over interstate commerce, it is not this.

It is a fair rule of interpretation that, when powers in respect of several subjects are presumed to be coextensive merely because of identity in the terms of the grants, the differentiation as to one subject destroys the presumption as to the rest. But we need not stop here; for, in point of fact, the assumed parallel between interstate and international commerce is, so far as federal power is concerned, quite as illusory as in the case of Indian trade, and for the same reason — a radical difference in the relations of the parties.

The United States deals with a foreign nation as one sovereign with another. It has no legal relation with the foreign state and, apart from the obligation of treaties, no conventional one. Its attitude toward other nations is dictated by policy,

[1] Cherokee Nation *vs.* Georgia, 5 Peters, 17.

[2] U. S. *vs.* Forty-three Gallons of Whiskey, 93 U. S. 188.

tempered in some directions by international law; and it may discriminate between them — inclining toward one and away from another — as its interests may appear to require. In dealing with the states, on the other hand, the United States is in communion with its members, whose relation to each other and to the federal government is fixed by law. By this law all states are of equal rank and are entitled to equal consideration at the hands of Congress. Hence the right to regulate commerce discriminately, which is an essential feature of the federal power when applied to foreign countries, does not exist in the case of interstate commerce.

Again, Congress taxes foreign imports for the purpose of encouraging domestic industries, and Judge Story bases this protective system on the power to regulate commerce; but surely Congress may not impose a tariff on manufactures from the Eastern and Middle states in order to encourage industries in the West and South. In 1807 Congress laid an embargo upon foreign trade, and described the measure as "neither hostile in its character nor as justifying or inciting or leading to hostility to any nation whatever." The constitutionality of the Embargo Act was savagely attacked, but the law was sustained in a district court;[1] and in Gibbons *vs.* Ogden Chief Justice Marshall referred to "the universally acknowledged power of the government to impose embargoes," described them as "sometimes resorted to without a view to war and with a single view to commerce," and said of the act of 1807: "By its friends and its enemies it was treated as a commercial, not as a war, measure." And Judge Story said: "If it [the Embargo Act of 1807] could be classed at all as flowing from or incident to any of the enumerated powers, it was that of regulating commerce."[2] If Congress may interdict foreign commerce, it is because it is presumably carrying out the policy of a sovereign — the United States — in opposition to or disregard of the policies of other sovereigns to whom it owes no legal duty in the premises. But an embargo on interstate

[1] U. S. *vs.* The Brig William, 2 *Hall's Law Journal*, 255.
[2] Commentaries, sec. 1289.

commerce for commercial reasons would be a manifest perversion of a power granted to Congress for the very purpose of promoting freedom of intercourse among the states.

By the foregoing discussion not only are we disembarrassed of the notion that the power of Congress to regulate is the same over commerce among the states as it is over that with foreign nations and with Indian tribes, but we are also enlightened by the suggestion that the right to interdict, which seems to inhere in the power to regulate when applied to foreign or dependent peoples, cannot be applied to the states, which are neither foreign nor dependent.

The recent case of France *vs.* United States[1] suggests the question whether Congress, by virtue of the commerce power, may forbid interstate traffic in the interest of morality. This was a suit brought by the government under the Anti-Lottery Act of 1895. This act, designed to complement the act of 1890 forbidding the use of the mails for the transmission of lottery matter, forbade interstate traffic in such matter by any means whatever. The act was in terms an assertion of power to regulate commerce among the states; and it was argued on behalf of France that the subject of lotteries was beyond the regulating power of Congress. The court found it unnecessary, in this particular case, to consider the constitutional question, as the statute did not apply to the acts of the defendant. It has never been decided — or, I think, seriously asserted—that the grant of power to regulate commerce invests Congress with supervision of the morals of the states. It has been supposed, on the contrary, that each state is competent to safeguard its moral welfare by its power of police. If a lottery ticket is not essentially an article of commerce, it goes without saying that a state may prevent its importation. If it is such an article, its importation can still be prevented under the rule derived from Plumley's case ; for it is not to be supposed that the rule of Leisy *vs.* Hardin, already limited in its application to the importation of liquors, should be revived and extended so as to force a state to admit lottery tickets in the absence of federal law to the contrary.

[1] 164 U. S. 676.

Until the supreme court decides otherwise, it is permissible to entertain the opinion that Congress cannot, under the power to regulate commerce among the states, prohibit the transfer of a commodity from one state to another. But, even if the supreme court should decide that there is a right to confiscate within the power to regulate interstate commerce, it would not follow that the forfeiture clause of the Trust Act is constitutional. Congress cannot deprive persons of property arbitrarily. The government may seize property for non-payment of taxes or confiscate it as contraband of war, but the powers exerted in such cases are unrelated to the power over interstate commerce. If there is a right to confiscate within this power, it cannot be exercised indiscriminately, but only upon articles the use of which is directly and distinctly harmful, and perhaps, according to the principle of the oleomargarine cases, upon articles which may deceive purchasers. A vile book, a lottery ticket and a barrel of sugar in transit from one state to another are equally in course of interstate commerce; yet one need not be learned in the law to perceive that the power of Congress over the necessary of life cannot be coextensive with its power over the other things. It would be difficult, indeed, for the supreme court to affirm the right to seize sugar in transit, not because its use would harm the consumer, but because its sale would benefit the owners who had acquired title to it by methods which Congress, while disapproving, cannot, according to the decision in the Sugar Trust case, condemn.

Finally, even if the supreme court should overcome the successive arguments which have been advanced against the prohibitory clauses of the Trust Act and should decline to pronounce the clauses invalid, a trust lawfully possessed of commodities in the state of production could, nevertheless, market them without federal interference.

It will be noticed that the law authorizes the seizure of articles in transit "owned" by a combination. It does not forbid the sale and delivery of the articles within the state of production. Such a transaction is of state concern, and, according to the decision in the Sugar Trust case, is beyond the reach

of Congress. Justice Harlan said in his dissenting opinion in that case:

> By the opinion and judgment in this case, if I do not misapprehend them, Congress is without power to protect the commercial intercourse that such purchasing [of goods to be transported from one state to another] necessarily involves against the restraints and burdens arising from the existence of *combinations* that meet purchasers, from whatever state they come, with the threat — for it is nothing more nor less than a threat — that they *shall not* purchase what they desire to purchase, *except at the price fixed by such combinations.* A citizen of Missouri has the right to go in person or send orders to Pennsylvania or New Jersey for the purpose of purchasing refined sugar. But of what value is that right if he is confronted in those states by a vast *combination* which absolutely controls the price of that article by reason of its having acquired all the sugar refineries in order that they may fix prices in their own interest exclusively?

When it is declared that Congress cannot forbid a citizen of a state from going or sending to another state for a barrel of sugar or from acquiring title to it in the latter state, it follows that he may send the sugar where he pleases, without being compelled even to inform federal agents where or of whom he bought it. The sale within the state has divested it of all possible federal interest. The sugar has passed into the hands of a dealer who is not a party to the combination, but, rather, according to Justice Harlan's view, its victim. The dealer and the consumer each benefit the trust by taking its produce; but it would be as absurd to punish the one for selling the sugar as the other for eating it.

IV.

The results of the foregoing discussion may be summarized in two propositions: (1) the power to regulate commerce among the states does not enable Congress to legislate in respect of the production of commodities within a state; (2) the power to regulate commerce among the states does not enable Congress

to forbid the transfer of commodities lawfully produced within a state to another state, or to authorize their seizure in transit. The first proposition is maintained expressly in the Sugar Trust case, and is the basis of the particular matter decided therein — that Congress cannot prevent transactions looking to monopoly of production within a state. The second is derived from the first by necessary implication; for, as Congress must admit the right of a state to regulate the production of commodities within its limits, it must recognize a right of ownership in commodities lawfully produced, and hence cannot forbid the owner to dispose of them. How absurd to hold that, although Congress cannot prevent a monopoly of sugar production in Pennsylvania and must recognize the sugar as property while in the state and protect it if necessary, it may, nevertheless, order the sugar to be locked up within the state and confiscate it if it shall be exported!

The theory of legislation against industrial trusts is based upon the presumed interest of the state in the conditions of supply and demand, in resulting prices, and in the distribution of wealth and labor. Such legislation is consistent and effective only when it cuts the root of monopoly by destroying combinations which control production. The dissenting opinion of Justice Harlan in the Sugar Trust case, from which I have quoted, shows how essential to the efficiency of federal legislation against industrial trusts is the power to forbid monopoly of production within a state, and how the denial of this power by the majority of the court precludes Congress from abolishing the trusts. Congress, by virtue of its power to regulate commerce, is bound to keep the ways open for the passage of commodities among the states; but what commodities shall be produced, by what agencies, by whom they shall be shipped and at what prices they shall be sold, are matters beyond its competency.

PART SECOND.

We have now to consider the construction of the Trust Act itself — a question elaborately discussed in the recent case of United States *vs.* Trans-Missouri Freight Association.[1] In this case the court held that an agreement made by the several defendant railroad corporations in respect of interstate freight rates is forbidden by the act. Unless this decision shall be modified in the pending appeal in the Joint Traffic Association case, all such contracts and combinations must remain illegal; and, if the condition is intolerable, relief must be sought from Congress.

The case was argued on behalf of the railroads on two main propositions: (1) that the act of 1890 was not intended to apply to railroads; (2) that, if it did so apply, the agreement in question was not within its purview. The court, standing five to four, denied both propositions in an elaborate opinion written by Justice Peckham.

There is a plain and important distinction between a decision and an opinion — between the point determined and the statement of the reasoning by which the point is reached; and partly because the declarations of so eminent a judge may wake an echo in legislatures and in other courts, partly because all of his positions may not have received the support of every judge who concurred in the result, it will be profitable to examine them with the respect due to the deliverance of an upright and able jurist, yet with the freedom with which one may criticise an official document.

I.

The argument that the act did not apply to railroads was not based on an assertion of lack of power in Congress; for the competency of Congress to regulate these instruments of transportation is unimpeachable. But it was urged that the Interstate Commerce Act of 1887 represented the complete purpose

[1] 166 U. S. 290.

of Congress in respect of railroads, and that the Trust Act related to other matters. It will not be necessary to consider the reasons which led the court to determine that the act applied to railroads, but there is one point which is worthy of particular notice. On page 313 the court says:

> We have held that the Trust Act did not apply to a company engaged in one state in the refining of sugar under the circumstances detailed in the case of United States *vs.* E. C. Knight Company, 156 U. S. 1, because the refining of sugar under those circumstances bore no distinct relation to commerce between the states or with foreign nations. To exclude agreements as to rates by competing railroads for the transportation of articles of commerce between the states, would leave little for the act to take effect upon.

The argument suggested by this paragraph does not appear to have compelled the conclusion that Congress intended the Trust Act to apply to railroads; yet we must assume that it was influential. The argument seems to be really unnecessary to sustain the conclusion, and it is repugnant to the true principles of statutory interpretation. When a statute appears at first blush to apply to several subjects, it may be argued that the previous exclusion of one or more by the courts entails a greater probability of the inclusion of the remainder. To reach a result by process of exclusion is a valuable and common method of reasoning, and courts should not wholly disregard it. But it may be questioned whether on principle this process is an invariable aid to the interpretation of statutes. Had the Freight Association case been decided by the supreme court, say, five years ago, when the *personnel* of the court was quite different, and had five judges then reached the conclusion that four now approve, could it have been properly suggested in the Knight case that a previous exclusion of railroads from the purview of the act tended to force the inclusion of industrial trusts? Is it not a questionable argument that one decision can, by its priority merely, affect another? It is true that courts must endeavor to discover an intelligent and lawful intention in every statute submitted for inspection, and are bound to effectuate such intention; but I do not understand

that they are bound to effectuate in some direction every act that cannot be declared void because of unconstitutionality. An act may be drawn so improvidently or obscurely that a court will be justified in declaring it inapplicable through an indefinite series of cases, and leave it, not by decree but by inference, a useless work. The court may not say in any case: "This act is without meaning"; but it may say in each: "This is not its meaning." But if a prior decision may sometimes aid the court in reasoning by exclusion, it is only when the subject excluded may be classified with the one in question. There must be a relation between two things in order to infer the inclusion of one from the exclusion of the other. For example, Congress is competent to legislate on *A*, *B* and *C*, but not on *X*, *Y* and *Z*. By excluding *A* from the purview of an act, we may perhaps make the inclusion of *B* or *C* more probable; but we should not infer that Congress has intended to affect *A* because it has been held that it cannot affect *X*. Yet this false inference is suggested in the opinion.

It was not because Congress did not wish to reach the Sugar Trust that it was placed beyond the purview of the Trust Act. Indeed, contemporary evidence is not lacking that Congress was seemingly anxious to break up this and other industrial trusts. But the court decided that, under a grant of power to regulate interstate commerce, Congress could not interfere with what was held to be simply a manufacture within a state. It is inconceivable that the exclusion of a matter of state concern from the operation of a federal statute should bear on the question as to what subjects of federal concern are actually covered by it.

II.

The Trust Act recites that "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations, is hereby declared to be illegal." Counsel for the railroads argued that, if railroads were within the purview of the act, the traffic agreement in question was not, because it was a

reasonable one. The opinion recognizes the rule that the use of general words in an act does not constrain the courts to a literal interpretation, and that the intent of the legislature may be gleaned from the spirit of the law; but it holds that in this case the general words express exactly the mind of Congress, and cover all subjects within the federal power to regulate interstate commerce. The vital question in this relation is, of course, the definition of "restraint of trade"; for "every" is of no force except in regard to contracts within the definition, and, indeed, in respect of these is merely emphatic. This question will be considered later, and we will take up a suggestion made by the court, not as compelling the literal interpretation of the clause recited, but as adding weight to it.

On page 327 we read:

> Is it [the statutory prohibition] confined to a contract or combination which is only in unreasonable restraint of trade or commerce, or does it include what the language of the act plainly and in terms covers, all contracts of that nature?

And on page 335:

> Considering the public character of such corporations, the privileges and franchises which they have received from the public in order that they might transact business, and bearing in mind how closely and immediately the question of rates for transportation affects the whole public, it may be urged that Congress had in mind all the difficulties we have before suggested of proving the unreasonableness of the rate, and might, in consideration of all the circumstances, have deliberately decided to prohibit all agreements and combinations in restraint of trade or commerce, regardless of the question whether such agreements were reasonable or the reverse.

The trend of these observations is that the court cannot say that Congress, although it contemplates the possibility of reasonable agreements, has not cast a drag-net for all agreements in order to insure the capture of unreasonable ones.

To impute to the legislature a deliberate abdication of the faculty of discrimination which lies at the very root of the ordering of human affairs, is presumably to accuse it. I say presumably, for there may be a condition involving both good

and evil phases, wherein the latter predominate so overwhelmingly that the legislature, finding it impossible to insure their separation, deliberately attacks the whole condition in order to destroy the evil that is in it. It is submitted that Congress was not confronted with this desperate condition when it passed the Trust Act.

The difficulties attending the making of reasonable rates are undeniably great, and in all probability they will never be overcome to the equal satisfaction of carrier and shipper; nevertheless, our courts, and especially the Supreme Court of the United States, have declared that the reasonableness of a rate is a matter for judicial determination. Legislatures have taken their cue from the courts and have incorporated terms of discrimination in statutes dealing with transportation charges. The Interstate Commerce Act prescribes that railroads shall not accord any *undue* or *unreasonable* preference or advantage nor make *unjust* discriminations, and that rates shall be *reasonable* in themselves. If this act has broken down, it is not because of these qualifications. If these should be stricken out and the act be then construed according to the reasoning of the Trans-Missouri opinion, the railroads would break down.

The Trust Act, as interpreted by the supreme court, imposes an additional definition of a *reasonable* rate — namely, that it shall be one reached by the independent action of the company offering it, and not by agreement with a competing road. Possibly a severe logician, querying how a rate reasonable in itself according to the Interstate Commerce Act becomes unreasonable under the Trust Act, might be forced to conclude that in the latter act Congress really distinguished between reason and policy, and declared that a rate reasonable in itself becomes impolitic if reached by agreement. Or the explanation might be that Congress discarded the Interstate Commerce Act as a failure and, in despair of enforcing rates reasonable in themselves, declared arbitrarily that rates fixed by agreement are essentially unreasonable. Or one may account for the position imputed to Congress by saying that the task of determining judicially a reasonable rate for two or more rail-

roads is much greater than in the case of a non-competitive rate, because it is difficult to find a common rate-making basis for several corporations. Yet, from whatever side we approach the question, the conclusion seems inevitable that, according to the supreme court, Congress has adjudged the rate determined by unchecked competition to be the only reasonable one. But a large proportion of our freight is carried at non-competitive rates, and great sections of country are served by single railroad systems. Therefore, if Congress asserts that the rate fixed by competition is the only reasonable one, it stamps a large share of our interstate freight charges as invincibly unreasonable.

In any view of the question, it seems to me that the court need not have construed the act as attacking all agreements because of an assumed difficulty in excepting such as are reasonable. Further, it is by no means clear that the court has not suggested, in the paragraph quoted, the impossibility of attaining reasonable rates on rival roads save through competition. If this is the correct statement of an economic proposition; if neither the state nor the corporation can evolve a plan which shall bring us approximately to the desideratum of open, uniform, fairly stable and reasonable rates between competitive points; if openness, uniformity and stability are so antagonistic to reasonableness that we must choose between them, — a dilemma is manifest.

III.

It was argued on behalf of the railroads that the economic benefits of competition in ordinary business could not be predicated of railroad transportation — that the public would be better served by agreements for reasonable and stable rates than by a demoralizing struggle for traffic; and the court was asked to hold that Congress could not be presumed to have intended to force the railroads into disastrous competition. The court not only declined to sanction the economic proposition and the inference suggested, but declared that the peculiarity of railroads, so far from placing them beyond the act,

made them especially subject to its provisions. This declaration involves a conclusion of law based upon a novel definition of a railroad company; and, in my judgment, neither the definition nor the conclusion is in harmony with the settled law.

Justice Peckham says, on page 321 of the Trans-Missouri opinion: "It cannot be disputed that a railroad is a public corporation . . ."; and on page 332: "It must also be remembered that railroads are public corporations organized for public purposes." This description of railroad companies as public corporations is a substantial departure from the accepted view of the status of these associations. The railroad is by far the most prominent instrument for facilitating intercourse, but it is not the only one. The canal, the turnpike, the toll bridge are in the same class with the railroad, which they long preceded. The status of the promoters of these undertakings has therefore been the subject of judicial determination for a very long period, and we will show that Justice Peckham's description is not in accord with the prevailing view.

Chancellor Kent writes of canal, bridge, turnpike and railroad companies: "The uses may, in a certain sense, be called public, but the corporations are private, equally as if the franchises were vested in a single person."[1] Peirce, Morawetz, Elliott and other writers agree in holding that railroads are *not* public corporations. This consensus of opinion is founded, of course, upon the decisions of the courts, and — what is especially pertinent — upon decisions of the Supreme Court of the United States in many cases. Chief Justice Taney said of the act incorporating the proprietors of the Charles River Bridge: "It is the grant of certain franchises by the public to a private corporation, and in a matter where the public interest is concerned";[2] and this definition is applied to railroads in Richmond, Railway *vs.* Louisa Railway.[3] Again, in Railroad *vs.* Peniston[4] a railroad is described as "a private corporation, though existing for the performance of public duties." In Railroad *vs.*

[1] 2 Commentaries, 275.
[2] Charles River Bridge *vs.* Warren Bridge, 11 Peters, 544.
[3] 13 How. 81. [4] 18 Wall. 32.

Iowa[1] a railroad company is said to be "engaged in a public employment affecting the public interest"; and in Cherokee Nation *vs.* Railroad Co.[2] a railroad is described as "a public highway established primarily for the convenience of the people and to subserve public ends."

We may discover in the above definitions a progressively greater stress upon the public side of the corporations. This is due, without doubt, to the increased power of these private organizations, which makes it proper to remind them of their public obligations. But all the definitions are consistent with the prevailing conception of a railroad company — a private corporation enjoying great powers by the favor of the state and owing important duties to the public. This conception admits the right of the state to compel railways to transport all comers at reasonable rates, to take proper measures for safety, *etc.* It is broad enough to accord with any governmental action in respect of railroads which may be constitutionally taken. "Public corporation" has acquired a fairly definite meaning in our jurisprudence — an organization public in origin, in purpose and in administration, and hence a part of the state. A railroad company is not in this category. It is a voluntary association of persons who ask and receive necessary aid from the state in order to accomplish their purpose. The purpose of the incorporators is private — the collection of remunerative tolls. The purpose of the state is public — the opening of a way for transportation which the state might undertake itself, but which it prefers to have undertaken by private parties.

The important definitions of our supreme court have an effect far beyond the forum. They are guides to political thought and action, and are likely to affect the trend of legislation. In defining a railroad as a "public" corporation, the court contemplates, without doubt, the safeguarding of all those private rights which the law of the constitution, as now understood, assures to the incorporators; but may not the radical change in the point of view beget a change in the legal status of rail-

[1] 94 U. S. 155 (The Granger Cases).
[2] 135 U. S. 641.

roads, which the court, as composed at present, could not contemplate with satisfaction?

Whatever may be thought of this definition of a railroad company, the conclusion which appears to be drawn from it is untenable. The conclusion is that the contracts and combinations of railroad corporations are not, like other contracts of the class under discussion, invalid only when in unreasonable restraint of trade, but are invalid by reason of the status of the parties. Said District Judge Shiras, in his dissenting opinion on the Freight Association case at circuit:[1]

> The failure to recognize the distinction between private enterprises carried on by individuals or private corporations, and public duties performed through the agency of public corporations, in my judgment has misled the court in reaching the conclusion announced in the majority opinion. As applied to private associations, the modern authorities undoubtedly sustain the proposition therein laid down, "that it is not the existence of the restriction of competition, but the reasonableness of that restriction, that is the test of the validity of contracts that are claimed to be in restraint of trade"; but that, in my judgment, is not the test of validity when the action of public corporations relative to public duties is brought in question.

It is to be noted that this argument is not founded on the words of the act, which neither proclaim nor suggest any such distinction as is here made. The conclusion is a matter of pure law and can be justified only by its reasonableness. But Judge Shiras's proposition seems to be approved substantially by the opinion of the supreme court.

Now, it cannot be denied that an unreasonable restraint of trade in the matter of transportation may work a more serious public injury than a like restraint in any other line of business, because the freight rate is a factor in the price of every commodity. The court might well have said, therefore, that a combination of railroad companies should be subjected to a peculiarly severe scrutiny, because of its evil possibilities. But the court, dominated, it would seem, by the idea of the power of railroads for evil, has intimated that, while contracts

[1] 58 Fed. Rep. 85.

in restraint of trade may be valid when made by ordinary parties, they must be invalid when made by railroads. Where is the authority for drawing a distinction between valid and invalid contracts in restraint of trade, based wholly upon the status of the parties? The act, as I have said, does not warrant — indeed, I do not think it permits — the distinction. It names *all* persons and corporations, and such as are within its purview must stand on the same footing. Authority for the distinction cannot be derived from the common law; for they who expound this law do not ask, Who have made this contract? but, Is this contract in unreasonable restraint of trade? The common law does not exert its remedial power until an unlawful act furnishes the occasion, and it holds that only to be unlawful which is unreasonable in the sense of being injurious.

Were the opinion of the court of merely federal concern, the distinction might be considered of little practical importance; for, as a matter of fact, the parties engaged in interstate commerce, as it is defined by the courts, are more than likely to be engaged in a business of peculiar public obligation — the business of a common carrier. But beyond the limited federal jurisdiction there is the broad field of the states, wherein trade and commerce represent, not merely one phase, but the whole sum of human activity applied to the production, acquisition and distribution of property. In this field the judgments of the supreme court, though not authoritative, are influential; but it is to be hoped that courts which have hitherto drawn upon the accumulated wisdom of the common law for their judgments in respect of contracts in restraint of trade will not be persuaded by the novel doctrine propounded in the federal court.

IV.

Chancellor Kent says:

> The common law includes those principles, usages and rules of action applicable to the government and security of person and property, which do not rest for their authority upon any express and positive declaration of the will of the legislature.[1]

[1] Commentaries, I, 471.

The common law is generally accepted as the basis of jurisprudence in the several states of the Union, and in some of these it is expressly recognized in the constitutions; but, strictly speaking, there is no common law of the United States. The whole body of federal law is made up of the constitution and the acts of Congress. The existence of the common law is recognized, however, in the Eighth Amendment; and the body of law contains many rules and terms couched in common-law phraseology and plainly derived from the older jurisprudence. Should federal judges go to the common law for the meaning of these terms? Said Chief Justice Marshall: "For the meaning of the term *habeas corpus* resort may be unquestionably had to the common law";[1] and Justice Clifford said: "In the construction of the laws of Congress the rules of the common law furnish the true guide."[2] These observations indicate that respect for and reliance upon the common law which has usually marked the rulings of federal judges.

This wholesome precedent so far influenced the court in the Freight Association case that it sought a common-law buttress for the definition of contract in restraint of trade which it obtained from the Trust Act — namely, an agreement creating a restraint in fact, whether reasonable or unreasonable. In the opinion we read:

> A contract may be in restraint of trade and still valid at common law. Although valid, it is nevertheless a contract in restraint of trade, and would be so described either at common law or elsewhere [page 328].

Chief Justice Parker said, in the leading case of Mitchell *vs.* Reynolds:[3]

> In all restraints of trade, where nothing more appears the law presumes them bad; but if the circumstances are set forth, that presumption is excluded, and the court is to judge of those circumstances, and determine accordingly; and if upon them it appears to be a just and honest contract, it ought to be maintained.

[1] Bollman's Case, 4 Cranch, 75.
[2] Rice *vs.* Railroad, 1 Black, 374.
[3] 1 P. Wms. 197.

In this passage Chief Justice Parker plainly describes restraints of trade as both valid and invalid, and textually supports Justice Peckham's statement. But mark how differently the American and the English judge handle their statements. The former takes a phrase descriptive of fact and announces it as a conclusion of law — that is to say, that all contracts which in fact restrain trade are opposed to public policy. The latter states a fact and then proceeds by a process of differentiation to a conclusion. Now, it may not be incorrect to describe all contracts which, as a matter of fact, restrain trade as being in restraint of trade, but it is incorrect to draw a common-law conclusion merely from this description ; for the only "restraint" which is material at common law is that which is denounced because of its unreasonableness. For confirmation of this position we may appeal to Justice Peckham himself, when, as judge of the New York Court of Appeals, he delivered the opinion in Matthews *vs.* Associated Press,[1] which Justice White cites most effectively in his dissenting opinion. Said Judge Peckham, in the Matthews case: "The courts do not go the length of saying that contracts which they now would say are in restraint of trade are, nevertheless, valid contracts . . ." (page 340) ; and again : "Such an agreement would not be in restraint of trade, although its direct effect might be to restrain to some extent the trade which had been done" (page 341). These sentences are full of the spirit of the common law. They recognize that distinction between reasonable and unreasonable applications of sound principles which courts have always striven to enforce, in order to make the common law a help and not a hindrance to the proper conduct of affairs. The common law, rooted as it is in a social order of comparative simplicity, has not invariably proved an adequate guide in the changing and progressively complex conditions of later times. Equity has been evoked to mitigate some of its rigors, and legislation to correct defects, close gaps and meet novel conditions. But it is noteworthy that, in respect of contracts in restraint of trade, the theory of the common law has generally

[1] 136 N. Y. 340.

sufficed to allow both a reasonable freedom of trade and a reasonable freedom of contract. Courts have always insisted that trade shall not be restrained to the public detriment, but the definition of detriment has always depended upon the circumstances of the case and the trade conditions of the time. I know of no opinion, and there certainly is none of authority, which asserts that the existence of a restraint in fact is proof positive of a public injury.

It must be remembered that the supreme court, in the Freight Association case, was dealing with a comparatively limited field of business activity — commerce between the states and with foreign nations. Yet its reasoning, if sound, should be applied in the larger field of general trade — the field which the state courts cover within their jurisdictions. Let us suppose that the New York Court of Appeals is called upon to construe a statute couched in the terms of the Trust Act. The common-law distinction between reasonable and unreasonable restraints has always been maintained in this state. For example, one may bind himself for a consideration to abstain perpetually from engaging in a particular trade or calling, provided that the circumstances do not show a public injury.[1] In the Freight Association opinion, Justice Peckham says with reference to such cases:

> A contract which is the mere accompaniment of a sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which in effect is collateral to such sale, and where the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute in question. [Page 329.]

But why should such a contract be excluded, if it is unreasonable in fact and therefore a public injury? And why should it be included, if it is reasonable in fact and therefore harmless? Justice White thus refutes the above argument:

> The asserted exception not only destroys the rule which is relied on, but it rests upon no foundation of reason. It must either result

[1] Diamond Match Co. *vs.* Roeber, 106 N. Y. 473. Discussed *supra*, p. 627.

from the exclusion of particular classes of contracts, whether they be reasonable or not, or it must arise from the fact that the contracts referred to are merely collateral contracts. But many collateral contracts may contain provisions which make them unreasonable. The exception which is relied upon, therefore, as rendering possible the existence of trade to be restrained, is either arbitrary or it is unreasonable. [Page 352.]

To return to the New York court: Should it approve the reasoning of the supreme court and follow it to its logical conclusion, it must declare that the legislature intended to treat as misdemeanants parties to contracts and combinations hitherto lawful. The doctor who sells his practice for a price increased by his covenant not to practice within certain limits, the workingman who joins a union for the purpose of bettering his condition, must be fined or go to jail, if the law is enforced impartially.

I conclude that the opinion does not make good the claim that its broad definition of contract in restraint of trade is in harmony with the common law. Nor does it appear that the court really relied upon the common law to support its definition, for we read on page 334 of the opinion:

The plaintiffs [the United States] are, however, under no obligation in order to maintain this action to show that by the common law all agreements among competing railroad companies to keep up rates to such as are reasonable were void as in restraint of trade or commerce. . . . But, assuming that agreements of this nature are not void at common law and that the various cases cited by the learned courts below show it, the answer to the statement of their validity now is to be found in the terms of the statute under consideration.

Herein we find the line of reasoning which leads the court to its conclusion. The "contract in restraint of trade" of the Trust Act is deemed to be coincident with the phrase of the common law in form only. In reality it is something quite different. It is a phrase without the support of a long line of decisions to explain its meaning — a phrase which appears first in the Trust Act and only received its positive and authoritative definition in the Freight Association case. This declaration of

independence of the common law is doubtless within the constitutional powers of the supreme court, but it marks a departure from customary ways.

V.

Upon reviewing the foregoing arguments and propositions of the Freight Association opinion, I should eliminate one as not necessary to support the decision. The proposition that the common-law meaning of "restraint of trade" covers reasonable restraints is not really relied upon, as we have seen, and it is inaccurate in itself. A second feature of the opinion — the assumption that Congress may have contemplated reasonable as well as unreasonable restraints and yet deliberately prohibited each — is ill conceived; for it imputes to Congress an action which is, to say the least, improper and possibly arbitrary. Of more importance is the suggestion that a railroad is a public corporation, and is therefore especially within the purview of the act. This idea seems to have exerted a decided influence on the result; but the definition is inaccurate and likely to mislead, and the distinction between contracts in restraint of trade based on the character of the parties rather than on the nature of the restraint, is not only untenable at common law, but contrary to the comprehensive words of the statute itself, which put all persons and corporations upon the same footing.

I should say that the proposition really underlying the decision is simply this: that the Trust Act is to be interpreted literally. Yet the rule of literal interpretation here expressed is not that which governs judges influenced by the common law, but suggests, rather, a bald literalness which does not savor of the forum. When the Trust Bill was introduced in the House the chairman of the judiciary committee said:

> Now, just what contract, what combinations in the form of trust, or what conspiracies will be in restraint of trade or commerce mentioned in this bill, will not be known until the courts have construed and interpreted this provision.

Congress is now informed of the effect of its law. It is informed that it says to all persons and corporations engaged

in interstate or international commerce who may contract or combine with reference to their business: "You cannot plead that your methods and objects are reasonable, that your association does not injure the public interest in commerce. We assume at the outset that your contract or combination is essentially vicious; we prescribe that the rule of unchecked competition shall govern those engaged in commerce between the states and with foreign nations."

In Part First of this essay I endeavored to show that the "commerce among the states" which Congress is empowered to regulate, and which may be affected by anti-trust legislation, does not cover the production and sale of commodities, but is limited to interstate transportation. All corporations and persons engaged in facilitating intercourse between the states are subject, therefore, to the Trust Act. The owners of railroads, telegraphs, shipping lines, *etc.*, are but a fraction of the host engaged in interstate commerce: the main body consists of hundreds of thousands of persons who exert the intelligent physical force without which intercourse would be impossible. Engineers, trainmen, telegraphers and freight handlers form parts of this body; and in each part the individuals are united more or less closely in associations, intended to promote the welfare of their members, which operate to restrain trade in the broad sense approved in the opinion of the court. Says Justice White in his dissenting opinion:

> It has been held in a case involving a combination among workingmen, that such combinations are embraced in the act of Congress in question, and this view was not doubted by this court *In re* Debs, 64 Fed. Rep. 724, 745–755; 158 U. S. 564. The interpretation of the statute, therefore, which holds that reasonable agreements are within its purview, makes it embrace every peaceable organization or combination of the laborer to benefit his condition either by obtaining an increase of wages or diminution of the hours of labor. [Page 356.]

The reasoning which has brought all railroad agreements within the act must cover all the combinations of workingmen engaged in interstate commerce, without regard to their character and

objects. This conclusion will be strenuously opposed, but I can see no escape from it, if the law is to be enforced without sentiment and prejudice. What ground is there for holding that an engineer who pilots a train carrying goods from one state to another is not engaged in interstate commerce, while the corporation which employs him is so engaged? That his agreement with his comrades is not, while that among his employers is, in restraint of trade? If the persons employed in this work are not engaged in interstate commerce, what are they doing? If it be answered that they are simply running trains under orders, careless of their freight and destination and interested only in receiving their pay, the same interest may be imputed to the corporation, which seeks only payment for services. It is evident that they who afford facilities for intercourse are engaged in commerce; and the facilities for railway transportation, for example, are afforded by the stockholders who own the road, the officials who administer it and the employees who operate it.

VI.

Section 1 of the Trust Act runs thus:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

In the syllabus prefixed to the opinion of the court in the Freight Association case we read:

> The prohibitory provisions of the said act of July 2, 1890, apply to all contracts in restraint of interstate or foreign trade or commerce without exception or limitation; and are not confined to those in which the restraint is unreasonable.

Here we have the prohibition and its application; and it is the plain duty of the government to prosecute all persons whose contracts or combinations appear to fall within the act. It is clear that Congress should at least, and at once, so amend it as to relieve the government from the duty of denouncing parties to reasonable contracts as criminals. If, when this is done, Congress is not satisfied with the position of railroads under the act, it may deal with them separately and declare its purpose either in an amendment to the Interstate Commerce Act or in a special statute.

I do not suggest a plan for bringing the railroad problem as near to the point of solution as so complicated a question is likely to attain, but I call attention to certain conditions which must be appreciated before any just and efficient plan can be devised.

On July 30, 1895, the railway system of the United States comprised 180,657 miles of road. The total capitalization was over ten billion dollars, divided between stock of the par value of $4,961,000,000 and a funded debt of $5,385,000,000. During the preceding year over seventy per cent of the stock paid no dividend, and over thirteen per cent of the bonds no interest. These figures, taken from the report of the Interstate Commerce Commission for 1896, show that railroads are by no means generally profitable to investors. It may be said that the bad condition of railroads is caused largely by vicious and improvident financiering and administration; but this does not alter the all-important fact that the railroads carry about five hundred million persons and about seven hundred million tons of freight annually, afford a livelihood to millions of people, and represent the legitimate investments of hundreds of thousands of persons. Evidently, the railroad corporation should not be treated as a public enemy; nor, on the other hand, can it claim the consideration due to a public benefactor. It represents simply the greatest business in the country, and performs public services second in importance only to those of government itself. Hence the private interest in railroads must be protected, not merely as private property, but in

order that the public interest may be well served; and that plan only will be satisfactory which accords proper recognition to each interest.

The legitimate private interest in railroads is in running them at a profit upon the capital invested. On page 332 of the Freight Association opinion Justice Peckham says of railroad companies: "They all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders." We may go further and say that, as between public duties and any dividends, the duties must prevail; for the earning power of a railroad so depends on its reason for existence, the character of its financiering and the method of its management, that it would be absurd for the public to condition the assertion of its rights upon the ability to earn dividends. Hence railroads, whether solvent or insolvent, must perform their obligations to the public. But, though they have no paramount right to earn dividends, they have the right to demand that their obligation shall not be defined so unreasonably as to deprive them of profits which they might otherwise earn by prudent management. In fine, innocent property cannot be confiscated; and so the courts have held.

There is an illegitimate private interest in railroads which manifests itself in various ways — in the building of roads to sell or to promote land speculation, in ruinous paralleling, in administering roads for the profits of management, in disregarding the fiduciary obligation which should govern directors and officials as representatives and agents of the stockholders. In such cases investors are victimized and the public is injured by the demoralization of an undertaking which must be well managed in order to afford the best facilities. I believe that had a tithe of the legislative energy which has been directed against railway rates been exerted to reform the laws under which roads are built and managed, the railway problem would be far less complicated. Even now much may be done in this direction; but this is generally a matter for state rather than federal action.

The public interest in railroads is too often voiced in a demand for lower rates for transportation. I do not mean low, but, literally, lower rates — charges constantly depressed by law. If mere cheapness of transportation is the true interest of the public, the sooner the railroad corporations join with the Populists in demanding government ownership, the better; so that they may sell now at a price satisfactory in comparison with what they would receive after the market value of their property has been reduced by oppressive legislation. In fact, safe and speedy transportation is the legitimate primary interest of the public; and it is only their secondary interest that the charges shall be as low as is consistent with the maintenance of the service and the return of a fair profit on the investment — that rates shall be reasonable.

The question suggested by the construction placed upon the Trust Act by the supreme court is: Does public policy demand that the reasonable rate shall be that which is fixed by unchecked competition? We say that "competition is the life of trade"; we may go further and declare it to be the law of nature. Yet the simplest social organization is a protest against the unrestrained competition of savagery, and the most perfect society is that which best controls the selfish impulses of its members. Unchecked competition is not, then, the accepted rule for the conduct of affairs in general; and in the affairs with which we are concerned — trade and commerce — we find many instances of approved restraint in usage and custom and in legislation. It cannot be said that these instances are the product of a consistent theory, but they indicate a constant struggle between the primitive law of competition and the policy of restraint. We may conclude, therefore, that there is no warrant in precedent or theory for prescribing unchecked competition as the invariably just and practicable rule of trade.

In the Freight Association case the government insisted that Congress had prescribed the salutary rule of competition in respect of railroads; and counsel for the railroads declared with equal vigor that unchecked competition was so plainly inimical

to public and private interests that Congress could not be supposed to have prescribed it. Now, whatever may be thought of the decision in the matter of statutory construction, it is evident, I think, that Congress owes to the country a careful investigation of the controverted question. For, while it might be admitted that in point of law — that is, according to the rules of statutory construction — Congress had prohibited railroads from making rate agreements, reasonable or otherwise, in point of fact, the matter was not deliberately considered. This should now be done; and if it shall be found that the public interests demand unrestricted competition — well and good. It may appear, however, that uniformity and stability in rates are desirable as well as reasonableness, and that these qualities can be combined only by means of traffic arrangements involving a certain restraint of trade that is not unreasonable according to the common law. In this event, let the railroads be permitted to make such arrangements, provided that their conduct in respect of past and present agreements has been such as to warrant the belief that they can be trusted to abide by them. But if, as has been charged, traffic agreements have proved ineffective because they have been persistently violated by weak and unscrupulous parties, let them be subjected to such governmental supervision as will tend to insure their observance.

VII.

The Trust Act, as construed by the supreme court, is a notable type of legislation much in vogue — penal laws which, embodying a germ of wholesome restraint, have at the same time a range so sweeping as apparently to include persons whose acts the legislature would never deliberately stigmatize as criminal. A common apology for such legislation is the difficulty of separating the sheep from the goats in the text of the laws, and the confidence that the courts will discriminate. This excuse is usually a confession of weakness; and in the Freight Association case the supreme court, declining to shoulder the responsibility, has taken Congress at its word.

Precision in defining offenses is a fundamental principle of the criminal law, and it has been asserted that the construction placed upon the Trust Act by the supreme court is the only one consistent with this requirement. It is argued that there can be no doubt as to the crime and the criminal when Congress denounces *all* persons who make *any* contract in restraint of trade; whereas, if only unreasonable restraints were attacked, there would be an evident lack of precision, since the description is indefinite on its face. This argument is defective. Absolute precision, a text so convincing that he who runs may interpret, is not required. In point of legal sufficiency that is certain which can be made certain by the scrutiny of the trained jurists of the bench. This very Trust Act cannot be understood until the courts have at least answered the questions: What is meant by "restraint of trade"? Who are engaged in interstate commerce? Twice have these questions been propounded to the supreme court, and the end is not yet.

Moreover, if the argument cited is sound, it proves too much. It suggests the intolerable proposition that the innocent must suffer for the sake of a precision of statement that will certainly include the wrongdoer. Justice is the foundation of law, not precision; and if our lawmakers can find no way to prevent certain economic evils, save by an indiscriminate denunciation of innocent and guilty, they must accept the conclusion which has always forced itself upon legislators whose earnestness is enlightened by intelligence — that the power of the state has its just limits, and that one of these is overpassed when the state strikes at a great and generally beneficent principle in order to destroy a harmful growth. Freedom of contract may be abused to the public injury; yet the abuse must be endured, if it can be corrected only by measures which will impair desirable freedom.

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THE GOVERNMENT AND THE NEWSPAPER PRESS IN ENGLAND.

THE purpose of this article is to trace the change which, during the last century, has come over the connection of the government with the newspaper press, so far as concerns the use of the press by the government and the attitude of the government towards newspapers, newspaper proprietors and journalists. For this purpose the beginning of George III's reign may be taken as a starting point; for from the first and second decades of that reign may be dated the beginnings of the modern daily press in England. Between 1760 and 1780 there came into existence in London numerous daily journals, of which several survived until the middle years of this century, and one, the *Morning Post*, still survives and flourishes.

During that period the daily journals began really to be newspapers. In the second decade of George III's reign they were reporting the debates in the House of Commons and the House of Lords under the same constitutional conditions as at the present time; and that these Parliamentary reports were full, fair and adequate is shown by the frequent references to them as such in Walpole's letters to Mann, and in other letters and diaries covering the first half of the Georgian era. The law courts were being reported, as were the quotations on the stock exchange and in the produce markets. News from the provinces was being collected and published with more or less system, and some attention was being given to foreign affairs. In short, by about 1770 the news letters were at an end and the era of the modern daily press had begun. Newspapers were commercial enterprises, conducted by responsible business men on commercial principles, and drawing their revenues from sales and advertising patronage; and there was no place left for the ephemeral journals like the scores which had come and gone between the Commonwealth and the American Revolu-

tion — the one-man journals which had been so largely made use of by the government during the reigns of Queen Anne and the first two Georges.

Soon after printing was introduced into England the government turned the new art to their account; and certainly from the time of the Commonwealth to the eve of the Reform Act of 1832 the government usually had in their service some official whose work it was to superintend the press and through it to influence public opinion. Milton and Needham acted in this capacity during the Commonwealth. Sir Joseph Williamson was partly in charge of the press during the Restoration. Defoe took up the work after the Revolution. Swift followed Defoe, and in his turn was followed for a while by Paxton, who also did much borough-mongering for Walpole. Mallett and Roberts, among others, were engaged in writing for the treasury when Newcastle was supreme; while during the long reign of George III there was a succession of managers or supervisors of the press in behalf of the government. The list includes Weston, who discharged some of the duties in the early years of the reign; James Macpherson, of Ossian notoriety, who took up the work when Lord North was in power; Rose, who was doing some of it in Pitt's time; and Croker, who began it in the second decade of the nineteenth century and continued it long after George III was dead — in fact, until the end of the last Tory administration which preceded the Reform Act.[1] Weston was under-secretary for foreign affairs, when, in 1763, he seems to have been acting as an intermediary between the government and the press. Macpherson, on the other hand, was, about 1767, specially engaged to act as the treasury editor. He had been in the Western provinces and the West Indies from 1764 to 1766, as surveyor-general of the Western provinces, at a salary of £200 a year; and when he got back to London this salary was con-

[1] From the colony of Maryland at the Revolution of 1776, Chalmers, the Tory, went as a writer to the aid of George III, and he wrote in behalf of the government until the time of the French Revolution. But Chalmers's work went chiefly into pamphlets and books published in the interest of the government: he seems to have had no close connection with the newspaper press.

tinued on the understanding that he should become a political writer in the interest of the government. Rose, who among his other services established the *Sun* in 1793 in the interest of Pitt, was secretary to the treasury. His partner in the newspaper enterprise was Francis Freeling, secretary of the post-office, then a department which could do much to help a government paper or to put obstacles in the way of opposition or independent journals. Croker was secretary of the admiralty during the years he was busied with the press, and he is nearly the last of the long line of press managers in the interest of the government reaching back to Milton and Needham. According to Greville, work similar to that of Croker was done for the Whigs, when they came into power in 1831 and for a few years after the Reform Act, by Le Marchant. His principal activity was in connection with the *Morning Chronicle;* but the conditions with regard to the press were changing again when the Whigs were in power, and Le Marchant can hardly have had the same opportunities that Croker enjoyed for carrying out this work.[1]

The new era in English journalism had not quite begun when George III came to the throne. One-man journals of the old school were still in existence. Smollett in 1762 was conducting *The Briton;* while Dr. Francis, the father of Sir Philip Francis, and Arthur Murphy were of the group of treasury writers carried over from the previous reign. It is remarkable how many of these government writers came from Scotland and Ireland and how many of them were of the church. Francis was of the church, and he received as part payment for his services the appointment as chaplain to Chelsea Hospital. Murphy took his pay in various ways. On one occasion he was given an ensigncy in a regiment by Lord Holland in return for his journalistic services. He sold it, and, some scandal arising out of the sale, the transaction led to the

[1] From Croker's own papers, from Scott's Life and Diary, from Lockhart's Life, from Coleridge's Letters and from Daniel Stuart's Reminiscences, it is almost as easy to realize Croker's work in connection with the newspapers as it is to trace that of Milton or Swift in managing in behalf of their governments the journals of their day.

establishment of the rule of advertising army appointments and promotions in the *London Gazette* — a rule which is in force to-day as regards all appointments in the army and the navy and to the civil service.

While the old form of journalism lasted it was an expensive one for the government, for the one-man journals made no pretense of paying their way. From 1731 to 1742 over £50,000 were paid out by the Walpole government to authors and printers of *Free Britons*, *Daily Courants*, *Gazetteers* and such journals; and in the *Anecdotes of Chatham* there is a statement that during the first three years of the reign of George III £30,000 were expended on the writing and printing of similar publications. By 1763 the daily papers of the new type — newspapers, as distinct from papers printed solely to serve the purpose of the government — were being used by the government. Among the Dartmouth Manuscripts there is a letter from Lord Halifax, written in July, 1763, to Edward Weston, who was then under-secretary for foreign affairs, asking him to contradict a story which had appeared in the *North Briton* concerning a pension charged on the Irish establishment. With the contradiction there was also a letter, which Halifax desired should be printed in the *Whitehall Gazette* and the *St. James's Gazette*, and also in the *Public Advertiser* and the *Daily Gazetteer*, which were then morning newspapers. That the statesmen of this period were quick to note the change which was coming over the press and the extended usefulness of newspapers is shown by a letter in the Townsend Manuscripts, written by Charles Townsend to the Duke of Newcastle. It is dated April 30, 1764, and suggests that

> to gain upon the minds of the people, a daily paper upon the plan of one of the present prints should be set up and circulated diligently, but quietly; and two good pens should be employed to write from material suggested by men of knowledge, and subject to their inspection.

The change from the old to the new system was complete when Macpherson, after his return from the West Indies,

settled down to the work of a treasury editor. The development of newspapers, according to Mr. Lecky, had then put an end to or absorbed the literature of detached periodical essays, which during the three preceding reigns had been so considerable, and the best periodical writing was now finding its way into the newspapers. But another quarter of a century was to elapse before the editorial article was to become a feature of the daily press: until then political opinions were expressed in the news which the editors chose to publish, and especially in the "Letters to the Editor" which were admitted to the columns of the papers.

It was therefore for many years the work of the treasury editors to watch this correspondence, to write letters in reply, and to secure their insertion in the daily press. Macpherson was engaged in this work, and over such signatures as "Musæus" and "Scævola" he wrote in reply to "Junius." He also exercised a general supervision over the newspapers. His duty was to prevent attacks upon the government, as well as to write regularly in their defense. The pay for this work in Macpherson's case was comparatively good, as before he had been long engaged in it his salary was increased from £200 to £600 a year. By 1770 the treasury had organized a systematic supervision of the press; for at the trial of Almon, of the *Political Register*, in that year, it was revealed that there were then two "messengers of the press" employed by the government on salary to purchase the newspapers and to note their contents. If Daniel Stuart's *Reminiscences* are to be relied upon, this systematic oversight of the press was continued as late as the time when Coleridge was writing for the press.[1]

The new style of journalism necessarily involved more adroit

[1] Stuart was owner of the *Morning Post* and the (evening) *Courier*. He states that once, on information obtained from Coleridge, he wrote for the *Courier* a paragraph regarding the conduct of the Duke of York. Early copies of the *Courier* were at this time sent to the government offices; and before the rest of the edition could be printed on the hand presses of that period, messengers appeared at the newspaper office with the demand that the entire edition should be cancelled.

management and more watching than the old. A writer like Smollett — to go back no further than George III's reign for an example — was not likely to write anything which would involve the canceling of an entire edition of his journal; and when Swift was in charge of the press he had the government printers and writers so closely under his eye that nothing could slip into print contrary to his instructions.

From the American Revolution to the French Revolution the use of the press can be traced in the *Letters of King George to North*, in Walpole's *Letters*, and in the Miles *Correspondence*. The *Letters to North* afford some glimpses of the connection which then existed between the treasury and the newspaper editors who were in its pay. Bates was the most notorious of these. According to the Walpole *Letters*, Bates's allowance was £400 a year. Whatever it was, it was grudgingly paid by George III. The king, who was in these matters exceedingly business-like, had a poor idea of the value of Bates's work and of Bates himself; and, having at this time so many other uses for the money at his disposal for electioneering, for managing the House of Commons and for influencing public opinion, he paid with but ill-grace the allowance with which Bates was rewarded.

The Miles *Correspondence*, which covers the period of the French Revolution, shows that, as in Macpherson's time, the treasury-paid editors were expected to keep out objectionable articles, as well as to uphold and defend the government, and that there was a close connection between the editors and the treasury. If the newspaper editors were in doubt as to the insertion of a letter from a correspondent, the communication was carried to the treasury and was passed upon by the official who was superintending the press. In this way the government saved itself from criticism and oftentimes from exposure; and was also enabled to approach and endeavor to win over to its side writers who were new in the field. From the Miles *Correspondence*, it is evident that when Rose was at the treasury the newspapers were closely watched. Efforts were made to ascertain the writers of the letters addressed to the

editors which were published anonymously, and when these efforts were successful, as in the Miles case, they were followed by overtures to accept service under the government.

Towards the close of the century there is ample evidence that the government was making use of the provincial press. Many of the English provincial cities then had their local weekly newspapers; and, as the municipal records and local histories of these old places show, the old corporations and municipal cliques had lost no time in getting the newspapers on their side. This usually meant the side of the local vested interests, and also the side of the government — the side which was opposed to all reform. Only slowly and with much caution had the provincial newspapers concerned themselves with national politics. As late as 1745 an editor of a York paper was punished by the House of Commons for printing a news paragraph narrating its proceedings; and as late as 1761 a general election passed with only the slightest allusion in the Liverpool journals, although Liverpool, with its large freeman electorate, was a centre of much political activity. As early as 1733 candidates for Parliament had used the provincial newspapers for publishing their addresses to the freeholders and to the electors in the cities and boroughs. But until towards the end of the eighteenth century the conductors of the provincial newspapers, who as a rule were master printers, were usually content to let national politics alone.

It is more than probable that when, about the time of the French Revolution, the local newspapers began to take more general notice of current politics, they did so at the instance of the treasury. When they went into politics it was invariably in the interest of the Pitt government. The reason for this is explained by a passage in the life of Edward Baines. Baines took over the *Leeds Mercury* in 1800. When he got possession he found that for some years previously it had been the usage at the *Mercury* office to receive marked copies of newspapers from London. These were sent out regularly by the treasury, and the newspapers thus forwarded to the country editors were London papers under the

control of the government. Unfortunately for the students of English politics between the French Revolution and the Reform Act, and of the history of English journalism, Baines left no record of the London newspapers which were thus being sent to the country editors when he began his eminently useful and distinguished career. Nor does his biographer indicate how long the practice had been in vogue. It may be taken for granted, however, that the *Sun*, which had been set up by Rose and Freeling in 1793, was one of the papers sent out; and that, while it lasted, Gifford's *Anti-Jacobin and Weekly Examiner* was also one of the number.

The *Anti-Jacobin* was only a short-lived publication. It lasted from November, 1797, to July, 1798, and in all thirty-six numbers were published. But from the point of view of the government it was a veritable editors' hand-sheet. Its features, to quote the prospectus, were

> an abstract of the important events of the week both at home and abroad; such reflections as may arise out of them; [and, most important of all] a contradiction and confutation of the falsehoods and misrepresentations concerning these events, their causes and their consequences, which may be found in the papers devoted to the cause of sedition and irreligion, to the pay or principles of France.

The *Anti-Jacobin* was further to appeal to all

> who think that the press has been long enough employed principally as an engine of destruction and who wish to see the experiment fairly tried, whether that engine by which many of the states which surround us have been overthrown and others shaken to their foundations, may not be turned into an instrument of defense for the one remaining country which has establishments to protect and a government with the spirit and the power and the wisdom to protect them.

William Gifford,[1] afterwards editor of the *Quarterly Review*

[1] There were two Giffords at this period. Both were associated with publications to which the name "Anti-Jacobin" was given. Both were in the service of the government, and both of them were adequately rewarded for their literary work. John Gifford, of the *Anti-Jacobin Review*, which followed the *Anti-Jacobin* of 1797–98, was made a London stipendiary magistrate for his services to the government.

and associate of Croker, edited the *Anti-Jacobin and Weekly Examiner;* and in this enterprise, in behalf of the Pitt government, he had associated with him the cleverest and most numerous staff ever got together for a newspaper of this kind. Much of the editorial work was done on Sunday; for the *Anti-Jacobin* was published in London on Monday, and in the coaching days it would reach the country editors in time for the issues of their journals, which went to press at the end of the week. For the country journals in the interest of the government there could hardly have been better political matter than that contained in the *Anti-Jacobin;* and, according to Baines's biographer, the country editors depended entirely for their political news on the newspapers which were forwarded to them by the treasury.

In setting up this scheme for using the country press the government relied to some extent on the Church of England clergy. The clergy went into the propaganda as part of the counter movement against Parliamentary reform, and in after years some of them used their zealous efforts in connection with the country press at this period as the basis for claims upon the government for promotion in the church. The editors were rewarded by the gift of postmasterships, by offices in the inland revenue department and by official advertising. Gifford was the most prominent government newspaper writer of this period, and was well rewarded for his services. Journalists were usually paid through pensions and offices. Gifford had no pension, but he held sinecures which were equivalent to a pension. At one time he held three of these: he was comptroller of the lottery office, with a salary of £600 a year; paymaster of the Band of Gentlemen Pensioners, with £300 a year; and clerk of the estreats in the court of exchequer, at £200 a year. He was one of the best-paid government journalists of the Georgian era; and in his turn he is credited with having rendered the government literary services second only to those of Burke.

In the two decades which followed the French Revolution no department of the newspaper press was ignored by the

treasury. The French immigrants in London had established *Le Courier de Londres*. This paper was in the service of the government, and was for some time nominally edited by Heron, the author of a history of Scotland, who owed his appointment to one of the under-secretaries of state. The mission of this journal, when Heron was connected with it, was to revile Bonaparte and his government. John Peltier, known in English judicial records as the editor of *L'Ambigu*, a political pamphlet of periodical publication, was also in the pay of the government as a journalist. Peltier's connection with the treasury began in the nineties, and was continued to as late as 1815. In that year he drew nearly £800 for his services. As long as England was at war with France there was work for Peltier. Even before the French Revolution the English treasury had in its pay writers for the French newspapers. Among the Abergavenny *Papers* there is a letter written in July, 1779, to Jenkinson, who was then at the treasury, which warrants the suspicion that the *Cologne Gazette* was a journal which might be used in the interest of England.

For the London newspapers which were willing to place their columns at the service of the government there were other advantages besides treasury allowances to their editors and appointments in the civil service. They received the government advertising, for which the rates were always high and the payment certain, and through the government offices they were furnished with intelligence that added largely to their value as newspapers. Some persons might regard them with disfavor or suspicion on account of their known or suspected connection with the government and their subserviency to it; but the people bought the newspapers, nevertheless, for the news which they contained. The *Courier*, during the time it was owned by Daniel Stuart, was known to be a government paper; but it was none the less a prosperous newspaper, and it received many advantages from its connection with the treasury. Occasionally, as Stuart's *Reminiscences* show, the *Courier* received important items of political news even in advance of the *London*

Gazette, though the latter had been, since the Restoration, the official journal of the government.[1]

In addition, moreover, to the direct advantages which accrued to the owners and editors of a journal in the service of the government, there were indirect advantages of great value at a time when the circulation of newspapers was small, when competition was keen, and when the cost of collecting news was high. The nature of these advantages is well indicated by incidents in the history of the *Times*. The *Times* has always been an independent newspaper. In the closing years of the last century and in the early years of this it was impossible for the government to get the *Times* to act as its subservient organ. Accordingly, when, during the war of 1805, the couriers of the *Times* with war news and foreign newspapers arrived at Gravesend, they were stopped by the government officers there and the intelligence they were bringing was held back, solely in the interest of rival daily journals in the service of the government. This was directly charged by the *Times* in 1810.

Further light on the general subject is to be derived from the Croker *Papers*, from which it appears that the proprietor of the *Times*, in 1815, asked as a favor that the French smugglers who were conveying newspapers for him from France should be unmolested by the guard-ships at the ports. An equivalent was offered. This was not, however, the use of the *Times* columns for matter in the interest of the government, but a loan to the government of the smuggled newspapers, after they had served their purposes in Printing House Square; for in those days the *Times* courier services were so well organized that its couriers frequently outdistanced by two or three days the couriers in the service of the government.

Obstacles in the way of legitimate journalistic enterprise, such as those of which the *Times* complained, were often the lot of the opposition and independent newspapers; and these obstacles were deliberately placed in their way as punishments

[1] Until a few years ago there was connected with the *London Gazette* a well-paid editorship, practically a sinecure, which was usually given to a journalist who had rendered conspicuous service to the political party in power when the editorship happened to fall vacant.

for their opposition or independence, and as a means of giving undue advantage to those competitors who were willing to sell themselves to the government. The government journalists had still another advantage. The stringent and far-reaching libel laws of those days had no terrors for the editors who were in constant and sympathetic association with the treasury officials. The government journals often ran near the danger line; but for their doings the treasury solicitors' department had a blind eye. On the other hand, it was only necessary for a government journal to call public attention to a risky paragraph which had appeared in an opposition or an independent journal to put the editor and the printer in the dock at the Old Bailey, and there to array against him all the strength of the law department of the crown. This was the fate of Perry, of the *Morning Chronicle*, in 1810, when he was indicted for a paragraph which he had printed, setting forth the good that might be expected from a change in the government which was then thought to be pending. Perry publicly attributed the prosecution entirely to a rival morning newspaper in the pay of the government, which had laid stress on the paragraph and urged the government to prosecute the author and the publisher. The trial failed; but, however much it inconvenienced Perry, students of English party history will not be disposed to regret that the abortive prosecution was begun, for Perry's defense contained one of the most lucid definitions of Liberalism to be found anywhere in the writings or in the speeches of the early part of this century.

Croker was the last of the government managers of the press before the old order in English politics was changed by the Reform Act in 1832. His own *Letters*, the *Life and Letters of Scott*, the *Letters of Coleridge* and the *Life of William Taylor of Norwich* afford glimpses of his work; and in his own *Letters* there is a statement of the estimate he had formed of his work and its value. Croker had as poor an estimate of journalists as the Benchers of Lincoln's Inn had, when, in 1809, they set up a rule against allowing to be called to the bar men who had written for the newspapers for pay. In 1829 he wrote

of London journalists as "needy adventurers." Yet, if Coleridge's statements are correct, Croker, to serve political ends, associated more or less intimately with journalists whose pens were at the service of the Tory government; and in 1829, when the Duke of Wellington, the premier, was badly in need of a newspaper organ and Croker was trying to get possession of the *Star* for him, he unsuccessfully endeavored to get Lockhart to join the "needy adventurers" in London. Scott, however, had no mind that his son-in-law should become a government journalist; and it was in connection with this proposal from Croker to Lockhart that Scott showed that he had an even poorer opinion of journalists than Croker, for he wrote to Lockhart "that nothing but a thorough-going blackguard ought to attempt the daily press." Moreover, neither Scott nor Lockhart had a high opinion of the nature of the services which Croker so long rendered to the Tory government in connection with the press. "Any understrapper M.P.," Lockhart wrote to Scott, "would do well enough for carrying hints to a newspaper office, and I will not, even to secure the Duke himself, mix myself up with the newspapers."

Croker, who had much of the journalistic instinct, never had the idea that the work he discharged for so many years could, in the disdainful words of Lockhart, be undertaken by "any understrapper of an M.P." Shortly before the long *régime* of the Tories came to an end he seriously put forward the suggestion that it should be the duty of a cabinet minister to instruct the press. In a letter to Planta, of August 21, 1829, he said:

> Suppose you have a good paper open to you and a capital hand to work. How is he to be supplied with materials? He cannot make bricks without straw. How is he to know the line to be taken? . . . No one but a member of the cabinet could do this safely and completely — not that, if a cabinet minister were to hold the pen, he need tell state secrets; but he alone would thoroughly understand the case, and know what to avoid, what to hint, what to deny, when to leave folks in their errors and when to open the real views of the government. I have heretofore conveyed to the public articles written by prime and cabinet ministers, and sometimes have composed such articles under their eye. They supplied the facts and I supplied

the tact, and between us we used to produce a considerable effect. In a cabinet like ours surely there might be one person who could find leisure for this sort of supervision, if not for some more direct coöperation. If anything of this kind were practicable, it ought to be done with the most profound secrecy, and every possible precaution against even a suspicion should be taken, and the minister who should undertake it, and his conveyancer, as "Junius" calls it, should throw in here and there such a slight mixture of error or apparent ignorance as should obviate suspicion of its coming from so high a source.

It is extremely doubtful whether the plan set out in Croker's letter to Planta — a letter which, for the purposes of this article, is an enlightening piece of history — has ever been acted upon. At the time Croker suggested it the English newspaper press was on the eve of another change, as important as that which occurred in the first decade of the reign of George III. At least one statesman saw that this change was coming, and that the day was at hand when allowances from the treasury, appointments in the civil service, government advertising and early information for the news columns would no longer serve as bribes to tie daily newspapers to the fortunes of the government; and that newspaper enterprise was gradually assuming such proportions that a government could no longer punish an opposition or an independent newspaper in the peculiarly annoying way in which the *Times* was punished in 1805. Lord Grey had had none of the experience in newspaper work which had been Croker's. But he was an observant man, who had been long in politics; and in 1831 he foresaw with much clearness the great changes which England's supremacy in the world of trade and her increasing wealth were to bring upon the daily press.

When the Whigs took office under Grey, the *Courier*, of which Croker had had much experience, was still regarded as a government journal. It had broken with the Tories about the time of Catholic Emancipation. Princess Lieven, wife of the Russian ambassador, was under the impression that the new government controlled the *Courier*, and she wrote to Grey to complain of a statement in regard to Poland which had appeared in its columns. Grey wrote in reply:

I saw the article last night in the *Courier* and it vexed me very much. We really have no power over that or any other paper in great circulation. All that we can do is by sending them sometimes articles of intelligence (but even to this I am no party) to conciliate them when public opinion is not against us. But when there is a strong general feeling, as in the case of Poland, it is quite impossible to control them. We might purchase a paper that is not read, which would do us no good till it got into circulation, and then it would do just like the others. The truth is that the profits of a paper extensively taken in are so great that they are quite beyond any temptation that could be held out to them.

But though, as Lord Grey pointed out, newspapers could no longer be tied to the government by the old forms of reward, by the bribes which had been used so effectually during the sixty years preceding the Reform Act, the Whigs, when they came into power in 1831, could and did reward journalists who for principle's sake had stood by them during their long period in opposition. Civil-list pensions and appointments in the civil service were bestowed on the journalists who, in the *Examiner*, the *Morning Chronicle* and other newspapers, had upheld Liberalism in the days when Toryism was supreme and when an unwary paragraph landed an opposition newspaper writer in jail. Indeed, for nearly two generations after the first Reform Act journalists were frequently appointed to consulships, to colonial judgeships and to responsible positions in the civil service at home, as rewards for services to their political party in or out of office.

Until about 1870 there was some similarity between the methods of the English government in rewarding journalists and those which still prevail in the United States. There were, however, two important differences. An English working journalist — and by a working journalist is meant one engaged on a newspaper at a salary — was never given an office equal in importance to some of those which are bestowed on journalists in the United States. English journalists were not sent as ambassadors abroad : the line was drawn at consular appointments. To this extent journalists in England continued to share in the spoils of office ; but office holders were not

cashiered solely to make places for men whom the government desired to reward. A fairly long list could be compiled of journalists who, since the Reform Act and since the change in this century in the character of the public journals, have been appointed to office at home or abroad. About the last name in the list of those appointed to consulships is that of Hanney, at one time editor of the now defunct *Edinburgh Courant*, an organ of Toryism in Scotland of much antiquity, who, in 1871, was appointed consul to Barcelona by the Earl of Derby.

The reform of the civil service in the seventies made it no longer possible for governments to bestow offices in the state departments at home or abroad for partisan services. The gate of entry to the civil service has been widened; but it must now be passed early in life, and at civil service examinations, or not at all; and nowadays there are comparatively few appointments in the civil service which a government can bestow upon its journalistic supporters. Taking one year with another, there are not half a score of places into which men can be thrust simply because they have rendered some service with their pens.

The opportunities for rewarding newspaper proprietors, as distinct from journalists, came to a temporary end somewhat earlier. When Earl Grey wrote to Princess Lieven the letter which has been quoted, English daily newspapers were already undertakings in which large capital was embarked. They were then past the stage at which the government could give newspapers any really valuable privileges or aid. There were still official advertisements to give out, but the value of these was becoming small and of little account to a prosperous newspaper in comparison with its general advertising patronage. As years went on and the fiscal burdens on the press were removed by Parliament, the circulation of newspapers became larger. They became properties of great value; and their owners began to find their way into the House of Commons, as bankers, merchants and manufacturers had been doing all through the eighteenth century. From the thirties and the

forties to the eighties, except in rare and occasional instances, like that of Sir John Easthope and the *Morning Chronicle*, newspaper proprietors carried on their business without any recognition or reward from the government. Not until 1885 did government manifest a consciousness that it was once more in their power to reward the owners of the daily journals which supported them. The form which rewards then began to take strikingly illustrates the enormous change which, since the beginning of this century, had come over British journalism ; for the meed of the influential newspaper owner was a knighthood, a baronetcy or a peerage.

Lord Salisbury was the first premier to bestow this form of reward. He began with knighthoods in 1885. Later on baronetcies were bestowed on newspaper proprietors ; and in two or three instances peerages were given. Mr. Gladstone soon followed Lord Salisbury's example. He, in turn, was followed by Lord Rosebery. There is now seldom an honors list in connection with the Queen's birthday or the New Year in which the names of newspaper proprietors do not appear. Newspaper editors also have received titles, usually knighthoods. During the last twelve years this new method of recognizing the press has been so general that there is scarcely a town in England with a population of 150, 000 which has not a newspaper proprietor or an editor with a title.

One singular result has followed the innovation of 1885. The ownership of newspapers has become a fad with men who are wealthy and who are also anxious to become knights or baronets. To finance a daily newspaper committed to the fortunes of a political party has come to be recognized as a sure route to a baronetcy. It is an expensive one to travel ; but in the long run it does not cost more than endowing hospitals or bestowing large sums of money on schools of music or imperial institutes ; and it has this advantage, that it adds to a man's importance in his own neighborhood. He also retains control over the money he is paying out; and, if the party he is supporting is likely to be long in opposition, he can spend just sufficient to keep his newspaper afloat until he obtains his

reward. Then, if he likes, he can stop it, or sell it cheap to another wealthy man who is also desirous of a baronetcy. This mode of earning a title leads occasionally to some singular changes ; for a Tory millionaire will buy a Radical newspaper to-day and bring it out as a Tory paper to-morrow. All that he has to do is to find a new editor. The paper so purchased and turned to the right-about may lose some of its former readers, but the loss of even half the reading constituency is a small matter to a man who has made up his mind to spend £50,000 or £60,000 in thus obtaining a baronetcy.

It may be asked what effect this new form of reward has upon politics. The real effect is small. An English newspaper of the better class sells chiefly on account of its news features; and these are not affected by the fact that the editor and proprietor may have had titles conferred upon them by a Liberal or a Tory government. Any tampering with the news features would tell against the position and prosperity of the paper, and it is not attempted. The political speeches and the political news of both parties are reported honestly and fairly as heretofore; and as long as the present high standard of English newspaper reporting is upheld, there is practically no danger to political education in the best and fullest meaning of the term. This reasoning applies to the papers of established reputations, which are also commercial enterprises. As concerns the papers which are established or transferred merely with a view to aiding the men who finance them to secure titles, the wonder is that any government can think it worth while to reward the owners with titles. Such papers, especially the evening papers of this class, depend more upon sporting-news than upon politics for their circulation; and for their purposes a "tout" at Newmarket or Epsom, who can send to the office reliable tips as to horses, is of more value than the best editorial writer who was ever in Fleet Street.

EDWARD PORRITT.

FARMINGTON, CONN.

ADAM SMITH'S LECTURES ON JUSTICE, POLICE, REVENUE AND ARMS.[1]

I.

THROUGH the publication of this report of Adam Smith's Lectures on Jurisprudence, edited with scrupulous care and extraordinary industry, Mr. E. Cannan has thrown a most serviceable light on the literary history of economics and on the intellectual development of Adam Smith. It may be permitted to me, as one who has devoted himself for many years to this old master of our science, to point out wherein, as I believe, consists the increase in our knowledge that has thus been brought about.

At the outset must be mentioned the fact that we are now for the first time in a position to form an entirely clear conception of Smith's Lectures on Jurisprudence. Especially can we understand Millar's statement that Smith endeavored

> to trace the gradual progress of jurisprudence, both public and private, from the rudest to the most refined ages, and to point out the effects of those arts which *contribute* to *subsistence* and the *accumulation* of *property*, in producing corresponding improvements or alterations in law and government.

We live in an age of materialistic philosophy of history, and we know how to appreciate the fact that a Scotch professor of moral philosophy attempted, more than one hundred and thirty years ago, to explain law as based on economic conditions. In only a few passages do we miss this treatment. To take a single example, neither the origin nor the abolition of slavery is explained by him on economic grounds. Thus, he says:

[1] Lectures on Justice, Police, Revenue and Arms; delivered in the University of Glasgow by Adam Smith; reported by a student in 1763; and edited, with an introduction and notes, by Edwin Cannan. Oxford, The Clarendon Press, 1896. —xxxix, 293 pp.

It is to be observed that slavery takes place in all societies at their beginning, and proceeds from that *tyrannic disposition* which may almost be said to be natural to mankind. Whatever form of government was established, it was a part of its constitution that slavery should be continued [p. 96].

A few pages further on, we learn that in western Europe slavery was abolished for political reasons — in fact, by the monarch, who "did all he could to lessen this (the lord's) influence," and by the church, since "whatever diminished the power of the nobles over their inferiors increased the power of the ecclesiastics." On the other hand, it is interesting to see that Adam Smith speaks of the guilds almost like a modern economic historian: "Though they might once be conducive to the interests of the country," we read on page 130, they are "now prejudicial to it." He speaks in a similar way, on page 235, of the markets and fairs, whose necessity he seeks to explain from the conditions of earlier times: "All fairs, however necessary they then were, are now real nuisances. It is absurd to preserve in people a regard for their old customs, when the causes of them are removed."

Further, the *Lectures* enable us to understand how the belief could have arisen that Adam Smith originally intended to write a history of civilization. This view is simple enough for those who are ignorant of the history of natural law or of Scotch moral philosophy, as well as of the profound influence of Harrington, Montesquieu, Hume and others on the social and political sciences. The *Lectures* show us now in the most unambiguous way that Adam Smith worked from 1760 to 1764 entirely within the limits of the Scotch moral philosophy: he had not yet at that time undertaken to separate the science of law from that of economic conditions. He defines jurisprudence as "the theory of the general principles of *law* and *government*. The four great objects of law are justice, police, revenue and arms." The fact that he put the historical point of view so strongly in the foreground by no means proves that he was intending at that time to write a history of civilization. So also, the letter dated March 5, 1769, which Delatour has

quoted in support of his view,[1] is entirely beside the point: it proves merely that Smith continued to devote himself to studies in legal history even after he gave up his professorial chair. This letter, moreover, probably supports an important inference which we draw from the end of the *Theory of Moral Sentiments*, — namely, that after his return from France Smith could not have thought of getting to work at once on his *Wealth of Nations*, but still intended to write a large work on jurisprudence, which would have included "justice, police, revenue and arms."

Much more important is another scientific advance, which we owe to the publication of the *Lectures*. It is now an undoubted fact that the system of political economy, as we meet it in Adam Smith, grew out of the system of natural law. A comparison of the first book of the *Wealth of Nations* with the corresponding part of the works of Grotius, Pufendorf, Wolff and Hutcheson induced me to express this opinion six years ago.[2] With this conception as a basis, I was able to conjecture wherein consisted the aid which Smith derived from his acquaintance with the Physiocrats and their writings. My supposition is now corroborated in all important points by the judgment of Cannan.[3] I fully share the contempt of Cannan for the "enthusiasts of plagiarism" who seek to make of Smith's ethics a weak copy of Hume, and of his economics a mere plagiarism of Turgot; for the endeavor to ascertain the factors which have determined the development of prominent individuals and of science itself has nothing in common with such aspersions. August Boeckh, in his *Encyclopaedie und Methodologie der philologischen Wissenschaften* has laid it down as one of the most important tasks of the historian of philosophy "to ascertain the standpoint at which they [the philosophers] are placed by the historical development of science." The accomplishment of such a task makes it necessary to combat on the one hand those naïve souls who believe that the "great

[1] Adam Smith, sa vie, ses travaux, sa doctrine, 1886, p. 91.

[2] *Cf.* my Untersuchungen über Adam Smith und die Entwickelung der Politischen Oekonomie, Leipzig, 1891.

[3] Cannan, Lectures on Justice, Police, Revenue and Arms, pp. xxvi–xxviii, and my Untersuchungen, pp. 163, 434, 435.

men" have drawn everything from their own inspiration and are but little influenced by their own times, and on the other, those pitiful minds who scent intellectual thievery whenever two persons say something similar. Both these classes lack appreciation of the laws of the development of thought.

Another imputation upon Adam Smith's genius, made even in the eighteenth century, is now finally silenced by the *Lectures.* It was maintained that Smith borrowed the principles of economic freedom from the Physiocrats. That part of his work entitled "Cheapness and Plenty" proves, however, — and in a way which surpasses all expectation, — that before his acquaintance with the Physiocrats he elaborated in his *Lectures* all the applications of the principles of economic freedom. On economic grounds of "expediency" he upholds the freedom of industry (pp. 179, 236), he maintains (pp. 209, 236, 246) the principle of commercial liberty, he demands free banking (p. 195). Like Arthur Arnold, Brodrick, Kay and others, he energetically opposes the land laws:

> The right of primogeniture hinders agriculture. If the whole estate were divided among the sons, each one would improve his own part better than one can improve the whole; besides, tenants never cultivate a farm so well as if it were their own property [p. 120].

"Entails," we read again on page 124, "are disadvantageous to the improvement of the country, and those lands where they have never taken place are always best cultivated." In the northern colonies, we are told on page 226, "the lands are generally cultivated by the proprietors, which is the most favorable method to the progress of agriculture." Indeed, what we are accustomed to call the mobilization of land finds in him a warm defender:

> If all the forms in buying lands were abolished, every person almost who had got a little money would be ready to lay it out on land, and the land by passing through the different hands would be much better improved. There is no natural reason why a thousand acres should not be as easily purchased as a thousand yards of cloth [p. 228].

It is to be regretted that in the *Wealth of Nations* Smith did not follow these convictions to their conclusion and demand

that the "tenants" be converted into "proprietors." But in the later work he took the same position as Arthur Young and Arbuthnot, regarding the diminution of the number of cottagers and other small occupiers of land as "an event which has in every part of Europe been the immediate forerunner of improvement and cultivation." Thus, by reason of his great authority, he made himself partially responsible for that "engrossment of lands" which he could not sufficiently deplore.

The metaphysical premises, also, of his policy of freedom appear here and there, even though in far less developed form than in the *Wealth of Nations* or the *Theory of Moral Sentiments*. On page 182 we read: "It is by far the best police to leave things to their *natural course*." On page 201 we are told: "There is no fear if things be left to their *free course* that any nation will want money sufficient for the circulation of their commodities." On page 180 he explains, quite in the spirit of the *Wealth of Nations*, "the *natural balance* of industry." This balance, he thinks, is disturbed when any branch of industry is favored by a bounty: "People are called from other productions which are less encouraged, and thus the balance of industry is broken." Again: "On account of the natural connection of all trades in the stock, by allowing bounties to one you take away the stock from the rest." Even the psychological bases of the *Wealth of Nations* come to view here and there:

> We may observe that those principles of the human mind which are most beneficial to society, are by no means marked by nature as the most honorable. . . . That principle in the mind which prompts to truck, barter and exchange, though it is the great foundation of arts, commerce and the division of labour, yet it is not marked with anything amiable. To perform anything, or to give anything without a reward, is always generous and noble, but to barter one thing for another is mean [p. 232].

II.

In my *Untersuchungen* I endeavored to prove that Adam Smith could not have borrowed the principle of industrial liberty from the Physiocrats, because the formulation and method

of proof employed in the Essay of 1755 were quite different from theirs. Much as I rejoice that my view has been confirmed, it must be strongly emphasized that the metaphysical foundation of his liberalism, which comes out so clearly in the Essay of 1755 and which is in the fullest agreement with the metaphysical bases of the *Theory of Moral Sentiments*, appears but incidentally in the *Lectures*. Why? we ask. Did he suppress his metaphysics because he was concerned with the province of "expediency" alone? In that case he must have given the basis of his system in the Essay and in the Lecture on Natural Theology; and this is precisely what I pointed out in my book. We are indeed able, as I have shown, to reconstruct Smith's general philosophy (*Weltanschauung*); but it is the Lectures on Jurisprudence which show us that the perusal of the Lecture on Natural Theology would open up new views and posit new problems. I cannot share the opinion of Cannan that the Lecture on Natural Theology is "not of historical importance": on the contrary, I believe it most desirable that this Lecture, as well as the Essay of 1755, be published, in the ideal interest of throwing light on literary history. Cannan supports his opinion by saying: "Arguments which would have been convincing in 1763 will fall perfectly flat in 1896" (p. xiv). But this is to assume a utilitarian, practical point of view, from which it would be hard to explain why the Lectures on Jurisprudence were published. The true end to be sought is not arguments, but an insight into literary history.

Far more striking than the absence of the metaphysical bases is the fact that, in the part entitled "Cheapness and Plenty," we find nothing at all about the natural laws of economic freedom. In the *Wealth of Nations*, as is well known, they appear again and again; and Smith terms his system "a system of natural liberty." Who does not remember that he denounced the expulsion of an innocent man as "an evident violation of natural liberty and justice." An interference with freedom of industry or capital is, according to Smith, "a manifest violation of the most sacred rights of mankind." This is the language of the Physiocrats, and of itself renders it explica-

ble that in the eighteenth century Smith was counted among their disciples. But he also reminds us of Locke when he says: "The property which every man has in his labor, as it is the original foundation of property, so it is the most sacred and inviolable." It is well known that the Physiocrats borrowed this doctrine from Locke.

Furthermore, every reader of the *Wealth of Nations* knows that Smith attempts to define sharply the boundary between public and private economy, and that he lays down principles of justice to govern the economic relations between the state and the individual. These ideas also are lacking in the *Lectures*.

It will be seen, then, that the *Wealth of Nations* differs in two respects from the *Lectures:* it contains the metaphysical elements in an undeveloped form, and it sets forth the demands of the natural laws of economic freedom. From this it results that in the *Lectures* is developed far more clearly the principle of "expediency" — the demonstration that on economic grounds a policy of economic freedom is best calculated to foster the development of wealth.

I once hazarded the conjecture that Smith must have developed the subjective laws of economic freedom in his Lectures on Justice. It must now be confessed that they are not to be found there in a specific form. It is, indeed, beyond dispute that Smith plants himself on the ground of natural law in the *Lectures* also. On page 6 we learn that there are "natural" rights; and he defines them as "rights which a man has to the preservation of his body and reputation from injury." On page 8 the list of "natural rights" is made still larger: "a person has a right to have his body free from injury and *his liberty free* from infringement *unless there be a proper cause.*" But these natural rights of liberty are not developed in a broad way, as in Hutcheson's treatment; they are not applied to the domain of economic life, as by the Physiocrats and by Smith himself in the *Wealth of Nations;* they are not even supported by any argument. Smith tells us that the "origin of natural rights is quite evident," so that "nobody doubts"; and on page 107 we read: "the former (natural rights) need no explanation."

It is true that from this general principle of natural liberty we may logically derive the particular principles of subjective economic freedom, so that there is no material inconsistency between the *Lectures* and the *Wealth of Nations*. But at one cardinal point a lack of harmony comes out very sharply. We have seen that Smith in his greatest work agrees with the Physiocrats and Locke in regarding "the property which every man has in his labor" as "the original foundation of property." It is well known that Locke in particular deduces private property in land from the labor expended. On the other hand, Smith in his *Lectures* teaches us that "private property in land never begins till a division be made" (p. 109); and on page 110 he precisely inverts the doctrine of Locke. There we read: "Land property is founded on division or on assignation by the *society* to a particular person of a *right to sow* and *plant* a certain piece of ground." In the *Lectures*, therefore, the individual and his labor are in no respect the ultimate source of the right of property in land: the origin of this right is in *society*. And quite in harmony with this, we find that Smith recognizes the possibility of a limitation of freedom by society, if "there be a proper cause." In the same way he opposes Locke when, in speaking on page 2 of the "state of nature," he says, "there is no such state existing," and when on page 11 he rejects "the doctrine of an original contract."

It is now clear why in the introduction to his work Smith does not once mention Locke, or even the great work of his teacher Hutcheson. He speaks of Grotius, Hobbes, Pufendorf and Cocceji as prominent authors in the domain of natural law: "besides these," he says, "there are no systems of note upon this subject." Now it is certain that he saw Hutcheson's work on the *System of Moral Philosophy*, which appeared in 1755: in the list of subscribers to the work we find "A. Smith" (he is the only one who asked for two copies); moreover, he was acquainted with the contents of the work, for he had heard Hutcheson's lectures on the subject, which were embodied in the book. It is still more astonishing that Smith should ascribe the opposition to Hobbes exclusively to the "divines."

"They endeavored," we are told, "to show that man in this state has certain rights belonging to him, such as a right to his body, to the fru ts of his labor, and the fulfilling of contracts. With this design Puffendorf wrote his large treatise." That poor Pufendorf, who was badly treated throughout his life by the "divines," should get into this company is strange; but not so strange as the fact that Smith seems to know nothing of the existence of Locke, the founder of the doctrine of the rights of man.

To any one who has read the *Lectures*, however, the explanation of these errors and omissions is simple enough: on all sides appears the effort to put abstract natural law into the background, and to make room for the concrete treatment of law and government, in the way that had been prepared by Harrington and developed by Montesquieu and Hume. We can only now appreciate the deep influence which these two men exerted on Smith in his earlier years. For the gaping chasm between the *Lectures* and the *Wealth of Nations* there is no other explanation than that Smith, while associating with the Physiocrats, was led by a study of their works to assume a more friendly attitude toward Locke and Hutcheson, and thus gradually to oppose the views of Montesquieu. For upon this point we must suffer no illusion: the Physiocrats did not look with friendly eye upon the historic-realistic conception of law and government which Montesquieu especially made so popular. Dupont de Nemours once expressed this very pungently:

> Combien doit être petit le nombre des hommes auxquels il appartient de savoir ce qui ne leur fut pas enseigné par leurs maîtres. Songez que Montesquieu lui-même vous a dit, comme un autre, que les principes du gouvernement doivent changer selon la forme de sa constitution, et que, sans nous apprendre quelle est la base primitive, quel est l'objet commun de toute constitution du gouvernement, vous avez vu cet homme sublime employer presque uniquement la finesse extrême, la sagacité supérieure de son esprit pour chercher, pour inventer des raisons particulières à des cas donnés.

We must not, however, regard the change in Adam Smith's attitude as constituting an abandonment of his previous convic-

tions; for, from the very fact that he lectured on natural law, he was accustomed to an abstract treatment of law and government. Jurisprudence he defined as "that science which inquires into the general principles which ought to be the foundation of the laws of all nations." Through Hutcheson he was intellectually related to Locke and Shaftesbury. The mighty influence of Montesquieu and Hume had, however, estranged him from the system of natural law. But while in France, perhaps, he had become aware that the fight against the old order of things required convictions — something more powerful than mere expositions of the "expediency of free trade." His soul was aglow with the flame that inspired the Physiocrats. Then were developed the concepts of the "natural order" and the "natural right" of the individual to liberty; and these became part of his system.

Perhaps still more rich in consequences was the fact that he, who in his *Wealth of Nations* deduced the right of private property from the labor of the free man, in the same work applied the principle of labor to the problems of political economy. In the *Lectures* this principle is relegated to a minor position, in the treatment of both jurisprudence and economics. It is well known how fruitful the principle of labor had been made in English political economy before Smith. I mention only Petty and Locke, Mandeville and Cantillon, Harris and Hume, the author of the essay "Some Thoughts on the Interest of Money, in General" and Hutcheson. The last named, Smith's teacher, was in a certain sense restored to his old place in Smith's regard; and it seems to me due to the stimulus of Hutcheson that Smith makes use of the principle of labor, for all the obscurities of the principle are found already in Hutcheson. Compare the following passages:

HUTCHESON.	SMITH.
But a day's digging or ploughing was as uneasy to a man a thousand years ago as it is now, tho' he could not get then so much silver for it; and a barrel	Equal quantities of labor, at all times and places, may be said to be of equal value to the laborer. In his ordinary state of health, strength and spirits, in

of wheat, or beef, was then of the same use to support the human body, as it is now, when it is exchanged for four times as much silver. Properly the value of labor, grain and cattle are always pretty much the same, as they afford the same uses in life, whereas new inventions of tillage, or pasturage, cause a greater quantity in proportion to the demand.

the ordinary degree of his skill and dexterity, he must always lay down the same portion of his ease, his liberty and his happiness. The price which he pays must always be the same, whatever be the quantity of goods which he receives in return for it. . . . Equal quantities of labor will at distant times be purchased more nearly with equal quantities of corn, the subsistence of the laborer, than with equal quantities of gold and silver, or perhaps any other commodity. Equal quantities of corn, therefore, will at distant times be more nearly of the same real value.

If, then, the conviction is well founded that Smith was influenced by the Physiocrats and by Locke in taking up a position antagonistic to that of Montesquieu, we have an explanation of the fact that he abandoned his original work on "The General Principles of Law and Government," and took up the *Wealth of Nations*. The former undertaking would have required that he should oppose Montesquieu: in fact, we are told that Smith, at the close of his life, was working on an *Examen Critique de l'Esprit des Lois*.[1] In all probability, however, his change of subject was much influenced by the fact that political economy developed with surprising rapidity in the sixties of the last century: witness not only the writings of the Physiocrats, but also and by no means least of all, the important work of James Steuart.

The transfer of Smith's intellectual sympathy from Montesquieu to the Physiocrats is responsible, I think, for the mistaken historical view, conspicuous especially in Books III and IV of the *Wealth of Nations*, which distinguishes between "natural" and "unnatural" economic development. In the first chapter of the third book he writes:

[1] Ingram, History of Political Economy, 1893, p. 92.

Had human institutions, therefore, never disturbed the natural course of things, the progressive wealth and increase of the towns would, in every political society, be consequential, and in proportion to the improvement and cultivation of the territory or country.

Adam Smith grafted a Physiocratic economic branch on the tree of his metaphysics. In the *Lectures* we notice nothing of this at all, even though a large part of the contents of the *Wealth of Nations* is to be found in the paragraph to which Cannan gives the heading, "Of the Causes of the Slow Progress of Opulence." At that time he had not yet made the discovery of a natural and an unnatural development. I cannot help believing that the first book of James Steuart's *Inquiry* contains a more profound and a more correct view of the relation of agriculture to industry than does the *Wealth of Nations*.

III.

The influence of the Physiocrats, however, led Adam Smith into other wrong paths also, as we can well see from the *Lectures*. In this work the part devoted to economics, and entitled "Cheapness and Plenty," is introduced by two paragraphs: "Of the natural wants of mankind," and "That all the arts are subservient to the natural wants of mankind." These disappear in the *Wealth of Nations*, and in their stead is put the well-known "Introduction," which begins with these words: "The annual labour of every nation is the fund which originally supplies it with all the necessaries and conveniences of life." As to this change Mr. Cannan says: "It is not easy to explain why the first two sections were omitted from the *Wealth of Nations*, and the fact will be regretted by those who ask for a theory of consumption as a preliminary to the other parts of political economy" (p. xxvii). It seems to me that the omission is entirely due to the influence of the Physiocrats.

Those predecessors of the Physiocrats and Adam Smith, who for the sake of convenience are called Mercantilists, and to whom it is customary to ascribe many absurd ideas, started out from a consideration of the world as it surrounded them.

Men, they observed, have wants which, as soon as the division of labor has made its appearance, create a demand for the commodities and the services of others. In an economic condition where credit is but slightly developed, this demand becomes effective through money and gives rise to the activity of the merchants, who at the same time stimulate wants, and therefore demand itself. The demand which is developed in this way causes production, and production cannot grow faster than the demand. The Mercantilists noticed how the development of demand and of production conditioned the employment and the increase of the great mass of men, especially those occupied in agriculture and in the production of raw materials. Thus they started out theoretically from human wants, from consumption, from demand; and their practical conclusion was that commerce and industry must be protected.[1]

This Mercantilist policy was opposed by the Physiocrats, on the ground that it injured and impeded agriculture. Quesnay said:

> Que le gouvernement économique ne s'occupe qu'à *favoriser* les dépenses *productives* et le commerce des denrées du crû, et qu'il laisse aller d'elles-mêmes les dépenses stériles.

In order to support this demand the economic development is then interpreted in a way quite different from that of the Mercantilists. Industry and commerce are held to be possible only because agriculture yields a surplus; therefore the *science économique* must begin with an analysis of production.

> Les négociants ne font point naître . . . la possibilité du commerce [says Quesnay] mais c'est la possibilité du commerce . . . qui (fait) naître les négociants. [And again :] Le commerce . . . est toujours un service plus ou moins dispendieux, et que moins on a besoin de ce service, moins il est onéreux.

The whole distorted character of the Physiocratic conception can, however, best be recognized from Baudeau's *Explication du Tableau Économique.* In that work he discusses the Mercantilist conception at length, and formulates it as follows:

[1] A fuller exposition of the Mercantilists' views is impossible here from lack of space. I can only refer the reader to Books I and II of James Steuart's Inquiry.

C'est le *désir de jouir* des façons, du trafic ou des amusements, qui excite aux dépenses productives: donc, *l'industrie est productive*, et même plus productive que les dépenses foncières et la culture, donc la classe prétendue stérile est tout le contraire.

In opposition to this view, he thus lays down the doctrine of the Physiocrats:

Nous trouvons pour *première cause* . . . les avances annuelles. Si je demande à toute personne raisonnable, qui est-ce qui a produit les épis dans ce champ? elle me répondra, c'est la *semence* et *le labeur*, car, pour recueillir des moissons, il faut fumer, labourer et semer.

With this compare the views on the *Question Singulière:* "Si le besoin ou le désir sont jamais les vraies causes de la production?"

Adam Smith, who leans at this point to the Physiocrats, pushes two steps beyond Quesnay. He regards as productive not only the labor which produces raw materials, but also that which is employed in industry and commerce; and he does not limit the demand of *laisser-faire* to industry and commerce, but extends it to all branches of economic activity. Since, therefore, production can no longer in any form be regarded as the aim of the state, he declares that "consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer." Here appears in all its sharpness the contrast between the Mercantilist theory and the liberal economics. The new view starts theoretically from production and practically demands protection for consumers; the old view starts theoretically from consumption, and demands protection for producers. The theoretical, and still more the practical, errors of the post-Smithian economics that were due to starting out from production are very evident; and it is now beginning to be recognized that the theory of economic phenomena must begin with an analysis of consumption. Jevons, as is well known, has given the most energetic expression to this view. My task has been merely to ascertain why Adam Smith strayed from the right path.

IV.

If now I should attempt to sum up the result of these observations, I should state it somewhat as follows: The Physiocrats have played a far more important rôle in the development of Adam Smith than we have hitherto dared to assume. Not only did they for the first time put him in a position to develop a system of theoretical economics that was complete in matter, even if perhaps not in form, but they induced him to apply "natural law" to economic conditions, and to give to the "natural order" a far wider extension than had before been attributed to it. And these, indeed, are the very elements which give to Smith's system its sharply defined character.

But, highly as we may estimate the merit of the Physiocrats, it cannot be maintained that Adam Smith's connection with them was an unmixed advantage to him. On the contrary, it might be said that Smith purchased the aid which they afforded him at a heavy cost. Support for such a view is to be found in all his conceptions of a natural law, a natural order, a natural and an unnatural historical development, in his abandonment of the doctrine of wants, and in his employment of the doctrine of production as the base of his system. Adam Smith's mind thus lost the impartiality and objectivity which we see in the *Lectures*. He constructed artificial causal connections which he had not previously discovered and he saw in the Mercantile system — that joint historical product of many political, social and economic forces — only a monster that had been deliberately brought into existence by the merchants and the industrial employers.

Had Smith been able to develop further on the lines of that training which is manifested in the *Lectures*, his economic system would probably not have attained its completeness; but he would have preserved the objectivity of his historical judgment and the purity of his economic perception. The blemishes of which the historical school and Jevons have complained are almost entirely absent in the *Lectures*.

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REVIEWS.

The Laws and Jurisprudence of England and America: Being a Series of Lectures delivered before Yale University by JOHN F. DILLON, LL.D., Storrs Professor, Yale University, 1891–92. Boston, Little, Brown & Co., 1894. — xvi, 431 pp.

A First Book of Jurisprudence, for Students of the Common Law. By SIR FREDERICK POLLOCK, Bart., M. A., LL.D., Corpus Christi Professor of Jurisprudence in the University of Oxford. London and New York, The Macmillan Co., 1896. — xvi, 348 pp.

Judge Dillon's lectures have positive merit of a high order. His long experience at the bar and on the bench gives freshness and value to his treatment of practical themes, such as trial by jury (pp. 120–132) and the condition of the law of real property (pp. 237–241). Particularly good, also, are the second and third lectures, on "The English Inns of Court," which give the student a mass of information not easily accessible elsewhere, and the twelfth lecture, which is devoted to Jeremy Bentham.

Like the majority of English and American lawyers, Judge Dillon is deficient in knowledge of general legal history and of foreign systems. In comparing the English with the Roman law (pp. 171, 172) he apparently declares, by implication, that the Roman law was wrought out by doctrinaires and that it is not based on the experience of mankind. He does not appear to know that the *Digest* of Justinian is chiefly composed of case law, or that half of the constitutions in Justinian's *Codex* are decisions rendered by the imperial judges in the name of the emperor. He therefore conceives of Roman law as a system but slightly capable of judicial development, quoting (p. 231) a passage to that effect from Markby. In fact, of course, modern and ancient Roman law are very different things, and the change has been wrought, in the main, by judicial interpretation. Even in our own day the German courts have discovered in the cases decided at Rome principles and rules which the Romans never formulated. Again, Judge Dillon follows Montesquieu and Freeman in deriving modern European liberty from the German forests — a fable which has been demolished by German legal historians. He can see no good in feudalism except its chival-

rous attitude towards woman, and the system of primogeniture has to him no reasons for existence save the gratification of ancestral pride and the maintenance of family splendor (pp. 169, 170). He can hardly be aware that feudalism took shape in the stress of the conflict with the Saracens, and that it was the feudal cavalry that kept Europe Christian. He ignores the fact that until the present century the holdings of the peasant as well as the lands of the noble went to one son, usually the eldest but sometimes the youngest; and that the abolition of this rule has produced, both in France and in Germany, grave social changes, not clearly for the better. His idea that modern German jurisprudence fails to separate law from ethics (pp. 7, 8) is obviously based upon the writings of the natural-law school. He does not realize that Savigny and his successors draw this distinction as sharply as do Hobbes and Bentham. Criticising the English analytical school, he says — and rightly — that the formal test of law is not that it proceeds from the state, but that it is enforced by the state; but he does not note that this eminently practical observation was made twenty years ago by the German professor, Rudolf von Jhering. He is greatly alarmed lest our laws and our jurisprudence be "continentalized," and this bogy looms all the bigger to him because he is rarely able to define to himself or to his readers what the European continental tendencies really are. Only two points come out clearly: that he is an adherent of jury trial in civil cases and an opponent of administrative courts. It may reasonably be inquired, however, whether American criticism of the civil jury or the appearance in our country of things singularly like administrative courts are due to European influence. Our boards of customs appraisers, at least, seem to be an independent product. Nor does he clearly separate foreign influence upon our jurisprudence from foreign influence upon our institutions and laws. No one, I think, will contest his assertion that English law is better for us than any other system could be; but if jurisprudence be the science of law, it can attain its true stature only by the use of the comparative method; and by rejecting the contributions of the European civilians, English legal science will deprive itself of half its proper food.

It is only fair to say, however, that the errors and prejudices here noted are in no sense peculiar to Judge Dillon. He exhibits the ordinary limitations and expresses the average opinions of the English and American bar. It is only fair to note, also, that Judge Dillon modestly disclaims, in his preface, "any pretension to pro-

found research or exhaustive treatment," and declares that the purpose of these lectures was

> to inspire a patriotic and just regard for the laws and institutions of our country, to incite enthusiasm in the study of the law rather than to impart technical instruction, to awaken inquiry rather than to satisfy it upon subjects of vital moment to the profession lying somewhat outside of the ordinary legal curriculum. It is due to me and to the reader that the book be judged from this point of view and no other [p. viii].

Judged from this point of view, the book cannot be praised too highly. It will surely help law students to appreciate the important part which our lawyers play in shaping the destinies of our country, and it cannot but quicken their sense of professional duty. In his insistence upon large views, Judge Dillon belongs to the older generation of American legal writers — the generation of Kent and Story. He belongs to that generation, also, in the roundness of his periods, the stateliness of his diction and the constant suggestion of familiarity with the best English literature. "A lawyer without history or literature," says Pleydell, in *Guy Mannering*, "is a mechanic — a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." In spite of his deficiencies in general legal history, Judge Dillon meets Sir Walter Scott's triple test.

That Sir Frederick Pollock is well versed in general legal history, as well as in the history of English law, and that he is familiar with the best results of continental experience and thought, need be said only to those who have failed to read his other books. No other English writer possesses so thorough an equipment for work in the field of comparative jurisprudence. His familiarity with the modern German literature of Roman law reveals itself throughout Part I of the present volume, which deals with matters that German pandectists assign to the "general part" of their treatises. His chapters on law and rights, persons and things, events and acts, possession and title would probably never have been written — would certainly never have assumed their present form — without the model furnished by the German writers. At the same time his discussion of all these topics is nearly as fresh and suggestive to a student of German legal science as it can be to an English lawyer. The new elements which make his book original are his thorough acquaintance with English law, his preference for English examples and illustrations — "intended," as he neatly remarks, "as a protest against the habit of regarding 'jurisprudence' as some-

thing associated with a little knowledge of the laws of every country but one's own" — and his English common sense, which preserves him from wandering off into discussions that have no practical bearing upon the comprehension or application of legal rules. Original, also, and in the highest degree valuable, is his recognition of the natural or social element in legal institutions and his constant effort to explain and judge legal institutions from the social point of view. The value of this effort is perhaps most conspicuously illustrated in his discussion of the artificial person, in his inclusion in this category of the firm, and in his extremely suggestive treatment of the relation between possession and title. In this last matter he owes something to Jhering's *Besitzschutz*, but his knowledge of English law enables him to make far more conclusive the demonstration of the points upon which he and Jhering agree.

To the beginner some passages in this first part may seem not merely abstract, but unpractical. The student may perceive that the analysis of the legal conception of a "thing" is essential to the comprehension of the law of property, but he will hardly see that the distinction between intention and motive in acts has any bearing upon the doctrine of mistake. The author leads directly up to Savigny's analysis of mistake and then, rather unaccountably, lets the subject fall. If limit of space did not permit any discussion of mistake, the reader might well have been referred to Pollock's *Principles of Contract*, Chapter VIII.

In this part of the book I find almost nothing to criticise, because almost everywhere I find myself in substantial agreement with the author. As regards the quasi-possession of servitudes (pp. 181–184), however, it seems to me that the difference between quasi-possession and true possession is over-emphasized and the analogy unduly ignored; and if the Roman doctrine is to be touched at all, some hint should be given of the practical value of quasi-possession to the possessor as against the owner of the servient estate. On page 145 the admission in criminal cases of evidence of good character is cited as a recognition of "external motive." If I understand the author's distinction, it is a recognition of internal motive, or, rather, of the probable absence of internal motive. On page 179 the author says:

> In a system where ownership is capable of direct proof and official confirmation, as by a registry of titles to land, the importance of possession and prescription tends to diminish, and might even conceivably become a vanishing quantity.

This result is not merely conceivable, it is observable. In the new German civil code prescription of real property has vanished and possession of such property is of no importance, except as a ground for protection against illegal disturbance.

The topics discussed in Part II — statutes, custom, decisions, *etc.* — would also appear in a German pandectist's general part, and would be brought into connection with those treated in the first four chapters of Part I. Sir Frederick Pollock, however, has adopted in Part II a method of treatment quite different from that employed in Part I. There is much less comparison between the English system and other systems of law. There is here, in little compass, great store of information concerning the slow development of legislation in the field of English private law, concerning the waning importance of popular or class custom as a source of legal rules, and concerning the beginnings of the English doctrine of judicial precedents. It seems to me that the exposition of this latter doctrine would have been simplified if judicial custom had been recognized as the continuation of and substitute for popular custom; but this relation, so far as I know, is not fully recognized by any legal writers. The concluding chapter on ancient and modern statutes should be put into the hands of every American legislator, to show him the difference between haphazard and scientific legislation, and the necessity of expert aid in drafting laws.

Here, again, there is little to criticise. When, however, the author states, on page 226, that the question whether interpretation does or does not make law is of philosophical interest only, he surely forgets that in the conflict of laws, at least, the question is a very practical one. If a Belgian court has to apply the law of France and finds the written rule identical in the two countries but the interpretation different, the Belgian court must determine whether the French interpretation is or is not French law. If a New York court finds that a case of which it has taken jurisdiction should be decided according to the law of Massachusetts, that the Massachusetts law in point is common law, and that the interpretation of the common law on the point in question is substantially different in the two states, then the question whether the New York court shall follow its own interpretation or that of the Supreme Court of Massachusetts turns wholly upon the antecedent question, whether the local interpretation of the Massachusetts court makes local law. That different views are possible is illustrated by a series of decisions of the federal courts, together with the case of Faulkner *vs.* Hart, 82 N. Y. 413,

on the one side, and the case of Alexander *vs.* Pennsylvania Co., 48 Ohio State, 623, 637, on the other.

In American constitutional law also the question has proved to be practical. The Constitution of the United States says that "no state shall pass any *law* impairing the obligation of contracts." If now the obligation of a contract be impaired in a state, not by its written law, but by a novel interpretation placed upon the written law by the state judiciary, is the new interpretation a "law"? The Supreme Court of the United States has answered the question in the affirmative.[1]

In enumerating the instances of the acceptance of Roman rules by English courts (p. 325 *et seq.*) it may perhaps be urged that, in view of the rarity of such cases, the author might have added Bechervaise *vs.* Lewis, 7 C. P. 372, 378. In this case (as in Acton *vs.* Blundell, 12 M. and W. 334, 353, which the author cites) there was a direct quotation from the *Digest* of Justinian.

Judge Dillon and Sir Frederick Pollock are both advocates of a well-considered and gradual codification; but both fail to note how the question is complicated in this country by the fact that the federal Congress cannot do the work, and that, if done, it must be done by the state legislatures. In codifying the common law, England exchanges one form of national law for another; we, on the other hand, would substitute local for national law. MUNROE SMITH.

The Study of City Government. By DELOS F. WILCOX, Ph.D. New York, The Macmillan Co., 1897. — xiv, 268 pp.

In this volume Dr. Wilcox has rendered distinct service to the student as well as to the teacher of municipal government. The work does not aspire to the dignity of either intensive investigation or exhaustive discussion, yet it rises above the grade of a high-school text-book. It is an analysis, a classification and a compend of facts, and it covers the whole field. City government in the United States is, of course, the principal concern, but the rich experience of other nations is freely drawn upon. Other men's thoughts on municipal problems are intelligently adduced; but the author also contributes virile thoughts of his own upon the problems he presents. The introductions and conclusions to the various branches of the subject properly comprise a "study" in city govern-

[1] See Rowan *vs.* Runnels, 5 Howard, 134, 139; Ohio Co. *vs.* Debolt, 16 Howard, 416, 432; Pine Grove *vs.* Talcott, 19 Wallace, 666, 677.

ment; while the fact-filled outline, which makes up the body of the book, may well be termed "a handbook to the study of city government."

The plan followed by the author is "to make a general analysis applicable to the study of government in any of its grades or branches, and to fill in the outline more in detail for the special study of city problems." In pursuance of this plan the whole subject is distributed into three groups: (1) "Problems of Function"; (2) "Problems of Control;" (3) "Problems of Organization."

> Politics [says the author], or political science, treats of the methods of fulfilling the functions assigned to the state and its agents. . . . The most useful classification in the study of politics is one that arranges these functions, whether undertaken in one country or another, in the present or in a past age, around certain groups of purposes as conveniently as possible for the illumination of the problems of control and the problems of organization, which together make up the real task of political science.

This tripartite division of the subject as a general scheme is, I believe, unique; and the differentiation of minor topics under these heads is singularly distinct and complete.

In view of his characterization of the divisions of his subject, we are naturally led to look to the author's presentation of the problems of function as the essentially original and philosophic contribution of his work to current thought. "The functions of government," he says, "may be roughly classed as direct and indirect, or primary and secondary." Under primary functions he includes the exercise of the ordinary police powers and social activities "whose direct and immediate purpose is to promote the general welfare." Secondary functions are "means to some further end," the most important being the raising of revenue, the carrying on of public works and the providing for elections. In attempting such distinctions and classifications there is always the danger, as the author himself says, of making refinements that are "quite scholastic," and I fear that he has not wholly escaped it. Every primary function of government has its ancillary function: every end is attained by means. While there are, it is true, general means, such as the raising of revenue, which are secondary to many ends but are not ends in themselves, it would, nevertheless, be well to emphasize the fact that even the maintenance of a police force, which Dr. Wilcox would call primary, is really secondary to the general welfare.

Of more practical and present interest is the discussion of "business and politics in city government." Dr. Wilcox seems to accept Professor Goodnow's proposition that the city "is always a public, *i.e.*, a governmental, corporation"; but he seems to obscure a corollary to this proposition which Professor Goodnow has thus stated:

> In so far as its local and, so to speak, corporate character is emphasized, it will be easier for the municipal electors to give to purely municipal problems the attention they deserve and must have, if municipal government is to be actuated by purely local and municipal motives — if the municipal government is to have regard for municipal needs.

In a period, like the present, of violent controversy on questions of municipal politics, such a work as this must play an important part. As it will be consulted alike by those who seek truth and by those who seek arguments, it cannot be too clear in the statement of principles. In opposing "the cry of 'business, not politics,' in reference to municipal government," and in contending for "the essentially political character of cities," Dr. Wilcox has unfortunately thrown himself open to misapprehension — on the one hand, by those who distinguish between business and gain; and, on the other hand, by those who confuse municipal politics with national partisanship.

As to "problems of control," the city is presented as occupying one of three positions: "It may be a city-state; it may be a grade of local government established by the state in the constitution; or it may be simply the creature and agent of the general government." For breadth of treatment, exhaustive analysis, and wealth of citation this chapter cannot fail to be gratifying to the student of the vexed question of "municipal home rule." In respect to central control, it appears, we have much to learn from European countries. While the author does not pretend to maintain any thesis, the irresistible argument of the facts here gathered is in favor of the development of the now incipient administrative control over local officers in many matters of general concern to the state and of the practical independence of the city in purely local matters.

The "problems of organization" occupy half the book. The new charters that have been turned out of the legislative mill so abundantly in recent years are freely cited in the presentation of the different elements in city organization. Not the least interesting details are those taken from the charter under which the great experiment commonly known as Greater New York will be inaugu-

rated January 1, 1898. The bearing of organization upon municipal politics is logically set forth in the experience of American cities.

> The central purpose of political organization [says the author] is to fix responsibility. . . . If democracy is to be a success, all those who participate in sovereignty must have freedom, tempered with a sense of responsibility. The citizen must be organized into the government, and not the government organized over the citizen.

This book is an added proof of its own timeliness. Good city government is the key to the success of democracy in America. With one-third of our population urban, with the constant tendency toward the absorption of suburban territory into the city, and, above all, with the growing demand for the practical freedom of the city to regulate its local concerns, we may say that we are approaching an era of the practical rehabilitation of the "city-state." With democracy dominant and largely insensible to political responsibility, especially in cities, the only safeguard of good government lies in teaching the people how to rule. Such a book as this gives intelligent patriots a fulcrum of fact, by the help of which they can use their influence effectively to raise the tone of citizenship.

COLUMBIA UNIVERSITY. C. M. LACEY SITES.

State Control of Trade and Commerce by National or State Authority. By ALBERT STICKNEY, of the New York Bar. New York, Baker, Voorhis & Co., 1897. — xiv, 202 pp.

This work embodies a very able argument against the decisions of the New York Court of Appeals and the United States Supreme Court in the cases of People *vs.* Sheldon (139 N. Y. 251) and United States *vs.* Trans-Missouri Freight Association (166 U. S. 290) respectively. Mr. Stickney's main contention is that the common law of neither England nor the United States recognizes as a criminal conspiracy the combination of individuals to raise prices; and that, therefore, a decision that such a combination is either an act injurious to trade or commerce, as was decided by the New York Court of Appeals, or an act in restraint of trade, as was held by the United States Supreme Court, is incorrect from the purely legal point of view. He also believes that these decisions are unwise from the economic point of view. As Mr. Stickney's reputation is chiefly that of a lawyer, his views on the legal aspect of the subject are naturally entitled to the greater weight, and we may with propriety address ourselves to these exclusively.

While there is much to be said in favor of the view which Mr. Stickney holds, he has taken in this book the position of the advocate rather than that of the impartial, unprejudiced student. This fact comes out as clearly as anywhere in his summary of the facts in the case of Mogul Steamship Company *vs.* McGregor, upon which he lays great stress. He speaks of this case as if it decided that a boycott of one steamship company by a number of other ship owners was not a conspiracy, and as if almost all manner of combinations in restraint of trade had, since its decision, been perfectly proper under the English law. What the case actually decided was, that a combination of ship owners, designed to lower freight rates and to give rebates to all shippers who would ship exclusively through members of the combination, and formed with the avowed purpose of crushing the competition of a firm not a member of the combination, was not a conspiracy for which a civil action for damages would lie. Such a combination, says Chief Justice Coleridge in his opinion in the case, is not even in restraint of trade. It is hardly fair to say, as does Mr. Stickney on page 83, that this case holds that "such a contract of combination [*i.e.*, 'a combination merely to raise prices'] independently of any statute, though the courts might not enforce it, never constituted a crime or a legal wrong." A combination to raise prices may or may not by the English law be a crime, but that question was not decided by this case.

Again, in trying to prove that the old English statutes prohibiting combinations to raise or lower prices were never in force in this country, Mr. Stickney quotes a *dictum* from the case of Commonwealth *vs.* Carlisle (Brightley 36); but he forgets to inform us that in this case it was decided that a combination of employers to lower the wages of labor was a conspiracy; nor does he mention the fact that the judge, in rendering the opinion, speaks of "a combination among the bakers to extort an exorbitant price for bread" as one "which every one will acknowledge to be indictable" (p. 42). Finally, most of the authorities which are cited to show that the early "English statutes which created these 'Offenses against Public Trade'" did not become a part of our American law, deal exclusively with the wages of labor, and not with the prices of commodities. It is true, of course, that the statutes as to forestalling, regrating and engrossing were repealed in England before the United States became independent; but it is not so clear that the statutes forbidding combinations to raise the prices of commodities, to which Blackstone refers as having force at the time he wrote, did not become a part of the law

of the state of New York in accordance with the provisions of its first constitution. Whatever may be the truth on this question, Mr. Stickney's argument does not by any means prove the negative. If these statutes did become law in New York, the court of appeals would not seem to deserve the censure visited upon it by Mr. Stickney for its decision in the Sheldon case. For the almost uniform course of American decisions is to the effect that all contracts of combination in restraint of trade are void, when unreasonable or detrimental to the public welfare; and the court held in the Sheldon case that a combination of coal dealers to raise the price of coal was a conspiracy to do an act injurious to trade or commerce.

But, whatever view we may hold on this point, we cannot but be grateful to Mr. Stickney for his able plea in favor of non-interference with trade by the government, and for the care he has taken to present to his readers in full the many old statutes, both English and American, on this subject.

F. J. GOODNOW.

Glasgow: Its Municipal Organization and Administration. By SIR JAMES BELL, Bart., and JAMES PATON, F.L.S. Glasgow, James MacLehose and Sons, 1897. — xxiii, 426 pp.

In these days of great and rapidly growing cities the diversity of municipal institutions, even in those countries where general laws govern municipal corporations, makes it impossible for the scientific writer to describe adequately the organization and functions of local government in general treatises. Paris, Berlin, London, Birmingham and Glasgow, as well as the great cities of the New World, demand special and detailed treatment. Although this fact is not particularly encouraging to the student of government who wishes to master at short notice the details of the world's political institutions, we may yet be glad that increasing diversity in the municipal experiences of cities marks an important change in the meaning and purposes of government. The repressive functions of government are particularly susceptible of uniform methods of fulfillment. The coöperative functions, on the other hand, demand all that complexity of method which characterizes the social and industrial activities of the modern world. A diversity of local institutions within a larger political unit is, indeed, a sign of political integration. Government is ceasing to be a repressive, life-destroying agency of the sovereign will, and is coming to be a coöperative, life-giving method of sovereign action. In the book before us Sir James Bell, late Lord Provost of Glasgow, illustrates the nature of this change as follows:

The town council of the seventeenth century was not in any sense the servant of the community; and, although they rendered services good and indispensable, these were performed in the spirit of lord and ruler rather than as duties confided by fellow citizens to their fellows for the common weal. . . . The traditions of the old days have been lost, the methods of rule have been changed, and the spirit and aims of the present day are utterly and entirely dissimilar from those which animated the municipal magnates of the seventeenth century.

Dr. Shaw's writings have made American students familiar with the reputation of Glasgow as a bold and progressive municipality. Furthermore, a report has been widely circulated in the United States that Glasgow, after the beginning of 1897, would levy no more taxes, on account of the large income derived by the city from its street franchises. It is a pity that the ardor of American enthusiasts for municipal ownership has been tempered, and the glory of Glasgow correspondingly diminished, by the discovery that the report is not true. But, although Glasgow has not attained to the rôle of the taxpayer's heaven, its achievements in the field of municipal activity make the Lord Provost's big book distinctly worth writing.

In the thirty-eight chapters are taken up in detail the history, the forms of organization and the actual work of the corporation. The development of the governing body is treated at length; the management of public lighting, of the markets, wharves, parks, museums and educational and charitable institutions is well described. But in all the long list of topics treated no place is found for a general discussion of the finances. There is a description of the "common good" in the chapter treating of the wealth and activities of the corporation, and there are scattered through the book fragmentary statements of the finances of several municipal departments; but there is no analysis of the debt, the annual expenditures, the income or the tax levy of the corporation as a whole. We are able, however, to pick out some interesting facts in regard to public expenditures. Thus, the Glasgow fire brigade, consisting of 109 persons, costs the city $60,000 a year, while the average loss from fires is $500,000 a year. The constabulary, or police force proper, consisting of 1355 persons, is maintained at an annual expense of $600,000. The Glasgow patrolman starts out with a salary of $310 a year, and after eleven years of faithful service in the ranks he receives only $390 unless promoted. Glasgow, it must be remembered, is a city of only 750,000 inhabitants; but if New York could get along with a proportionate expenditure for fire and police protection, the abolition

of our department of taxes and assessments would be much nearer than it now is.

In spite of his omission of a chapter on the finances, Sir James Bell has given us a book of great interest and of far-reaching importance. Lack of space forbids any extended review in this place of the history and organization of Glasgow's municipal authority. It may be said, however, that until 1895 the town council acted in several distinct capacities — as water commissioners, improvement trustees, *etc.* But the municipal organization has now been considerably simplified by the concentration of powers and duties in the hands of the town council, as such. It should be mentioned, also, that the town council, as the old authority of the corporation, is a body of general, unenumerated powers. But the tendency in recent years has been to limit these powers by statutory grants to the council in its various capacities. Our author says:

> In this way the ancient prerogatives of the corporation have, to some extent, been limited and abridged; and certainly, at this day, the greatest and most laborious of the municipal duties are discharged, not as by the ancient corporation, but as by trustees and commissioners constituted and acting under modern Acts of Parliament.

As is well known to students of municipal government, Glasgow's extensive ventures into the field of municipal ownership and operation of franchises have been marked with great success. This fact is, perhaps, explained by Mr. Bell, when he remarks:

> The qualities which make a good town councillor are simply those which belong to the successful business man, — method, precision, accurate judgment, and prompt decision, — and with these characteristics the elected councils have been well endowed.

DELOS F. WILCOX.

NEW YORK CITY.

L'Évolution française sous la troisième république. Par PIERRE DE COUBERTIN. Paris, Plon et Nourrit, 1897. — xx, 432 pp.

The Evolution of France under the Third Republic. By BARON PIERRE DE COUBERTIN. Translated from the French by ISABEL F. HAPGOOD. New York, T. Y. Crowell & Co., 1897. — xiii, 430 pp.

M. de Coubertin has written a book that was both sadly needed and very difficult to write — a political history of France from the establishment of the existing republic to the present day. This is not exactly what the title of the book leads one to expect. The evolu-

tion of a country under a given government consists not so much of the history of that government as of the transformations which take place in the life of the nation during its existence; but we shall not find fault with M. de Coubertin for not giving us exactly what he seemed to promise. No one was further than he from underestimating the difficulties which must be encountered by any writer who undertakes to give to the public an exact narrative of contemporary events. These difficulties are, indeed, alluded to by him in the very first words of his preface: "Any one who undertakes to analyze contemporary history runs the risk of finding that the title of historian is deliberately refused to him." And if the mere narrative of events that are near us presents obstacles which are at times almost insurmountable, how much more arduous must be the task of him who undertakes not merely to relate events, but to state in what respects and to what extent, at different moments of a comparatively short but exceedingly complex period, the character of a whole nation has been modified by events which are very likely not *entirely* known to him! It seems, therefore, that M. de Coubertin's mistake lay much more in the selection of his title than in the composition of his book.

We should not, however, like the reader to suppose that the title of the book is altogether a misnomer. The last five of the fourteen chapters of the volume unquestionably suggest what was very likely the author's original purpose. They are devoted respectively to "The Republic and the Church," "Education," "The Nation Armed," "Ideas and Habits" and "The Social Question." The nine chapters that precede them give us a complete political history of France from the date of the establishment of the republic to the death of President Carnot; and it must be said that even in these chapters the author seldom fails, when the opportunity arises, to call attention to the reciprocal influences of political history and national temper. The fact remains, however, that we have here a "contemporary history of France," the most complete and the best composed that has thus far been published, either in French or in English. The only works to be compared with it are the as yet unfinished history of the Third Republic by M. Zévort and, for the first three years of the period, the two excellent volumes of M. Théodore Duret.

One of the chief merits of the book before us lies in the admirable division of the subject. This could hardly be improved upon. In writing the history of a republic which is now ruled by its sixth president, there was a natural temptation to make of each presidential term

a chapter of the book. Instead of such a formal and meaningless division of the period, M. de Coubertin discerns a number of periods which are marked by special characteristics in the forward march of the nation towards the definitive establishment and recognition of a truly democratic form of government. The titles of his chapters are: "The Early Years of the Republic" (two chapters), "The Sixteenth of May," "The Alarm of 1875 and the Congress of Berlin," "Tunis and Egypt," "The Jules Ferry Ministry," "Colonial France," "The Crisis," "The Triumph of the Republic."

Another merit of the book is that the author seldom fails to give the greatest prominence to the events which were really of the greatest importance. There was for him danger of losing himself in a maze of details of secondary value. This is generally avoided by putting in the footnotes at the bottom of the page a great deal that the reader would expect — and perhaps rightly — to find in the text itself: such things, for instance, as the composition of the various cabinets, the results of elections, and the divisions at the end of discussions in the National Assembly of 1871–75, as well as in the Senate and the Chamber of Deputies established by the constitution of 1875.

The temper of M. de Coubertin is strikingly impartial. His views are usually those of a not unprogressive moderate republican, who is not without some sympathy with socialistic ideas. He is heartily in favor of the colonial policy of France, and among her statesmen most admires Gambetta and Jules Ferry — the latter perhaps even more than the former. It is not quite certain that he does full justice to President Thiers. Here, perhaps, we strike one of the few faults of this really good book. M. de Coubertin is still a young man: he was born, we are told in Dr. Shaw's introduction to the American edition, on January 19, 1863. Hence, part of the events about which he writes took place when he was still too young to take a very deep interest in public affairs, while in the rest he has been an active participant,— and this fact is clearly visible in the work. The more recent period is treated, if not with more fullness, certainly with much greater vividness and even with greater accuracy than the rest. Thus, the most serious misstatement I have found in the book relates to one of the events of the year 1871. M. de Coubertin states (p. 24) that "on August 31, 1871, on M. Rivet's motion, M. Thiers had received for three years the title of President of the Republic." The facts are that the Assembly *refused* to grant M. Thiers a three-year term and merely decided that he should hold office as long as the Assembly itself. The reason for the change

thus introduced in M. Rivet's original bill was that the Assembly was entirely unwilling to have President Thiers preside over the elections which would follow its own disappearance. It also feared that if M. Thiers were granted a fixed term of office, he might join the "*campagne dissolutionniste*" of Gambetta and others. Another, but a comparatively unimportant, mistake in another part of the book relates to the gift of Chantilly to France by the Duc d'Aumale, which M. de Coubertin states to have taken place just when that prince was sent into exile by President Grévy. In fact, the gift was not made until much later, and there was no connection between the two events.

Of the translation one is tempted to remark, the less said, the better; but when work which ought to have been done seriously is so wretchedly "botched" as in this case, words of much stronger condemnation, and even full exposure, are decidedly needed. Every one who is desirous of reading M. de Coubertin's book ought to read it in the original French, of which the so-called *English* edition is only a travesty. Every page of the translation contains sentences which are either incorrectly rendered or written in unintelligible English. In places the inaccuracies in translation go so far as to state the very reverse of what is meant by the French text. For example, the vote on the famous Wallon amendment, which made the constitution of 1875 a *Republican* constitution and which was adopted "*à une voix de majorité*," is reported thus: "[the amendment] was adopted, by the vote of the majority" (p. 45).

As a specimen of the translator's English, it is perhaps sufficient to quote the following: "But he [Jules Ferry] did not comprehend any state of things between France and Germany but peace or war" (p. 160).

As a rule, the translator has everywhere used the English word which looks most like the French word to be translated: thus, *grandeur* is everywhere translated by grandeur, never by greatness, and we are told of this or that man's "grandeur of soul." Of the political vocabulary, either French or English, she is totally ignorant: thus, *suffrage à deux degrés* becomes "suffrage in two degrees"; *les sénateurs à temps*, or elected for a term, become "senators with temporary warrants"; *nolle pros* becomes mandates of non-prosecution. She does not know the difference between *Départements* and *Arrondissements*, or, in fact, any of the details with which the translator of such a book ought to have been acquainted.

Inaccuracies in names are also frequent. For instance, M. Magne, the great financier, becomes M. Magnac (p. 37); while Admiral de Montagnac becomes Admiral Montaigne (p. 46).

The *Nation* has already called attention to the surprising rendering of *Ralliés* by Mugwumps; but what shall we say of a translator who renders *une conception un peu sceptique du monde* by a "non-sceptical (!) conception of the world" (p. 222), and of an editor who speaks of Bossuet's *Discourse on Natural History?*

Miss Hapgood's performance is preceded by an introduction which bears the signature of Dr. Albert Shaw, and which speaks of "her well-known fidelity and skill!"

ADOLPHE COHN.

COLUMBIA UNIVERSITY.

Domesday Book and Beyond: Three Essays in the Early History of England. By FREDERIC WILLIAM MAITLAND, LL.D. Cambridge, The University Press, 1897.—xiii, 527 pp.

Under this modest title Professor Maitland has put forth a masterly treatise which illumines many important phases of English constitutional history in the Anglo-Saxon and Norman periods. His book is a remarkable combination of minute scholarly research and broad generalization concerning some of the most fundamental questions of early English history, and his views are presented in a lucid, attractive style which we are not accustomed to find in learned historical monographs. Most disquisitions on the hide and the plough-land, the *bordarii* and the *radmanni*, of "Domesday Book" are dreary reading; but Professor Maitland holds our attention in all his "meanderings" through the mazes of the great survey.

There is a deftly woven thread of thought running through his three essays, and this thread has an anti-Seebohm hue; it is the first elaborate effort that has been made to controvert Seebohm's brilliant deductions. The "Germanists," or adherents of the older theory of manorial development, have long awaited a work of this sort. They were thankful for what Allen, Earle, Andrews and Vinogradoff had achieved, but that was not sufficient: the arguments of Seebohm and Fustel de Coulanges were not yet adequately refuted. While Professor Maitland aims to controvert Seebohm's conclusions, his tone is not polemical; he has a happy faculty of striking heavy blows with a gloved hand. He strikes blows, moreover, not merely at the "Romanists," but also at the apostles of the older school. His work is, indeed, thoroughly original: he does not move along any well-trodden path.

To indicate in detail the varied contents of this volume would require many pages; here it is possible only to state briefly the author's main conclusions. In the first essay, entitled "Domesday Book," he shows that the great survey is, above all, a tax book, for its main theme is the "geld." The villein's lord is answerable for the geld due to the crown from the land which the villein holds. This is a matter of importance, because he who pays the tax for the land will be regarded as its owner. There is in "Domesday Book" much evidence that the villeins and sokemen, the tillers of the soil, are being depressed by the geld. The word "manor" in "Domesday Book" is a technical term, meaning simply "a house against which geld is charged." The state will endeavor to collect this tax in large sums.

> It will endeavor to make the great folk answer for the geld which lies on any land that is in any way subject to their power; thus the cost of collecting petty sums will be saved and the tax will be charged on men who are solvent.

In other words, the king gets at the poor through the rich. The burden ultimately falls on the peasants, for they keep the tax collector from their doors by promising the lord heavy rents and services. Thus the geld is one of the forces that contributed to the growth of seignorial authority and the manorial system.

Passing to the feudal superstructure, our author finds feudalism or vassalism in existence before 1066. Many thegns held their land "under" the king or some other lord, though numerous royal thegns were able to forsake their lord, "to go to what lord they please." There was, indeed, among the Anglo-Saxons something very like military tenure. Though the Conqueror defined the amount of military service which each tenant-in-chief owed to the crown, it seems questionable whether he introduced any very new principle. The Anglo-Saxon host was no longer the nation in arms. The lord was bound to bring into the field a certain number of *milites*, perhaps one man for every five hides.

> It is not improbable that one of the forces that is attaching the small free proprietors to the manors of their lords is this "five-hide rule"; they are being compelled to bring their acres into five-hide units, to club together under the superintendence of a lord who will answer for them to the king.

Thus, in the Confessor's time the villeins occupied lands for which their lords gelded and for which their lords fought.

In the last section of the essay on "Domesday Book" Dr. Keutgen's theory regarding the origin of German towns is applied to England.

What legal principle distinguishes the borough from the township or village in the tenth and eleventh centuries? That is the problem which Professor Maitland desires to solve. He believes that the typical Anglo-Saxon borough was a fortified town, maintained by a county or district for military purposes and invested with a special peace and with its own court. The special royal peace conferred upon fortified places "is the original principle which serves to mark off the borough from the village." Thus, the ancient boroughs are in their inception royal boroughs; though the king was rarely the landlord of all the burgesses, his peace prevailed in the streets; the profits of the court and of the market were his. Some strong arguments are advanced in support of this theory; and, even if the theory may ultimately be regarded as untenable, this section will be read with profit, for it throws much light on the early municipal history of England.

The second essay, "England before Domesday," will probably attract more attention than the other two, because it deals more fully with the most fundamental question of early English history — the question whether the population of England in the seventh and eighth centuries consisted mainly of dependent serfs or of independent freemen, whether the English manorial system is to be traced back to the Roman *villa* with its slaves and *coloni* or to the gradual substitution of the manorial organization for peasant proprietorship. Professor Maitland rejects what he calls "the Romanesque theory." He believes that early in the Anglo-Saxon period there was a large class of freemen who tilled land which they owned; that the Celtic population did not survive as the serfs of the conquering chieftains; that "our true villages, the nucleated villages with large 'open fields,' are not Celtic, are not Roman, but are very purely and typically German." He contends that Seebohm's theory gives no rational explanation of the state of things revealed to us by "Domesday Book" and no rational explanation of seignorial justice. The manorial system was slowly evolved as the result of various causes — the transfer of royal rights to lay and spiritual magnates, the "commendation" of the weak to the strong, the encroachments of the lords and the pressure of Danegeld. Seignorial justice, which may be traced far back into the Anglo-Saxon period, was due mainly to royal grants of immunity or jurisdiction. Though our author argues that in England there were once many free or lordless villages, peopled by free landowning ceorls and their slaves, he rejects the old doctrine which places the ownership of the soil, or of large tracts of the soil, in free

village communities: he does not believe that land belonged to communities before it belonged to individuals. It will be difficult for the followers of Seebohm to answer Professor Maitland's brilliant arguments in favor of the gradual growth of the manorial system — the gradual subjection of free landowners and their land to seignorial authority. Apart from that fundamental question, this essay is a valuable contribution to Anglo-Saxon constitutional history.

In the third essay our author deals with the "dreary old question," What was the hide? But in his hands it ceases to be dreary, because he points out its bearing on larger problems. "That question about the hide," he says, "is 'pre-judicial' to all the great questions of early English history." He declares against Kemble's 30-acre hide, and believes that the normal tenement of the German settler in England, the typical holding of each free family, was a hide of 120 acres of arable land. This view is supported by arguments drawn from Anglo-Saxon documents and especially by the evidence of "Domesday Book."

> If we are right about this matter . . . some important consequences follow. We may once and for all dismiss as a dream any theory which would teach us that from the first the main and normal constitutive cell in the social structure of the English people has been the manor. To call the ceorl's tenement of 120 acres a manor, though it may have a few slaves to till it, would be a grotesque misuse of words, nor, if there is to be clear thinking, shall we call it an embryo manor, for by no gradual process can a manor be developed from it. There must be a coagulation of some three or four such tenements into a single proprietary unit before that name can be fairly earned.

In other words, this definition of the hide leaves little room for the Roman villa system with its population of serfs and *coloni*.

This work will hold a very high rank both as an exposition of "Domesday Book" and as a survey of the early institutions of England. Professor Maitland has fathomed the "deep speech" which the Conqueror had with his wise men at Gloucester in 1085. He has blazed through "Domesday Book" a new path leading far into the "Beyond." He has done what, in his concluding words, he hopes his successors may do: he has made more thinkable "the thoughts of our forefathers, their common thoughts about common things."

CHARLES GROSS.

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Life and Labour of the People in London. Edited by CHARLES BOOTH. Vol. IX. Comparisons, Survey and Conclusions (with an Abstract of Vols. I–IX). New York, The Macmillan Co., 1897. — 455 pp.

With the present volume Mr. Booth "completes the design originally laid down." In the earlier volumes he surveyed the working population of London, street by street and occupation by occupation, and applied the two standards of (1) earnings and (2) house accommodation. He now proceeds to institute a series of comparisons between "the 89 trade sections" in the following respects: apparent poverty, crowding, earnings, proportion of Londoners, numbers in families, ages of workers, proportion of employers to employed, and increase or decrease since 1861 in numbers engaged. Next, in order to put the reader in a position to control the vast mass of information already put at his disposal, Mr. Booth has had prepared a neat abstract of the contents of the nine volumes. This is excellently done, and may be looked over for its own sake with more profit than is usually the case with abstracts: for an example, one may refer to the paragraph on Jewish characteristics (p. 83). At this point Mr. Booth has accomplished his main purpose. What he has endeavored to present to his readers, he tells us in language of grave simplicity, "is a picture or a way of looking at things, rather than a doctrine or an argument. I have been glad to see my book furnish weapons and ammunition for absolutely opposed schools, and can even make shift to stifle my annoyance when it is occasionally quoted in support of doctrines which I abhor" (p. 440).

But Mr. Booth cannot be denied the right to draw some conclusions for himself from the material he has gathered; and these conclusions — from his own pen and that of Mr. Ernest Aves, who seems to agree with him on all important issues, though a slight difference of tone is here and there perceptible — occupy rather more than half the present volume. The most important of them will be anticipated by the careful student of the previous sections of the work. That "the modern system" of industry has its good sides as well as its bad; that the day of small businesses is by no means over; that the rôle of trade-unions, while considerable, must always be subordinate to wider economic influences; that regularity of earnings is more important than rates of wages; that moral weakness is the main source of irregularity of employment; that the existence of profit is the security of labor — these are some of the more prominent.

The survey, however, is not yet a final one. Mr. Booth now proposes to devote three years' work and three more volumes to a study of "the forces for good or evil that are acting upon the condition of the population of London." Not till then will he be ready for "the ultimate balancing of hopes and fears that will form" his "final judgment." In view of this postponement of final judgment, it may be well to set down some of the doubts that occasionally come over at least one reader in making his way through Mr. Booth's instructive pages.

First, as to method. The work necessarily takes the form, to a large extent, of a manipulation and interpretation of census statistics. The sound judgment and moral earnestness of the editor and his assistants, however, save it from the trivialities that are apt to disfigure the work of the professional statistician. Yet the construction of schedules and the striking of averages tend to breed an unconscious affection for the schedule and the average, as such, that is likely to endanger the sense of relative magnitude. For instance, on page 279 we are told in how many, out of 206, occupations practiced in London the recognized hours of work are 48 per week, in how many 48–54, and so on up to 72. But before we can attach any particular significance to such statements we want to know the relative magnitude of the several occupations. There is at the end of the chapter a table of "the hours of work, overtime, and principal methods of remuneration" in all the 206 trades; but just the one piece of information which would add significance to it all, the numbers employed, is omitted. If the reader possesses the complete set of volumes and can give some time to putting the figures together, he can get the information for himself. But if it were given in this volume, it would be a great convenience, and it would show him where to lay the emphasis among the remarks which make up the rest of the chapter.

A more vital matter is the relation between evidence and conclusions. It were foolish to crave for perfection. Mr. Booth is modest to a fault about the value of his own conclusions, and never fails to remind us of the disturbing influence of personal temperament. But we fear that his remarks will not always be taken subject to these implied qualifications. Therefore we cannot but wish that Mr. Booth had seen his way to stating his conclusions rather more in the form of a summing-up upon the evidence. Perhaps some such mechanical device as is adopted in the reports of some recent commissions — the placing by the side of each paragraph of a reference to the particular

sections of the evidence more particularly in mind at the time — would have put us in a better position to estimate the exact amount of weight to be given to Mr. Booth's several contentions. As it is, we are often given an estimate of relative probabilities and possibilities of a kind that reminds us — Mr. Booth will pardon the comparison — of the *Spectator:* that of the late Mr. Hutton, not of Addison. There is the same sober dignity; but in each case the utterances occasionally give one the impression of being just a little in the air. The necessity of adducing definite grounds for each opinion might have led to the postponement of some generalities, which at present seem hardly to have any close relation to the evidence as here set forth, though they may perchance be amply borne out by other considerations not adduced. Thus, the proposition, "where there is freedom and industrial energy state enterprise would do more harm than good," is a formula that requires definition in every one of its terms before it becomes significant; and this is a fair example of the aphoristic writing in which the authors not infrequently indulge.

From Mr. Booth's conclusions, so far as they are the direct outcome of his investigations, it may seem presumptuous even to appear to dissent. Mr. Booth has brought to his task all that high purpose, tireless industry, calm judgment, and the most liberal expenditure of time and money could accomplish; and he may naturally be supposed to be, and within a certain range undoubtedly is, his own best critic. And yet it must be observed that Mr. Booth's investigations have, after all, dealt with but one side of modern industry — the side of labor; and the habit of looking at a sociological problem from only one point of view is likely to color the judgment to a quite disproportionate extent when one comes to express an opinion on the general situation. This, I cannot help thinking, is the explanation of what seems to me the undue importance here attached to "the *entrepreneur* function," to business "management," "leadership," "enterprise." We all know how easy it is, when we think of the comfort produced among servants and work-people by our own personal expenditures, to come to regard ourselves as rather fine fellows because we "furnish employment." In the same way, those who attack the economic problem from the side of the workingman's weekly incomings are likely, quite unconsciously, to get an exaggerated impression of the beneficence of the employer as such. That business enterprise is enormously important, *as things now are*, is very true; that the socialism of Marx — together with much of the socialism of to-day — has overlooked its importance may still need to be said;

but the impression produced by Mr. Booth's concluding chapters goes beyond this, and makes one think of "enterprise," as such, as being permanently estimable and altogether indispensable. Yet surely there is enterprise *and* enterprise. Much of the enterprise which, when successful, obtains large rewards is the enterprise which merely seeks to divert the demand from a competitor offering the same or a similar article. He must either be a very optimistic observer or apply a very subjective conception of *utility* who supposes that successful enterprise always means an increased utility to the consumer. The "sound judgment and business forethought" (p. 169) may be only the judgment and forethought which correctly anticipate the popular whim or devise the catching advertisement. Still more "enterprise" is at present demanded for the calculation of a fluctuating market; and how badly individualist initiative often does it the alternation of over-production and under-production sufficiently exemplifies. The rational-Socialist contention is that the value of modern individualist "enterprise" is largely relative to modern individualist competition. It is surely not a wild dream to look forward to conditions in which — at any rate for a large number of staple commodities — supply will be so adjusted to demand that much of the present individualist enterprise will be unnecessary, and the work of a good deal of the rest of it will be performed a good deal better.

Mr. Booth's generalizations as to actual conditions have turned out, in comparison with *The Bitter Cry* and *Darkest England* and *Merry England*, to be unexpectedly cheerful; and we cannot doubt that they are far more true. London produces on him "the general impression of a well-to-do, energetic people" (p. 441). "Here and there, as one walks, a foul back street is seen, or some woe-begone figure slips past. We may then turn to our statistics to learn what proportion such things bear to the rest." Many of us owe Mr. Booth a debt of gratitude for lifting from our spirits the weight of unrelieved misery. It is a great comfort to have really trustworthy statistics to which "one may turn to learn the proportions" of things. Yet now, having escaped pessimism, we must be on our guard against optimism; and certainly not a little of Mr. Booth's language would seem unguarded. His belief in the merits of enterprise is closely connected with a confidence, like that of John Stuart Mill, in the formative effect of competition on character; and he has the courage to apply this to the working classes. Accordingly, we have passages such as this: "*Every power* of man is stimulated, guided and brought to bear on the desired object." "To *talent*, even

of a very humble description, a career is *always* open" (p. 168). Over against these, indeed, may be set other passages which counteract the seeming exaggeration. But, as the indolent reader will not make such comparisons, we may be allowed to regret even an occasional absence of caution. The "powers," the "talents" for which the present *régime* furnishes a stimulus are not all the powers and talents of man. We can each of us easily draw up a list of the traits which are likely, on the whole, to enable a workingman to lead a prosperous life. We can, with equal ease, draw up a list of those that may make him a better Christian, a pleasanter companion, a more interesting personality, without landing him in a house of his own or a post-office annuity. "The self-made man" is a characteristic feature of modern competitive life, and we know how much the world owes to him; but we also know the rough and ready judgment of mankind upon him. The higher sort of Socialism is in large measure a protest on behalf of the non-"economic" qualities of man; and one could have wished a more steady recognition of this in a work, on the whole, so sane and broad-minded.

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Baumwollproduktion und Pflanzungswirtschaft in den Nordamerikanischen Südstaaten. Von DR. ERNST VON HALLE. Erster Teil: *Die Sklavenzeit.* Staats- und socialwissenschaftliche Forschungen, herausgegeben von Gustav Schmoller. Band XV, Heft 1. Leipzig, Verlag von Duncker und Humblot, 1897.—xxiv, 369 pp.

Dr. von Halle—who is, it will be remembered, the author of the little book on *Trusts* which appeared a few years ago—has continued his investigations of American economic institutions and phenomena, and now presents us with a study of the industrial and social condition of the Southern states before the Civil War. The second half of the work, which is promised within a year, will deal with the period since emancipation. In the present work, which is based on personal inquiries and observation, as well as on literary researches, the author has made cotton culture the central point of his discussion; because, as he says in his preface, his studies soon convinced him that it was cotton production which "was destined to furnish the key to the solution of the problem of Southern economy throughout the entire nineteenth century" (p. ix).

In Book I Dr. von Halle brings together nearly all the references by early writers to cotton culture in this country previous to the

Revolution, points out the causes which retarded both cotton production and cotton manufacturing, gives an interesting account of the social and economic status of the South at the end of the eighteenth century, and describes the results to Southern agriculture of the invention of the saw gin.

In Book II he takes up some forty pages in considering the botany, chemistry, geology and climatology of the cotton states; in explaining the methods of planting, cultivating and harvesting the crop; and in describing the diseases and enemies of the plant, *etc.* The propriety of giving so much space to work purely technical in its nature in a treatise which is professedly economic in character may well be questioned. The same may be said of Chapter V of Book III, where sixty pages are devoted to a discussion of land legislation, the development of means of transportation, and the elements and the distribution of population in the Southern states. Indeed, perhaps the chief criticism which can be passed upon the book is that its real contents are in no way adequately expressed by its title. Not less than half the work deals with subjects which, at most, can be said to bear only an indirect relation to cotton culture. It should be stated in passing, however, that section 5 of the above chapter contains some interesting statistics on the distribution of the white and black races in the cotton states and the border states, and on their relative rates of increase. Chapter VI gives the statistics of cotton production, the distribution of the crop among the several states and the part which the exports of this staple have played in the cotton trade of the world. Just the opposite criticism to that made above may be passed upon this chapter. The text adds little to the information furnished by the tables, containing, as it does, little more than a repetition of the facts already found there and a statement of the author's opinion as to the value to be attached to these figures.

In Chapter VII the author approaches the most interesting and the most important part of his subject — the relation of cotton culture to slavery. Dr. von Halle sees clearly the connection that existed between these two Southern institutions, which, he says, were "the two poles between which hung the whole industrial and social sphere of this part of the land." In this chapter, which treats of the "Movements and Changes in the South previous to the Election of 1860," he has, unfortunately, failed to set forth tersely or very clearly just what effect the culture of cotton did have upon the widening of the national domain and the corresponding expan-

sion of slavery. Instead of dealing with the economic forces which brought about these changes, he has entered at some length into a discussion of the political and constitutional sides of the question. There was little need of this discussion even for German readers, as his own countryman, von Holst, had already treated the same subjects in detail; and for American readers, it, of course, adds nothing to the recent works of Rhodes, Wilson and Burgess. Dr. von Halle's account of the effect which the westward territorial expansion and the increase in cotton growing had upon the domestic and foreign slave trade is more appropriate and valuable material, although Du Bois has quite recently covered the same field.

One may take exception to the author's statement (p. 189) that without negro slavery and its use on the large landed estates of the South there would not have been such a rapid settlement of the South or such a sudden increase in cotton production. Early writers in the South expected that the adoption of cotton culture would lead to an increase of small farms cultivated by white labor; and this, indeed, seems to have been the tendency of the new movement[1] until the advantages of cotton culture for slavery made themselves felt. The climatic disadvantages, which, according to Dr. von Halle, prevented immigrants from seeking the South and kept white labor out of the cotton fields, were, for the most part, mere fictions of Southern *ante-bellum* writers. The increase of white labor in cotton production since the war, and the migration from the North and from Europe to Texas and to other parts of the South, have shown that throughout the greater part of the cotton belt there are no climatic restrictions on the use of white labor in agriculture. Indeed, a Southern writer, himself a son of one of the leading advocates of slavery in 1860, has recently asserted that the supposed climatic disadvantages in the use of white labor do not exist even for the alluvial regions, and that the segregation of the colored population there "was effected solely by economic influences and has been maintained by a race prejudice."[2]

Chapter VIII is taken up with a well-written description of the various social classes of the "Old South" — the slaveholders, the slaves, the free negroes and the poor whites. Perhaps the most interesting and valuable chapter in the whole book is Chapter IX, where the author discusses "The Economic System of Slavery Times

[1] Ramsay, History of South Carolina, II, 448, 449.

[2] Harry Hammond, "The Culture of Cotton," in "The Cotton Plant," Bulletin 33, Office of Experiment Stations, United States Department of Agriculture, p. 253.

and the Methods of Cotton Cultivation." This chapter is almost the only one in which Dr. von Halle confines himself strictly to his subject. He gives here a thorough discussion of the influence which cotton culture had upon the distribution and concentration of the slave population of the South, of the methods of employing this labor and of cultivating the soil, of the size and management of Southern landed estates, and of the influence which cotton raising had upon the price of slaves and on their movement southward from the border states. The text is illustrated throughout with well-arranged statistical matter compiled mainly from the censuses of 1850 and 1860.

In Chapter X the author has supplemented his historical and descriptive account of Southern conditions by a discussion of the slavery theories of various writers, European and Northern, as well as Southern. He reviews in an interesting manner the theories of De Tocqueville, Harriet Martineau, Carey, Cairnes, Calhoun, McCay and Helper, as well as those of many minor writers, whose bombastic rhapsodies do not really deserve the serious consideration which he gives them. Finally, in Chapter XI, the author gives an account of the "System and Effects of Plantation Agriculture."

Dr. von Halle has an extensive acquaintance with the literature of his subject, and not the least service which his book can be made to render to future students of Southern institutions and history will be that of acting as a guidebook to Southern *ante-bellum* literature. If the author seems at times to attach too much importance to the writings of both the defenders and the opponents of the slave system during the heated controversy over this subject, it must be said that his statements are usually exact and his conclusions warranted by the evidence. There are a few historical blunders, as, for instance, on page 199 (note 4), where it is stated that the petitions for the abolition of slavery in the District of Columbia were presented by "Expräsident Charles Francis Adams."

UNIVERSITY OF ILLINOIS. M. B. HAMMOND.

The Liquor Problem in its Legislative Aspects. By FREDERIC H. WINES and JOHN KOREN. Boston and New York, Houghton, Mifflin & Co. 1897. — vi, 342 pp.

In the year 1889 fifteen gentlemen who were interested in questions of progress began to meet from time to time and to exchange opinions on various social topics. Among the papers read and discussed at these meetings, and afterwards published, were President

Seth Low's essay on "The Government of Cities in the United States" and Professor William M. Sloane's on "Pensions and Socialism." In 1893 this group decided to enlarge its membership to fifty, and to make a systematic investigation of the liquor problem in the United States. Four sub-committees of this "Committee of Fifty" were appointed to report, one on the physiological, one on the legislative, one on the economic and one on the moral aspects of the question. The sub-committee on the legislative aspects consisted of Charles W. Eliot, Seth Low and James C. Carter. These gentlemen appointed Messrs. Wines and Koren to conduct the investigation. The present volume is the substance of their report.

The investigation took a wide range. Inquiries were made in many different sections of the country, and concerning all the important systems of legal regulation of the liquor traffic that have here been tried. A full account is presented of the history and practical value of prohibition in Maine and Iowa, of the South Carolina dispensary system, of the restrictive system in Massachusetts, of the high license system in Pennsylvania, of the Ohio and Indiana laws and of the Missouri local option law. The work has evidently been done with great care. No important fact has been overlooked, and no attempt has been made to find in the evidence a support for any view or policy. The criticism throughout is discriminating, and the inferences are those which any dispassionate judgment must draw from the data. No such review of the whole case for and against legislative control of the sale of intoxicating drinks has ever before been made, and nowhere else can the conscientious voter find so clearly and so fully presented the information that he requires to enable him to see his duty.

The three gentlemen of the sub-committee have themselves made a summary statement of results and inferences which they unite in signing. Prohibition, they declare, has been partly successful but largely a failure, and has brought with it many concomitant evils, particularly a distrust of local self-government and a centralizing tendency. Local option has much to commend it, but the Massachusetts plan of annual voting on the question is inferior to that of Missouri, where the issue can be raised only once in four years. The licensing system in all its forms is open to grave political objections; no other plan does so much to keep the liquor traffic in politics. A tax law, like that of Ohio, is so far an improvement. Almost every sort of liquor legislation, however, creates some specific evil in politics.

Wherever high-paid offices are created by liquor legislation, those offices become the objects of political contention. When a multitude of offices are created in the execution of liquor laws, they furnish the means of putting together a strong political machine. Just this has happened under the dispensary system in South Carolina, where a machine of great capacity for political purposes has been created in a short time, with the governor of the state as its engineer. . . . The activity of liquor dealers' associations in municipal politics all over the United States is in one sense an effect of the numerous experiments in liquor legislation which have been in progress during the last thirty years. The traffic, being attacked by legislation, tries to protect itself by controlling municipal and state legislators.

The committee concludes that "it cannot be positively affirmed that any one kind of liquor legislation has been more successful than another in promoting real temperance"; but that, nevertheless, "the wise course for the community at large is to strive after all external, visible improvements, even if it be impossible to prove that internal, fundamental improvement accompanies them." To this they might well have added — what their volume clearly demonstrates — that the only "external, visible improvements" which experience has shown to be such in fact as well as in name are the products of moderate measures that have aimed at maintaining order and decency rather than at a transformation of human nature or at the realization of utopias.

FRANKLIN H. GIDDINGS.

La disoccupazione e l'assicurazione degli operai. Da C. F. FERRARIS. Roma, Nuova Antologia, 1897.

The question of the unemployed is one of permanent interest. While, on the one hand, the expedients for giving employment and for satisfying the most urgent needs of the situation are multiplying in all countries, on the other hand grave questions as to the causes and the remedies of enforced idleness are bringing about wide researches on the part of students. Among the most recent publications on the question is that of Professor Ferraris, of the University of Padua, who has profited by the ample literature that already exists on the subject, and who sums up with much clearness and vigor the principal causes of the lack of employment, examining the remedies that have been tried in the chief countries and treating in a fresh, broad way the newer arguments for the adoption of the system of insurance against unemployment.

Ferraris makes a minute analysis of the causes of unemployment, emphasizing especially those of a more strictly economic character and, above all, those connected with the influence of technical progress. Passing thence to the remedies, he, as a state socialist and a believer in social reform based on governmental action, declares that insurance against involuntary idleness is as much a social duty as are philanthropy, elementary education and insurance against sickness, accidents or old age. I shall not follow the author in his diligent and learned analyses and classifications of the various remedies that have been proposed, — relief work, labor colonies, labor bureaus, *etc.*, — but shall limit myself to the study that he makes of the proposition to insure laborers against involuntary idleness, for this presents the chief interest.

The first difficulty which this proposition meets is that of finding some law, some normal action, in a phenomenon so irregular in appearance as unemployment. Ferraris, as a first attempt to solve the difficulty, makes a laborious and acute analysis of the data relating to the unemployed that are contained in the German census of 1895 — an analysis that throws not a little light on the different degrees of intensity in unemployment, according to the forms of production, age, locality, season, *etc.* He helps us to see a certain regularity in the duration of unemployment, and thus lays a foundation for the technical arrangement of the insurance scheme.

After summing up the results of a few experiments thus far made, the author, in the last part of his work, devotes himself to the practical problem of organizing a system of insurance. He demands that this be undertaken by the public authorities, who alone — since the evil is so deep seated and extended — can really attack the problem successfully or can bring to the work means adequate for accomplishing the result in the public interest and with the greatest economy. The necessary funds are to come from three sources : (1) premiums paid by the insured, who must as far as possible share in the expense; (2) contributions of the employers, upon whom rests the obligation to look after the workman in all the contingencies of his occupation; and (3) grants from the state and other governmental bodies, so far as they may be indispensable to the carrying out of the scheme. As regards these technical arrangements the author goes into the most minute particulars.

While he believes in the efficiency of governmental action, especially in the various forms of labor insurance, Ferraris does not claim that this provision will constitute a radical remedy. But in

the face of the widespread uncertainties, doubts and illusions as to the complete reconstruction of industrial society, he declares that he is satisfied for the time being with the remedies which, though modest, may yet accomplish some good. This is not the place to discuss the question of the efficacy of state intervention. Those of us who take substantially the materialistic view of history have only very slight faith in it; but, at all events, we need not refuse to concede that in certain cases it may accomplish something. In view of the actual state of the question and of the experiments that have been made, it appears probable that in certain countries insurance against unemployment will soon come to augment our stock of social legislation. How far this system may go it is hazardous to predict, especially in view of the technical difficulties in the way; but as regards Italy, for whom, above all, Ferraris has written, it is easy to prophesy — remembering the long and painful travail of the yet unborn law for insurance against accidents, as well as the embryonic condition of that for the pension insurance — that there will be a long delay in securing this particular form of insurance.

UGO RABBENO.

UNIVERSITY OF MODENA.

Introduction to the Study of Economics. By CHARLES JESSE BULLOCK, PH.D., Instructor in Economics in Cornell University. New York, Silver, Burdett & Co., 1896. — 511 pp.

Outlines of Economic Theory. By HERBERT JOSEPH DAVENPORT. New York, The Macmillan Company, 1896. — 381 pp.

Outlines of Elementary Economics. By HERBERT JOSEPH DAVENPORT. New York, The Macmillan Company, 1897. — 280 pp.

The last quarter of a century has been extremely productive in economic thought and research. Jevons, Walras, Menger, Böhm-Bawerk, von Wieser and Clark have revolutionized method and terminology. The historical and statistical school has placed at our disposal an enormous mass of material for illustration, comment and reflection. Marshall, Wagner, Hadley and Pareto have each essayed the *magnum opus* of combining method and material in order to become the Adam Smith, or at least the John Stuart Mill, of the present generation. These are but a few names among those of many who have taken an active part in the movement; and the future historian of economic thought will have an extremely difficult task,

if he attempts to trace a logical order of development; while he will have a very ungrateful task, if he attempts to decide rival claims to priority and originality of thought.

Now commences — as always after a productive period — the flood of secondary works. We are inundated with "Manuals," "Text-books," "Introductions," "Outlines," "Elements" and "Principles" of political economy, not to speak of entire reconstructions of the old science and the formulation of brand-new principles of a simplicity and comprehensiveness never before heard of. The former activity is easily understood and justifiable. Each one who has drunk at the sources feels an uncontrollable desire to retail the life-giving liquid in a diluted form to the perishing nations. To abandon metaphor, there is a real necessity of popularizing the new terminology and method and making them intelligible to the many. This is scientific progress. The second tendency is due to shallow minds, to whom a new principle immediately suggests all sorts of vague analogies, which they hasten to sketch out under the belief that they are making new discoveries. The doctrine of evolution gave rise to the same noxious crop.

Under these circumstances, any author coming before the public with a new systematic political economy does so at considerable risk. Whatever its merits, it is apt to be received with a certain degree of impatience. Men are asking, not for more treatises on political economy, but for *the* treatise or *a* treatise which will accomplish a definite purpose. There is room, I apprehend, for a text-book for beginners; also for a work which will throw into clear form the latest results of economic thought and research; and there is, of course, always a place for original thought and new discoveries.

Dr. Bullock's work is admirably adapted to fulfill the first purpose. He presents in clear, simple form the modern theories of marginal utility and value. He preserves enough of the traditional divisions into consumption, production, exchange and distribution to serve as a framework for theories and facts. Such a formal division I believe to be not only useful and helpful in dealing with the complicated phenomena of economic life, but absolutely necessary for the beginner if he is to follow economic analysis easily. At the same time, by emphasizing the fundamental principles of value throughout his treatment of all these departments, the author makes clear the unity of the whole subject, so that the beginner will be in little danger of believing that production has no relation to consumption or that distribution takes place without exchange. Theory and

application also go hand in hand; and a judiciously chosen bibliography aids the student to further study.

Mr. Davenport's works seem to me rather less satisfactory. The larger one "was not originally projected as a text-book" (preface), although there is an elaborate apparatus of questions and quotations obviously intended for class-room work. In many cases the quotations do not support the text, and apparently are not intended so to do. Such constant presentation of conflicting views is sometimes thought to be the true pedagogical way of conveying truth; but for beginners this method is more often confusing than enlightening.

Nor can Mr. Davenport's work be regarded as a good digest of the newer economic views. There are many interesting discussions, but it is difficult to understand the arrangement of chapters. While discarding the traditional divisions of production, exchange, *etc.*, he retains the distinction between science and art without any very clear-cut line of separation between the two. This leads to considerable repetition of topics without essential difference of treatment—as in the two sections on population, pages 106 and 324. There are also apparent contradictions in his definitions which will be apt to trip up the reader. For instance, we find the following passage:

> Capital is wealth, other than nature and natural forces, used as an aid to human energy in the reproduction of wealth. It is to be noted that this definition conceives capital from the social instead of the individual point of view. So far as concerns questions of production and reproduction of wealth, nature and natural forces are to be regarded as forms of capital [p. 125].

The last sentence seems to contradict the first, and it requires considerable effort of thought to supply the hiatus.

The use of the term value, too, is not always clear. Thus, on page 39, it is said that "value measures sacrifice and not well-being"; while on the next page, speaking of a purchaser, he says: "He finds his personal schedule of values to differ from the market schedule greatly to his own advantage"; and on the next page we have the definition: "The value of a thing is its power in exchange by virtue of its utility of commanding sacrifice." Is there, then, one value or two values? And is the fundamental idea sacrifice, well-being or utility? It may be that a thorough and minute study of the work would show that Mr. Davenport is consistent in his use of terms all the way through; but has the author of "outlines" the right to demand such minute study as is given only to the masters? Should

not the "outlines" stand out of themselves with reasonable distinctness? And should they not be reasonably complete on all sides? One is struck by the contrast between the elaborate treatment of rent and the meagreness of the chapter on population; similarly, Böhm-Bawerk's theory of interest is given in full, while profit is briefly defined as a species of wages. Some parts of the book, too, are much more thoroughly worked out than others. As a matter of detail, I should like to know why a book published in 1896 gives the population of the United States in 1890 as "estimated" at 62,032,672. Is this irony?

At the same time, it is not to be denied that there is a good deal of vigorous thinking and vigorous writing in this book. In the hands of the author I can imagine it to be stimulating to students. It is encouraging as showing the fermentation that is going on in the minds of teachers of economics. The process (so far as I can judge) has not in this case indeed reached its completion, and the results do not always appear to be fully clarified.

The "Elementary Economics" is condensed from the larger work, with the same arrangement and order of ideas.

RICHMOND MAYO-SMITH.

RECORD OF POLITICAL EVENTS.

[From May 9 to November 10, 1897.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — The activity of the government in this field has been manifested most conspicuously in connection with Cuba, Hawaii and the Bering Sea seal fisheries. **The situation in Cuba** was made the subject of careful consideration by President McKinley's administration during May and June, as preliminary to the appointment of a minister to Spain. A special commissioner, Colonel W. J. Calhoun, was despatched to Cuba in May to investigate and report upon various subjects of controversy between the United States and Spain. Pending his report, the President, on the basis of consular reports as to suffering among American citizens in Cuba, recommended to Congress, in a message of May 17, that an appropriation be made for their relief. An act was passed three days later devoting $50,000 to this purpose, of which only a fifth had been expended by September. On May 20 the Senate passed, by 41 to 14, a resolution declaring that war existed between Spain and the Cubans, and recognizing the latter as belligerents. It was well known that President McKinley disliked the tendency of Congress to encroach upon what he, like his predecessor, regarded as a function of the executive, and the resolution, accordingly, was not considered by the House. At the beginning of June Colonel Calhoun returned from Cuba and made his report to the President, who based upon it demands for indemnity from Spain for the ill-treatment of certain American citizens. On the 16th the appointment was announced of Mr. Stewart L. Woodford, of New York, as minister to Spain. Mr. Woodford presented his credentials on September 13. His instructions, which were communicated to the Spanish government, were not made public, but were understood to embody serious representations as to the necessity of terminating the existing situation in Cuba. Newspaper reports that he had presented an ultimatum to Spain gave rise to manifestations of popular feeling against the United States in many parts of the country; but the truth of the reports was officially denied. The change of ministry and of policy in Spain (*infra*, p. 753) delayed the reply to Mr. Woodford's instructions, and it was not transmitted to Washington till October 27. No authentic information as to its purport was made public; but the sailing of a filibustering expedition from New York, just before, gave rise to reports that Spain laid much stress on the failure of the United States to fulfill her obligations as a neutral. — On June 16 the President formally resumed the policy of the last preceding Republican administra-

tion by sending to the Senate a treaty for **the annexation of Hawaii.** The negotiation of such a treaty had been expected, and commissioners for the purpose had been sent to the United States before the inauguration of Mr. McKinley; but the immediate impulse to the conclusion of the agreement seems to have been given by exigencies in the formulation of the sugar schedule of the new tariff (*infra*, p. 738). In connection with the annexation the treaty provided that a special system of laws dealing with public lands should be enacted by Congress for application to Hawaii; that, until otherwise provided by Congress, the administration of the islands should be carried on by the President of the United States, in such manner and by such persons as he should direct; that existing treaties between Hawaii and other nations should cease forthwith, but that municipal legislation and commercial relations between Hawaii and the United States should remain unchanged; that the public debt of Hawaii, up to $4,000,000, should be assumed by the United States; and that further immigration of Chinese into Hawaii, as well as into the United States from Hawaii, should be subject to the restrictions of the laws of the United States. The announcement of the treaty was followed by a protest from Japan, chiefly on the ground that rights of Japanese, both civil and political, would be summarily destroyed by the termination of Hawaiian treaty relations. China objected to the clauses touching Chinese immigration; and the deposed Queen Liliuokalani filed a protest against what she designated as the spoliation of the natives and the practical confiscation of crown lands. The treaty was not brought up for action in the Senate at Washington during the extra session, but in September the Hawaiian Senate ratified it unanimously. — In respect to **the seal fisheries** the efforts of the administration have resulted in the arrangement of two different conferences of interested powers on the method of preserving the herds. Great Britain, in April, declined to accede to the proposals of the United States for a suspension of sealing for one season and for a conference looking to the revision of the Paris tribunal's regulations for pelagic sealing. Under date of May 10, Secretary Sherman sent a dispatch in which the attitude of Great Britain in respect to the matter was very sharply censured, and she was rather bluntly charged with bad faith, in not performing her proper share in the work of patrolling the seas and enforcing the prescribed regulations. Mr. Sherman's note concluded with another request for a conference. Lord Salisbury's reply, dated July 28, agreed to a meeting of experts named by Great Britain, Canada and the United States, for the purpose of reaching precise conclusions as to the present size and condition of the Pribyloff herd. The American administration had been intent on a conference including representatives of Japan and Russia, and understood that Lord Salisbury had agreed to this. Accordingly, those two governments were invited to send delegates to Washington. But at the beginning of October Lord Salisbury declared that Great Britain adhered to her original idea, and would not attend if Japan and Russia were represented.

Accordingly, the plans were changed so as to provide for two separate conferences, — one of representatives of the United States, Japan and Russia, the other of representatives of the United States, Canada and Great Britain. The former conference resulted, after a short session, in a treaty between the powers concerned, which was signed November 6. The second conference met November 10. — **Negotiations on international bimetallism** were carried on throughout the summer at the chief European capitals by the commission named by the President (last RECORD, p. 358). The result of the negotiations with Great Britain and France were made public in October. France agreed to open her mints to the free coinage of silver at the ratio of 15½ : 1 on condition that Great Britain would coöperate in accordance with the proposals of the United States. These proposals included, with others, the opening of the Indian mints to free coinage, the substitution of silver for gold by the Bank of England to the extent of one-fifth of the note-redemption reserve, and the annual purchase by Great Britain of £10,000,000 in silver. In response to the British government's inquiry the Bank of England agreed to the suggested use of silver in its reserve, on condition that France open her mint to free coinage, and "that the prices at which silver is procurable and salable are satisfactory." The Indian government, to whom was referred the opening of the Indian mints, unanimously opposed such a step, and this view was approved September 16 by the British cabinet. With this action the negotiations, so far as made public, ended.

INTERNAL ADMINISTRATION. — Up to the final passage of the new tariff bill the condition of **the finances** manifested the same reassuring features that were chronicled in the last RECORD. Anticipatory importations swelled the revenue to such an extent that the net deficit at the end of the fiscal year, June 30, was only $18,623,108. With the passage of the Dingley Law the reaction at once appeared, and a huge excess of expenditure developed, which by November 1 had reached a total for the four months of over $27,000,000. — In respect to **the currency** the administration has been exceptionally fortunate. The gold reserve has remained throughout the period at about $150,000,000. Trade conditions have all been favorable to the maintenance and even to the increase of the treasury's store of gold. Widespread crop failures abroad have been accompanied by good crops at home; a very marked revival of business has developed since early summer; and the product of the new Klondike gold fields has found its way in considerable measure to the treasury vaults. In the autumn months the administration was in a position not only not to encourage, but even absolutely to reject, the offers of gold for deposit. Simultaneously with these conditions a great fall in the market price of silver contributed to weaken the position of the free-silver party. Despite this, however, the commission appointed by President McKinley gave evidence of activity in different European centres in the interest of international bimetallism. And while this official body was working abroad

for the rehabilitation of silver another commission, unofficial and non-political in character, but representative of a convention of financiers and business men held last January at Indianapolis, was considering projects for the reformation of our currency without reference to international action. This commission, headed by ex-Senator Edmunds, was appointed as the result of the failure of Congress to act upon the President's recommendation of an official commission (*infra*, p. 739), and was understood to have been constituted with some reference to the desire of the administration. It is expected to report during the winter. Meanwhile, on October 29, Secretary Gage submitted to the cabinet and made public an elaborate plan of currency reform, which proposed (1) the establishment of a separate department in the treasury, to be known as the Issue and Redemption Division; (2) the issue of refunding bonds, bearing 2½ per cent interest and payable in gold; and (3) the amendment of the National Bank Act so as to promote a great increase of note circulation. — President McKinley's attitude in reference to **civil-service reform** was made perfectly clear by an order of July 28, which, despite the confident anticipations of influential Republican adversaries of the reform, confirmed and promoted the policy of the preceding administration. With some slight modifications of the existing rules as to classification, the President ordered that no removal should be made from any position subject to competitive examination except for just cause and upon written charges, and after full opportunity for defense should have been given to the accused. Before this, the power and method of removal had not been affected to any great extent by the rules of the service, and the new rule was generally regarded as an effective supplement to those governing appointments. During September several cases of violation of this rule were brought before the courts on applications of the removed persons for judicial relief. In general, the courts followed the opinion rendered by Judge Cox at Washington September 14. In that case a postal officer applied for an injunction to restrain the postmaster-general from removing him except in accordance with the new rule. The court refused the writ, holding (1) that a court of equity had no jurisdiction in matters of removal from office; (2) that the rule in question was not authorized by the civil-service act of 1883; (3) that the rule was within the authority of the President to prescribe, and was enforcible by the President through his administrative control over his cabinet, but not through the courts. A diametrically opposite opinion was rendered November 9 by the federal district court in West Virginia, and the matter has been taken to the higher courts. — Under authority embodied in the Sundry Civil Appropriation Bill, the President appointed, at the beginning of July, a new Nicaragua Canal Commission, consisting of Admiral J. G. Walker and two engineers, from military and civil life respectively. The commission is to make a detailed study and report upon the practicability and cost of a canal. In May the Nicaraguan government retracted the statement involved in the note of Minister Rodriguez during the preceding

winter (see last RECORD, p. 359), to the effect that the charter of the existing canal corporation had been forfeited. Nicaragua now declared that the communication had been made to Secretary Olney under a misunderstanding. — A treaty concluded in September by the Dawes Commission with the Creek Nation, for the abandonment of their independent government and the allotment of their lands in severalty, was in the following month rejected by the legislature of the Indians. On the other hand, the agreement reached last April with the Choctaws and Chickasaws was ratified by both tribes at the beginning of November. — The foreclosure sale of the Union Pacific Railway (see last RECORD, p. 356) was effected November 1. Under pressure of a newspaper agitation against the terms first agreed upon and of steps by the government looking to postponement of the sale, the reorganization committee of the company consented in October to raise its bid so as to assure to the government $58,028,532.76, the full amount of its claim for principal and interest. The sale was carried out under this arrangement, and the financial connection of the government with the road terminated.

CONGRESS. — Substantially the only work of the session was the completion of **the new tariff law**, which at the beginning of the period under review had been adopted by the House and had just been reported to the Senate by the committee on finance. The bill was debated in the Senate from May 25 to July 7, when it passed, with amendments, by 38 to 28 — one Democrat and two silver Republicans voting with the majority, but most of the Populists and silverites refusing to vote. A conference committee then considered the measure till July 17. A report agreed to on that day was adopted by the House on the 19th, — 189 to 115, — and by the Senate on the 24th, — 40 to 30, — becoming law on the latter date by the President's signature. The general character of the bill as passed did not differ from that of the original draft, as described in the last RECORD. Modifications made by the Senate and in conference were confined for the most part to small adjustments of rates, significant only to the special industries concerned. Among the more important changes were the following: the transfer of hides from the free to the dutiable list; a heavy increase of rates on linens; a readjustment of the sugar schedule so as apparently to give refiners more protection than in the House bill, though much less than that proposed by the Senate; and the imposition of an equivalent countervailing duty on articles on which an export bounty or grant has been paid by the country of origin. Owing to doubts in the Senate as to the revenue-raising capacity of the House bill, various provisions looking to additional income were proposed at different stages of the discussion, among them a duty on tea, an increase of the tax on beer, and a stamp tax on transactions in stocks and bonds. None of these propositions, however, survived the conference committee. The retroactive provision which had been inserted in the House bill to prevent the loss of revenue through anticipatory importation was dropped, and the new duties went into effect

from the date of the approval of the law by the President. Shortly after the passage of the act an important question was raised as to the effect of a clause imposing a discriminating duty of tenper cent additional on goods imported "in vessels not of the United States," save where otherwise provided by treaty. This clause had been a feature of all our tariff laws since 1824, but had been modified, in the latest act, so as to apply the additional duty to goods "which, being the production or manufacture of any foreign country not contiguous to the United States, shall come into the United States from such contiguous country." It was soon disclosed that this amendment, which had attracted no attention during the discussion of the act in Congress, had been made at the instance of persons who had long been trying, but in vain, to curtail the privileges through which the Canadian Pacific Railway was enabled to compete with the trunk lines of the United States in transcontinental traffic. It was held that, under the new law, Asiatic goods landed in British Columbia for transportation by the Canadian Pacific in bonded cars to Eastern cities of the United States must pay the discriminating duty. The Treasury Department promptly applied to the attorney-general for an interpretation of the new clause, and on September 21 Attorney-General McKenna gave an opinion which held (1) that the new clause, like the old, regarded only transportation by sea, and (2) that in this second aspect no very important change had been effected in the law. — Of **other legislation** by Congress there was very little. Upon the passage of the tariff bill, the President, on the same day, sent to Congress a message urgently recommending the immediate creation of a non-partisan commission to report upon such changes in the currency system as might be necessary and expedient. The House at once passed a resolution embodying the desired provisions; in the Senate there was no hope of action, and the matter was referred to the regular committee. During the consideration of the tariff by the Senate the House continued its suspended animation by adjournment at three-day intervals, despite the discontent of both Democrats and Republicans who wished for action on various measures. The embargo was raised only for the passage of the delayed appropriation bills and one or two other routine measures. In the Sundry Civil Appropriation Bill an animated controversy over President Cleveland's orders establishing forest reservations (last RECORD, p. 356) was settled by a provision suspending the orders till March 1, 1898, and authorizing President McKinley to revoke or modify them at his discretion. Upon the final passage of the tariff bill, Speaker Reed made the announcement of House committees, which, with the exception of ways and means, accounts and mileage, had been held in abeyance. The chairmen of the most important were as follows: foreign affairs, Hitt, of Illinois; appropriations, Cannon, of Illinois; judiciary, Henderson, of Iowa; banking and currency, Walker, of Massachusetts; coinage, Stone, of Pennsylvania; commerce, Hepburn, of Iowa. The session ended on July 24, the day the tariff bill was passed.

THE FEDERAL JUDICIARY. — In the case of The Interstate Commerce Commission *vs.* Railway Companies, the supreme court held, May 24, that Congress did not bestow upon the commission the "power of prescribing rates, either minimum or maximum or absolute," and therefore did not intend to empower the commission to determine in reference to the past what rate was reasonable and just, and then call upon the courts to enforce such rate in the future by peremptory order. In another case involving the Interstate Commerce Commission the court decided, November 8, that under the long-and-short-haul clause the railroads could in first instance, without appealing to the commission, make allowance in their rate schedules for differences of circumstances between two routes due to the competition of other railways and of water routes. In National Bank *vs.* Nebeker the court held that the clause of the National Banking Act taxing the circulation of such banks was not a bill for raising revenue in the sense that it must, in order to be constitutional, originate in the House of Representatives. During May and June the leading officials of the "Sugar Trust" were brought to trial at Washington on criminal charges of refusing to answer certain questions propounded by a Senate committee of investigation. The principal issue turned on the refusal to state what sums had been contributed by the corporation to party campaign committees at the times of elections. In each case the defendant was acquitted, chiefly as a result of the contention that the specific question at issue was not such as to fall within the scope of a Senate committee's inquiries. — In October President McKinley accepted the resignation of Associate-Justice Field, of the Supreme Court of the United States, to take effect December 1. Justice Field's term of service, thirty-four years and seven months, is the longest in the history of the court.

STATE ELECTIONS. — On November 2 elections occurred in fourteen states for various legislative, executive and judicial officers. Interest in the results centred chiefly on the evidence that might be presented as to the trend of party feeling on national issues. From this point of view the most important features of the returns were as follows: The Democrats made conspicuous gains in New York, Kentucky, New Jersey and Ohio, carrying the first two states by substantial majorities, but failing to overcome entirely the adverse majority in the latter two. The Republicans held their own in Pennsylvania, Massachusetts, Iowa and Maryland, securing in the last named a legislature that insured the election of a Republican United States senator to succeed Mr. Gorman. In Virginia, Colorado and Nebraska the voting gave results showing no material deviation from those of last year.

VARIOUS STATE LEGISLATION. — Constitutional changes have been acted upon as follows: New Jersey, September 28, ratified by popular vote, though by a very narrow majority, an amendment prohibiting lotteries, pool-selling, book-making or gambling of any kind; at the same time, an amendment opening the suffrage to women at school elections was defeated.

Tennessee voted down, August 5, a proposition for a convention to revise the constitution. Connecticut ratified, October 4, an amendment specifying that the ability to read the constitution or laws, which had long been a qualification for voting, should mean ability "to read in the English language." Maryland rejected, November 2, an amendment requiring competitive examinations for appointments in the civil service.—The perennial antithesis of **state legislature and national judiciary** has been expressed in the following instances: a Pennsylvania law imposing a tax of three cents a day on every alien employed as a laborer in the state was held unconstitutional, August 26, as denying the equal protection of the laws which is required by the Fourteenth Amendment. In South Carolina, early in June, the state dispensary authorities were enjoined by the circuit court from interfering with the sale of liquor in the unbroken "original packages" in which it came from other states. A large original-package liquor business was in consequence developed in opposition to the state dispensaries; but it appeared in September that the state authorities were making some headway against this by various forms of pressure through which the railroads were induced not to carry liquor for the original-package concerns. In Tennessee the law prohibiting the sale of cigarettes was declared unconstitutional, October 2, as in conflict with the power of Congress over interstate commerce. In Kansas a controversy developed in August between the state government and the national courts over the refusal of the former to permit a New York insurance company to do business in the state. The national court enjoined the state officials from interfering with the company; the officials brought the company on *quo warranto* proceedings before the state courts; and the matter now awaits decisive action by some higher authority. In Nebraska the national court, October 5, enjoined the state officers from enforcing a law regulating the business and rates of stock yards, on the ground that it took property without compensation.—Projects for the taxation of inheritances have failed in New York and Pennsylvania. In the former state the bill described in the last RECORD (p. 365), after passing both houses of the legislature, was on May 21 vetoed by the governor. In Pennsylvania a state court decided, June 4, that the recently imposed inheritance tax on personal property was in conflict with the state constitution.

LABOR CONFLICTS. — A widespread **strike of bituminous-coal miners** was inaugurated July 5 by order of the United Mine Workers of America. The object of the strike was an increase of wages; and the region affected included western Pennsylvania, Ohio, Indiana, Illinois and to some extent West Virginia and Kentucky. A great diversity and complication of interests were involved in the strike, both workmen and employers being divided into jealous factions. The strike was practically terminated by an agreement reached early in September, which involved a concession of an increase of wages equal to seventy-five per cent of that demanded by the miners. After this settlement, however, the conflict was continued in vari-

ous regions, especially in Indiana and Illinois, where the terms of the agreement were not satisfactory. The progress of the strike during the summer brought anew into prominence the application of the much-denounced "government by injunction." As a means of preventing the working of mines by non-union men, in various places, notably western Pennsylvania and West Virginia, permanent camps of strikers were established on leased private property, and the roads by which the non-union men went to and from their work were regularly beset by bodies of strikers, seeking by persuasion and entreaty to induce the workers to join them. Organized masses of strikers also marched from place to place with the same purpose. Stringent orders were issued by the leaders of the strike to avoid everything in the nature of violence or breach of the peace, and these orders were very generally obeyed. Despite this policy, however, occasion was found for resort to injunctions. Under the influence of professional agitators, — Messrs. Sovereign, Debs and others, — who repaired to the region, the activity of the strikers assumed a threatening aspect, and the protection of the courts was invoked by the mining companies. Both state and federal judges granted injunctions. Though the terms of these orders did not warrant the picturesque assertion of Mr. Debs that he had been "enjoined off the earth," they could be and were so construed as to apply to many of the proceedings incidental to the methods of the strikers. The latter were excluded absolutely from the property of the mine-owners, were prohibited from "interfering with the employees of [the owners] in passing to and from their work, either by threats, menaces or intimidation," and from "unlawfully inciting persons who are engaged in working the mines to cease from working in the mines, or in any wise advising such acts as may result in violations and destruction of the rights of the plaintiff in this property." A Pennsylvania court's order specifically enjoined the strikers from "assembling, marching or encamping in proximity to said mines . . . for the purpose, by intimidation, menaces, threats and opprobrious words, of preventing" the working miners from continuing at work; and by virtue of this order the sheriff of the county concerned put an end to the marches of the strikers and prevented some of their meetings. A little later, August 15, the United States court in West Virginia issued a series of orders of similar content, which were followed by similar results. The strikers complained that their constitutional right to assemble and walk upon the public highways was infringed by these orders, but the higher courts, both state and national, sustained the lower in the view that systematic and exclusive occupation of the highways for the purpose of interfering with adjacent property owners was an abuse of the right. — On September 10 a fatal collision occurred at Hazleton, Penn., between a body of striking miners — not connected with the great strike described above — and the sheriff of the county and his deputies. The strikers, mostly Hungarians, had been marching about the region in a disorderly manner, intimidating other miners, when the sheriff and his force met them and sought to stop their further progress.

An attempt to arrest one of the marchers brought on a struggle, upon which the deputies opened fire with rifles and killed some twenty or more of the strikers. The remainder dispersed, and order was maintained afterward by a large force of militia which was hastily sent to the place.

MUNICIPAL AFFAIRS. — The leading event in this field was the first election for officers of the "Greater New York," whose charter goes into effect with 1898. The campaign acquired a special character by the activity of an organization known as the Citizens' Union, which framed a platform looking to the separation of municipal from national and state politics, and to the exclusion of both Republican and Democratic "machines" from control of the city. The Union nominated Seth Low for mayor and gained the support of large numbers from both Republican and Democratic camps. Both regular party organizations entered the contest. The Republicans, led by Senator Platt, nominating General Tracy, and Tammany Hall, led by Mr. Croker, nominating Judge Van Wyck. A fourth leading candidate, in the person of Henry George, was named by a body of enthusiastic devotees of Mr. George's social and economic theories, and was supported by many anti-Tammany Democrats. The sudden death of Mr. George from apoplexy, October 22, in the midst of an energetic campaign, was a dramatic feature of the contest. The election took place November 2, and resulted in the triumph of Van Wyck by about 80,000 over Low, Tracy falling behind Low by about 50,000. In lesser cities recent elections showed more favorable results for independent candidates. Indianapolis, Atlanta and Rochester chose mayors without reference to the national parties. — In November Philadelphia formally abandoned its municipal gas works by leasing them for a long term to a private corporation.

LYNCH LAW. — The list of lynchings reported in the newspapers during the period under review is by far the longest for any equal period in many years. The total number that has come to the notice of the compiler is forty-three. Of these thirty-five were in the late slave states and eight in the rest of the Union. The victims included, in the slave states, twenty-nine negroes and six white men; in the other states, one black and seven whites. The offense charged was actual or attempted rape in twenty-four cases, — twenty blacks and four whites, — and other crimes in nineteen cases, — ten blacks and nine whites. Many features of the summer's record were very discouraging to the authorities and to that element of the people who are striving to abate the evil. Thus, at Princess Anne, in Maryland, a negro who had just been convicted of assault upon a white woman and sentenced to death was taken from the sheriff at the court house and hanged forthwith. At Williamsburg, Kentucky, a white man, under sentence of twenty years' imprisonment, was likewise taken from jail and hanged. The usual excuse, the law's delay, was wholly lacking in these cases. Farther south, in Georgia and Alabama, several newspapers have assumed an attitude of open approval and encouragement of lynching in cases of rape. A prominent woman speaker in Georgia made a public address to the same effect at

a fair at Savannah, August 11. In the Northern states two incidents excited especial attention. At Urbana, Ohio, June 3, a negro, after assaulting a white woman, was convicted and sentenced to twenty years' imprisonment the day following his arrest. On the next night a mob attacked the jail, but was fired on with fatal effect by a militia company which was on guard. Later the attack was renewed and the negro was taken and lynched. None of the lynchers was brought to justice, but the sheriff and many of the soldiers were obliged to leave the town on account of the indignation manifested by friends of those who were killed in the attack on the jail. At Versailles, Indiana, on September 15, a mob took from the jail and hung five men who were implicated in a series of robberies that had been perpetrated in the vicinity. Here, again, though the executive authorities displayed much activity, no punishment of the lynchers has been announced.

II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The dominant topic in this field has been the adjustment incidental to **the war between Greece and Turkey.** The net result of negotiations covering the whole period under review has been the conclusion of a preliminary treaty of peace between the hostile powers. On May 11 Greece accepted the conditions on which the great powers had agreed to intervene for the termination of the war. The conditions were that Greece should consent to the autonomy of Crete, recall her troops from that island and follow implicitly the advice of the powers in the establishment of peace. The Porte at first refused the request of the powers for an armistice; and on May 17 the Turkish Army attacked and carried the position of the Greeks at Dhomoko, driving the defeated forces entirely out of Thessaly. On the following day, under strong pressure from the powers and on the request of the Czar in a personal message, the Sultan ordered a suspension of hostilities. Then began the long diplomatic conflict over the terms of peace. The Porte demanded the annexation of Thessaly, a war indemnity of £10,000,000 and the abolition of certain privileges enjoyed by Greek subjects in Turkey. All that the powers would agree to was a slight rectification of the Thessalian frontier in favor of Turkey and an indemnity of £4,000,000. By the familiar method of playing upon the mutual jealousies of the powers, the Porte postponed until the middle of July acceptance of their terms, and yielded then only after somewhat peremptory warnings of serious consequences that might follow a longer delay. Questions of detail as to the time and manner of evacuating Thessaly and as to the security for payment of the indemnity prolonged negotiations for two months longer. It was finally arranged that the administration of the Greek revenues assigned to the service of both the old national debt and a new indemnity loan should be entrusted to a committee of representatives of the great powers, and that the Turkish troops

should be withdrawn from Thessaly when the working of this arrangement should have been assured. On September 18 the preliminary treaty was signed by the Sultan. According to its provisions, Greek and Turkish plenipotentiaries shortly after began negotiations for the definitive treaty of peace. — **The Cretan question** has been left almost entirely in abeyance, on account of the attention demanded by the other phases of the general Eastern situation. In May the Greek force, whose occupation of the island had precipitated the crisis (see last RECORD), was withdrawn. Thereafter the blockade which the powers maintained was greatly relaxed. No steps were taken, however, toward the definitive establishment of the autonomous *régime* proposed by the powers, and as between Mohammedans and Christians the hostile *status quo* has remained practically unchanged. The Christians, with an organized assembly, control the interior of the island and agree to accept the proposed autonomy, but not until the Turkish garrisons are withdrawn from the coast towns. The Sultan declines to withdraw the garrisons, on the ground that they are necessary to protect the Mohammedans against the Christian insurgents. The naval forces of the great powers, occupying the chief towns, are kept busy restraining both parties from flying at each other. Early in October the Sultan solemnly urged upon the powers the necessity of settling matters, but revealed that his method of settling was wholly inconsistent with that already agreed upon by the powers. It was announced early in November that the powers had chosen a Colonel Schaeffer, of Luxemburg, as the Christian governor of autonomous Crete. — Of the customary summer visits by the heads of European states, those paid to the Russian Czar by the German Emperor and the President of the French Republic, respectively, attracted the greatest attention. The journey of President Faure to St. Petersburg in August had been arranged long before. That the German Emperor visited the Czar a few weeks in advance of the French President was the cause of much comment and of very ingenious calculations as to the relative enthusiasm which the two excited among the Russian courtiers and populace. President Faure's visit proved, however, the more sensational from the fact that it was made the occasion of an announcement of a **formal alliance between France and Russia.** On August 26, at a farewell luncheon on the French man-of-war which was to bear the President home, the Czar, in proposing a toast, used the words: "Our two nations, friends and allies"; and, to leave no doubt on the subject, the Russian sailors united with their cheers for France the new cry: "Vive l'alliance." Though the existence of an alliance was thus put beyond doubt, no information was made public as to its terms.

GREAT BRITAIN AND IRELAND. — The most striking and not the least important political incidents of the period centred about the celebration of the Queen's Diamond Jubilee. June 22 was the sixtieth anniversary of the monarch's coronation, and already before that date her reign had exceeded in length that of any of her predecessors on the throne. This

double occasion was the basis of extended and elaborate demonstrations of loyalty and affection from her subjects all over the world. From a political point of view the salient feature of the festivities at London was the emphasis put upon the imperial idea and the attention paid to the representatives of the colonies and dependencies. In response to special invitations, the prime ministers of all the self-governing colonies came to take part in the celebration; and under the auspices of the colonial secretary, Mr. Chamberlain, there was held a series of **conferences of the colonial premiers** on matters of general interest. These conferences resulted in expressions of opinion by the premiers as follows: that any treaties which hamper the commercial relations between Great Britain and her colonies should be canceled, and that steps should be taken toward preference by the colonies to the products of the United Kingdom; that existing political relations between the colonies and the mother country were generally satisfactory; that federation of geographically united colonies is desirable, and that periodical conferences like the present for the whole empire ought to be held; that the existing naval arrangements for the protection of Australasia were satisfactory; that steps toward uniformity in organization and equipment of the military forces of colonies and mother country were desirable; and that the British restrictions upon the investment of trust funds in colonial stocks ought to be removed. Various other topics were also discussed, but in most cases any conclusion was rendered unimportant by the uncertain conditions of parliamentary majorities in the colonies. One prompt result of the conferences was the denunciation by the British government, July 30, of the commercial treaties with Germany and Belgium. These treaties secured to those nations — and hence to all others having most-favored-nation rights — the same tariff rates in British colonies that were given to Great Britain. Only by getting rid of the treaties, therefore, could Great Britain profit by the preferential duties hoped for from the colonies and already granted by Canada. Another incident in the *rapprochement* of colonies and mother country was the unconditional contribution by the Cape Colony of the cost of a first-class battleship to the imperial treasury. — **Parliament** remained in session till August 6. The government met with no important obstacles in carrying out its program of legislation. Its most important measures were that giving additional aid to board schools, passed by the Commons May 20, and the Compensation for Accidents Bill, passed by the Commons July 15. The latter act gives greatly increased facilities to workingmen for enforcing against employers claims for compensation in case of accidents occurring in the line of duty, but does not prohibit employees from contracting out of its provisions. Incidentally to the discussion of Irish business, Mr. Balfour announced, May 21, that the government would introduce at the next session a project for the radical modification of local government in Ireland, with a view to the extension of popular control. — The representatives of **Ireland** in the two Nationalist factions signalized their irreconcilable atti-

tude by refusing to vote for the congratulatory address from the Commons to the Queen on the occasion of her jubilee. A very bad condition of the crops in western Ireland, and especially of potatoes, was made the basis of a petition by the members of the Irish parties for an immediate assembling of Parliament to take steps for relief against impending famine. The petition was denied. — The Parliamentary committee on **investigation of the Jameson raid** reported July 13. The report condemned the raid in severe terms, visited unqualified censure upon Mr. Cecil Rhodes for his connection with the affair, found two other directors of the South Africa Company guilty of complicity, but absolved the rest, and exonerated the officials of the colonial office from all knowledge or responsibility in connection with the raid. No steps were taken to punish anybody whom the committee held responsible. — A conflict between employers and employees in the engineering business, which began in July, had not terminated at the close of this RECORD. The chief point at issue was the eight-hour question, the employers, who to some extent had conceded the demand for the eight-hour day, having resolved that they could not adhere to this system. Strikes and lockouts resulted throughout the United Kingdom. Each side is thoroughly organized, and the duration of the struggle has been prolonged by the apparent determination of the employers to break once for all the power of the trade union. Incidentally to this conflict considerable progress has been made in the development of "The Free Labor Protective Association" — an organization of employers, including all kinds of business, for the purpose of effectively opposing the trade unions, especially in the use of such methods as "picketing."

THE BRITISH COLONIES AND INDIA. — The Canadian Parliament remained in session till June 29. Its legislative work included the enactment of the new tariff, described in the last RECORD; an act giving to the Northwest Territories a government by legislature and responsible ministry; and an act to prevent the entrance of workmen from the United States under contract to labor in Canada. This last act was avowedly designed to retaliate upon the United States for the alleged harsh and unfair administration of its alien-contract-labor law at Detroit and Buffalo. The application of the Canadian law was left discretionary with the government, to see if more satisfactory procedure should follow its enactment; in July it was put in force. A number of other measures were brought forward aiming to curtail the privileges and enhance the burdens of United States citizens having interests in Canada, the cause of all being the provisions of the Dingley tariff that bore with great severity on Canadian commerce. The retaliatory bills were not favored by the ministry, but they had large support among the members. An abrupt and unexpected prorogation prevented some of the worst of them from becoming law. Owing to the treaties with Germany and Belgium which were denounced in July (*supra*, p. 746), the Canadian government was obliged to extend the preferential rates of its tariff to some fifteen countries besides Great Britain and her colonies. When, at the

end of a year, these treaties expire, the preference will be limited to British goods alone. — The convention at Adelaide completed on April 23 the draft of a scheme for **Australian federation.** The most animated contests in the convention turned on the organization and powers of the upper house — the "States Council" — of the proposed federal government. On these questions the division in the convention was on the line of small colonies against large. The draft as completed provided for the equal representation of the states in the council, but prescribed that money bills should originate in the lower house — where representation was according to population — and should be subject to rejection but not to amendment by the upper house. The convention's draft was submitted to the various legislatures during the summer sessions and was by them subjected to many amendments. In September the convention assembled again at Sydney. Before its work was completed, however, it adjourned till January, in order that Queensland, which had hitherto been prevented by internal dissensions from sending delegates, might participate in the final discussions. The ultimate result of the convention's work is to be submitted to popular vote in the various states. — The vigor of the British administration has been tested by a series of **disturbances in India**, some of which are supposed to have been inspired by the reports of the Turkish Sultan's victory over the Christian Greeks. A restiveness among the Mohammedan population of the country, and an aggressive tone in their press, created some apprehension among the European residents. On June 30 Chitpur, a suburb of Calcutta, was the scene of rioting which lasted several days, and which originated in Mohammedan claims that a mosque had been violated. It was on the northwestern frontiers of India, however, that the most serious trouble arose. In June a series of uprisings began among the tribes of Mohammedans in the mountains between the British and the Afghan territory. The movement began with the preaching of a religious fanatic proclaiming a holy war. During the summer the insurrection spread until most of the passes, including the important Khyber, were in the hands of the tribesmen and Peshawur was threatened. Brisk fighting was required on the part of the British troops to make headway against the insurgents, and heavy losses were incurred; but by the end of this RECORD the lost positions had been recovered and the tribes adequately punished, except in the neighborhood of the Khyber pass, where heavy fighting was in progress with the Afridis. The Ameer of Afghanistan, who was at first suspected of encouraging the insurgents, published at the end of September a vigorous denunciation of their acts and aims. The Hindoo as well as the Mohammedan subjects of the Queen contributed to the disturbances of the period. The particular occasion for their share was the proceedings of the administration in trying to stamp out the plague in Bombay and Poona. The measures employed for discovering and cleansing infected regions called forth bitter complaints from the lower classes of natives, and these were made the basis of attacks on the government by the Hindoo press. In connection with these attacks was expressed the wide-

spread hostility to British rule which pervades the educated classes of the Hindoos, especially those who have imbibed the radical spirit in politics. At the end of June two English officials were assassinated at Poona, and secretly circulated pamphlets of a highly seditious character were discovered. A month later the police arrested several wealthy and influential Hindoos on charges of inciting disaffection. Among the prisoners was Gangadhar Tilak, a member of the Bombay legislative council, who had shortly before published in a Poona paper an article which was alleged to embody incitements to sedition and assassination. The accused was later convicted. Other newspaper writers were expelled from the country. The government's strong measures seemed to be having a satisfactory effect, though the excitement rose very high. The plague has not entirely disappeared, but has become less manifest. As to the famine, the weather has indicated that it will be at an end when the season's crops are harvested. The number of persons on relief rose during the summer to above four million; and the Mansion-House fund amounted, when it was discontinued in September, to £550,000. The total cost of the famine was estimated by the secretary of state for India at about £10,000,000, of which the part borne by the Indian government brought its finances into a desperate condition.

FRANCE. — The internal politics of France has presented no features of striking significance. **The Chambers** were in session from May 18 to July 20, and assembled again for their autumn session on October 19. The most important legislation accomplished included a slight readjustment of the direct tax on land, the renewal for twenty-three years of the note-issuing franchise of the Bank of France, and a law authorizing the President to put in force by decree the duties embodied in a new tariff bill at the time the bill is introduced. An attempt of the opposition to commit the Chamber to the policy of an income tax was defeated by a small majority. The budget, presented on May 18, embodied no innovations. — **The Panama scandal** was temporarily revived by the appointment of a new committee of investigation by the Chamber of Deputies at the end of June. The committee expected to receive a full confession which was promised by Cornelius Herz, who had been intimately involved in the affair, and who was an invalid in England. The committee prepared to visit Herz in a body, but at the last moment he imposed such conditions on their coming that they abandoned their purpose and expressed their conviction that they had been trifled with. — **President Faure** has been twice the object of supposed Anarchistic attempts at assassination. On June 13, as he was driving to the races, a bomb was exploded close to his carriage; and on August 31, in the midst of his enthusiastic reception at Paris upon his return from Russia, a bomb was exploded on the route of the procession. In neither case was injury done to either the President or anybody else.

GERMANY. — The session of the **Reichstag**, which terminated June 25, produced but small legislative results. Practically the only two impor-

tant measures that were passed were dictated largely by the Agrarian Party. An Oleomargarine Bill, adopted in May, put severe restrictions upon the manufacture and sale of various substitutes for dairy products; and the Emigration Bill (see last RECORD), which was passed at the same time, was designed in part to keep down the cost of farm labor by decreasing emigration. A further purpose of this latter act was that of diverting the course of emigrants from North America to the South American countries, where German feelings and characteristics were less quickly and completely lost by absorption in the native populations. — In the middle of May the government formally declared that the methods of procedure adopted by brokers to evade the provisions of the new Bourse Law (see last RECORD) would not be recognized as effecting their purpose. Accordingly, the informal assemblies that took the place of the disbanded produce exchanges were subjected to government regulation, as required by the law. — A considerable **remodeling of the imperial cabinet** was effected during the summer, though personal rather than political motives seemed to have played the chief part in it. As minister of the interior, Doctor von Bötticher was succeeded by Count von Posadowsky-Wehner, who became also the general deputy of the chancellor; the vice-presidency of the Prussian ministry, which was also resigned by von Bötticher, was bestowed on Doctor von Miquel, the Prussian minister of finance. As minister of foreign affairs, Baron Marschall von Bieberstein was succeeded by Herr von Bülow. Admiral Tirpitz succeeded Hollmann as minister of marine; and changes were made at the head of the treasury and of the Post-Office. — A very hot conflict arose in the summer in the Prussian Landtag over a proposed modification of the **law of associations**. In accordance with a promise of the prime minister that the law should be changed, a bill was introduced by the government in May. The change expected was a repeal of the prohibition against the union of associations. Together with this, however, the government's draft embodied a number of new provisions, strengthening the control of the police over associations and meetings of a political character. The Radicals and Liberals, aided by the Clericals, stoutly opposed the measure and in the lower house of the Landtag stripped it of all the new reactionary features. The upper house restored them, and even accentuated the specific purpose of the bill by giving to the police in terms the power to "dissolve meetings in which Anarchist or Social-Democratic movements are manifest, aiming to overthrow the existing order of state or of society." In this form the bill was passed by 112 to 19. On the next day, July 23, the lower house rejected it by 205 to 209, and the session was then closed. The discussion of the bill excited much attention, and the Reichstag, before its adjournment, passed by 207 to 53 a bill for the empire embodying the provisions that were favored by the Liberals. This action had, however, no chance of approval by the Bundesrath, and availed merely as a vote of censure on the action of the Prussian ministry. Another result of the agitation was the formal resolution of the Social Democrats, in their party convention,

hereafter to contest seats for the Prussian Landtag, where they have never yet had a representative.

AUSTRIA-HUNGARY. — The Austrian half of the dual monarchy has been throughout the period under review agitated by the **conflict between Germans and Czechs**, of which the first scenes were noticed in the last RECORD. The prime cause in this present renewal of an ancient feud was the disruption of the German Liberal Party by the anti-Semitic and Clerical movements, and the necessity thus put upon the government of getting the support of the Young Czechs to complete its majority in the Reichsrath. A "language-ordinance" was issued in April, putting the Czechish on a par with the German as the official language of Bohemia and Moravia. This concession was followed by violent demonstrations of hostility to the government by most of the German factions in the Reichsrath. By a course of systematic obstruction the opposition prevented the transaction of any business during May, and on June 2 the fruitless session was ended by imperial order. From the parliament the manifestations of race prejudice were then transferred to local assemblies, both official and popular. Many large meetings of Germans were held in Bohemia to protest against the government's policy; and these gave rise to interference by the police and to street conflicts with the Czechish populace. At the same time the local authorities in the German districts refused to carry out the language-ordinance, and contrived various methods of obstructing the administration. The whole summer was filled with incidents of the agitation. In August Prime Minister Badeni sought to bring about a compromise between the excited nationalities, on the general lines of that adopted in 1890 but never enforced. The German leaders, however, refused to negotiate till the offensive language-ordinance should be revoked. Meanwhile the conflict in Bohemia and the concessions to the Czechs had aroused the other nationalities of the empire, and the old demands of the Croats, Slovenes, Ruthenians and radical Poles were renewed in various forms. A special stimulus to these was given by certain tentative propositions by Count Badeni looking to federalism in the empire. Upon the reassembling of the Reichsrath, September 23, the sessions were attended by even more violent scenes than those in the spring. Certain leaders of the German popular party devoted themselves to virulent and disorderly attacks on the other nationalities and on the government. Premier Badeni took personal offense at one of the Germans named Wolff, and a duel was fought, in which the prime minister received a slight wound. The duel seemed to act as a general safety valve for excited emotions, and for a time a relative calm came over the parliament's proceedings, though the policy of obstruction was none the less resolutely adhered to by the Germans. A proposition of Count Badeni to introduce some form of closure failed to find favor with the government parties, especially the Czechs, who had themselves often found obstruction useful. In the middle of October the opposition brought forward again a series of propositions to impeach the prime minister and several of his col-

leagues. On the 26th the president of the Reichsrath, Doctor Kathrein, resigned, worn out with futile efforts to maintain order in the house. Up to the close of the RECORD no legislative business had been accomplished. — In **Hungary**, also, parliamentary obstruction played a large part in politics during the summer. For two months a government bill extending jury trial to all kinds of crimes was held in suspense by the minority because it excepted certain minor press offenses from its provisions. The deadlock was terminated about the first of August by mutual concessions, and the ministry's program was completed. The efficient impulse to a settlement seems to have been the general desire to strengthen the ministry's hands in the negotiations with Austria for the renewal of the Compromise of 1867. By the attitude of the opposition in the Reichsrath and the uncertainty of Count Badeni's position, the progress toward an agreement had been stopped, but the Hungarians were keenly alive to their interests and were eager to hold their own when the time came. At the resumption of its activity in October the lower house of the Diet passed a bill prolonging for a year the old Compromise. In the preliminary negotiations between the two governments as to the quotas of contribution to the imperial expenses, — the crucial point in the Compromise, — the nearest approach to an agreement was reported to have been an offer by Hungary of 34.6 per cent and a demand by Austria that it should be 36 per cent.

RUSSIA. — The most important governmental acts that have come to public notice have been: (1) the institution of extensive reforms in the administration of justice throughout Siberia, designed apparently both to meet new needs that are expected to arise upon the completion of the great railway and to strengthen the central control over local affairs; and (2) the adoption of a law, August 8, extending the government monopoly of alcohol to all parts of Russia in which it was not already in force. — There were some indications in the press during the summer of better relations between the imperial government and the Poles. The Czar paid a visit to Warsaw early in September, and it was reported afterward that a plot to assassinate him while he was in the city had been discovered and thwarted.

ITALY. — Political life has been devoid of striking incidents. In the session of parliament, which lasted till July 15, the di Rudini ministry had plain sailing. The adoption of the budget and an army-reorganization bill constituted the chief work. The ministry announced as to Africa an explicit purpose to relinquish all the Red Sea territory except Massowah and a very small region around it, and to retain that much only because of the complications that might arise among other European powers if it were abandoned. The probability of any modification of this policy seems remote, owing to the fact that Crispi, its chief antagonist, has been seriously compromised by the results of judicial investigation of the bank scandals.

SPAIN AND CUBA. — The apparently favorable position attained by the government in its colonial affairs at the opening of this RECORD was soon followed by an unfavorable development in **internal politics**. On May

24 the Sagasta Liberals and the Conservative adversaries of Prime Minister Canovas formally withdrew from the Cortes, signifying thus the termination of the agreement under which they had patriotically abstained from opposing the government during the difficulties in Cuba and the Philippines. The immediate occasion for the withdrawal was found in a personal altercation, attended by blows, between the Duke of Tetuan, minister of foreign affairs, and a prominent Liberal senator. On June 2 the Cortes was prorogued and the Canovas ministry at once tendered its resignation. After a few days of negotiations, however, the Queen Regent refused to accept it, and the ministers resumed their functions. The Liberals, led by Sagasta, demanded a change of policy in reference to Cuba, involving the recall of General Weyler and the concession of a more extensive autonomy than that hitherto offered. Canovas, on the other hand, maintained his confidence in the personality of Weyler and in the concessions already made. On August 8 the prime minister was assassinated by an anarchist named Golli at Guesalibar, a health resort in the north of Spain. No change of cabinet followed, the minister of war, General Azcarraga, assuming at first provisionally and then definitively the position of premier. The hope of continuing in power depended on the possibility of winning dissident Conservatives to the support of the ministry's Cuban policy. This hope failed, and on September 29 the Azcarraga cabinet resigned. Sagasta was then called upon, and on October 4 he announced a cabinet composed chiefly of his Liberal followers, with Moret as minister for the colonies and Gullon at the head of foreign affairs. — The murderer of Canovas was executed August 20. At Barcelona the Anarchists manifested their continued existence by an unsuccessful attempt to murder two police officials of the city September 4. — **The situation in Cuba** did not retain during the summer the favorable aspect in which the Spaniards rejoiced at the end of the last RECORD. The withdrawal of Liberal support in Spain made Premier Canovas especially anxious to show results that would vindicate his Cuban policy; and, apparently under the stimulus of urgings from Madrid, General Weyler, in the latter part of June, entered upon a campaign in large force against the insurgents in the eastern end of the island. The most conspicuous result of the movement was a sudden and effective revival of insurgent activity in the central and western provinces, from which Spanish troops had been drawn for the movement in the East. The guerilla tactics of the Cubans kept all the towns, even Havana itself, in a state of apprehension. During July the Spanish authorities sought to treat with the insurgent leaders through an offer of amnesty and home rule. The advances, however, were rejected. Early in September the insurgents in Santiago de Cuba gained a sensational victory in the capture of Victoria de las Tunas, a Spanish fortified place, with its garrison. This event caused renewed attacks in Spain on General Weyler and his policy and seems to have contributed much to the fall of the Azcarraga cabinet. The Sagasta ministry, promptly upon taking office, announced a change of policy toward Cuba, and replaced Weyler as captain-general

by Ramon Blanco. The new policy was said to involve the concession of a much fuller autonomy to Cuba than that offered by Canovas; but the details of the scheme have not been announced. Governor-General Blanco assumed authority October 30, and promptly modified some of the more oppressive features of Weyler's policy in the treatment of the Cubans. For example, the orders under which the country people in many districts were obliged to leave their homes and live in the towns were partially revoked. — In the Philippines the situation appears less favorable to Spain than it was at the close of the last RECORD. The Spaniards have failed to press the advantages they had then obtained, and the insurgents have had time to renew their strength.

MINOR EUROPEAN STATES. — The legislatures of **Norway and Sweden** succeeded in the summer in adopting a provisional commercial arrangement to take the place of the *zollverein* that terminated in July. The protectionist party is strong in Sweden; and, in addition to their desire on general principles for a high tariff, they have a disposition to employ their industrial advantage to bring pressure on Norway in the question of union. The joint commission on union has held another session, but without reaching a conclusion. The elections for the Norwegian Storthing were in progress during the latter part of the summer, and by the middle of October had reached a stage that insured a great triumph for the Radicals. As a consequence, the Hagerup coalition ministry prepared to give way to Steen and his separatist followers. — The crisis in **Denmark** mentioned in the last RECORD was adjusted by a reorganization of the ministry in May and the modification of the government's budget. — The federal legislature in **Switzerland** adopted during the summer the project for the purchase and operation by the government of the five chief railway systems of the country. — On the Danube the little states have passed the summer and autumn in general political calm. Prince Ferdinand of Bulgaria attracted attention in August by ostentatious demonstrations of affection and loyalty toward the Sultan. The prince visited Constantinople and while there conformed to all the ceremonial requirements that characterize the intercourse of subject with suzerain. The contrast between this effusive acceptance of a vassal condition and the prince's well-known aspirations to the royal dignity excited much comment and a variety of conjectural explanations. In Servia elections for the Skupshtina were held in July and resulted in almost a clean sweep for the Radical Party. Little effect was produced, however, on the government, which continued to act on the autocratic lines laid down by King Alexander at the last revolution. Steps toward the formulation of the new constitution long since promised by the king have been announced from time to time, but no definite result has appeared. The fall of the Simitch ministry in October was officially ascribed to a difference with the king as to the policy desirable on this point. — A **cabinet crisis in Greece** was precipitated by the presentation of the preliminaries of peace with Turkey to the legislature. Taking

advantage of the deep discontent with the assumption of control over the finances by the great powers, M. Delyannis carried a vote of no confidence September 30, and the Ralli ministry resigned. The threatening attitude of both Turkey and the Christian powers, however, caused the hasty formation of a ministry headed by M. Zaimis, from which Delyannis was excluded.

AFRICA. — The advance on Khartoum by the Anglo-Egyptian Army has been successfully continued. Abu-Hamed was captured August 7; and a month later the very important town of Berber, much more than half way from Dongola to Khartoum, and in easy communication with Suakin on the Red Sea, was occupied. A railroad from Wady Halfa to Abu-Hamed, across the great bend of the Nile in which occur the second, third and fourth cataracts, was constructed during the summer, and provided great facilities for the security of the advancing force. — The situation in **the Transvaal** has lost the apparently critical character it bore at the end of the last RECORD. As a result of the energetic remonstrances of the British government, the Volksraad, upon the recommendation of President Krüger, repealed in May the Alien Immigration Act, which had constituted the most serious cause of tension. Further, the jubilee of Queen Victoria was recognized by making June 22 a holiday in her honor; and later a special commission on the industrial conditions of the republic reported in favor of reducing railway rates and modifying labor laws so as to benefit materially the mining interests. At the same time the negotiations for a defensive alliance, and also for a kind of federal union, between the Transvaal and the Orange River Free State were carried to a successful conclusion. — From **Abyssinia** the British and French missions returned with claims of having achieved their respective purposes, though official information is lacking. The question of territory in the equatorial region seems to have been conspicuous in the negotiations and to have been discussed with special reference to the purpose and progress of the Anglo-Egyptian advance up the Nile. The Negus Menelik in July appointed Count Leontieff, a Russian, governor of his equatorial provinces. Leontieff had recently conducted a Russian mission to Abyssinia, and had given grounds for a report that Russo-French influences were antagonizing those of Great Britain and Italy at the Abyssinian court. It was announced in September that Italy, after difficult negotiations, had reached an agreement with Menelik, under which the boundaries of the Italian colony were less favorable than Italy had claimed, but satisfactory terms as to commercial and diplomatic relations had been secured. — From **the Congo Free State** news came in the spring of a reverse to the force of Baron Dhanis, which has been for some time operating in the northeast in the neighborhood of the upper Nile. A rebellion of native troops broke up the campaign; but the commander, escaping to the posts on the Congo, collected reënforcements and returned to his task. The rebels were decisively defeated in July.

THE ORIENT. — By a treaty, the ratifications of which were exchanged in June, China made to Great Britain some valuable concessions on the Burmah frontier, including the transfer of certain small parcels of territory and the grant of valuable commercial privileges. The importance of the treaty consists chiefly in the advantage secured by the British in their rivalry with the French for the controlling influence in that region. — It was announced in the middle of October that the King of Corea had assumed the title of Emperor. The change seems to have been connected with the more independent position acquired by the kingdom as a result of the recent Chino-Japanese War. — The relations between Japan and Hawaii have been somewhat strained throughout the period under review. The cause was the action of the Hawaiian government some time since in refusing admission of Japanese immigrants and summarily shipping a number of them back to Japan. This action was held by the Japanese government to be in violation of a treaty; it was unquestionably a reversal of a long-standing policy of Hawaii, which had freely admitted Japanese to fill the demand for laborers on the sugar plantations. An animated diplomatic controversy between the two governments was tending at last accounts toward a settlement by arbitration.

LATIN AMERICA. — Insurrections in **Brazil and Uruguay** continued throughout the summer to disturb those countries. Canudos, the stronghold of the Brazilian insurgents, was said to have been captured in July by the government's forces, but it was not till October that the leader of the rebels was slain and the final suppression of the uprising was effected. In Uruguay the civil war continued until the assassination of President Borda at Montevideo, August 25. As the main source of discontent had been the personal character and policy of Borda, his death was soon followed by an adjustment between government and insurgents, and peace was restored in September. — In **Chili** the difficulties between President Errazuriz and the Congressional majority continued till the end of the summer and produced a succession of cabinet changes, with no permanent effect. — **The Greater Republic of Central America** was strengthened June 15 by the conclusion of a treaty by which Guatemala and Costa Rica adhered to the arrangement already in force among the other three states (see last RECORD). In Guatemala President Barrios in June dissolved the legislature and assumed dictatorial powers. In the middle of September an insurrection against his authority broke out, and for a time the insurgents carried all before them. By the middle of October, however, Barrios had succeeded in turning the tables and in retaking the chief positions which the rebels had seized. — A movement for the adoption of the gold standard by Latin-American states has been caused by the decline in the price of silver. Thus far more or less definite action in the matter has been reported from Peru, Hayti and Costa Rica.

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