CHAPTER IV

THE JUDICIARY AND THE ELECTORATE

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1. The Judicial Office and its Tenure. The judicial branch of the government, though less numerous than the executive (in its wider sense), occupies a position no less important in the organization of the state. The prime function of the judiciary, performed in all states, is to decide upon the application of the existing law in individual cases. The essential requisite in a judge is consequently an exact knowledge of the law. The work of the judiciary is thus a highly technical function, demanding for its proper accomplishment the trained intellect of a specialist. Whether the law is right or wrong, just or unjust, is a secondary matter: the duty of the judge is to adjudicate upon the law as it is, and not upon the law as it ought to be. It is far better that a bad law should work injustice in an individual instance than that a judge by deliberately refusing to recognize it should impair the principle of law itself.

In actual fact, however, judicial decisions are far more than merely declaratory in their nature; they

contain a constructive element and serve to expand the existing law into a more and more detailed interpretation. For no statute can be so minute in its provisions as to contemplate all possible cases, and to admit always of only one construction. Where the letter of the law is silent, the judge is called upon to attach to it the meaning which may be considered "reasonable," that is to say, which is consistent with the general principles of morality and public policy. In countries such as England and the United States this principle is carried very far; for here the decisions once given are viewed as precedents for future ones. Such precedents are not, of course, absolutely binding, but the presumption, where identity of circumstances can be established, is vastly in their favor. The process of adjudication thus amounts to a supplemental form of legislation, and a large part of existing law is said to be "made" by the judges.

The nature of judicial functions, viewed in this light, clearly demands that the judiciary must be as impartial as is humanly possible. Not only must their own pecuniary interests be unaffected by the legal decisions given by them, but they must be removed entirely from the play of political interests. It is for this reason that in a well-ordered government the judiciary should be adequately paid by a compensation not affected by the number and nature of their decisions, and should enjoy permanent tenure of office and be independent of the good will or ill will of the other branches of the government. This object is adequately effected in the national government of the United States; the Constitution (art. iii, § 1) prescribes that "the judges, both of the supreme

and the inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office." [1] The same is true in the case of Great Britain. The English judges until the close of the seventeenth century held their office at the pleasure of the crown, a position obviously inconsistent with impartiality. The Act of Settlement (1701) declares that "judges' commissions shall be *quamdiu se bene gesserint*, and their salaries ascertained and established." Removal can only be made "upon the address of both houses of Parliament." [2] The position of the judiciary thus established has never been altered. The system has also been adopted in the British colonies. The permanent and independent tenure of the judges thus secured in the United States and in the British Empire, and found also in France, Prussia, and other leading countries is unfortunately not universal. The commonwealths of the United States are a notable exception. In many of these a false conception of the principle of popular sovereignty, and the vicious influence of the doctrine of "rotation in office" has led to the election of the judges by the people for a stated term of years. In some states, it is true, the judges are nominated by the governor or elected by the legislature; in some also they hold office during good behavior. But the majority of judicial positions in the state governments are held by election for a stated term, often

[1] This does not hold good of territorial judges, whose term of office is fixed at four years.

[2] Anson describes this as a tenure "as regards the crown during good behavior, as regards Parliament at pleasure." It is practically a permanent tenure.

as short as two years. Such an institution cannot be too strongly condemned. It exposes the judges to the influence of political and personal motives in their conduct on the bench, impairs the impartiality of their decisions, and inevitably lowers the character of the judicial body.

2. The Relation of the Courts to the Executive and to the Legislature. Certainty of tenure and of compensation guarantee the judiciary against being unduly controlled by the other branches of the government. The question next arises, whether and to what extent the officers of the legislative and executive departments are to be protected from the power of the judiciary. That their original appointment or election is not made by the judiciary goes without saying. But it must be further decided whether, while they are in office, the legality of their official acts is to be subject to the decision of the courts. Shall the judges have power to decide whether the legislature or the executive, or any part of the executive, has acted in excess of its lawful power? To an American unacquainted with foreign governments, the answer seems self-evident, for the principle of limited constitutional powers and responsibility before the courts lies at the basis of the American system. But on this most important point of public law, the usage of modern states is divided between two sharply contrasted systems. In the United States, the Latin-American Republics, Great Britain and her colonies, the officers of the government are responsible before the law courts. The complete legal immunity of the British sovereign, and the immunity (except by impeachment) of the President of the United States, are

exceptions of a special nature which need not be considered in this connection. On the other hand, it is the prevalent usage in the continental countries of Europe that the ordinary courts of law have no power to question the legality or decide as to the constitutionality of the official actions of the legislative and executive officers. A closer consideration of the consequences of these antagonistic principles will show how greatly the relations of the government to the individual citizens are affected thereby.

The case of the British Empire is less complicated and may be treated first. In the United Kingdom every servant of the state (except the king) is responsible for his actions to the ordinary courts of law. "Every official," says Mr. Dicey,[1] "from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen. The Reports abound with cases in which officials have been brought before the courts, and made, in their personal capacity, liable to punishment or to the payment of damages for acts done in their official character but in excess of their lawful authority." Not only the members of the executive civil service, but the officers and men of the army are individually liable before the ordinary tribunals for any unlawful acts, even if performed at the command of a superior officer. "The position of a soldier," says the same authority, "may be, both in theory and practice, a difficult one. He may, as it has been well said, be liable to be shot by a court-martial if he disobeys an order, and to be hanged by a judge and jury if he obeys it."

[1] *Law of the Constitution*, chap. vi

In spite of the apparent anomaly involved in the last instance, the protection afforded to individual liberty by this responsibility of executive officers cannot be overestimated. In the case of the British legislature there cannot, of course, be any such thing as a statute made in excess of power. For since the Parliament (used here in its legal sense of King, Lords, and Commons) is supreme, every statute that it makes is legally a good statute and cannot be questioned by the courts. But the legislative enactments of any minor body (such as a county council) are always subject to be passed upon by the courts, and perhaps set aside on grounds of illegality.

It is in such countries as the United States that the principle of judicial decision on the validity of the actions of the government has the greatest consequences. Here, as in England, the officers of the executive are responsible to the courts for their official actions. But this is by no means all. For since the national and state legislatures are given by the Constitution only a certain definite and limited power, it becomes the duty of the courts to decide whether or not the legislature in the making of any statute has confined itself to the powers it legally possesses. Where such is not the case the court (though it cannot abolish or amend the statute itself) can refuse to apply it in the individual case before it, which is in practice equivalent to declaring the statute invalid. Americans are apt to regard this power of the courts as a necessary consequence of a written constitution. For how else, it might be asked, can the legislature and the executive be duly confined to the power granted them? Logical as this

seems, it remains true, as will presently be shown in the cases of France and Germany, that the existence of a written constitution is not always accompanied by this revisional power of the ordinary courts of law. That such an institution should have grown up in the United States is one of the most felicitous features of American political evolution. The germ of its development is found under the colonial governments, from which in the last resort appeal might be taken against any action of the legislature or executive of the colony to the king in council. The written charters that had been so familiar in colonial history and still existed at the Revolution in Massachusetts, Rhode Island, and Connecticut prepared the way for written constitutions limiting the powers of the organs of government. The severing of the connection of the colonies and the crown rendered it necessary to substitute something for the appellate jurisdiction of the king in council. Even before the making of the federal Constitution (1787) the judiciary of the new state governments had begun to occupy this field. Several decisions of state tribunals are recorded in which acts of the legislatures are declared unconstitutional. In the report of a Virginia case in 1782 in which this point was raised, it is stated that "Chancellor Blair with the rest of the judges was of the opinion that the court had power to declare any resolution of the legislature or of either branch of it unconstitutional and void.[1]" The federal Constitution of 1787 did not in terms lay down this function of the courts; but the proper sanction for it is found in art. iii, § 2, and in art. vi, of the Constitution. "The Judicial

[1] W. W. Willoughby, *Supreme Court of the United States*, chap. v.

Power," it is laid down, "shall extend to all cases . . . arising under this Constitution." Moreover "this Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land: and the Judges in every State shall be bound thereby." The case of Marbury *v.* Madison (1803), in which an act of Congress was declared unconstitutional, definitely established the precedent for the later working of the national government. The constitutional relation thus established between the judiciary and the other branches is not, however, unique in the United States. In the Dominion of Canada, for example, the judiciary exercise an analogous power in their interpretation of the British North America act, and the judges under the federal system of the Australian commonwealth are entrusted with a similar function.

Widely contrasted with the relation in which the American courts of law are thus seen to stand as regards the Congress and the officers of the executive, is the position occupied by the courts in the chief continental countries of Europe. The latter, as we have seen, are (with the exception of Hungary) countries with written constitutions. Yet the courts of law are not found to exercise the function of declaring the acts of the legislature unconstitutional. In such countries as France and Italy this is not so surprising, for these are not federal governments, and the constitution in these cases is concerned only with the organization of the government, and with the protection of individual liberty, and not with the division of legislative power between central and local authorities. As a con-

sequence of this the French courts do not question the validity of a statute. Conceivably a French statute might be grossly unconstitutional; a law, for instance, which professed to abolish the republican form of government would be in direct violation of the constitution. But in practice such do not occur. In the case of the German empire, which is federal, and which has a written constitution, one would expect to find the courts constantly called upon, as in the United States, to adjudicate upon the constitutionality of state and federal laws. In point of fact no such decisions are given. Isolated cases have occurred in which the courts (the federal as well as state) have declared certain statutes of the minor German legislatures to be in violation of the state constitution. But the legality of imperial statutes once made passes unquestioned. The bulk of authority, supported by the declaration of the Reichsgericht (or imperial court) itself, is in favor of admitting that such a revisional power exists. Other authorities take an entirely opposite view. Since no law of the imperial legislature goes into force until officially promulgated by the emperor, these writers regard the promulgation as itself supplying the necessary test of constitutionality. Be this as it may, the fact of the matter remains that imperial statutes are always accepted by the courts as valid. More noteworthy still is the fact that in the federal republic of Switzerland the same practice prevails; indeed it is a provision of the Swiss constitution that every statute passed by the federal assembly must be accepted as valid.[1]

[1] Constitution, art. 113.

3. Administrative Law and Administrative Courts. But the absence of this revising power of the courts is not the only point in which Continental practice is at variance with that of America. The whole status of executive officers before the law is different. The principle by which every official in England and America is responsible to the courts for his official actions does not apply. On the Continent this form of liability is replaced by the regulations and procedure known as administrative law.[1] Under this system public servants acting in their official capacity are not subject to the jurisdiction of the ordinary tribunals, but can only be called to account before the administrative courts. These are specially constituted bodies composed for the most part of members of the executive. In France, for example, there is a graded service of administrative courts which exist parallel with the ordinary tribunals. In each department the prefect and his prefectoral council (appointed by the president) act as an administrative court. Special jurisdiction is exercised by the court of accounts, councils of revision (as to military recruiting), colonial courts of conflict, and certain councils for public instruction. Final jurisdiction is exercised by the council of state,[2] a body nominated by the

[1] The term administrative law has more than one sense; as used in France (*droit administratif*) it refers not only to the law covering the relation of the administrative authorities towards private citizens, but also to the whole of the public law relating to the organization of the state. In English it is more commonly used in the former restricted sense. For the operation of administrative law in continental Europe the student may consult Simonet, *Traité Elémentaire de Droit Public* (1897), and Goodnow, *Comparative Administrative Law*.

[2] For the precise composition of this council, which is partly an advisory executive body and partly a judicial tribunal, consult De la Bigne

president. A special body (the tribunal of conflicts), made up of equal representation from the two kinds of courts, together with the ministers of justice and two added members, decides on cases of disputed competence. The jurisdiction of administrative courts over official actions is not indeed quite without exception. "The ordinary courts have as a result of statutory provision the entire control of the matter of expropriation or the exercise of the right of eminent domain. Again, arrests made by the administration are under the control of the ordinary courts as a result of the Penal Code. It is true also that where the government or a department of the government becomes a party to an ordinary commercial contract the jurisdiction is in part given to the ordinary courts."[1] But in the main the statement holds good that in France, and in constitutional countries generally, conflicts between individuals and the administration are settled by the administration itself.

The administrative system of courts originated in France with the extension of the absolute centralized monarchy, which tended to supplant by royal officials the older local tribunals. The Constituent Assembly of 1789 expressly adopted the principle of executive courts for passing upon the acts of the executive. In doing this they hoped to free the executive from being unduly dependent on the judicial branch of the government, and found the warrant for their action in the familiar dogma of the separation of

de Villeneuve, *Eléments de Droit Constitutionnel Français*, part i, chap. iii, § 2, art. iii.

[1] Goodnow, *Comparative Administrative Law*.

powers. "The constitution will be equally violated, if the judiciary may intermeddle with administrative matters and trouble administrative officers in the discharge of their duties. . . . Every act of the courts of justice which purports to oppose or arrest the action of the administration, being unconstitutional, shall be void and of no effect." [1] The principle thus established has been adopted by the successive governments that have ruled over France. Though nominally abolished at the inception of the third republic, the technical interpretation of the decree of repeal has been such as to render it ineffectual in practice. Theoretically dependent on the principle of distributed powers, it has really commended itself as a means of strengthening the hands of the executive government. Some writers have indeed sought to show that the administrative courts themselves afford a valid protection of individual liberty. But the bulk of the evidence seems to prove that the rights of the individual are of necessity sacrificed under a system in which the executive may be at one and the same time the aggressor and the judge of the aggression.

4. The Electorate: Evolution of So-called Universal Suffrage in Leading Countries. In speaking of the executive, legislative, and judicial branches of government, reference has frequently been made to the election of the officials of these departments by the people. Let us therefore conclude the discussion of the organs of government by a brief treatment of the electorate. The body thus designated is not identical

[1] Instructions to the Law of Aug. 16-24, 1790. Cited by Goodnow, *op. cit.*

with the whole body of citizens. A citizen means any individual member of a state, male or female, who owes it allegiance and who may claim its protection, but the electorate only includes those who under the suffrage laws of that particular state, enjoy the right to vote. The electorate, or voters, are sometimes spoken of as the "political people," to distinguish them from those who have no direct legal share in the conduct of public affairs. The French constitution of 1791, anxious to harmonize the principle of popular sovereignty with a very restricted suffrage, spoke of their two classes as "active and passive citizens."

The right of the general body of the people to vote for representatives to govern them is the corner stone of the free institutions of Great Britain and America. The origin of this representative government lies hidden at the very beginnings of Anglo-Saxon institutions. In Saxon England we find every township sending up an elected reeve and four men to represent it in the court, or general meeting, of the shire. It is presumed that in such early elections all free men had a part. But at the very beginnings of parliamentary government in England the right to vote tended to restrict itself to owners of land. This was only natural in a country like England in the fifteenth century, where wealth, social standing, and ownership of land were almost identical terms. A statute of Henry VI (1430) limited the right to vote in county elections to residents possessing a freehold worth forty shillings a year.[1] The value of money having changed since the fifteenth century in a ratio

[1] Anson, *Law and Custom of the Constitution*, part i, chap. v, sec. ii, § 1.

of at least one to fifteen, this means a quite high property qualification. Although the clause requiring residence fell into disuse, this statute governed the franchise in the English counties for four hundred years. In the boroughs, too, the suffrage, though varying greatly from town to town, rested for the most part either on the possession of real estate or the payment of taxes. Thus it came about that in the course of time the right to vote became permanently associated with the holding of property. This political fact was accompanied, as is usually the case, by an explanatory political theory. The property-owner was viewed as having a stake in the community, and his vote was regarded as the consequence, not of his personal citizenship, but of his property. In the American states in the early years of their independence this theory was prevalent. The suffrage, and with it the right to be elected, rested on quite restrictive property qualifications. Even in Revolutionary France the first constitution (1791) included among its "active citizens" only those who paid annually a "direct tax equal at least to the value of three days' labor."

But the democratic ideas which worked themselves out in the philosophy of the eighteenth century and in the French and American revolutions gradually led to the dominance of a quite different view. This was the principle of (so-called) "universal suffrage," or the right of all adult capable citizens to vote, by virtue of their being such, and irrespective of the holding of property. This doctrine was proclaimed by the Jacobins, or extreme republicans among the French revolutionists, though even among these only a minority considered

that women should share in this "universal right." [1] The influence of the same theory was seen in America in the early part of the nineteenth century, when the states abandoned the principle of a property qualification, and moved nearer and nearer to manhood suffrage. In England too, where abstract political theories have but little weight, the practical injustice of the restricted franchise led to the long agitation culminating in the Parliamentary Reform of 1832. The various governments which have modeled themselves on those of Britain and the United States have adopted also the principle of universal suffrage.

In the democratic countries of to-day, the people entitled to vote represent a fraction of the population ranging from one fifth downwards. The general principle is that of the admission to the polls of all the adult male citizens of mental and moral capacity. The principle is extremely simple, and in some states is applied to the whole community by a single and comprehensive law. Thus, for example, in France, the law of July 7, 1874, grants the suffrage to all male citizens of France at least twenty-one years of age. Similarly the right to vote for members of the German Reichstag, the popular house of the imperial legislature, is granted by the constitution to all resident male citizens of the German Empire who have reached the age of twenty-five.[2] In the United States, the suffrage, though extremely democratic both in principle and practice, is extremely complex in its legal details. The Constitution

[1] For the question of female suffrage during the French Revolution, Aulard. *Histoire politique de la Révolution Française*, may be consulted.

[2] Constitution of the Empire, art. 20.

leaves the matter in the hands of the state governments; in voting for members of the federal House of Representatives, the voters (Constitution, art. i, § 2) "in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." To this is to be added the provision of the Fifteenth Amendment: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." The suffrage laws of the separate states, though all agree in excluding persons under twenty-one years of age, vary very much in reference to qualifications and exclusions. Four of the states (Colorado, Idaho, Utah, and Wyoming) grant the full suffrage to women. Most of them admit as voters only citizens of the United States; others grant the suffrage to aliens, otherwise qualified, who have declared their intention to become citizens. The term of necessary residence in the state previous to voting varies from three months (Maine) to two years (Alabama and others); so also does the requisite term of residence (if any) in county, town, or precinct. The general list of exclusions comprises insane persons, idiots, and felons. Most states exclude paupers, and some specifically exclude the Chinese (California, Nevada, Oregon). In several of the Southern states peculiar suffrage laws are found which are intended to circumvent the Fifteenth Amendment in order indirectly to prevent the negroes from voting. Thus in Louisiana the voting list comprises all citizens of the United States who are able to read and write, or who own three hundred dollars' worth of

property assessed in their names, or whose fathers or grandfathers were entitled to vote on January 1, 1867.

In the case of the United Kingdom the parliamentary franchise is of the most complicated character. The reason for this is that Parliament has never seen fit to revise the existing franchise at a single stroke and to repeal all previous statutes and substitute for them a single and uniform suffrage law. Instead of this each measure of parliamentary reform has only partially repealed existing legislation. Three great statutes have been passed in the nineteenth century in extension of the right to vote. The Reform Act of 1832 widened the old county franchise by including tenants as well as owners of land, and gave the borough franchise to rate-paying householders occupying premises worth at least ten pounds a year. The Reform Act of 1867 further extended the franchise. Finally the Representation of the People Act of 1884 establishes both in towns and county a very democratic suffrage: a person entitled to vote must be of the male sex, at least twenty-one years of age; must be either the owner or the lessee of land or premises of a certain yearly value, the sum varying according to the nature of the tenure; or else must occupy or be a lodger in fixed premises of a certain yearly value, or on which the local rates have been paid. In addition to this persons may be qualified by virtue of the remnants of earlier unrepealed laws; they may for example be voters by virtue of being born and resident freemen of certain towns, or liverymen of one of the city companies of the city of London, or as graduates on the electoral roll of Oxford, Cambridge, Dublin, or London, etc.

The list of excluded persons comprises aliens not naturalized, idiots, convicted felons, and members of the peerage. It is impossible in short compass to give the exact details of the parliamentary franchise in the United Kingdom. For fuller information reference may be made to the first volume of Sir William Anson's "Law and Custom of the Constitution." The complex historical aspect of the present English suffrage and its practically democratic operation is highly characteristic of English political institutions. Little heed is taken of the logical requirements of abstract political theory provided that the practical operation is not, to an appreciable degree, repugnant to the demands of common-sense justice.

5. Criticism of Existing Systems; the Case of Women, of Negroes, etc. From what has been said of existing suffrages we may now turn to consider the validity of the theory of so-called universal suffrage. In the first place it is to be noted that the suffrage in question is by no means universal. It nowhere includes more than a minority of the population. It omits everywhere children and minors, and persons of unsound mind and of proven criminality. It leaves out almost everywhere the female half of the population. That the right to vote cannot be absolutely and literally universal requires no proof: no amount of political dogma could make it appear reasonable that a ballot should be deposited by a two-year-old child or by an incapable idiot. That the principle of exclusion must be adopted is an actual if not a logical necessity. It is extremely important to duly appreciate this fact. Universal suffrage everywhere omits a large number

of citizens, and the reason is in every case that the excluded classes are composed mainly of persons who, in the opinion of those who vote, are not fitted to exercise the right of voting. It is to be observed that the excluded class is not in reality composed entirely of persons unfit to vote. No one would claim that no young men of twenty are ever fit to vote, and that all men over twenty-one are always fit to vote. The exclusion merely means that on the average persons under twenty-one have not the required capacity, and that those over twenty-one have it. It appears, then, there is no such thing in theory or in practice as an absolute and universal right to vote. Nor is the exclusion of any class of citizens, in and of itself, a violation of any abstract law of political justice. Every such exclusion must rest for its justification on the question whether the excluded persons are — taken on the average — not capable of the political judgment required in voting.

The general view thus obtained may be applied to two of the prominent questions of the time in regard to the suffrage, the right of women and of negroes to exercise a vote. The political rights of women have been much agitated during the last fifty years, but as yet no very great advance has been made in the direction of female suffrage. In the United States, as has been said above, four of the states grant to women on equal terms with men the full suffrage both for local and state elections. In addition to this women vote in school elections in nineteen states; they vote in Kansas in municipal elections; in Iowa and Montana when a vote of the citizens is taken on a proposed issue of

municipal bonds, and in New York state by a law of 1901 women owning assessed village property have a similar voice in a local referendum. As against this it is to be recorded that the proposal to admit women to the full suffrage has recently been defeated in New Hampshire (1903) and in several Western states (South Dakota, Washington, Oregon). Nor is the extension of the right to vote for members of the national legislature granted to women anywhere in Europe, except in the case of widows who own property in the kingdom of Italy. In England women cannot vote at parliamentary elections, but, if qualified, may vote in any local elections. Women are granted the full suffrage in New Zealand and in the states of Australia. The suffrage in the latter case carries with it, as in the United States, the right to vote for members of the federal house of representatives.[1]

Historically considered the exclusion of women is only a part of the general economic and legal position of dependence in which women have been placed. Indeed the word "exclusion" is hardly applicable. What has happened has been negative rather than positive. Until quite recent times only a very small part of the men of the community had the right to vote. It is more accurate to say that the women have never been admitted than that they have been expressly excluded. The arguments of John Stuart Mill and others in favor of female suffrage have turned partly on abstract justice — the claim of every person, as a person, to vote — and partly on the idea that women are in the main as well qualified as men, or at any rate sufficiently quali-

[1] See "Political Woman in Australia," *Nineteenth Century*, vol. lvi.

fied. The first contention seems quite invalid: the principle of exclusion is, as has been shown, a necessary one. The second contention remains still a debatable point. As against these arguments it has been urged that women, being mentally inferior to men in those particular aptitudes required for the proper exercise of political rights, had better be excluded. It is also claimed that women are for the most part dependent for their political convictions on the opinions of a husband, father, or other male relation; they are thus already represented in an indirect fashion, and to give them a vote would unfairly duplicate the voting power of their male relations. On these grounds a distinction is sometimes made between the claims of married and unmarried women.

The other vexed question relating to the suffrage is that of permitting the negro race to vote. Every one knows that the Southern states — the white people of the Southern states — would never have conferred even a nominal voting power on the black race except by compulsion. This compulsion has been found in the amendment to the Constitution already mentioned. Its adoption was due partly to the desire to make use of the negro vote for political purposes, and partly to the force of public opinion generated by the idea that abstract principles of justice gave the negro a right to the suffrage. There has resulted the rather absurd situation whereby many persons in the United States have been ardent champions of the supposedly inherent political rights of the blacks while willing to apply an entirely different criterion to the case of women, both the white and the black. Women are excluded as unfit

to vote, and blacks are included on the ground that nobody can be unfit to vote. The exact extent of political capacity of these two classes is a matter that would admit of some discussion; but it seems hardly reasonable to think that an illiterate and in many ways debased negro population can have a political claim superior to that of educated and intelligent American women. Unhappily a false and hopelessly abstract view of political rights and the rigidity of the federal Constitution prevents a rectification of the political error made in admitting the negroes to the suffrage. In practice the Southern states have found various means to render the negro vote largely illusory. But legally the anomaly persists.

6. Representation of Minorities. A question of especial interest in reference to voting is the representation of minorities. If the members of a national legislature were all elected out of the whole community on one "general ticket," — each voter voting as many times as there were places to be filled, — it is clear that there would be a minority group of voters who elected none of their candidates. So glaring an illustration of the "unrepresented minority" does not in practice occur. The need of representing at least a part of the people in each district naturally leads to the division of the whole country into districts from each of which a candidate, or a group of candidates, is elected. But even with such a division into districts, a number of the people in each throw away their votes on a candidate not elected and thus remain in a sense unrepresented. This evil may be aggravated if those in power so divide up the election districts as to make the most of the

votes of the adherents of their own party and to make the least of the votes of their opponents. This is the process known as gerrymandering, and unfortunately only too familiar in modern politics. At times it is effected by so allotting the electoral districts that the adverse voters will be too few everywhere to carry any district. If this is impossible the districts are so contrived as to "bunch together" the hostile voters, and thus it results that when they do carry a district, they carry it by a needlessly large majority, and so practically lose a lot of voters.

Much attention has been given to the problem of how to represent the minority, and various schemes have been proposed for this purpose, and to some extent adopted. Of these a few may be mentioned. The most noteworthy of all, historically, is the scheme of Mr. Thomas Hare, which attracted considerable attention in England in the middle of the nineteenth century.[1] This was the plan of "self-made constituencies." Instead of dividing the country into districts, it was proposed that any candidate should be elected for whom sufficient votes were cast anywhere in the country. The number required was to be found by dividing the number of voters by the number of seats in Parliament to be filled. By this means any particular minority group, instead of being scattered in district constituencies, and everywhere swamped, could combine themselves into a united vote. The scheme, however, demands too elaborate a political activity on the part of each voter to be at all practical.[2]

[1] Thomas Hare, *The Election of Representatives*, 1859.

[2] For criticism see Bagehot, *English Constitution*, chap. vi.

Another method of minority representation is the plan of "limited voting." This is used whenever several candidates are to be elected to form a board or council; it would not apply to districts where only one candidate is to be elected. Each voter is allowed to vote, not for as many candidates as there are places to fill, but only a limited number of times. For example, in the elections to a city council, there may be twelve places to fill, but each voter has only seven votes. The result is to elect seven members of one political party, and five of the other. No one party could elect all unless strong enough to divide its adherents into two distinct voting groups, and still defeat the other party. Such a system meets the case of representing a second party, but may, of course, leave a further majority unrepresented. Similar to this is the cumulative vote. In this plan, where a number of persons are to be elected, each voter may vote once for each of several candidates, or give all his votes to one. Thus, if twelve candidates had to be chosen, a very feeble minority could get a representative if each person gave all his votes to the same candidate.

In practically all elections it happens that the elected candidate gets more than enough votes to elect him. Only in rare instances will he happen to get just the necessary odd vote and no more. The surplus votes, therefore, again constitute an unrepresented minority. To meet this difficulty there has been contrived the device of "proportional representation." Here the voter is called upon to indicate not only his choice of a candidate, but the names he would choose as a second or third choice, and so on. The surplus votes of each

elected candidate are then handed on to the voter's second choice, or, if not needed there, to the third, etc. The difficulty lies in deciding which are to be considered the tickets that elected the first candidate, and, consequently, to which one the votes are to be given away. In practice this can be done only by lot. This system has been put in practice in Tasmania, in the city constituencies.[1] Adverse critics have pronounced it an "arithmetical jungle." A quite distinct form of minority representation, directed towards a particular political end, is found in the elections of the kingdom of Prussia. It is used in the elections for the Prussian parliament, though not, of course, in those for the imperial Reichstag. The voters are divided into three classes, not numerically, but according to the taxes that they pay. If the total taxation of the district amounts to a certain sum, then the first class is made up of the richest property-owners in sufficient number to represent one third of the taxes. The second class represents the next third of the taxes, and the third class the rest. Each class chooses an equal number of "electors" for an electoral college, and this latter makes the actual selection of the members of Parliament. It can be seen at once that the two upper classes, voting together, though representing only a minority of the people, can absolutely outvote the third. Much the same plan is adopted in Prussian local elections. To American ideas this system is grossly unjust. The Socialist party in Prussia has largely abstained from voting in Prussian elections rather than accept a vote on such conditions. It can only be defended on the

[1] See Jethro Brown, *The New Democracy*.

principle that property, not the citizens personally, is the thing to be represented in a legislative body.

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CHAPTER V

FEDERAL GOVERNMENT

1, Importance of the Federal Principle; its Historical Development. — 2. The Different Kinds of Federations. — 3. Sovereignty in a Federal State. — 4. Utility of the Federal Principle in effecting a Compromise. — 5. Distribution of Power in Federal States. — 6. Conclusions.

1. Importance of the Federal Principle; its Historical Development. The subject of federal government is so important that it may well merit a separate chapter. The origin and growth of federation and the purpose it has served in the evolution of the past are among the most interesting topics of historical study. Of the political problems of our own time none are of more vital bearing than the relation of the local and central powers in a federal system. In the development of modern states the principle of federation has played a prominent part. It has supplied the requisite cohesive power to bind together the commonwealths that compose the United States, and the unequal monarchies and free cities that are joined into the German Empire. Mexico, Brazil, and Switzerland are federal republics. The British Empire is, as a whole, a unitary state, but its two most important dependencies, the Dominion of Canada and the Commonwealth of Australia, are, when considered separately, federal systems closely resembling that of the United States. As far as our present political vision reaches, it seems as if any attempt to create a universal state

must proceed along the lines of federation. It may perhaps be reasonably thought that the experience now being gained in the construction of composite governments on a federal plan is supplying to civilized mankind the requisite training for the making of the world state of future ages.

It is impossible to overestimate the important part that has been played by federation in the history of political growth. Speaking broadly, one of the chief features in the evolution of civilized government has been the extension of the area covered by a single political unit or state. This extension has not of course proceeded always in a continuous chronological course. Modern Switzerland is but a diminutive state when compared with the Roman Empire. Yet it is true in the main that one of the most notable and most essential factors of political progress has been the increasing size of the territory brought into a single state.[1] To accomplish this, two great historical forces have been at work. Of these one is the principle of conquest, absorption, and expansion. The growth of the French monarchy and the spread of British dominion illustrate this. The other has been the principle of deliberate federal union, whereby a basis of compromise is afforded permitting the political junction of previous states which are too closely connected by situation, language, and customs to remain apart, but which are too unlike in area, local customs, etc., to permit of complete amalgamation. Of these two methods the one is the path of peace, the other is the path of war. No lasting union of the great states of the world can now

[1] See also part i, chap iii, § 5, above.

be expected from the process of conquest. If united at all it must be only by means of a union which will destroy neither national pride nor national autonomy.

In its broadest sense the term federation indicates any form of union entered into by two or more independent states. Numerous historical examples at once suggest themselves. At the very beginning of political history we have the famous Achæan league. This was originally a defensive alliance of twelve cities of the Peloponnesus, but in its later shape as revised in the third and second centuries (B. C. 281–146), this "after-growth of Hellenic freedom" assumed a more elaborate character. It included Corinth, Megara, and many other important city states of southern Greece. Each city retained the control of its own internal regulation, but surrendered into the hands of the league the control of foreign relations and war. "There was," says Professor Freeman,[1] "an Achæan nation with a national assembly . . . no single city could of its own authority make peace or war." Had it not been for the rise of the world power of the Roman Empire, such a league might have supplied a means of converting the Greek city state into a territorial national state. In later history the short-lived combinations of Italian cities in the thirteenth and fourteenth centuries may perhaps be spoken of as federations. A more conspicuous example is seen in the growth of modern Switzerland. Here the forest districts of Uri, Schwyz, and Unterwalden, still nominally subject to the emperor, banded themselves together for protection in 1291. The league thus formed grew in extent and power. Other districts

[1] Freeman, *Federal Government.*

and the free cities of Bern and Zürich were joined to it. The defeat of Austria in the end of the fourteenth century gave it a practical independence, which was finally confirmed by the treaty of Westphalia (1648). In the confederation thus formed each member retained its separate independence, mutual protection being the only purpose of the union. Though for a time amalgamated by the interference of the French Revolutionists into a republic, "one and indivisible," it was not until the changes effected by the constitutions of the nineteenth century (1848 and 1874) that Switzerland lost the appearance of a defensive league of separate states.[1]

A similar league was that existing between the independent states of North America under the Articles of Confederation (1781–1789). Here each state was a separate body politic. The only form of common control was exercised through the Congress, a body of delegates which had no power to compel the states to its will, and no power to command or to tax the individual citizens of the thirteen states. The federal Constitution, made in 1787 and put in force in 1789, established in the place of this a single federal state, in which the central government was brought directly in contact with the citizens. The course of the nineteenth century has witnessed several federations of historical importance. Of these, the Swiss constitutions of 1848 and 1874, the federation of the provinces of Canada into the Dominion (1867), the creation of the North German Confederation (1867) and the German Empire (1871), together with the recent federation of the commonwealth of Australia

[1] Sidgwick, *Development of European Polity*, Lecture XXIX.

(1900), are the most salient examples. Other countries, too, such as Mexico and Brazil, have adopted the federal system of government, not as a means of increasing their area, but as a method of harmonizing local and national interests.

2. The Different Kinds of Federations. When we consider the various forms of union by which separate states may be joined together, it is clear that they present a graded series of increasing closeness. At one end of the scale is the offensive and defensive alliance entered into by sovereign states. Of this nature was the famous Family Compact of the eighteenth century, between the Bourbon monarchies of France and Spain. Such a union is extremely illusory in its nature, as, in the absence of any joint organ of government, it has no "sanction" or compelling force behind it. More advanced than this are confederate types such as the Achæan League, the German Confederation of 1815, or the Southern Confederacy. In this each participant state retains, in name at any rate, its sovereign character. It may happen that in such a union of states the formal act of union declares itself perpetual and at the same time declares that each state retains its sovereignty. This is quite inconsistent, for it implies that each state is free to leave the union, and at the same time bound to remain in it. Such, however, is the case with the American Articles of Confederation (in force from 1781 till 1789) and the constitution of the Southern Confederacy. Beyond this type of union lies the federation *par excellence*, — the federal state,[1]

[1] Professor Burgess claims that the term "federal state" is not admissible, on the ground that a state is a unity. But while admitting that

a new unit composed out of previously sovereign states, now united to form a new sovereignty, but each retaining its own political sphere independent of the legal power of the central government. Such is the nature of the present federal union of the United States. Beyond this again might be distinguished what could be called an amalgamation, or complete fusion by agreement. It differs from the expansion of a single state by conquest of territory, in that the participant members enter into the amalgamation or amalgamated state of their own free will. The best examples are found in the composition of the United Kingdom by the act of union of England and Scotland in 1707, and of Great Britain with Ireland in 1800. These unions were effected by similar statutes passed by the separate parliaments of the countries concerned. The unions declared themselves to be made on certain stated terms and conditions. But the process differed from federation in that in each case the parliaments which made the unions then went out of existence in favor of a new parliament which was legally sovereign, and not bound by the conditions of union. That this is more than a theoretical view of the case is seen in the fact that the British Parliament in 1869 abolished the established (Episcopal) church in Ireland, whose maintenance was one of the terms of the union of 1800. A similar case of amalgamation is seen in the "fusion" of the separate Italian states into the kingdom of Italy (1859–60). The product of such a process is a unitary and not a federal state.

it is illogical to speak of a confederate state, it seems reasonable to use "federal state" to mean a state of which the organization is federal.

The different kinds of united governments thus indicated have afforded ground for elaborate classification of the various species of confederacies and federal states. This has particularly interested the modern German writers on public law, some of whom distinguish a great many subdivisions. Such classifications have been undertaken by Laband,[1] Jellinek,[2] and others. Jellinek distinguishes, in the first place, virtual unions, such as Canada and Australia (legally part of the unitary British state) and legal unions. The latter he subdivides into (1) protectorates, etc., (2) unions of a superior and inferior state (Staatenstaat), seen in the case of Turkey and Egypt, (3) monarchial unions, in which two independent states are joined under a common sovereign, this again being subdivided into real and personal, according to whether the union is organic and deliberate (Sweden and Norway, before 1905) or accidental (England formerly with Hanover), (4) the confederacy (Staatenbund), and (5) the federal state (Bundesstaat). Other classifications are still more minute. Of all these fluctuating subdivisions American and English writers are generally inclined to throw aside everything except the distinction between a confederacy and a federal state. This is a vital point in public law and requires some explanation. A confederacy is not a single state. It is a collection of independent sovereign bodies united on stated terms for certain purposes. Each of them is, legally, free to withdraw from the confederacy when it pleases. A confederacy cannot therefore be permanent and indissolvable, for if

[1] *Staatsrecht des Deutschen Reiches.*

[2] *Das Recht des Modernen Staates.*

it were so then the sovereignty of the component states would disappear. A federal state is a single state. Its subordinate parts may have been, though not of necessity,[1] sovereign states previous to the union; they cannot be so after the formation of the federation. Such a union becomes, legally, indissolvable so far as the action of the separate state governments, or of the central government, is concerned. It could only be dissolved by the constitutional amending process, where such exists. The interpretation put on the Constitution of the United States by the seceding states of the South would have made it a confederacy. The interpretation put upon it in the North made it a federal state.

3. Sovereignty in a Federal State. This leads at once to the much-disputed question of the sovereignty in a federal state. Around this centred the great secession issue between the Northern and Southern states, for the retention by a component state of its sovereign power carries with it of course the right to withdraw from a federation of which it is a part. Let us consider the question first of all apart from the particular case of the United States. If what has been said above is correct, it follows, by definition, that the creation of a federal state annihilates the sovereignty of the component states, — not limits it or divides it, but annihilates it. For sovereignty either is or is not. But in the new state the sovereignty does not lie in the central government; it lies in the body, wherever and whatever it may be, which has power to amend the

[1] Compare the case of the republic of Brazil; the constitution of 1891 puts the provinces on a federal basis, but they were not previously independent states.

constitution. Legally speaking, this sovereign body can entirely abolish the federation and restore each member of it to its original independence. This is not the same as secession, but it carries with it the consequence that such a union is not legally indissolvable. In a confederacy, on the other hand, each state is still a sovereign state. There is properly no confederate law. Any common regulations adopted by a central body of the confederacy, and binding on the citizens of all the states, are law to any such citizen because adopted as law by his own state. Where law exists, a state exists. Where a state exists then it has sovereign power. It follows then that confederacy and secession are one and the same term in point of public law. In actual fact secession resolves itself into a question of force. Switzerland was an acknowledged confederacy from 1815 until 1848. Yet when the seven Roman Catholic cantons undertook to secede from it (1847) they were forced back into the confederation at the point of the sword.

In the United States the controversy did not turn on the difference between a confederacy and a federal state. It turned on the question whether the United States was the one or the other. On this point, as Professor Goldwin Smith has said, the "constitution proved itself a 'Delphic oracle.'" The language of the Constitution, especially when read in the light of the antecedent history of the confederacy of 1781–89 (which was virtually dissolved by the "secession" of eleven of its thirteen states[1]) admitted of either inter-

[1] When the Constitution went into force (March 4, 1789) two states, Rhode Island and North Carolina, were not as yet in the Union. They

pretation. But apart from the question of secession, many American writers, while admitting the federal union to be permanent, have taken quite a different view of sovereignty from the one here indicated. This is the theory of dual or divided sovereignty. In accordance with this view the sovereign power in a federal union, such as the American republic, is not located in any single authority but is divided or distributed between the federal and the state government. Such a theory is of course totally at variance with the whole conception of sovereignty explained in an earlier chapter. It is difficult to regard it as anything else than a confusion of sovereignty, which is complete and absolute, with constitutional power, which may be of any degree of limitation. If the federal and state governments represent a "division of sovereignty," then the three branches of the federal government represent a further subdivision, and so forth. In spite, however, of its inconsistency, the theory of dual sovereignty has found illustrious champions. President Madison devoutly believed in it. "It is difficult," he wrote, "to argue intelligibly concerning the compound system of government in the United States without admitting the divisibility of sovereignty." The American courts of the same period declared, "The United States are sovereign as to all the powers of government actually surrendered. Each state in the Union is sovereign as to all the powers reserved." [1]

were certainly no longer in the confederacy, which had ceased to exist. Yet the articles had declared that "the Union shall be perpetual" (art. 13).

[1] For the subject of sovereignty under the American constitution,

4. Utility of the Federal Principle in effecting a Compromise. Returning from the question of the location of sovereignty to the general aspect of the federal state, it may be noted that the peculiar utility of the federal principle in political construction lies in the spirit of compromise which it embodies. Every small community or state is driven by the need of protection to seek for a union with its fellows. But a form of association which annihilates its own traditions of independent self-government naturally runs counter to the sympathies of its citizens. Still more is this the case if the communities to be united are of unequal magnitude. In this case a complete amalgamation into a unitary state would practically mean the absorption of the minor states into the large ones. The position of New Jersey, Delaware, and Connecticut at the time of the making of the Constitution was of this sort. Still more unequal was the federation long contemplated among the German states, and finally accomplished by the formation of the federal empire in 1871. The principality of Schaumberg-Lippe has an area of 131 square miles, and a population of about 40,000 persons; the kingdom of Prussia has an area of nearly 135,000 square miles and a population of 35,000,000. In all such cases as this the federal system supplies the means of creating a single state, combining the whole powers of its members for international defense and for matters of general interest, without sacrificing the individual life and political susceptibilities of the component parts. Even among "states" of relative equality, as in the

the student may consult Merriam, *History of the Theory of Sovereignty since Rousseau*, from which the above quotations are taken.

case of the majority of the forty-five states of the Union, the federal system has the advantage of permitting the legislation of each to accord with differences of environment caused by climate, racial elements, local custom, and antecedents. In the United States, more than anywhere else in the world, full advantage has been taken of the possibilities of the federal principle. Its history is largely a history of federations. In the earliest times of colonial history we have the formation of Connecticut by the federal union of its towns, and the establishment in 1643 of the New England federation uniting the northerly colonies for mutual protection. The quarrel with Great Britain in the eighteenth century brought the thirteen colonies into a union, which, after passing through the preliminary stages of the Continental Congress and the abortive confederacy of 1781, was finally consolidated into the present federal republic. The principle of political growth and constitution adopted in 1789 has governed the whole evolution of the United States during the nineteenth century.

5. Distribution of Power in Federal States. So much, then, for the historical and political aspect of the federal principle. Let us turn now to consider the important subject of the division of power between federal and subordinate authorities. It is not necessary in this connection to take account of any of the confederacies or federal governments previous to the formation of the Constitution of the United States. In these only the most elementary and necessary powers were allotted to the central government. But the federations of 1789 and of the nineteenth century offer an interesting series which may be studied with a view to discov-

ering the teaching of experience in regard to the relative position of central and subordinate authorities. We may here best begin by stating the general principles of apportionment of power. The prime historical motive of federation has been the need of defense. It is therefore first of all requisite that the federal government should have control of the military and naval power. Closely connected to this is the necessity that in its dealings with outside states the federation should conduct itself as a unit. The control of foreign relations must therefore rest with the central power. Since neither foreign relations nor war can be conducted without financial support, it is further necessary that the federal government should have some power of taxation of the individual citizens. It is not enough that it should be able to requisition the component commonwealths for the money it needs: this was amply seen in the collapse of the finances of the old Confederation (1781–89). To cover urgent and temporary needs, the financial power must include the power to borrow. These three functions — the conduct of war and defense, the control of foreign affairs, and the power to raise money — are the prime essentials without which no federal state can exist.

As a second class of governmental duties may be ranked all those which are only effective in so far as uniformly and generally performed. Of this nature are the control of coinage, the regulation of patents and copyrights, and the conduct of the postal service. Third in the list will stand a variety of public affairs in which, though uniformity is not absolutely essential, it is nevertheless largely contributory to national pro-

gress. In this connection may be mentioned the control of the more extensive transportation facilities (those which constitute "interstate commerce"), — railroads, canals, telegraphs, etc., — the regulation of the banking system, and the establishment of a general tariff. The latter is a somewhat anomalous case. Federal control of a tariff is apt to find its place among the powers of the central government from financial reasons sooner than from economic. The tariff offers a convenient and somewhat surreptitious form of taxation. Though not theoretically a requisite power of the central government, it is in practice of great importance: tariff walls are a serious impediment to the consolidation of national life. To illustrate this one may refer to the tariff bickerings of the thirteen states under the Articles of Confederation, or to the case of the German states united in the confederation of 1815. In this last instance not only was each state a separate tariff area from the others, but the single states were subdivided, — Prussia was a political unit, but contained sixty-seven different tariff areas.[1] As a fourth class may be placed the debatable category of subjects whose allotment to the federal or component government is a matter of opinion and must depend on the circumstances of the case. Here the conspicuous examples are seen in the regulation of marriage and divorce and in the control of public education. Beyond this as the fifth and final class lie those duties which certainly ought to be left to the constituent governments to perform. Here again opinion may differ, but public works of

[1] See in this connection Seignobos, *Political History of Europe*, chap. xiv.

merely local scope, public charities, the regulation of the liquor question, etc., are generally included.

With this outline let us now briefly compare the actual distribution of powers in the chief federations under our notice. We may begin by quoting the legislative powers assigned to Congress by the Constitution of the United States.

"The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

"To borrow money on the credit of the United States;

"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

"To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

"To coin Money, regulate the Value thereof, and of foreign Coin, and to fix the Standard of Weights and Measures;

"To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

"To establish Post Offices and post Roads;

"To promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

"To constitute Tribunals inferior to the Supreme Court;

"To define and Punish Piracies and Felonies com-

mitted on the high Seas and Offences against the Law of Nations;

"To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

"To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

"To provide and maintain a Navy;

"To make Rules for the Government and Regulation of the land and naval Forces;

"To Provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

"To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the Discipline prescribed by Congress;

"To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, Dock-Yards, and other needful Buildings;—And

"To make all laws which shall be necessary and

proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." [1]

It will be seen at once that apart from the special provisions relating to the Indians and the District of Columbia, there are no powers granted here that have not been given to the central government in all the later federations. The national government receives by this article but little more than the necessary powers of government. The residual power of government — the authority to control those things for which no special provision is made — is elsewhere explicitly withheld from it.

Let us place in immediate comparison with this the allotment of power between the federal and provincial governments in the Dominion of Canada. The basis of the constitution of Canada is a statute of the British Parliament named the British North America Act of 1867. The provisions in respect to the distribution of power are in the ninety-first, ninety-second, and ninety-third sections of the act. They are particularly interesting in the present connection because they are based on the arrangement made in the Constitution of the United States revised in the light of subsequent political experience. In addition to the powers possessed by Congress, the legislative power of the Dominion Parliament extends to the criminal law, marriage and divorce, interest, and the raising of money by any mode or system of taxation. Other things, such as banking, etc., are included which are not explicitly

[1] Art. i, § 8.

granted to the Congress and to which the federal authority in the United States only reaches by interpretation of implied powers. In addition to this the statute enacts that the Dominion Parliament has legislative power "in relation to all matters not coming within the classes of subjects by this act assigned exclusively to the legislatures of the Provinces." The amount of federal power expressly granted contrasts strongly with the section of the American Constitution quoted above. Even as compared with the power of Congress when expanded by the doctrine of implied powers, the control of the Dominion over such items as the criminal law represents a considerable increase of federal authority.

Closely following upon the making of the Canadian constitution, we have the constitutions of two important federal states still in operation. These are the constitution of the German Empire (1871) and that of Switzerland (1874). In each of these the scope of the central power is far wider than in that of the United States. In Germany the constitution, together with an amendment of December 20, 1873, grants to the federal government the control, not only of the things within the jurisdiction of Congress, but also the criminal law, civil law and judicial procedure, banking, medical practice, railroads (except in Bavaria), the regulation of the press, of trades, insurance (including workingmen's insurance and pension laws), and other matters.[1] In Germany the legislative scope of the central government is vastly greater than in America. Its action in the administrative direction is less,

[1] Imperial Constitution, art. iv.

since the principle of decentralization is here adopted and the federal measures (tariff, etc.) are carried out by the authorities of the constituent governments. The action of the central government is further narrowed in practice by the use that is made of the principle of concurrent jurisdiction. In many of the matters mentioned above the power of the federal government is not exclusive. Where the federal government has not seen fit to act, the states are free to exercise a legislative power. This applies for example to the control of railroads, medical practice, the criminal and civil law, etc. The federal jurisdiction is only exclusive where from the nature of the case it must be so (such as raising of money on the credit of the empire) or where it is expressly stated (for example, the taxation of imports).[1] To prevent conflict of authority it is provided that a federal law always overrides a statute of one of the constituent parts of the empire. This same principle of concurrent jurisdiction obtains of course in the United States, but to a much less extent; most of the powers granted to Congress are forbidden to the commonwealths, but in some matters, such as bankruptcy laws, they may act in the absence of federal legislation.[2] The present constitution of Switzerland (1874), together with the amendments since added, shows a wide range of federal power. "The legislative authority of the national government," says Professor A. Lawrence Lowell,[3] "is much more extensive in Switzerland than

[1] Imperial Constitution, art. xxxv.

[2] This subject is well treated by Burgess, *Political Science and Constitutional Law*, vol. ii, chap. vii.

[3] *Governments and Parties in Continental Europe*, vol. ii, chap. xi.

in this country, for in addition to the powers conferred upon Congress it includes such subjects as the regulation of religious bodies and the exclusion of monastic orders, the manufacture and sale of alcoholic liquors, the prevention of epidemics and epizoötics, the game laws, the construction and operation of all railroads, the regulation of all labor in factories, the compulsory insurance of workmen, the collection of debts, and the whole range of commercial law." To this may be added the fact that the federal government has the power (under the constitution) to compel the cantons to establish compulsory secular education, gratuitous in the primary schools. The Swiss government has, however, no power to levy direct taxes.

As a concluding instance let us notice the position of the central power in the recent federation of the Australian colonies. The Commonwealth of Australia, considered apart from its connection with the British Empire, is a federal unit made of six separate "states."[1] Its constitution, like that of Canada, is found in a statute of the British Parliament enacted in 1900, under the title of the Commonwealth of Australia Constitution Act. The legislative power of the federal parliament is laid down in great detail.[2] It includes all the essential and virtually essential powers already treated, such

[1] Rightly or wrongly the Australians have adopted the term states as the official designation of the component parts of their federation. Since the whole body is officially called the Commonwealth, we find the terminology used by Professor Burgess and other American writers exactly reversed.

[2] Constitution Act, part v, § 51 and § 52. A good commentary is given by Professor Harrison Moore, *The Commonwealth of Australia*, chap. v.

as defense, taxation, postal service, tariffs, interstate commerce, etc. In addition to this the federal authority is explicitly declared to extend to bounties on production or export, insurance (other than state insurance), marriage and divorce, invalid and old-age pensions, foreign corporations, acquisition of state railways (with consent of the state), railway construction (with similar consent), railroad control even without consent if needed for military purposes, conciliation of industrial disputes, if not confined to a single state, immigration, influx of criminals, and other minor matters. It is interesting to notice the use that is made of the principle of concurrent jurisdiction. The German constitution had, as we have seen, deliberately adopted this plan. The British North America Act, on the other hand, tries to indicate the powers of Dominion and provincial governments as exclusive of one another; in practice this has led to confusion. In Australia only a few of the powers are expressly declared exclusive (§ 52). In the majority of instances the state government may act where the federal government has not done so. But, as in the German Empire, "When the law of a state is inconsistent with a law of the commonwealth the latter shall prevail." This last provision must not be misunderstood. The law of the commonwealth in question must not transcend the constitutional power of the federal parliament, otherwise its application can be declared invalid by the courts, just as in America.

6. Conclusions. From the foregoing comparison of the chief federations of the nineteenth century, important conclusions are to be drawn. There is manifest

throughout the tendency to entrust the central or national government with a wider and wider sphere of authority. For this several reasons are to be assigned. In the first place it represents a process that is altogether natural, and which may rightly be spoken of as organic. The units of the federation once brought into contact begin to grow together, and to be knit into a more and more united body. The original jealousy and particularism of the separate parts are gradually merged into the wider outlook that accompanies a larger national life; the central government of the federation becomes a part and parcel of each individual citizen, and enlists in its support a broader patriotism than narrow adherence to the interests of his section of the community. Where the sense of natural greatness is involved constitutional limitations can be overridden with public approval; the addition of Louisiana to the territory of the United States at once suggests itself in illustration. An equally potent factor leading to the extension of federal power is found in the material conditions of modern life. Rapid transportation, the telegraph, and the evolution of production and commerce on a scale undreamed of at the making of the Constitution have broken down the economic barriers that once existed. Communities that were originally absolutely distinct in their economic and social life have undergone a complete industrial amalgamation. Each administers to the wants of the other, and each in turn receives a benefit. The wheatfields of the Dakotas and the factories of Massachusetts are complementary to one another. Where industry and commerce are thus fused into a

single economic life, it is impossible to separate the control of them into distinct territorial districts. It becomes an absolute necessity that the powers of the federal government must be either so expressed or so interpreted as to cover the whole range of economic life that has passed the bounds of the component "states" and become national. It is for this reason that the process of addition to federal power may be expected to continue in the future. Before the intruding forces of industrial civilization "state lines" are becoming more and more meaningless. Moreover, the true path to be followed has been already indicated by the German and Australian constitutions. By adopting the plan of concurrent jurisdiction and leaving it to the central government to occupy the field in proportion as the progress of national evolution demands it, a way is open for continued expansion without suffering the pangs of amendment, or relying upon the strained interpretation of the law.

We have still left out of consideration the question of how the American Constitution, made at a time when local jealousies prescribed the most grudging admission of federal power, is able to adapt itself to the changed situation of to-day. That this is not done by legal amendment has been already shown: the amending machinery of the Constitution is so rigid and immovable that it is valueless for the kind of adaptation here demanded. But instead of technical amendment a process of virtual amendment has been effected continuously through the nineteenth century by the interpretation given to the Constitution by the courts. The Constitution is fortunately an elastic document, capable of meaning much or

little at the will of its interpreter. The courts therefore have fallen back on the doctrine of "implied powers," and have stretched the Constitution to cover things never contemplated in its literal meaning. "A power vested," said Chief-Justice Marshall, "carries with it all those incidental powers which are necessary to its complete and efficient execution." The purchase of Louisiana, the Embargo Act of 1807, grants of land for railroads and canals, the annexation of Texas, grants of land for agricultural colleges, etc., are not things for which direct authority can be found in the enumerated powers of the federal government.[1] It is by interpretation only that Congress has the power to issue paper money, to make anything it wills legal tender, to charter and regulate national banks, to claim a monopoly of the postal service. It is probable that, if future needs demand it, the Constitution can be held to permit the national government to build, buy, and own railroads, and to monopolize the telegraph service. That this device of latitudinarian interpretation has filled a most useful historical purpose is beyond a doubt. It is an excellent example of the political genius inherent in the Anglo-Saxon temperament, that the difficulty created by the error in making amendment so rigid should be surmounted by so simple and natural a remedy. The error remains an error nevertheless. The Swiss or Australian system, whereby recurring amendment is part of the life of the constitution, is greatly to be preferred.

[1] See Andrews, *Manual of the Constitution*, p. 135.

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CHAPTER VI

COLONIAL GOVERNMENT

1. The Acquisition of Dependencies. — 2. Colonies of the Ancient World. — 3. Colonial Expansion after the Discovery of the Sea Route to the East Indies and the Discovery of America; Spanish Colonial System. — 4. Colonial Policy of England and France in the Seventeenth and Eighteenth Centuries. — 5. The American Revolution. — 6. Alteration of British Colonial Policy in the Nineteenth Century; Establishment of Self-Government. — 7. Present British System of Colonial Administration. — 8. Imperial Federation. — 9. Recent Colonial Expansion of European States. — 10. The Dependencies of the United States.

1. The Acquisition of Dependencies. Taking the word colony in its widest sense to include all kinds of dependencies, we are met by the fact that the colonies of the world occupy two fifths of the land surface of the globe, and contain a population of half a billion people. Great Britain has at least 350,000,000 colonial subjects, France 56,000,000, the Netherlands 35,000,000, Belgium 30,000,000, and Germany about 15,000,000.[1] The political status of the communities thus controlled presents the greatest diversity. In the strict theory of law each of them is under the absolute dominion of the sovereign state to which it "belongs." In practice they vary, from the virtual independence enjoyed by Canada and Australia to the total dependence of Gibraltar or Madagascar. The vast

[1] Statistics taken from the Bureau of Statistics publication, *Colonial Administration* (1901).

extent and the great natural resources of the modern colonial area indicate its importance in the future history of the world. The realization of this by the great powers has led, during the past twenty-five years, to a renewed colonial expansion, in which practically all the "unclaimed" territory of the world has been partitioned among the leading states. The subject of colonial administration, both political and economic, has taken on, in consequence, an increased interest, and attention is more and more directed to the study of the systematic management of dependencies. The recent expansion of the United States resulting from the war with Spain has rendered this portion of the study of government one of especial consequence to Americans. The present chapter, therefore, will be directed towards an inquiry into the origin and evolution of colonial government, the different systems of administration now employed, and the question of the political future of colonies. Throughout the chapter it will be proper to devote most attention to the colonies of the United Kingdom. Great Britain has been, *par excellence*, and still is, the colonizing country; and it is by the British government, in a somewhat groping and half-conscious way, that what may be called the modern system of colonial administration has been worked out. The new dependencies of the United States will be examined in conclusion in order that their present government may be discussed in the light of British experience in the past.

A sovereign state comes to possess dependencies in various ways. The simplest is that of conquest, by which the vanquished community is subjected to the rule of its victors. Such was the case with the ex-

pansion of Rome, whose "provinces" were countries conquered by the Roman arms. The Spanish colonies of Mexico and Peru, and the British dominions in India, were the fruits of conquest. Closely akin to this is the acquisition of a colony by cession. A country possessing a colony may be compelled by defeat in war to cede the colony as the price of peace, or induced from commercial reasons to sell it. The numerous treaties of the eighteenth century, whereby France and England handed their colonial possessions back and forward, were of this sort. The cession of Canada by France (1763), and of the Philippines by Spain (1898), are instances of colonial acquisition by war, while the purchase of Louisiana (1803) illustrates the purely financial process of acquisition. In addition to these two modes of colonial aggrandizement there remains what may be called, *par excellence*, the colonizing process, namely, that of occupation and settlement. In this case the claim to the colony rests, if not on actual discovery of the land (Newfoundland, Australia, etc.), at any rate on priority of actual occupation. Where a native population is found in fixed agricultural settlements, the assumption of control approximates to conquest. But where the native population is sparse and migratory, merely wandering over the land in nomadic fashion, living on the bounty of nature and the fruits of the chase, their presence ought not to invalidate the claim of immigrants proposing to make a permanent and fixed settlement. Much sentiment has been wasted over the supposed claim of the Indians to the continent of North America. When it is recalled that the whole Indian population, from Newfoundland to Florida, and

from the Mississippi to the sea, was about as numerous as the inhabitants of a large American city (probably about 200,000), and that its settlements were only in a few places fixed and agricultural, its "claim" to ownership of the whole country becomes somewhat absurd. One may well ask how far such reasoning should be carried. Did the few starveling bushmen of the desert and forest of Australia own the whole continent? Without accepting the brutal code of the right of the strongest, one may in all reasonableness recognize the right of civilized nations to the acquisition of territory which is only "squatted upon" by wandering savages.

2. Colonies of the Ancient World. Of the colonies of the ancient world those of Greece and Phœnicia along the shores of the Mediterranean are the most noteworthy. The Phœnician settlements were for the most part merely trading stations, but there were exceptions also (such as Carthage) in which a large body of emigrants established a permanent agricultural settlement. The colonies of Greece were on a larger scale: they resulted first of all from the Dorian invasion of the Peloponnesus about 1000 B. C., which drove many fugitives to seek new homes. Similarly the conquests of the Spartans and the inroads of the Persians occasioned a scattering of some of the conquered tribes. Other colonies were due to the political dissensions with which the restless city states of Greece were rife and which sometimes resulted in the deliberate withdrawal of a part of the citizens to found a new city elsewhere. But the establishment of Greek and Phœnician colonies did not involve what we now think of as colonial government. Athens, indeed, succeeded in

exacting money tribute from the cities she had planted in the Ægean Sea, basing her claim on the naval protection afforded them. But the general practice was to regard a colony as an independent political unit from its inception. It was an emigration, an "outswarming" of freemen who carried with them the same right of self-government that they had had in their former home. A somewhat different type of colony made by settlement in ancient times is seen in the Roman *colonia*. This was a settlement of Roman soldiers on land allotted to them by their general after it had been conquered; here the prime object was to create a frontier defense of the empire, but these colonies often developed into permanent settlements.

3. Colonial Expansion after the Discovery of the Sea Route to the East Indies and the Discovery of America; Spanish Colonial System. It is with the discovery of the sea route to the East Indies and of America that modern colonization begins. The sixteenth century opened to the adventurous spirits of Europe a wonderland of unknown countries, in which to satisfy their passion for exploration and adventure, their lust for gold, their chivalrous ambition to increase the dominions of their king, and their pious desire to spread the Christian religion to the uttermost parts of the earth. It was in this age of adventure and conquest that Spanish and Portuguese colonial aggrandizement acquired the peculiar characteristics of domination and levying of tribute which proved its ruin. The Portuguese, sailing around the Cape of Good Hope, secured a monopoly of the rich trade of the East. Thither their merchants flocked in great numbers, setting up trading

stations on the coast of Africa (Sofala, Zanzibar), on the shores of the Indian Ocean (Goa, Malacca, etc.), among the East India Islands, and even in China and Japan (1542). In Brazil, partly by sending over exiled Jews and transported criminals, they founded a plantation colony in which the sugar cane was cultivated and to which slaves were early introduced from the coast of Guinea. Feudal grants of land were made to nobles of Portugal with almost absolute power over the natives. The Spaniards, equally adventurous, directed themselves not to the East, but to the West Indies, and to the mainland of Central and Southern America. A bull of Pope Alexander VI (1493) had divided the unchristian world with magnificent generosity between Spain and Portugal; Spain was to have the western world, Portugal the east. A revision of the shares by treaty gave Brazil and Labrador to Portugal and all the rest of America to Spain. The Spaniards proceeded to make good this shadowy claim by vigorous conquest. By the year 1510, Cuba, Hispaniola, Porto Rico, Jamaica, and other islands had fallen an easy prey. Mexico was conquered by Cortes (1519–21), and Peru fell before the brutal conqueror Francis Pizarro (1525–35). Thence Spanish dominion spread over the whole of Central and South America, except Brazil.

From the very beginning, however, the colonial system of Spain[1] had taken a false bias. The colonial establishments were regarded solely as a source of profit to the conquerors. There was no question of real self-government or liberty of trade. A recent writer[2] has

[1] See Zimmermann, *Die Europäischen Kolonien*, vol. i (1896).

[2] Professor Blackmar, U. S. Bureau of Statistics Publication, *Colonial Administration* (1901).

thus described the Spanish system of administration in the centuries which followed: "All the laws, the control of trade, commerce, agriculture, finance, taxation, the foundation of municipalities, the management of the natives, and the regulation of religion were made in the mother country, and sent to the colonies with the expectation that the colonies would adapt themselves to the laws. Nor did the decrees of the crown and its agencies stop here, but the home bureau organized the colonial government, local and central. The officers and rulers were natives of Spain sent out to rule their distant dependencies. During the Spanish domination in America nearly all the important offices of the state and church had been filled by Spaniards. The presidents and judges of the courts were from Spain. There were 18 Americans out of 672 viceroys, captains-general, and governors; and 105 native bishops out of 706 who ruled in the colonies. This system of officialism continued in all of the colonial possessions of Spain to the close of the present [the nineteenth] century." In matters of trade and industry the Spanish colonies were under the most stringent regulation. They could trade with no other country but Spain itself, and even then only through the organization known as the Casa de Contratacion, which held a monopoly. That such a system contained in itself the seeds of its own ruin is only too evident. The revolt of the Spanish colonies and the establishment of their independence in the early part of the nineteenth century were the natural outcome of such a vicious and short-sighted colonial policy.

4. Colonial Policy of England and France in the Seventeenth and Eighteenth Centuries. Al-

though England and France were early in the field with voyages of exploration (Cabot, 1497, Cartier, 1534) the establishment of their American colonies belongs to the seventeenth century. With Champlain's permanent settlement on the St. Lawrence (1603), and the landing of the Pilgrim Fathers (1620) the beginnings were laid of New France and New England. From the grant of the charter to the Virginia Company, 1606, dates the commencement of the plantation colonies of the South. That the English colonies grew and flourished on the Atlantic is to be attributed to the good fortune of the English government, rather than to its political foresight. The sterling qualities of the colonists themselves, animated by the high purpose of religious refugees, or by the daring of adventurers, had much to do with their success. It was through the neglect, and not by the policy, of the home government, that the colonists acquired their political right of self-government. The charter granted to the Massachusetts Bay Company in 1628 was intended by the government as a sort of commercial instrument for the conduct and governance of a trading company. It was the emigration of the officers and the company itself to the shores of America which converted it into a political constitution. In the seventeenth century the English in general did not dream of the magnitude of the colonial empire which lay within their reach. In this their colonial policy was sharply contrasted with that of France. The French government early recognized the possibilities of American colonization; they realized the value of the St. Lawrence and the Mississippi as opening the way to the

interior of the continent, and planned a vast colonial empire which should encircle the narrow English settlement of the Atlantic seaboard. The English government in the seventeenth century gave little or no help to its dependencies; the French were ready from the first with money and ships to be used in the upbuilding of New France. It has been part of the irony of history that the magnificent empire thus planned by the French should have passed by the fortune of war into the hands of the British crown.

But before the close of the seventeenth century, the American colonies, from their growth in population and the development of their resources, began to assume a new importance. The colonial trade offered a harvest to the merchants of the mother country, and supplied a new bone of contention to vex the long-standing quarrels of England and France. Indifferent as the British government had been to the political position of its earlier colonists, it adopted in reference to the growing trade of the colonies a policy much resembling that of Spain. So too did the French, whose colonial schemes included, of course, the profit to be derived by the mother country from the natural wealth of its possessions. Already in the reign of Charles II the navigation acts[1] had placed restrictions on colonial commerce. By the first of these (1660) foreign ships were forbidden to trade with the colonies. All colonial sugar, tobacco, cotton, indigo, and other enumerated articles were to be sent only to England, or to an English possession; nor could

[1] For the contents of the navigation acts and a criticism of British colonial policy involved, the student may consult Egerton, *Short History of British Colonial Policy*, a really admirable work.

foreigners become merchants in an English colony. A new act of 1663 kept out all ships that had been built in foreign countries. An act of 1664 obliged European goods, even if placed in English ships, to be first landed in England before being exported to the colonies. Finally, an act of 1672 made goods passing from colony to colony liable to whatever customs duties they would have incurred if brought into England. These are the famous navigation acts which formed the basis of the English colonial policy of the eighteenth century. It was necessary indeed to modify them by making concessions to the colonists where they became too burdensome. The trade in wine and fish between Portugal and New England was made an exception. On the other hand the acts were reënforced by a number of statutes in the early part of the eighteenth century. Such a commercial code, if applied to a modern colony, would appear monstrous. It can however be said in defense of the acts, that they helped to encourage the growth of British and colonial shipping, and thus contributed to the national defense of both the mother country and the colonies. Nor did the restrictions laid upon trade press as severely upon the colonies as might be imagined. Evasion of the laws was notorious, and in any case the natural direction of commerce was to the British Isles. Less defense can be found for the policy of Great Britain in legislating in the eighteenth century against colonial manufactures. "The creating of manufactures in the colonies," ran a resolution of the British House of Commons in 1719, "tends to lessen their dependence on Great Britain." In accordance with this a statute of that year, fortunately applied only

in part, forbade all forms of iron manufacture in the American colonies. Indeed, when all is said, the whole code of commercial and industrial regulation must be considered as the outcome of the inveterate European habit of viewing colonial establishments as a source of mercantile profit. "The deliberate selfishness of English commercial legislation," says Mr. Lecky, "was digging a chasm between the mother country and her colonies, which must inevitably, when the latter had become sufficiently strong, lead to separation."[1]

5. The American Revolution. The quarrel between England and her American colonies which ended finally in independence is the most important fact in the evolution of colonial government. It showed to the world the elementary fact of colonial administration, that no civilized colony of size and increasing population can be kept in a state of permanent political tutelage. It led England to adopt, not immediately but ultimately, the policy of colonial autonomy. What had previously been done through neglect was now sanctioned by the teaching of experience. Yet, as in every quarrel, there were certainly two sides to the question. On the one side was the righteous protest of a free people against political dictation, against that "taxation without representation," the very sound of which is repugnant to Anglo-Saxon ears; on the other side were pressing needs of imperial defense.[2] The patriotism of national historians has long obscured the one or the other of

[1] W. E. H. Lecky, *History of England in the Eighteenth Century*, vol. iii, chap. xii.

[2] The English side of the controversy is to be found in Lecky, *History of England in the Eighteenth Century*, vol. iii, chap. xii; and Egerton, *Short History of British Colonial Policy*, bk. ii (*passim*).

the two sides of the controversy; it is only after a lapse of a century and a half that a clearer vision is becoming possible. That the American resistance to imperial taxation in the form in which it came to them was justified seems beyond a doubt. But the colonies were equally wrong in adopting towards the vexed question of imperial finance the selfish inertia of indifference. Unkindly critics have not scrupled to say that it was not "taxation without representation" that they resented, but taxation in any form and by any authority. The strain on the imperial treasury of protecting British subjects, both home and colonial, against foreign powers had been great. The successive wars against France — King William's war (1689–97), Queen Anne's war (1702–13), King George's war (1744–48), and the French war (1756–63), to give them the names by which they were known to the colonists — had increased the national debt at an alarming rate. Amounting in 1702 to a little over twelve and a half millions pounds, it stood at over one hundred and thirty-two millions at the Peace of Paris (1763). Much of this had been spent in defense of the American possessions. The colonies indeed had contributed, in separate fashion and in unequal proportion, both money and men to aid the British arms in America. It was a colonial expedition that captured Louisburg in 1745, the money thus spent being partly reimbursed by a parliamentary grant from Great Britain. But colonial contributions for defense were irregular and unequal. The colonies removed from the scene of immediate danger were inclined to shirk responsibility altogether. During King George's war the New York Assembly proved quite

intractable. At first they would do nothing for defense; later they contributed money sparingly for the Louisburg expedition, but would send no men. New Jersey was an inveterate delinquent. Sheltered by the adjacent colonies from the actual ravages of frontier warfare, she was never ready to make adequate contribution towards the common defense. In Queen Anne's war the Assembly struggled hard to prevent the raising of a military force, and was only forced into doing so by the packing of the house. Contributions were made to King George's war, but in the great final struggle of the French war New Jersey remained culpably inactive.[1] These were not isolated instances, but were characteristic of the difficulty of obtaining joint action from the colonial governments. Mr. Lecky thus describes the situation: "In order to raise the money for the support of the American army it was necessary to have the assent of no less than seventeen colonial assemblies. The hopelessness of attempting to fulfill these conditions was very manifest. If in the agonies of a great war it had been found impossible to induce the colonies to act together; if the Southern colonies long refused to assist the Northern ones in their struggle against France because they were far from the danger; if South Carolina, when reluctantly raising troops for the war, stipulated that they should act only within their own province; if New England would give little or no assistance while the Indians were carrying desolation over Virginia and Pennsylvania, what chance was there that all these colonies would agree in time

[1] See Lodge, *Short History of the English Colonies in America*, chap. xiv.

of peace to propose uniform and proportionate taxation on themselves in support of an English army?" The financial difficulty to be faced was thus an actual one, though aggravated by the mistaken policy of the British crown. The colonies and the mother country had reached an *impasse*; further continuance on the existing basis was no longer possible; the only solution could have been found in a joint revision of inter-imperial relations; this the dull stupidity of the English administration and the willful inertia and mutual jealousies of the colonies rendered impossible.[1] It is of importance properly to appreciate the historic situation thus created; for the relative financial situation of Britain and her colonies is now reproducing itself on the horizon of the twentieth century. To this attention will be directed later.

6. Alteration of British Colonial Policy in the Nineteenth Century; Establishment of Self-Government. In what has been said above it is not meant to imply that the system of self-government in the colonies was established at once after the American Revolution. Indeed, for the time being, the case was rather the contrary. The king and his ministers, attributing the disaster of their colonial system to the license allowed to the colonial assemblies, were inclined to tighten their grip upon their remaining dependencies. The Quebec act of 1774 established royal government in Canada with no elective assembly, but only a council

[1] The rejection of the scheme of the Albany congress (1754), rejected by both mother country and colonies; the recognition by various colonial governors of insight, of the need of union and joint taxation; Governor Pownall's proposition of an imperial customs union — may be reckoned among the signs of the times.

nominated by the crown. Even under Pitt's constitutional act of 1791 the measure of liberty granted to the Canadians, and intended to reward the allegiance of the Loyalists, consisted only in the right to elect the members of the lower house in each of two provinces. The governor, the executive council, and the legislative council or upper house, were all appointed by the crown. The same is true of the other North American colonies. Those that already had partial self-government (as Nova Scotia, Barbadoes, Jamaica, Bermuda) were not deprived of it, but those newly acquired (Trinidad, etc.) were kept under crown government. Cape Colony, definitely ceded in 1815, remained under military government till 1835. Even then the civil government established was a nominated and not an elective one. Self-government being out of the question in a penal settlement, Australia remained long in direct dependence on the crown. But the lesson taught by the American Revolution had nevertheless been effective. As the new colonies grew in population and importance, the opinion gained strength that both justice and expediency demanded that they should administer their own affairs. Even on commercial principles it was thought that colonial liberty was more profitable than colonial bondage. The doctrines of the political economists which became in the middle of the century the official creed of the English government, brought about the establishment of free trade (1846) and the repeal of what was left of the navigation acts (1849). Already before this the serious rebellion in Canada (1837) and Lord Durham's report, strongly recommending the establishment of responsible government, had called

public attention to dangers of the existing system. The act of union of 1840, joining upper and lower Canada into one, introduced the principle of parliamentary self-government on the model of the British parliament. In the next decade the same "enfranchisement" was extended to the other provinces of British North America and to all the other colonies in a position to receive it, — to New Zealand (1852), to Cape Colony (1853), to Victoria (1854), to New South Wales and Tasmania (1855), to South Australia (1856), and to Queensland (1859).[1]

It is interesting and instructive to observe the attitude adopted in England towards the colonies at the time of the grant of self-government, and in the period immediately following. In the first place two great questions of paramount interest in the colonial policy of the present day were left entirely out of sight, — the tariff relations of the colonies with the mother country, and the question of imperial defense. That the tariff should have passed unconsidered was entirely to be expected in the light of the ideas then prevalent; indeed the question seemed to have settled itself in the course of nature, and the optimistic free-traders of the middle of the century took it for granted that tariff barriers were soon destined to disappear the world over. It seemed unnecessary, therefore, to stipulate for free trade or any form of customs union between the United Kingdom and its dependencies. The other

[1] Lord Grey's treatise, *The Colonial Policy of Lord John Russell's Administration*, is a formal defense of the policy thus adopted. Natal was granted an elected legislature in 1856 and acquired responsible government in 1893.

problem, that of imperial defense, was also passed over: perhaps by virtue of the very difficulty of its solution, perhaps as a result of the sanguine hopes that had been fostered in the peace era. The policy adopted was not everywhere approved. Disraeli, speaking in 1872, and foreseeing with characteristic prescience the difficulties that must arise, pronounced it a mistake. "Self-government," he said, "ought to have been conceded as part of a great policy of imperial consolidation. It ought to have been accompanied by an imperial tariff . . . and by a military code which should have precisely defined the means and the responsibilities by which the colonies should be defended, and by which, if necessary, this country should call for aid from the colonies themselves."

But the real secret of the willingness of the English people to leave the government of the colonies in the hands of the colonists themselves lay in the new view that was becoming current as to the "manifest destiny" of the British colonies.[1] The example of the rise and progress of the United States seemed to point towards the inevitable future of all great dependencies inhabited by an enlightened and increasing population. Independence seemed only a question of time, and the duty of the mother country was to give the colonies a sound political education in the methods of responsible government, and when the destined hour came to let them depart in peace. The views of the "little Englanders," of the Manchester school of economists, averse to large military and naval expenditures, cosmopolitan in their

[1] For interesting details in this connection see B. Holland, *Imperium et Libertas* (1901).

sympathies and sanguine in their hopes of the commercial unity of the world, powerfully stimulated public feeling in this direction. It is astonishing at the present date to look back on the opinion then prevalent. Sir F. Rogers (afterwards Lord Blachford), who for eleven years was permanent under-secretary for the colonies (1860-71), wrote at a later date (1885) of the views he held in the following terms: "I had always believed, — and the belief has so far confirmed and consolidated itself, that I can hardly realize the possibility of any one seriously thinking the contrary — that the destiny of our colonies is independence: and that in this point of view the function of the Colonial Office is to secure that our connection, while it lasts, shall be as profitable to both parties, and our separation, when it comes, as amicable as possible." Such views were only too common in the period of colonial history from 1840 to 1880. Payne, in his "History of European Colonies" (1877), designed as an educational work for English schools, wrote: "Canada and Victoria are bound to England by a tie so slight that its rupture would not at all be dreaded; and such a rupture would hardly be felt whenever it happened." Great indeed is the contrast between such a point of view and the sentiments now entertained both in Great Britain and the colonies, of the relations of the dependencies to the mother country. But before considering the new imperialism and its political consequences, it will be best to pass briefly in review the varied systems of government at present obtaining in the colonial possessions of the United Kingdom.

7. Present British System of Colonial Administration. First let us consider the general principles

which are adopted in the management of the British colonial possessions. Some persons indeed might deny that there are any general principles involved; for it is contrary to the spirit of British institutions to act on a formal and preconceived plan, and the method adopted is rather a habitual way of doing things, based on the teaching of experience, than a scientific and complete system of administration. The British system, if the word may be allowed, recognizes no absolute right of self-government. It aims, in the words of Earl Grey, to allow "the inhabitants to govern themselves when sufficiently civilized to do so with advantage" and, where this is not the case, to provide "a just and impartial administration of those colonies of which the population is too ignorant and unenlightened to manage its own affairs." It is recognized therefore that the government adopted in each colony must be in accord with the particular conditions presented, must vary according to the race, character, and number of the population, their degree of enlightenment, the extent of the territory, and (as in the case of Gibraltar) with the possible military importance of the place for the defense of the empire. Within these limits the principle obtains that a colonial community of which the great majority is made of civilized whites shall be granted the fullest autonomy; while to the other colonies shall be extended such a measure of self-government as their circumstances seem rightly to demand. The principle of political training for future self-government, as is seen in the case of the elected municipal bodies in India, is also recognized. In the case of every colony, however, the crown retains a certain power of control;

the governor, or executive head of the colony, sometimes nominal, sometimes actual, is the nominee of the crown; the crown reserves a veto on all colonial legislation; the final court of appeal for colonial cases is the judicial committee of the Privy Council.

Though resting on this general plan, the governments of the British colonies present the greatest range of diversity in the details of their political constitutions. Various classifications have been offered, of which the most satisfactory seems to be the separation first of all into three great classes, — the crown colonies, the representative colonies, the responsible colonies. The crown colonies are those which have no self-government; the representative colonies are those which have partial self-government; the responsible colonies are those which have complete self-government. These three divisions may be taken to indicate, not only the classification of the dependencies at any particular time, but also the stages through which a British colony passes in the upward progress. Canada, as has been seen, was a crown colony from its conquest until 1791, a representative colony until the act of 1840, and since then a responsible colony.

In the first of these divisions, the crown colonies (with which also the various protectorates are to be included), are comprised all those dependencies whose governing officials are all nominated by the crown. The list includes the Straits Settlements, Hong Kong, Fiji, Trinidad, Sierra Leone, Honduras, Gibraltar, St. Helena, and many other places. Within the group, however, various degrees of dependence on the home government are found. In the places of great military

and naval importance (Gibraltar, St. Helena) and in dependencies containing but few white people, the control of the crown is complete; the nominated officials are appointed directly by the home government, and sent out to the colony. In Gibraltar the whole legislative and executive authority is vested in the commander-in-chief, who is also governor. In other possessions, representing a higher stage of colonial evolution, and which contain a considerable element of white, or at least of educated native inhabitants, the control of the crown is less direct. In British Honduras, for example, the administration is conducted by a governor with a nominated executive council of five members, and a legislative council consisting of three ex-officio members and five others nominated by the crown from among the residents. The government of Hong Kong approaches still more nearly to being representative. The governor has as his executive council a nominated body of eight members, six of whom (the secretary, the officer commanding the troops, the treasurer, the attorney-general, the harbor master, and the director of public works) hold their positions ex officio. There is in addition a legislative council composed of the same ex-officio members together with the captain-superintendent of police and six unofficial members, — four appointed by the crown (two of these being Chinese), one nominated by the Chamber of Commerce, and one by the local justices of the peace. Such a body, it will be observed, stops just short of the principle of popular election. The details here given are not of importance in themselves, but are intended to show the careful grading of the British colonial government.

The representative colonies are those in whose government the principle of election has been introduced, without, however, being allowed to predominate. To this class belong Ceylon, Jamaica, Mauritius, the Bahamas, Barbados, British Guiana, Bermuda, etc. Here again two degrees of relative dependence may be distinguished. In some of them (as Mauritius and Jamaica) the legislature consists of a single body, a part of whose members are nominated and the rest elected; in others (as Barbados) the legislature consists of two houses, one entire house being elected by the people. But in all the representative systems, the officers of the executive are nominated, and the parliamentary system of government does not obtain. The legislature (Council of Government) of Mauritius, made up of the governor, eight ex-officio members, with nine nominated by the governor and ten elected members, is typical of the first class. Barbados illustrates the second and more advanced type; it has a bicameral legislature, the upper house (Legislative Council) composed of nine members nominated by the crown, and the lower, or House of Assembly (twenty-four members), being elected annually by the people.

At the apex of the system stand the really self-governing, the responsible colonies, whose governments are modeled on that of the United Kingdom itself. These include Canada, Newfoundland, Australia (now federated), New Zealand, the Cape of Good Hope, and Natal. Within this group, in accordance with the general terms of the agreement of May 31, 1902, between the crown and the Boers, still in arms, are to be included the Transvaal and the Orange River

Colony as soon as the progress of their pacification permits. The responsible colonies enjoy a virtual independence. Their governments have been created, as already seen in the case of Canada and Australia, by statutes of the British Parliament which are practically equivalent to written constitutions. With the exception of the nomination of the governor-general (or governor, as the case may be), the reservation of the power of disallowing colonial statutes, and the retention of the judicial committee of the Privy Council as the final court of appeal, the home government withdraws from any internal control of the self-governing colonies. It must however be distinctly understood that in point of law this self-effacement of the imperial government is only operative at the pleasure of Parliament. The claim has indeed been raised in Canada that the grant to the Dominion Parliament of "exclusive legislative authority" over the matters enumerated in the British North America Act was "exclusive" of the authority of the Imperial Parliament itself. Such a contention is at variance with the very basis of the British constitution, and cannot for a moment be accepted. But unless and until a statute of Parliament allows it, neither the crown nor any other authority in the mother country has any power over the colonies beyond that reserved in the constituent acts.

These colonies are thus left free to manage their own internal concerns. This includes the very important privilege of making their own tariff. All of the autonomous colonies have availed themselves of this, and have erected protective tariffs against the trade of the mother country. Though recently British goods have been ad-

mitted into Canada, New Zealand, and South Africa[1] at a preferential rate of duty, it was long true that the colonial tariffs placed British goods in the same position as those of a foreign country. The colonies have not the power to conclude treaties with foreign states, but it has been the custom of Great Britain, in negotiating treaties affecting immediately the greater colonies, to give a ready hearing to the wishes of her colonial subjects. "It is an understanding or even maxim of the policy governing the relations between England and the Canadian Dominion," wrote the late Sir John Bourinot, the leading authority on the government of Canada, "that Canadian representatives shall be chosen and clothed with all necessary authority by the Queen in council to arrange treaties immediately affecting Canada, and all such treaties must be ratified by the Canadian Parliament." The form of government prevalent in the responsible colonies is virtually the same as in England, except that the existence of the constituent statutes introduces everywhere the principle of constitutional limitations analogous to what is found in the United States. The governor exercises a nominal authority similar to that of the crown. The real executive is the prime minister and his cabinet, whose tenure of power is dependent upon the continued support of the majority of the lower house. The Canadian senate is a nominated body of limited members, but the nominations are made on the advice of the ministry, and not, as in the representative colonial councils, at the pleasure of the crown. The same is true of the legis-

[1] Preferential duties were adopted in 1903 by Cape Colony, Transvaal, Natal, Orange River, and Rhodesia.

lative councils of Natal, New Zealand, and Newfoundland. The upper houses of Australia and Cape Colony are elective.

India, whose conditions are altogether unique, stands apart from the rest of the British colonial system. Here a vast population, numbering in all about three hundred million and presenting the widest varieties of racial character, customs, and creeds, are more or less under the control of the United Kingdom. About seventy million of these are found in the semi-independent native states, the rest fall under the government of what is technically called British India. The government of India is divided between the home authorities, the central government in India, and the subordinate or provincial governments. At the head of the home government is the crown, acting through the secretary of state for India. With this secretary is adjoined a special council composed of former residents in India, holding office for ten years, and not eligible to sit in parliament. The expenditure of the Indian revenue must be sanctioned by the secretary and a majority of the council. All other business done in the United Kingdom in reference to India is conducted by means of the council, but in some matters of a diplomatic character, as in dealings with native states, the secretary acts alone. In India itself, the supreme executive power lies in the governor-general, or viceroy, who is appointed by the crown. He has an executive council, which includes the commander-in-chief and the highest officials. For legislative purposes, the council is increased by sixteen members appointed by the viceroy. The provincial governments, under governors (appointed by the crown) or

lieutenant-governors (appointed by the governor-general) or chief commissioners (appointed by the governor-general in council) assisted by councils, are similar in construction to the central government. There is thus no attempt at self-government in either the central or provincial administration of British India. It is only in the municipal governments (by virtue of acts of Parliament, 1882 and 1884) that the elective principle has been introduced. Over the native states Britain exercises a varying degree of control. They contain no British officials, except an advisory resident; they raise their own armies. But they can hold no diplomatic intercourse with one another or with the outside world, and have no right to make war or peace. Britain also reserves the penalty of dethronement as a punitive power over the native princes.

8. Imperial Federation. The question of greatest interest in connection with the large self-governing colonies of Great Britain is their political future. Their rapidly increasing population and the development of their natural resources throw into a strong light the important position they are destined to hold in the course of the century now opening. The idea of their manifest destiny as independent states, prevalent fifty years ago, has now receded into the background. The new wave of imperialism that has affected public opinion in all the great states of the world has fascinated the national ambitions of all the British subjects with the possibility of the future power of their colossal empire. The smaller destiny of isolated independence is set aside in favor of participating in the plenitude of power possible in union. The combined efforts of

Britain and the colonies called forth by the Transvaal War have done much to strengthen this feeling. But with the acceptance of this new point of view, the troubled question of interimperial relations again looms large upon the horizon. The question is almost identical with the great colonial controversy of the eighteenth century already discussed. But the frame of mind in which it is approached on both sides, and the riper political experience now available, remove it to another plane. Yet it does not seem possible that another generation can go by and find Canada and Australia still outside of the imperial councils; it hardly seems possible that the group of ministers who control the foreign policy of the empire can permanently remain the appointees of the electorate of the British Isles, to the exclusion of the British dominions beyond the seas. If independence is no longer to be the future ideal of the colonies, and since geographical reasons forbid a complete amalgamation, it looks as if the manifest destiny of the colonial system must now be sought in imperial federation. The movement that has been made in that direction has enlisted the support of influential men in all parts of the empire; but as yet they are only a minority. It seems, nevertheless, as if the continued growth of the colonies, and the more and more imperative needs of imperial defense, will force the question to the front. The difficulty to be overcome is great. If a federal parliament is formed, it obviously will not exercise authority over the internal affairs of the British Isles. There must therefore be two parliaments in Great Britain itself, the insular parliament and the supreme federal body. It will not therefore be sufficient

to admit colonial representatives to the parliament at Westminster, but will be necessary to totally reconstruct the legislative power in the United Kingdom. The dead weight of inertia to be encountered, before such a change can be effected, will be realized by all who are aquainted with the British political temperament.

9. Recent Colonial Expansion of European States. But it is now necessary to turn to the consideration of the colonial expansion in recent times of the other great states of Europe, and the methods they have adopted in the administration of their dependencies. Since the year 1880 the territorial area claimed by the great powers as their dependencies has vastly increased. The available parts of Asia, and the unclaimed islands of the Pacific have fallen into European hands; the largest prey has been found in the continent of Africa, which has practically been parceled out among the great states. France, which had commenced the conquest of Algiers as early as 1830, has extended its possessions in north Africa, and holds not only all Algeria, but Tunis, French West Africa, the Sahara, Wadai, Sénégal, French Guinea, the Ivory Coast, Dahomey, and French Congo. This territory includes nearly all of the desert, the larger part of the valley of the Niger, and central Africa north of the Congo. The island of Madagascar was seized in 1895. France has also (beginning in 1861) obtained a large part of Indo-China (forming the dependencies of Cochin China, Tonkin, Annam, and Cambodia). The French dependencies now include in all an area of 3,740,000 square miles, and a population of 56,000,000 people. As the larger part of this area is occupied by an un-

civilized native population (in Madagascar, for example, there are less than two thousand Frenchmen in a population of two and a quarter millions), it has remained to a great extent either under military government (as in central Africa) or under appointed officials with military support (Madagascar, Indo-China). Where possible, however, in the older colonies of France, self-government is introduced; Martinique and Guadaloupe have each elected councils; so too has New Caledonia in the south Pacific. Algeria is governed as part of France, being divided into departments and represented in the Senate and in the Chamber of Deputies. Nowhere has more thought been directed to the theory of colonial government than in France, the largest part of the theoretical literature of recent times on the subject being French. In spite of the fact that the maintenance of the new colonial system proves a heavy burden on the French exchequer, the dream of a colonial empire persists. It is characteristic of the French people, that while the English still keep their vast colonial possessions unrepresented in the parliament of the mother country, France has already adopted the principle of colonial representation. Cochin China, French India (Pondicherry and four other towns), Guiana, and Sénégal each elect one deputy; Guadaloupe, Martinique, and Réunion each elect two. These last three, as well as French India, are represented by one senator each.

The expansion of Germany, which began in 1884, has taken the form of establishing "protectorates" and "spheres of influence," rather than colonial establishments in the true sense. The territory thus brought into dependence on the German empire amounts to

one million square miles. Most of it is in Africa, and is made up of Togoland, the Cameroons, German Southwest Africa, German East Africa, etc. The administration carried on by imperial governors, commissioners, secretaries, etc., is similar to that of a British crown colony of the primary type. There is scarcely any European population. Italy also has established African dependencies (Eritrea, Italian Somali Land) whose general character and whose administration are similar to those of Germany. The colonial possessions of the Netherlands, though not attributable to the recent European expansion, are of great wealth and importance. Their population outnumbers that of the mother country in the ratio of seven to one, although of the thirty-five million inhabitants less than one hundred thousand are white. The elective principle is nowhere in use. The governor of the Dutch East Indies, the members of his assistant council, and the provincial "residents" and district "controllers" are all appointed officials. The administration of the colony, however, must be in accord with the principles laid down in a Dutch statute of 1854, for the "government of Netherlands India."

10. The Dependencies of the United States. The most recent chapter in the history of colonial expansion is offered by the acquisition on the part of the United States of a number of dependent territories. The Hawaiian Islands, annexed in 1898, may be passed over; admitted to territorial status (1900) and having a government similar to that of the other territories of the United States, they are not to be looked upon as a dependency. But the case is different with the

islands acquired by cession from Spain (1898), as the result of the Spanish-American War (Porto Rico, the Philippines, Guam), and with Tutuila, Manua, etc., in the Samoan group, annexed in 1899 at the request of their inhabitants. Porto Rico is controlled by a governor and an executive council appointed by the President of the United States, and a legislature of which the lower house is elected by the people, while the upper house consists of the executive council. Of this branch of the legislature at least five, out of a total of eleven, must be natives of the island. The principle here adopted of forming a legislative body by using an executive council containing a number of natives, resembles somewhat the system already described as used in the government of British India. The addition of a lower house altogether elected makes the government much more nearly democratic than that of India, and assimilates it very closely with the government of Barbados. The government of the Philippine Islands has not yet passed the constructive stage. For some time after the defeat of Spain, and even after the formal cession of the islands, the administration remained in the hands of the military authorities. This was superseded by civil government (July 1, 1901) vested in a commission of officials nominated by the President. An act of Congress (July, 1902) validated the creation of the civil government thus established, and the exercise of power granted to it by executive order. The commission thus formed consists of a governor with seven commissioners, four being Americans and three Filipinos. The American commissioners are respectively assigned to the departments of commerce and police,

finance and justice, public instruction, and the interior. The same act of Congress provides for the future government of the Philippines. Two years after the completion of a census and the pacification of the islands, a new government will be formed in which the commission will remain as the executive, but will in part lose its legislative functions. There will be a bicameral legislature of which the commission will form the upper house, the lower house (Philippine Assembly) to consist of delegates elected from all of the people except the non-Christian tribes.

The acquisition of the above dependencies by the United States has occasioned in recent years a vast amount of discussion. It has been a matter of earnest debate as to whether the acquisition of such distant insular territory as the Philippines, peopled by races altogether alien, in part uncivilized, and in part openly hostile, was either just or profitable. Even the constitutionality of such a proceeding was widely denied. The last question has been set at rest by the interpretation of the courts, and by the overwhelming force of accomplished fact. The plain truth is that at the making of the Constitution, the acquisition of such territory as the Philippines was not considered, either one way or the other. The result is that in reality the Constitution has nothing to say about it. But the convenient doctrine of implied powers has been made to meet the case. The question involving the keenest discussion was that of the tariff. It was held by many that the provision of the Constitution that the tariff must be uniform throughout the United States prevented Congress from making a tariff barrier between the repub-

lic and its new dependencies. The Supreme Court, however, in the Insular Cases of 1901, has decided that this is not the case. In consequence the action of Congress in setting up the present tariff[1] is constitutional.

It may be observed in conclusion, that the tendency of the United States in dealing with its dependencies has been to proceed further in the direction of popular government than English experience would warrant. The system contemplated in the Philippines of instituting a lower house elected by the natives, would meet with no approval if suggested for the governance of British India. It has been difficult for Americans, in whose minds the principle of popular government has always assumed a more sharply theoretical form than is current with the English, to reconcile themselves to the "possession" of a dependent community. Common sense has shown the impossibility of governing the Philippine Islands on the same plan as Massachusetts or California. Yet the positive assertion of the Declaration of Independence that "all men are created equal" reads a little awkwardly in connection with the government of a group of islands by a commission sent to them from a distant country, and with the exclusion of the unchristian tribes from its future governance. But as usual the brute force of circumstances proves too strong for abstract theory, even when clothed with the historic authority of the Declaration of Independence.

[1] The tariff as between the United States and Porto Rico was temporary and has expired. An act of Congress of March 8, 1902, set up a tariff as between the Philippines and the United States and conversely. Products of the islands enter the United States at twenty-five per cent less than the tariff rate applied to foreign countries. The proceeds are expended on the islands.

The islands have come, by the fortunes of a just war, into the possession of the United States. It has become a moral duty to govern them, and only an infatuated worship of political abstractions could counsel handing them over to the wrangling anarchy of their half-civilized inhabitants.

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CHAPTER VII

LOCAL GOVERNMENT

1. Local and Central Government Distinguished. — 2. Areas of Local Government; the United States, France, England. — 3. Composition and Powers of Local Governing Bodies; the United States. — 4. England. — 5. France. — 6. Prussia. — 7. Local Taxation; the property tax of the United States. — 8. Systems of Local Taxation in Other Countries. — 9. Reform of the American System.

1. Local and Central Government Distinguished. Hitherto, our discussion of the structure of government has been confined to the consideration of those governing bodies whose authority extends over the whole state. But in all but the very smallest communities these are not the sole organs of administration. There exists in addition a number of officials and official bodies, whose functions extend only over a portion of the total territorial area of the state. These bodies, and the duties that they perform, are spoken of under the general designation of local government. Local government, therefore, will refer to the operations of all township and county councils, the governing bodies of municipalities, districts, etc. The common-sense meaning of the term is quite clear, but the definition of local and central government, in exact, precise form, is not so easy. For it is to be observed that not all the governing bodies whose power extends only to a part of the state are to be classed as organs of local government; for otherwise this would include the compo-

nent parts of a federal state, which is contrary to the evident signification intended. The state authorities of New York or Massachusetts are not organs of local government. Nor does the distinction lie in the extent of territory covered, nor in the number of persons ruled over. The municipal government of New York or Boston, or the county council of Lancashire, exercises its authority over a vastly greater number of people than the state of Nevada; on the other hand in extent of territory, the senates of Hamburg and Bremen, which are not merely local governments, rule over less territory than comes within the sphere of the council-general of a French department. The difference between local and central government is not therefore a matter of area or of population.

The distinction lies partly in their relative constitutional positions, and partly in the respective nature of the public services performed. In regard to the first point, it is true of most independent states that the local government derives its powers from the central government, and holds them at the pleasure of the latter. This is the case, whether or not there is a written constitution. In France and in Italy, each of which has a written constitution, the organization of the local government is entirely under the control of the central parliament. It is for this reason that we do not think of the Swiss cantons or the "states" of the United States as organs of local government; for these component parts of a federal system are, within the sphere of their own competence, quite independent of the central federal authority. But the distinction thus made is not universally true. Though it applies to nearly all independent states,

it is not the case with the organs of local government (townships, county, and municipal authorities) in the separate commonwealths of the United States. These certainly are organs of local government, and yet to a great extent they exist by virtue of the state constitution, and could not be put out of existence at the will of the state legislature.

The other point of distinction between local and central government consists in the different nature of the services accomplished. This requires some further explanation. The various functions performed by the agencies of the state for the benefit of the citizens will roughly fall into two classes. Some of them will be in the interest of the community generally, and the benefit thereby effected will not be assignable to any single part of the country. For example, the protection afforded by the army and navy whereby foreign conquest is prevented, is a benefit shared by all the inhabitants alike. The same will be true of all the large class of public works, the advantage and purpose of which may be said to be national. There will also be a number of regulative functions to be performed, — the institution of the criminal law, the control of marriage and divorce, law regulating contracts, sales, etc., all of which, to be effective, must be uniform. The whole class of functions thus indicated will properly fall within the province of the central government. But in addition to these, there are other state activities (for it must be recollected that both local and central government form a part of the organization of the state) of quite a different character. Here the benefit to be conferred only affects a small portion of the community, and is obviously assignable to

a particular area. The lighting of a town, the erection of a bridge over a country road, the establishment of a street-car system, are matters of this sort. Here it seems reasonable that the advantage, the cost, and the control of the enterprise should be looked upon as solely the concern of those who are affected by it.

Such, then, is the general distinction between the duties of central and local governments. The public services of the latter will be found on examination to refer mainly to the maintenance of schools, hospitals, asylums, bridges, roads, parks, etc., and the management of local public utilities, such as lighting plants, transportation systems. The activities of local government are thus concerned mainly with real property in various forms; it represents the collective activity of the citizens directed towards the creation and control of such tangible utilities (roads, bridges, water supply) as are of general benefit in their particular area, and indivisible among the separate citizens. The services thus performed may be better understood by contrasting them with such regulative legislative activities as the making of the criminal law, which belongs to the central government. In spite, however, of the obvious nature of the general distinction, the functions of local and central government shade and blend into one another. In some cases what is evidently a local matter as to expense and immediate benefit, is yet in other aspects a matter of general concern. This is seen in the case of schools. It is of evident universal concern that all the citizens should be educated, and it is therefore within the proper province of the central government to make education compulsory, and to prescribe the general plan upon which

it shall be based. It may also properly defray a part of the cost, leaving to the local government the immediate control and the main part of the cost, at least of primary schools.

2. Areas of Local Government; the United States, France, England. From this general consideration of the nature of local government, we may pass to some of the special problems which arise in its construction and conduct. These we may group under three heads: (1) the question of local areas, and here we shall have occasion to contrast the orderly "multiple system" in use in the United States with the confusion of the English areas; (2) the composition of local governing bodies, and their relation to the central executive, in connection with which the centralized system of France may be compared with the decentralization in England and in America; (3) the question of local taxation, involving an examination of the American property tax, and the systems in use in other places.

The institution of local government everywhere necessitates the division of the total territory, not only into one set of subordinate areas, but into several. In the United States we have townships and counties; in England parishes, districts, and counties (with other divisions); in France, communes, cantons, arrondissements, and départements. In the United States and in England we have in addition to these the municipal areas occupied by town and city governments. The reason for having more than one set of divisions will be plain. Different public utilities will naturally spread their effect over areas of different size. Thus it will require, let us say, only twenty families to support a country

school; but the same number of families could not with advantage erect and maintain a lunatic asylum for their use. Nor presumably could a hospital or a poorhouse be supported out of so small an area. It becomes plain, then, that local government demands the making of several areas adapted to the respective "rarity" or "denseness" of the function to be performed. But for convenience' sake it will be well to make these areas as few as may be, and to group together those which roughly correspond.

As the basis of the areas of local government, there will generally be found in old countries such as England, France, or Prussia, a primitive unit of settlement whose history is long antecedent to that of the central government itself. Such is the English parish, whose ecclesiastical name has susperseded the original Saxon "township," the French commune, and the Prussian gemeinde. In its origin this represents the little community of neighbors living together in a hamlet, or in adjacent rural settlements, and conducting their joint concerns by some form of common management. Where such exists it is plainly desirable to adopt it as the primary area of the local government of the modern state. There is, however, this disadvantage, that in the course of their long history the original parishes, etc., will have grown vastly different in size and population. In England, for example, out of a total of about 15,000 parishes, the smallest contains less than fifty acres, the largest over 10,000; eleven parishes (in 1891) had no inhabitants, and the most populous (Islington) contained 319,000 inhabitants. Similarly in France some communes are rural areas or mere hamlets, while others

are great cities. In spite of the distortion of area thus occasioned, it is advisable to retain such historic areas in the frame of local government. For they represent an essentially organic unit, and one which offers already a common economic and social life as a basis for political construction. Above such areas as these will come larger units (the counties, districts, etc.) representing the performance of public duties such as road-making, erection of poorhouses, hospitals, jails, etc., which demand a wider support than that given by the smallest local community. The number of gradations in the ascending scale of local areas varies from country to country, and will be best understood by a brief comparative review of the division adopted in some leading states.

The United States is singularly fortunate in the configuration of its local areas. They are in part historic, and in part deliberately constructed prior to, or at the same time as, the settlement of the land. The towns (townships) of Massachusetts, for instance, and the counties of Virginia may be called historic or organic areas. They represent the original grouping of settlers in their first occupancy of the colony. But one has only to glance at the map of such a state as North Dakota or Kansas to see that here the form of the local area has been a matter of deliberate construction. The townships, the sections into which they are divided, and the counties of which they form a part, are rectangular figures constructed on a common plan. But in the greater number of the commonwealths in the United States, whether in regular lines or not, we find each commonwealth divided into townships, which grouped

together make up counties. In some states, as in New England, the townships have come first, and the county is made up by a subsequent addition of townships; in the South the reverse has been the case, and the original area was the county, subdivided later to make townships. In the newer states, townships and counties have been made at the same time. But the excellence of the arrangement of the areas of local government in the United States lies in the fact that the larger areas are multiples of the smaller ones; township lines do not cross county lines. The result is that all the inhabitants of any township belong to the same county. This will be seen to have a most important bearing on the adjustment of local financial burdens.

The division of areas in France is based, as in the United States, on the multiple plan. To this general scheme, however, the historic commune is a disturbing exception. There may be several communes in an arrondissement (as is generally the case, since the total communes number 36,000), or, as in the case of Paris, several arrondissements in a commune. But above the commune the areas fit into one another; the canton (which is only an electoral and judicial district, and not a seat of government) is in every case a part of an arrondissement; the latter itself is a subdivision of the largest area, the département. With the exception again of the commune, all these areas represent deliberate construction, involving to some extent the sacrifice of the historic division of the country. They were made in 1790 by the Constituent Assembly, the first national parliament of the French Revolutionary era. This is reflected in the fact that the departments are approxi-

mately of equal size. Some of the more extreme constructionists of the epoch wished to subdivide France into a number of rectangles, exactly similar and exactly equal, disregarding at the same time the geographical configuration of the country and the historic associations of provinces, towns, and districts. This was not done, however, and the departments as constructed conform pretty much to the physical features of the country, and are named after the mountains, rivers, bays, etc., which they contain or adjoin.

In England, and indeed in the British Isles generally, the utter confusion into which the areas of local government had fallen has caused one of the administrative problems of the nineteenth century. In Saxon times the township, the hundred, and the shire formed a simple multiple system with local self-governing bodies. But the hundred fell into decay, the township (taking its ecclesiastical name of parish) became irregular, and lost most of its civil authority, and in place of the local self-government of township and county was substituted first the control of the king's sheriff, and finally the almost universal administrative jurisdiction of the local justices of the peace. For special purposes — the care of the poor, highways, burial, sanitation, schools — special areas were added, having little to do with parish or county lines, and under a separate governing body. The result previous to the reforms to be described later was complete confusion. The situation is thus described by Dr. William Odgers, recorder of Winchester:[1] "In 1883 England and Wales were di-

[1] *Local Government*, 1901; an excellent book, which, however, refers only to local government in England.

vided for local-government purposes into the following areas: There were 52 counties, 239 municipal boroughs, 70 improvement-act districts, 1006 urban sanitary districts, 41 port sanitary authorities and 577 rural sanitary districts, 2051 school board districts, 649 unions, 194 lighting and watching districts, 14,946 poor-law parishes, 5064 highway parishes, not included in urban or highway districts, and about 13,000 ecclesiastical parishes. The total number of local authorities who then taxed the English rate-payer was 27,069, and they taxed him by means of 18 different rates." With one trifling exception, "all the various areas intersected and overlapped each other." The means that have recently been taken to rectify the entanglement thus occasioned will form the subject of a later paragraph.

3. Composition and Powers of Local Governing Bodies; the United States. Let us now consider the composition and powers of local governing bodies, and their relation to the central authority. Here we may distinguish two broadly contrasted methods of construction. The one is the system of decentralization, or local autonomy. By this the control of local affairs is vested in a set of officials, elected by the people of the locality itself. Subject to certain general regulations which proceed either from the central authority or from the constituent power (expressed in a written constitution) which is behind both the central and the local organization, the fullest latitude is given to the citizens of the locality in the management of their public affairs. The other system is that of centralization. Here the management of local affairs is largely

controlled by a set of officials appointed by the central government. The former system prevails in complete form in the United States, and to a slightly less degree in England. The latter, or centralized system, is in use in France. In the kingdom of Prussia, something of a combination of the two has been put into practice. A brief review of the governing bodies thus established in the different countries will help us to a judgment as to the peculiar political purposes and the relative merits of the two systems.

In the United States, both in the North and South and in the new states, local autonomy prevails. The form which it assumes differs, however, to some extent. In the New England states the primary area of local government is the historic "town" or township, originally formed by the joint settlement of a group of emigrants. Its government has already been referred to in connection with direct legislation in a preceding chapter. The original organ of its government is the mass meeting of the qualified voters, called the town meeting. In places that have grown too populous for such a form of government, the town meeting is replaced by elected municipal government, — in Massachusetts, for example, towns of over twelve thousand inhabitants are erected into municipalities. But in less populous areas, the town meeting still exists. It is held once a year (with extra sessions, if necessary), usually in the spring, though in Connecticut the regular meeting is in the autumn. Its business is to elect the officers of the township for the ensuing year, to vote on the prospective expenditure of money, and the basis of its assessment, and other local matters that may be brought

before it. When the town meeting is not in session, its authority passes to the officers whom it has elected. These are the group of selectmen, varying from three to nine in number; the town clerk, who keeps its records; the treasurer and the assessors, who are entrusted with the important duty of setting a value on the property of the township for the collection of taxes; in addition to these are a collector of taxes, school-committee men, and minor officers. This system, it will be seen, erects the township into a complete local democracy, a republic within a republic, as it were. The authority of the superior officials of the state over the affairs of the township is reduced to a minimum. It must be recollected, of course, that under the American system, the state constitution itself acts as a check upon the power of the local authorities, prescribing the limits of their authority, often laying down the maximum of their taxing power, and the form of taxation which they are authorized to use. If they exceed their legitimate powers, the usual method of judicial redress through the courts can be brought into play. The area superior to this, the county, is in New England merely a grouping of townships, whose governing authority is an elected body, the functions of which are very restricted. In Massachusetts there are three commissioners, one elected each year, and serving for three years. Their duties consist in apportioning taxes for county purposes among the towns according to the system discussed later, in erecting and looking after county buildings, and maintaining county roads, in issuing licenses, etc.

In the South the position of county and town is

reversed. The county is the historic area, originally used for judicial purposes, and extended in use, later, to other administrative functions. The township represents a subsequent subdivision of the county, especially for the purpose of maintaining primary schools. But in some states the county exists alone, without the township. The organization of the Southern county is based on local autonomy. At its head is the elected board of county commissioners, with whom are associated a treasurer, superintendents of the poor and of education, sheriff, and other officers. Where no township exists, the commissioners of the county conduct the whole local administration (roads, poorhouses, jails, etc.); where the township has been introduced, the things handed over to its elected officers vary very much.

In the central Atlantic states, and to the west of the Alleghanies, we no longer find either township or county assuming the same preponderant position as in New England or the South. Both township and county exist, governed by officers elected by the people, and dividing the local government between them according to the nature of the service to be performed. Sometimes the one and sometimes the other has been historically antecedent. In New York, Pennsylvania, Delaware, and New Jersey, the township was the original area, an organic unit based on settlement. For this reason we still find the annual town meeting in rural New York, presided over by the justice of the peace, electing officers, passing by-laws, and voting taxes. But in the central Atlantic states the existence of a larger and artificial area in the shape of the

"riding," acted as the starting-point for the introduction of county government. In the northwestern states the county has generally preceded the township. In Illinois, most of whose Southern settlers in early times came from Virginia, the county was first introduced. But here, as in a great many other states, the needs of school regulation served to introduce township government. By the system of surveys made by authority of Congress (beginning with the land ordinance of 1785), the land in all new territory has been cut up into squares six miles each way, and thus containing thirty-six square miles. One square mile in each has been devoted by the national government to the maintenance of public schools. It has thus happened that in many cases the word "township" was first used merely as the designation of the tract of land six miles square. Later on, as settlement grew, the election of officers for the public business of the township naturally followed. But in other states the township, though the county has existed side by side with it, has been from the first the chief area of local government. This has happened in Michigan, whose first settlers came from New England, and transplanted their local institutions. The town meeting is in use in Michigan almost in the same way as in Massachusetts. Within the township itself there is often found as a subordinate area the school district, with separate elected officers (trustees, directors, etc.), who appoint teachers, supervise the expenditure of money on buildings, etc. But this is not universal, as in many places — in Massachusetts and Pennsylvania, for example — the school district is amalgamated with the township.

The above are the only organs of government that operate in the rural parts of the country. But there are, in addition to these, the urban organizations (cities, towns, villages, and — in Pennsylvania — boroughs); the exact form of government varies from state to state. Cities and towns, etc., are sometimes organized by virtue of a general statute or constitutional provision, which makes it possible for any locality having a certain population to adopt a municipal government. Sometimes their form of administration is given to them by a special act of the legislature. It may approximately be said that the latter is the case in regard to the larger cities, the smaller ones coming under a general law. In all cases the government is democratic and autonomous. The control of the city is in the hands of officers elected by the qualified voters among its inhabitants, or, if not directly elected, at any rate appointed by some one else who is himself elected. In some states (Virginia) the city government excludes the county; in others the county remains, forming a part of the city, or including the city as part of itself. The government of an American city resembles in its structure that of one of the states. At its head is an elected mayor, as chief executive officer, with a large number of subordinates, partly elected, partly appointed. There is, in addition, a legislative or quasi-legislative body in the form of the city council, generally made up of two different sets of members — the aldermen and the councilors — who are elected for different terms and different districts. The earlier tendency, which originated in the prevalent belief in the omniscience of any legislative body and a distrust of

executive officers, was to place the bulk of the authority in the hands of the council, and to give the mayor as little discretionary power as possible. The change of public opinion in this respect (already referred to in a preceding chapter) has caused a contrary policy. The concentration of authority in the hands of one man, rather than of a whole body, carries with it a definite location of responsibility. One man, conspicuous by the isolation of his office, aware that he alone is answerable, and that the blame of negligence cannot be shifted, and having at the same time the power to act unhampered by idle discussion, is more likely to prove efficient than a committee whose members can shift to one another's shoulders the blame of their joint misdeeds. In Boston, for example, the administration is vested in a mayor elected for two years, and in a city council composed of two houses, — an upper house of thirteen aldermen, and a lower house of seventy-five councilmen. Of the subordinate officials, the street commissioners are the only ones elected by the people. Some few of the rest are appointed by the council, and the police board by the government of Massachusetts, but the great bulk of appointments to city offices are made by the mayor. In some cases the ratification of the aldermen is required. By the charter of greater New York, amended in 1901, the city government centres in a mayor, elected for two years, and a board of seventy-three aldermen, elected for the same term. The mayor has very great power. He can absolutely veto any grant of a city franchise, and has a partial veto over ordinary legislative acts of the board of aldermen. He appoints the heads of fourteen out of the fifteen administrative

departments (fire, education, water supply, etc.), and has power to remove most of them. He appoints, also, the civil service commissioners. Each of the separate boroughs of greater New York has its president, who controls the street paving, the sewers, etc.[1]

The most important of all questions in connection with city government is not its construction but the scope of its operation, the kind of public services which it is to undertake, whether or not it shall operate its own lighting plant, car service, etc. But the consideration of this topic will fall under a later chapter.

4. England. The distinctive feature of American local government has been seen to be the great extent to which autonomy, or self-government, prevails. The same feature is to be observed in the local government of England, as recently reconstructed; but previous to the reconstruction acts of the last half of the nineteenth century, this was not the case. The greater part of local jurisdiction had been placed, not all at once but bit by bit, in the hands of the justices of the peace. The functions of these officials had become so numerous as to defy anything but a purely alphabetical enumeration; they included such important matters as the levy of the county rate, the issuing of liquor licenses, the conduct of asylums, and the supervision of prisons. In their judicial capacity these officials tried criminal cases. The justice of the peace, appointed by the crown, on the advice of the lord lieutenant of the county, did not represent the principle of local self-government. He was the nominee of the central gov-

[1] D. B. Eaton's *Government of Municipalities* is a standard work upon the subject of city government.

ernment, and in many cases was acting as the agent of one of its departments, of the local government board, the board of trade, etc. In addition to the justices, various special bodies had been created in the course of the nineteenth century, occupying some of the conflicting areas already mentioned. The board of guardians (by the poor law amendment act of 1834) had control of the care of the poor in a "union" of parishes, the board being composed of the local justices together with elected members. The burial acts (1852 and others) constituted burial boards, elective bodies operative over a parish or larger districts. Finally there were added, in 1870, school districts, with elective school boards. The parish itself remained as an ecclesiastical area, but exercised also through its officials, or through its general vestry meeting, minor civil functions. These and other bodies made up a medley of authorities, whose areas of jurisdiction were inextricably confused, and whose composition gave but little scope to local self-governance. The government of cities and towns which had grown up under special charters, and was often in the hands of a small portion of the inhabitants (sometimes of a close corporation), was also hopelessly confused and hopelessly at variance with any principle of popular government.

Though much of the older confusion, at least as viewed by an American, remains, a great deal has been done to place local government in England upon a more reputable footing. Two main objects have been kept in view, — the rectification of areas and the introduction of local self-government. With this object, a series of reforming acts has been passed: the munici-

pal corporation acts of 1835 and 1882, the local government act of 1888 (referring mainly to county government), the local government act of 1894 (for parishes and districts), the London government act of 1899, and the education act of 1902. The general effect of the reform is as follows. The justice of the peace is relegated to his judicial sphere, retaining but few of his administrative functions. The old Saxon system of three ascending areas with elective self-government (township, hundred, and county) reappears in the present parish, district, and county. To the county is given an elected council, with wide range of local power. The elected district council has authority over sanitation, allotments, certain licenses, and other things. The parishes inside the area of towns are not affected by the reform, but the rural parishes have now elective self-government. If the parish has less than three hundred inhabitants, it exercises its government by means of a general "parish meeting," on the lines of the American town meeting, but with much less authority, for the sphere of parish operations is small. In the larger parishes councils are elected. The school district under the act of 1902 disappears, and the control of schools is vested in a committee of the county council, having as a subordinate authority a body of managers for each school.[1] The reforms also introduce elective self-government into the cities and towns,

[1] The violent opposition to the act arose not from this aspect of its provisions, but from the fact that, in unifying the church schools with the board schools, it contrived to allow the former to get a share of the proceeds of local taxation. It amounted therefore, in the eyes of its adversaries, to a device for making rate-payers of all denominations contribute to the support of the schools of the Church of England.

in the shape of mayor, aldermen, and councilors; but the relation of the cities to the counties in which they lie is not always the same. Some are administrative counties (Southampton, etc.), or are "county boroughs" (Liverpool, Manchester, and about sixty others), and stand quite apart from the county government. Below these are graded classes, which fall to an increasing extent within the regulation of the county authorities. London stands by itself. It contains within it the small central portion (about one mile square) known as the city of London, and governed as before by the lord mayor and the "courts" of which he is president, the court of common council (composed of aldermen and councilors) being the chief. Outside of this lies the vast "county of London" (with a population of 4,433,000 in the census of 1896), under the control of an elected county council. This whole area (except the city) is subdivided into twenty-eight "metropolitan boroughs," each with an elected council. The result of these various reforms is that throughout the whole system the central government has withdrawn from its former control, in favor of the autonomy of elected local authorities. Such management as it still retains is in the hands of the local government board, a body consisting of a president (who is a member of the cabinet, and who is the acting power) and other cabinet officers, nominally associated with him. But the duties of the board consist merely in supervision; it does not appoint local officials, and its chief function of importance is to sanction financial measures of the subordinate authorities.

5. **France.** In France local government assumes

an entirely different character from that found in America and England. The distinguishing feature is its highly centralized form, and the great degree of dependence in which all local authorities are placed in regard to the central national government. Take for instance the administration of a French department, the largest of the local areas. At its head is the prefect, an official appointed by the president of the republic, on the recommendation of the minister of the interior. He has associated with him, it is true, an elected body known as the general council of the department. But the power of the latter is reduced to the smallest compass. It is allowed by law only two regular annual sessions, the one of fifteen days, the other of a month. It has no true taxing power, for the amount of money which it may use and the manner of raising it are both regulated by the French parliament. In the spending of the money thus accruing to it, it does not act on its own initiative, for it is the prefect who draws up the budget which is annually submitted to it. Even then the expenditure as finally voted requires the assent of the president of the republic. The latter has also the power to dissolve the council, a power which may be exercised even by the prefect if the council outsits its statutory term. If it exceeds the scope of its legal competence, its acts can be declared void by the president. Its members are unpaid, their attendance is compulsory, they are forbidden to adopt any resolutions, etc., bearing upon general politics, nor can a council enter into any political correspondence or relations with that of any other department. In contrast to this the power of the prefect

is very great. At times, indeed, he merely acts as the agent of the general government, with no discretion of his own, as when enacting the ordinances of the president. But in addition to this, and to the duties in connection with the council already explained, the prefect has a wide sphere of authority. He appoints and dismisses the teachers in the government schools, is at the head of the police, is recruiting officer, etc. The same system on a smaller scale is adopted in the arrondissement, the first subdivision of the department. At its head is a sub-prefect, appointed by the president; the functions of its council amount to little more than the division of apportioned taxes among the communes. The primary unit, the commune, is in a slightly less dependent position. Being organic and historic, and not merely "geometrical," as are the superior units, it tends to develop a greater vitality. Its mayor (since 1882) is an elected officer. But its municipal council, like that of the department, has restricted powers and very limited sessions.[1] It is subject to dissolution by the president, and can be suspended for a month by the prefect. All French towns and cities except Paris and Lyons, which have a special form of government, are organized as communes on the same plan.

The peculiar form which local government has thus assumed in France has grown out of the troubled history of the country since the Revolution. At the making of the first constitution of that era (the monarchi-

[1] Full details in reference to the organization of local government in France may be found in Ducrocq, *Cours de Droit Administratif*, vol. i; and in Simonet, *Traité Elémentaire du Droit Public et Administratif*.

cal constitution adopted in 1791) the reformers were fully inspired with the idea of local autonomy. The departments were erected into what were described as "little republics," and the power centred in their "councils general" was very considerable. Such an arrangement made at such a time served only to weaken the authority of the central executive at Paris to an alarming degree. Under the revolutionary government of the Terrorists, therefore, in 1793–94, local power was put into the hands of "national agents," appointed from Paris, and of special "representatives on mission," who exercised a dictatorial power. The intense centralization thus effected rendered it possible for the executive government to avail themselves of the whole resources of the nation with wonderful effect. The same plan was deliberately adopted and perfected by Bonaparte under the constitution of the year VIII (law of Feb. 17, 1800), in which the prefects and sub-prefects appear, and which has since remained as the basis of local government in France. The struggle between different dynasties and parties for the control of the national government, and the successive revolutions (1830, 1848, 1851, 1870) in which the struggle has culminated, have made each party willing to adopt the centralized system as a means of consolidating its own power. This has contributed largely to give to Paris a political preëminence not enjoyed by any other capital. For the purposes of revolution, Paris during the nineteenth century meant France, and the successful seizure of the central control carried with it the mastery of the entire government. The efficiency of this concentration of power in time

of war or invasion is very great; it insures a prompt coöperation from all parts of the country. But as against this must be set the enervating influence on local affairs of government from above, and the temptation of the central government to use its agents for political purposes.

6. **Prussia.** The system of local government in Prussia is far too complex to allow of any adequate description in brief compass. The areas are numerous (provinces, districts, circles, communes, and organized towns). It contains, however, one interesting feature, which may be noticed in passing. As a compromise between state control and local self-government, there is in use in the Prussian provinces a double set of officials, a president and council appointed by the crown, and a provincial diet elected by the representative bodies in the circles and choosing its own executive head (Landeshauptmann) and executive committee. The spheres of state authorities and provincial elective authorities are kept separate, the former being mainly concerned with supplying information to, and acting as the agent of, the royal government at Berlin. The functionaries of the Prussian district are all nominated by the central government; of those of the circle, the executive chief is appointed by the president of the province, the diet is elective. In rural communes there are elective assemblies, but there remain still communes, if one may use the term to translate the word *Rittergut*, that are under the jurisdiction of a manorial lord. The towns and cities are variously organized on the elective plan. But it must be recalled that the elective system in Prussia is always arranged

on the division of classes described in an earlier chapter. The central government retains a supervising power over financial measures. The Prussian system of combining local authority with central control would prove quite impossible in America, owing to the conflict of jurisdiction it would occasion; in Prussia such conflict is less to be feared, because it is a matter controlled, as already explained in reference to France, by the administrative officers themselves.

7. Local Taxation; the Property Tax of the United States. We come now finally to the difficult question of local taxation and finance. In the United States local taxation has proved one of the most serious of the practical problems of administration. The peculiar difficulty which has arisen to a greater or less degree all over the Union is of the following character. The state, county, and township authorities draw a very large proportion, in the case of the two latter practically all, of their financial support from the proceeds of a direct tax laid on all forms of property. The tax applies both to real and personal property,—land, houses, buildings, horses, carriages, furniture, stock and shares, mortgages, bonds, etc. At its origination it seemed eminently reasonable. The states were forbidden to levy import and export duties, and to levy excise duties would tend to drive out manufactures to a more favored locality; they therefore of necessity fell back on direct taxes. And of all such, a single tax, laid on all forms of property alike, seemed to commend itself as the most uniform and the most equitable. In practice it has shown itself to be distressingly inequitable. This is due in part to the manner of its assessment,

which is made as follows. The state authorities compute the amount of the direct tax needed for their purposes, and divide it up among the counties in the proportion of the value of assessed property in each. To the sum thus called for each county adds the amount needed for its own use and then distributes it in like manner among its townships, again according to the proportional value of the assessed property in each. To this sum the township adds what is needed for its own purposes, usually the largest amount of all. The total thus reached is distributed among all the property-holders of the township according to their proportion of assessed property; in other words the total of the assessed property is divided by the total tax to be collected, and a tax rate is thus obtained which is levied on all the property. If, for example, the total of the property was worth $5,000,000, and the total tax to be collected was $100,000, then the tax rate would be put at one fiftieth or two per cent. Under such a system, then, everything turns on the assessment. If one county has been assessed for very much less property than it actually has, then the amount of the tax assigned to it by the state will be very much less than it should be, but at the expense of the other counties, for the rate all round will need to be higher in order to supply the fixed quantity of money asked for. Or again let us suppose that in one of the townships the property is assessed for very much less than it is worth. Then the township in which the assessment is too low is given less than its share of the county tax, but always at the expense of the other townships, on account of the rate being of necessity higher than would be needed if the assess-

ment were larger. Finally, within the township itself precisely the same thing happens among individuals. Any one whose property is put at too low a valuation, or not valued at all, escapes at the expense of his neighbors; and the more the property in general escapes assessment and remains invisible, the higher becomes the tax rate. Hence has arisen what is called competitive under-assessment, the counties and townships vying with one another in attempting to make their findable property as small as possible. The assessors, moreover, being elective officers, elected in most cases for a very short term, are personally interested in not making the total property of their area stand at too high a figure.

The upshot has been that while the system was originally devised as the most equitable form of universal taxation possible, in its actual operation nothing could be more vicious and inequitable. For it is to be observed that it in reality discriminates most unfairly between different kinds of property. Real estate, for example (lands and buildings), is much less easy to conceal than such forms of property as shares in bank stock, bonds, debentures, etc. In illustration of this it may be mentioned that in the assessment of property in Brooklyn in 1895, real estate constituted over ninety-eight per cent of the total values. Some years ago (1884) a tax commission in West Virginia reported in reference to personal property, "Things have come to such a condition in West Virginia, that as regards paying taxes on this class of property, it is almost as voluntary, and is considered pretty much in the same light, as donations to the neighboring church or Sunday school." In ad-

dition to this, a premium is put upon dishonesty, since people of a pliable conscience will find it easier to dodge the assessment than those of a more uncompromising morality. Even some of the measures intended to prevent this, as, for example, the adoption of a schedule of property made out and sworn to by the owner, and the penalties (legal and spiritual) for perjury, etc., accentuate the evil rather than lighten it. The worst feature of all is that when under-assessment once sets in, it moves forward at an accelerated pace. For the higher the rate rises, the more imperative does it become for each individual to understate his property. But the more the property is understated, the higher the rate rises, and thus the worse the situation is, the worse it tends to become. In some cases the rate becomes so high that to tell the literal truth, and pay the full tax rate, would mean absolute ruin. Thus in some of the "towns" of Chicago, previous to the reform of the assessment system a few years ago, the rate stood as high as eight and nine per cent. Now it must be remembered that this means, not the contribution of eight per cent of one's income, but eight per cent of one's capital property. To actually pay this and continue in business would not, for ordinary enterprises, be found possible. The result is that both the assessors and the assessed adopt a rough scale of depreciation, accepting as accurate a figure that is perhaps one fifth or one tenth of the probable actual value of the property concerned. Meanwhile the incentive to dishonesty remains, and a vast amount of property escapes untaxed.[1]

[1] For detailed statistics as to the operation of the property tax, the following works may be consulted: Seligman, *Essays on Taxation*,

Throughout the entire United States opinion is agreed as to the inefficiency and iniquitousness of the general property tax. It has been condemned by a long series of state tax commissions held within the last forty years, and by all the highest authorities on the subject of public finance. "Instead of being a tax on personal property," said the New York commissioners of 1872, "it has in effect become a tax upon ignorance and honesty. That is to say, its imposition is restricted to those who are not informed of the means of evasion, or, knowing the means, are restricted, by a nice sense of honor from resorting to them." The Illinois commission of 1886 spoke of it as "a school for perjury, promoted by law." The New York report of 1893 says, "It puts a premium on perjury and a penalty on integrity." The recent industrial commission in its final report (vol. xix) quotes as illustrative of the general feeling, the words of a special committee on taxation which reported to the California senate in 1901: "From Maine to Texas and from Florida to California, there is but one opinion as to the workings of the present system. That is, that it is inequitable, unfair, and positively unjust. Theoretically all property is called upon to bear a share of the public burdens in exact proportion to its present value. In practice that end is admittedly not even approached. Scarcely a fractional part of the property in any commonwealth is brought to the tax rolls. This is especially true of personal property in its most coveted forms, money and credits."

chaps. i, ii, and xiii, 3d edition, 1900; Ely, *Taxation in American States and Cities; Final Report of the Industrial Commission*, vol. xix, pp. 1031-1071.

That the reform of local taxation is one of the crying needs of the American system of government is only too obvious. But before considering the steps that have already been taken in that direction, and the various plans suggested, it will be well to set in comparison the systems adopted in other countries.

8. Systems of Local Taxation in Other Countries. Complicated as is the local administration of England, there are certain features of its financial system which merit attention in connection with the present question. In the first case the central government does not divide or apportion taxes among the county councils for collection, so that all question of competitive under-assessment as between counties is set aside. Nor is there, for reasons which will appear presently, competitive under-assessment between the minor areas. In the next place the whole field of personal property, tangible and intangible, is left out of local taxation. Thus the American difficulty of finding "invisible property" is avoided. But at the same time such property contributes to the national finance through the income tax, an adjustable tax ranging from two to five per cent, or even higher, and which, among its other categories, is levied on stocks, shares, etc., and paid at the source. Though the operation of the income tax is of course fallible, and allows the more fluid forms of income (professional, etc.) to partially escape, it nevertheless serves to make the intangible forms of property contribute to the general revenue of the state.

The actual revenues of the local authorities consist partly of sums handed over to them by the central government, and partly of "rates" (proportional taxes)

which they levy on real property. To the first class belong certain payments made by the national government to the counties (administrative counties, and county boroughs), representing a fraction of the amount received as the proceeds of license taxes (liquor, dogs, guns, etc.), a fraction of the estate duties collected, and, under a statute of 1890, the proceeds of certain duties on spirits and beer. In other words the national government collects various taxes, and shares them among the counties. The rest of the local income comes from direct taxation. The rate is levied not, as in America, on the capital value, but merely on the annual value of real property. A committee of the county council fixes the county rate, assigning to each parish a standard of what the rate is to produce. This involves assessment as in America of the property value in the parish, but the valuation is never made by an elected parish officer. The county authorities follow the valuation made by the national government for the raising of the income tax, or that of the poor-law authorities, or at times make a valuation of their own. Boroughs, districts, and parishes levy similar rates on the annual value of real property. The difference in conditions between England and America is seen in the fact that while the American property tax ranges (nominally) from about one and one half to ten per cent on capital value, the total of various kinds of English local rates for the year 1895–96 stood at 4*s.* 5*d.* on the pound of annual value; in other words, while the nominal American rate is at one to ten per cent of capital, the English rate is twenty-two and one half per cent of income. Even this rate is considered in England alarmingly

high. In the year 1899–1900, something over forty and a half million pounds was raised by direct taxation, and twelve and a quarter million pounds derived from the contributions of the central government.

It must not be thought, from what has been said above, that the situation in regard to local finance in England is altogether felicitous. There, however, the feature which occasions grave apprehension is not the method of assessment and levy, but the great increase of local expenditure and local debt. The local expenditure of England and Wales in 1868 was only thirty million pounds; in 1900 it reached one hundred and one million. Much of this has been paid for with borrowed money, and the total of local indebtedness stands at about three hundred million pounds. As a result local rates have increased to a great, indeed to an alarming extent. The rate per pound in 1891–92 stood at 3*s.* 8*d.*; in 1895–96 at 4*s.* 5*d.* It is true that the borrowing power of local bodies is subject to the sanction of the local government board, and the accounts of most local bodies are audited by district auditors, appointed by the same authority, and having a power to disallow items.[1] A further extension of this application of central control would seem justified by the circumstances.

In France[2] local government presents certain features differing in a marked degree from the systems both of England and America. In the first place, use is made of a sort of internal customs duty, the octroi, levied on various classes of goods brought into

[1] Odgers's *Local Government*, chap. xii.

[2] For local taxation in France, see Leroy-Beaulieu, *Traité de la Science des Finances*, vol. i (6th edition, 1899).

towns. This is one of the main resorts of communal finance, the towns as already seen being organized as communes. The same form of local tax is used in Paris and Lyons. In the year 1896 no less than 1513 French cities, towns, and villages made use of the octroi, the revenue thus produced being about one third of their total revenue. The chief articles thus taxed are wines, beer, and spirits generally, oil, meat, combustibles, fodder, and building materials. This part of the French system is certainly to be condemned. It hampers trade, and is troublesome and expensive in collection. Unfortunately, like other indirect taxes, it has the insidious quality which renders its use tempting to municipal authorities. The employment of the octroi, though abolished at the time of the French Revolution, has steadily increased in the nineteenth century, and in 1899 about one third of the population of France were subject to it.

For the rest of the municipal revenue and for the revenue of the department, a quite different plan is used. There are four great direct taxes levied by the French national government, — the tax on real estate, tax on personalty and persons (*impôt mobilier et personnel*), the door and window tax, and the tax on business. Of these the last named is a graded tax on all forms of business enterprise, varying according to the kind of business, the magnitude of the business, and the location of the business. The whole classification falls within the scope of the central government; there is no apportionment among departments, etc., and hence no chance of competitive under-assessment. It is as if the state of Massachusetts imposed a license tax on

all forms of business, which, other things being equal, would be higher in Boston than in a town of fifty thousand people, and higher in the case of banking business, other things being equal, than for a grocery business, and finally would be higher in the case of a business employing one hundred men than one which only employed twenty, still with the condition that other things were equal. The total tax collected would therefore vary with the changing factors. Its use by the government of France is meant to supplement the lack of a national income tax. Of the other taxes, that on real estate is based on what is called a "cadastre," or fixed valuation made by the government on a basis of area, productivity, value of buildings, etc. The part of this valuation referring to land remains unchanged for a long time together (1821–90). That on buildings has been frequently revised. The former portion of the tax is apportioned, that is to say, the government decides on a total sum and collects it from the departments in proportion to the valuation of their land, the rate thus varying as in the United States. In the case of the latter portion of the tax, the government fixes the rate and takes the proceeds. It is the duty of the local authorities in the arrondissements to share the apportioned tax among the communes; but as the valuation on which they proceed is made for them, they are in a totally different position from that of the American assessors. The so-called personalty and persons tax (*impôt mobilier et personnel*) is in reality an apportioned tax on houses together with a capitation tax of the value (according to locality) of three days' labor. Finally

the "door and window tax" is an apportioned tax on houses.

It has been necessary to show the nature of these direct taxes in order to explain the French system of local taxation. The local revenue is obtained by the addition of a certain percentage to the sums thus collected. The "centimes additionnels" as they are called, are settled by the central government, and collected by its agents. It is for this reason that it can be said of the general council of the department that it has no power of taxation. The "centimes additionnels," or sur-tax, added to the "principal" of the French direct taxes, is greater than the principal itself. No sur-tax is added to the capitation tax mentioned above.[1]

In Prussia use is made of the octroi[2] as in France, its burden falling upon mill-ground articles, cattle, meat, etc. There are also, as in France, sur-taxes added to the direct taxes of the state government and other direct taxes whose proceeds go wholly to the local authorities. The direct taxes of the first class include the income tax and the tax on circulating business; those of the second class comprise the taxes on land, houses, and fixed business. The extra percentage, or sur-tax, actually collected varies greatly, but is under the control of the central government. The land assessment is made by commissioners appointed by the state government, together with a staff of technical experts in each province. The persons liable to the income tax are divided into classes within which all pay the same. The assessment is made by a special

[1] In some cases, however, "extra centimes" are added to the fixed tax for state purposes. [2] The octroi is not used by Berlin.

board in each circle or county, partly appointed by the local authorities, but in the majority elected by the persons liable to the tax. Unfortunately the method of ascertaining income has not proved satisfactory. Till recently (1891), the board relied largely on circumstantial evidence of income (style of house, obvious expenditure, etc.). The objection that this was an inquisitorial proceeding led to the adoption of self-assessment by declaration. In spite of the severe penalties for fraud, a great part of income escapes. The mode of assessing the business tax is peculiarly interesting. The French system of classification by industries and by population of locality was abandoned in 1891. Instead of it businesses are grouped into four classes on a joint basis of capital invested and earnings made. The assessment of the top class is made province by province, by assessors of whom one third are nominated by the minister of finance, and two thirds by the committee of the province (the executive committee of the elected portion of the provincial government). The tax amounts to about one per cent of earnings. The two middle classes are taxed district by district (*Bezirk*), and the lowest class is taxed in each "circle," or county. The government assigns a lump sum (based on the average earnings of included businesses) to be collected from all businesses of the same class in the same district (or minor district), and this is shared among the individual business concerns by a tax committee elected from their number. It must be observed that this elected committee has no power to spare its constituents as a total. This form of tax has proved singularly efficient.

9. Reform of the American System. Let us now in the light of what has been said in regard to foreign countries consider some of the chief proposals for the reform of the American system of local taxation, and the steps that have already been taken in that direction. In the first place we have the frequent suggestion of a more stringent enforcement of existing laws. This is what has been done in Ohio under the "tax inquisitor law," whereby county commissioners engage an individual to "discover" personal property, paying him a proportion of the tax thereby realized. In view of the obnoxious character of the property tax so generally condemned, mere rigor of enforcement only aggravates the situation. The Ohio system introduces a feature of management which should have no place in public administration, except in dealing with the criminal class. Nor is the system of making the legal assessment value (as recently done in Chicago) only a fraction of the true value, of any permanent efficacy. It affords, it is true, the opportunity for a general repentance and a new start, but the viciousness of the assessment system is not altered thereby. The proposals which appear to be substantiated by the experience of foreign countries are (1) the separation of the sources of state and local revenue, and the abandoning of the system of apportionment, (2) the abolition of the property tax on personal property, and (3) the creation of other forms of revenue to fill the void thus created and to satisfy the equities of taxation.

The first of these proposals has been endorsed by the American League of Municipalities, by the New York State Commerce Convention, and by various

other bodies. In Oregon under a statute operative in 1905, apportionment of state taxes among the counties is abandoned. The proportion of state taxes paid by each county will depend on the ratio of its own expenditure to the total expenditure of the counties. The Industrial Commission in its Final Report (1902) recommends that the states (not the localities) abandon the property tax altogether. In the second place the abolition of the tax on personalty would leave only land and buildings subject to the property tax. The motive for concealment would be lessened, since there would no longer exist the sense of injustice at the escape of personalty from a tax to which it was legally liable. The experience of England and Prussia certainly falls in with the suggestion of the commission that this tax should be for local purposes only. It might seem advisable that when the system of elected assessors exists it should be abandoned in favor of assessors appointed by the government of the state and holding an independent tenure of office. Such a suggestion is but little consonant with the current political ideas of American people. But the experience of European countries certainly favors it. A valuation of land on the French system by general survey and estimate would reduce that portion of the tax to a stable basis.

In reference to the third question, that of creating other sources of revenue, much has already been done in some states and there is much that naturally suggests itself. The successful business taxes of Prussia and France seem to indicate a useful form of taxation. The Industrial Commission recommends the adoption of taxes of this nature as a supplement to the property

tax. In several of the Southern states there already exist "licenses" or "privilege taxes" which are of this kind. They are by no means so elaborate as the Continental taxes, varying only according to population or other evident criteria, but not proportional to the volume of business transacted. A more elaborate form of business tax with the Prussian system of assessment would be a decided gain. The taxation of income is also recommended by the commission; theoretically the income tax is the most equitable of all, but experience shows it liable to grave inequalities. It might well form a part of a reconstructed tax system for state purposes, especially if income from real estate were omitted, being already taxed under the local property tax, and if the English system of tapping the income at its source were put into force. Separate income taxes have recently been levied in Virginia, North Carolina, and South Carolina. Massachusetts has an income tax which exempts income from taxed property, and which dates from colonial times. Pennsylvania and Louisiana attempt, but not very successfully, to tax income under the property tax. An amended taxation of corporations — which are now taxed in various ways, on the value or on the cost of property, on capital stock, on bonded debt, on gross earnings, on dividends, on net earnings, etc. — is also proposed. In summary it may be said that what is needed is a complete reconstruction of local taxation. The general object should be to avoid the present evils of competitive underassessment and invisible property and to institute a new composite system of revenue calculated to properly distribute the burden of taxation.

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CHAPTER VIII

PARTY GOVERNMENT

1. Conflict of Opinion on the Merits of Party Government.—2. Origin and Development of the Party System in England.—3. Origin and Growth of Political Parties in the United States.—4. The Organization of American Political Parties.—5. Reform of the System.—6. Party Machinery in Great Britain.—7. The Party Groups of Continental Europe.

1. Conflict of Opinion on the Merits of Party Government. By a political party we mean a more or less organized group of citizens who act together as a political unit. They share, or profess to share, the same opinions on public questions, and by exercising their voting power towards a common end, seek to obtain control of the government. They constitute something like a joint stock company to which each member contributes his share of political power. They are thus collectively able to acquire the strength which it would have been impossible for them, acting singly, to obtain. In all except the autocratic modern governments this system of deliberate collective action supplies the motive power which keeps the wheels of administration moving. Though standing almost outside of the legal structure of the state, party government is the vital principle of its operation. The Constitution of the United States does not indeed presume the existence of political parties; but in the evolution of American government in the nineteenth century, they have come

to be its central feature. In the United Kingdom the law of the constitution knows nothing of any such institution. But the customary operation of the Constitution is altogether based on the supposition of this sort of collective action. For the whole cabinet system — which we have seen to be the central fact of British government — presupposes the united action which alone can render its existence possible. The countries which have deliberately adopted parliamentary government — France, Italy, Canada, Australia, etc. — have done so on the same assumption. The law cannot, indeed, expressly decree the existence of parties, but it can set up institutions, as in the countries named, which become meaningless without them. For a proper study of modern government it is, therefore, necessary to take full account of this form of joint political effort and to study the organization and operation of modern parties. We may thus form some judgment as to the value and efficiency of the political expedient thus devised.

Party government, indeed, has been variously judged. It has been extolled as the most natural and condemned as the most unnatural of political phenomena. Those who judge it harshly are shocked by the peculiarly artificial agreement which it sets up among the group of party adherents, and their equally artificial disagreement with their opponents. Each side remains in a state of willful inconvincibility, with individual judgment frozen tight in the shape of the party mould. This kind of unanimity seems to its critics false and injurious; it suppresses that very freedom of individual opinion and action which is meant to be the vital principle of democratic government. Where two great

political parties dispute the field, it presumes, as has been said by Professor Goldwin Smith, "a bisection of human character," which does not in reality exist. Those who defend party government take an entirely opposite ground. They draw attention to the fact that in a certain sense the bisection of human nature is altogether in accordance with fact. There are naturally, they claim,[1] four kinds of men, — those who wish to return to the methods and institutions of the past (reactionaries), those who wish to retain those of the present (conservatives), those who wish to reform present institutions (liberals), and those who desire to abolish them (radicals). If for evident reasons of expediency the two former classes and the two latter act together politically we get a division into two great political parties, resting on fundamental psychological principles. It is further argued that far from being in conflict with the theory of democratic government, it is the only thing which renders the latter feasible. For it is impossible for all the people to rule all the time — taken singly. The rule of the people can only mean the rule of a majority. Now the only way in which any particular set of people can remain together as a majority, and thus render possible a stable and consistent administration of public affairs, is that the members of the ruling group shall "agree to agree" with one another. A modern democratic state without this somewhat artificial and yet essential unanimity would become a brawling chaos of individual opinions.

The validity of the two contentions thus urged will depend in some measure on the circumstances of the

[1] See W. E. H. Lecky, *Democracy and Liberty*.

time and country. It often happens — as in the case of the slavery question or the silver question in the United States, the free-trade question in England, etc. — that some one paramount political issue presents itself which of necessity separates the community into affirmative and negative divisions. The importance of the issue is such that the supporters of either side are perfectly willing to subordinate to it all minor matters and to act in concert in everything for the sake of the main point to be gained. Two free-traders or two free-silver men might consent to vote and act together, and to put their interests into the hands of the same representative, even if the one of them was a prohibitionist and the other an anti-prohibitionist. It is in such cases as this that the party system seems eminently a defensible one; it offers a natural and reasonable method of reaching the main object to be achieved. This was the condition in the United States in the middle of the century. It was also the chronic condition in England during a large part of the nineteenth century, the general idea of liberal reform being opposed to the general immobility of conservatism. It was owing to the existence of this state of things that party government grew to be invested with an air of inevitability, and seemed to carry with it its own defense. On the other hand, where no such main issues exist the party system must depend for existence on the strength of its organization. It must have pledges first and principles after, and its members, having first decided to agree, must next make up their minds what it is they agree about. This is the present position of the party system in the United States. Failing this, for default of a main issue, political parties will

take the form of numerous and rapidly changing groups, the government being carried on by temporary and unstable combinations, and the parties, having neither traditions nor standing power, being animated with a dangerous sense of irresponsibility. This is the position of affairs in France, Italy, and several Continental countries. At the present juncture, then, the party system meets with keen criticism and speculation is rife as to its future evolution.

2. Origin and Development of the Party System in England. The origins of party government are found in England and may be considered as dating from the Elizabethan era. The Puritans, opposed to the intolerance and the extreme prerogative of the queen's government, exerted themselves to gain seats in Parliament, where their representatives acted as an organized party in arresting the royal grants of monopolies, etc. On the basis thus formed grew up the popular party, whose cohesion was rendered stronger by the arbitrary government of the Stuart kings. "Sandys, Coke, Eliot, Selden and Pym, may be regarded," says Sir Thomas May,[1] "as the first leaders of a regular parliamentary opposition." As the resistance to the royal tyranny increased, the defenders of popular rights and the adherents of the crown changed from political parties to the opposing factions of a civil war. But after the Restoration the same parliamentary division reappears under the name of the Court Party and the Country Party of the reign of Charles II. With the debates

[1] Sir T. E. May (Lord Farnborough), in his *Constitutional History*, vol. ii, chap. viii, gives an account of the rise and development of the party system in the United Kingdom.

over the Exclusion Bill of 1680 (for debarring the king's brother from the throne) the nicknames of Whig and Tory (terms equivalent to "dough-face" and "highwayman") first appear. Henceforth for a century and a half these names indicate the two great political parties by whom the parliamentary activity of the United Kingdom was controlled. The Whigs were the opponents of the royal prerogative and the adherents of the doctrine of parliamentary supremacy; the Tories advocated the power of the crown. Their relation to the later parties must not be mistaken. Neither was by its origin the party of progress or reform; neither the party of stability or order. They represented merely two different theories of English constitutional relations. After the accession of the House of Hanover the two parties found their positions curiously reversed. The Whigs, the opponents of prerogative, were the supporters of the new dynasty, while the Tories, the advocates of prerogative, were the opponents of the holder of the crown. This blunted the edge of their original hostility, and helped to convert them from the position of inimical factions to the decorous and official form of opposition since maintained. Moreover the practical triumph of the principle of parliamentary supremacy, and the recognition of the hopelessness of the Stuart cause, led to an alteration in the distinctive characteristics of the two groups. From the accession of George III onwards, the Whigs tended to become the advocates of reform and progress; the Tories placed their faith in order and security. Thus the two changed into the great Liberal and Conservative parties of the nineteenth century. The doctrine of liberalism favored the increased "democrat-

ization" of the constitution, the grant of equal political privileges to all, the abolition of the remaining religious disabilities and tests, the establishment of economic liberty of trade and industry. To this the Conservatives opposed the historic view of political rights that had grown up under the constitution, the safeguarding of vested interests, and the resistance of dangerous innovation. But since the middle of the nineteenth century, these original characteristics of the two parties have largely been obscured. The Conservative administrations have participated in many of the great reforms of the latter part of the nineteenth century, — the extension of the suffrage, the reform of local government, of Irish land tenure, and so forth. The present complexion and organization of party life in the United Kingdom will be considered in a later paragraph.

3. Origin and Growth of Political Parties in the United States. In America we may consider distinct political parties as beginning with the colonial controversies of the eighteenth century. The standing opposition of the representative portion of the colonial governments to the governor and his associates, naturally divided political sympathy on much the same lines as in the mother country. As in England during the Stuart period, the war of the Revolution changed the partisans into armed combatants. But with the making of the first truly national government (1787) political parties reappear on an entirely new basis. Those who favored the establishment of a strong central government became known as the Federalists, while those in favor of the restriction of the federal power were termed Anti-federalists. After the adoption of the Con-

stitution the term Federalist indicated those in favor of consolidating and strengthening the federal power, while those in favor of the rights of the states were called Republicans. The latter, being supported by the general trend of public opinion in favor of the rights of the individual and the restriction of governmental functions to a minimum, then current both in Europe and America, eventually carried the day. The Federalists declined in numbers and influence, and in the early twenties were practically extinct. Their opponents had in the early years of the Constitution strengthened their hold upon popular sympathy by adopting the name Democratic Republican, which has developed into the present term of Democrat. After the disappearance of the Federalists, the absence of definitely marked political parties led to a sort of interregnum known historically as the Era of Good Feeling; this designation and the lapse of time has surrounded with an undeserved halo a decade which "was really," says Professor Hart, "a period of bitterness and rancor and legislative ineptitude."[1]

With the advent of Andrew Jackson (1829) the Democratic party entered on a new phase, in which it stood for extreme individualism, the extension of the suffrage, and the rights of "the people" in the special sense of the term. This raised up in opposition the party of the Whigs, advocates of strong government, national improvements (roads, canals, etc.), and a protective tariff. The rising predominance of the question of slavery (1820–1860) sundered the Whig party and removed them from the political arena. In their place

[1] *Actual Government* (1903).

sprang up anti-slavery parties of different degrees of opposition. The voting strength of these was finally gathered together as the Republican party, opposed to the further extension of slavery, though not (as a party) opposed to its existence. The Civil War removed the main issue by abolishing slavery. Since then the same two great parties have remained in name, but their evolution in the last forty years has rather taken the form of a consolidation of the organization of party structure than a collective adherence to any single principle or policy. The Republicans are in favor of protection, but the Democrats are certainly not free-traders. The Republicans, but not all of them, are in favor of the gold standard, and for a time some of the Democrats, but not all of them, opposed it. The states of the South have remained solidly Democratic, but this is by the historic continuity with past conditions. The plain truth is that both parties are largely opportunistic, adapting their policy on current questions to the circumstances of the day, and mainly governed in their selection of political opinions by the probability of political success. The party organization has become the leading factor, and the party opinions have taken a secondary place. A Republican is no longer to be defined as a man who holds such and such opinions, but as a man who adheres to the Republican organization and will support its candidates. At present, then, the striking fact in connection with American political parties is the complete mechanism of their organization.

4. The Organization of American Political Parties. That parties should have become highly or-

ganized is the natural outcome of the circumstances of the country. Among the contributory causes are to be noted in the first place the disjunction of executive and legislative power, which naturally calls for a bond of union in the shape of a party organization.[1] To this we must add the great extent of territory to be covered, the impossibility of selecting candidates for the presidency, or for the state governorships, secretaryships, etc., in any purely spontaneous fashion. Nor is there under the American system any set of persons among those holding power who are placed in the same position of evident party leadership as has always been the case with the party leaders in England. The attempt of the members of Congress to assume this position and to nominate candidates for the presidency in a party "caucus," soon fell into disrepute, and in 1824 broke down altogether. The similar attempt of the state legislatures in the decade following was equally ineffective. In place of this there sprang up in the twenties, in accord with the general American idea of the sovereignty of the people, the practice of holding a special "convention" or meeting of representatives selected by the members of a political party, to make the choice of its candidates. The system thus established grew apace. As long as the great slavery issue was before the nation, the convention failed to give to the political parties the highly mechanical aspect they have since assumed. But from the close of the Civil War the machinery has become more and more definite, until it has reached the elaborate form in which it now exists.

[1] See in this connection F. Goodnow, *Administration and Politics*.

The scheme of its construction is as follows.[1] Its organization follows the division of areas made for the purposes of elections. In each of these a special meeting of party adherents is held for the selection of candidates. The basis of it is found in what is known as the primary, often called a "caucus," in the New England states. In theory this consists of a meeting of all the qualified party voters resident in the smallest voting area: township, county, or precinct, as the case may be. In actual fact it is only a minority of the voters of the party who are to be found at a meeting of the primary. Many absent themselves from indifference, others for lack of the technical requirements for admission. Others properly qualified are excluded by unfair means. This is particularly true of primaries held in urban areas, where the voters have but little individual acquaintance with one another. The duty of a primary meeting is threefold. It appoints the standing committee of the party for that area, it nominates party candidates for the elections held in its district, and, most important of all, it sends up delegates to the party meetings held in the area of which its own forms a subdivision. In these larger areas, such as a congressional district, or state assembly district, or state senate district, it is impossible for all the voters to be gathered together. In them, therefore, the party meeting takes the form of a "convention," composed of delegates sent from the primary meeting. The functions of such a convention are similar to those of the

[1] Mr. Bryce's admirable description of party machinery in the United States, *American Commonwealth*, vol. ii, part iii, has never been surpassed. For more recent information see Hart, *Actual Government*.

primary itself. It appoints a committee, it makes nominations for office in the district, and in the case of some areas it sends up delegates to the state convention. The state convention similarly nominates candidates for the governorship, etc., appoints the state party committee, and sends delegates to the national convention held once in four years.[1] This national convention stands at the apex of the system. It is held for the selection of the party candidates for the presidency of the United States. It consists of twice as many members as the state has members of Congress, two delegates being sent from every congressional district, and four from each state at large; these together with six representatives from each territory make in all 994 delegates, which is at present the full complement of a national convention. A duplicate set of members known as "alternates," or substitutes in case of accident, are also appointed. The convention thus constituted draws up the national platform of the party, and makes its nominations for the presidency. The nomination is made by ballot; in the Republican party a simple majority suffices, in the Democratic a majority of two thirds is needed. In the Republican party the members of the delegation sent from a state may vote individually for different persons; in the Democratic party they must vote as a unit for the same person.

The system as thus planned is beautiful in the symmetry of its organization. It seems to offer a thor-

[1] Delegates are sent to the national convention from the state conventions, or from the congressional district conventions. In any case the four delegates corresponding to the representation of the state in the Senate are sent from the state convention.

oughly just method of selecting party candidates, and one in which all are equally entitled to participate. But unfortunately in practice it has opened the way to the gravest political abuses. In the first place it makes a considerable demand upon the time and energies of the voters, a demand rendered all the greater by the multiplicity of American elections. There is a natural temptation for the voter to stay away from the primary, and to content himself with whatsoever candidates it may select. The conduct of the primary, and as a consequence, of the superior coventions to which it is contributory, thus falls under the control of the professional "politicians" and their hangers-on. Hence arises the now familiar phenomenon of the "party ring" and the party "boss," for whom the elaborate system of party machinery serves as a ready-made instrument of political control. The more the primary falls under the control of an inside ring, the more are the ordinary citizens tempted to stay away from it, deploring its vices, yet unable single-handed to combat them. In the city primaries the number of those entitled to vote, who actually do vote, is seldom more than one third, and often drops to the merest fraction. Even the number of those entitled to vote in the primaries has often been only a small part of the voters of the party. For as long as the primaries remained self-constituted bodies, it was possible for them, as for example in New York, to adopt exclusive rules of admission which shut out all but the favored few. The persons who were entitled to vote in a primary, and actually did vote, became only a fraction of a fraction. Indeed the whole of the elaborate party

machinery that we have described comes to be operated not from its own spontaneous force, but at the bidding of the clique of inside politicians, who "work the machine." Instead of the real selection by a party convention, we have the adoption by the convention of a "slate," or list of names already prepared for them. The worst feature of all is the class of men thus brought into American politics, and the point of view they bring with them. The nature of the party machine lends itself to repel the honest and to attract the unscrupulous. Relatively few men have sufficient public spirit to consent from purely patriotic motives to seek office by such obnoxious means. The opportunity is thus opened to second-rate, shifty, and self-seeking aspirants, to whom the whole party machinery merely offers a method of gaining an easy livelihood, embellished with a tawdry conspicuousness. Too much stress must not, however, be laid on the sinister side of American party life. It is not true, as a foreign observer might be inclined to think, that the American people as a nation are corrupted by it. In moments of stress or in the presence of a great national crisis, the artificial barriers set up by such a system are easily pushed aside, and the right men shoulder their way to the front of public life. But in the ease of quiet times, and in the absorbing prosperity of a great industrial civilization, the machine falls back again into the hands of those who make it their business to run it.

5. Reform of the System. The question of finding a remedy for the evils of a party machine has long been discussed. The only real and permanent cure would be found in rousing the ordinary voter from his

habitual indifference and absorption, and bringing him to take an active interest in the exercise of his full political rights. This, however, is a matter quite beyond legislative control, and can only come with the growth of vigorous public sentiment in regard to the duties of a citizen, stimulated by the object-lessons afforded by rampant corruption. It may in any case be doubted whether, with the present system of short terms of office and numerous elections, such an active public life of the citizens at large could be gained without serious detriment to their other social activities. It would be easier to reform the operation of American parties, if the attempt were accompanied by the lengthening of elective tenure of office. Why, for example, should an elective officer hold office, as do a vast number in the United States, including two state governors — for one year only? Or a member of a legislature, as is customary, for two years only? There is nothing peculiarly democratic about the space of twelve months; if change is a good thing in itself, why not hold a new election every month? With fewer elections the ordinary voter would be able to concern himself more directly with those there were, and the practical exclusion of the majority from political control would no longer be possible.

Even within the limits of legislative action attempts have already been made to remedy the evil operation of the party system. The first of these is the plan of making the primary meeting of a political party a legally organized body instead of a self-constituted group. This is the intention of the so-called "primary election laws" which have been enacted within the last

ten years in most of the leading states. Massachusetts, New York, New Jersey, Pennsylvania, Illinois, Ohio, Michigan, Maryland, South Carolina, Georgia, and other states have already adopted statutes of this kind. These laws provide that due public notice shall be given of the time and place of primary elections; that the elections shall be by ballot, and that the expense shall be paid by the state. The laws are usually compulsory in cities and optional in rural districts. The above provisions still leave the question of admission to the primary to be regulated by the party itself. But in some states the law goes further, and defines the qualification required for admission to the primary. The general aim is to give to all persons who voted with their party at the last elections, the right to a vote in the choice of candidates in the primary.

A still more fundamental improvement is hoped for by the adoption of the system of "direct nomination," already in use in certain elections in the state of Minnesota, and largely advocated throughout the country. The aim of this plan is to do away with the selection of candidates by a party caucus. In place of it is held a preliminary election in which all voters participate. Each voter indicates the name of the candidate he nominates, and the party for which he nominates him. Prospective candidates may announce their names to the public before the preliminary election, although such an announcement is not theoretically a requisite to the working of the plan. The result of the election is to give the official nomination in each party to the person receiving the largest support. It is thus somewhat akin to the

French system of "double balloting."[1] The peculiar difficulty encountered is that voters may with malicious intent help to nominate an inferior candidate in the party opposed to their own. The Minnesota law was recently amended to try to prevent this; the vote is also made compulsory to force indifferent citizens to the polls. It may safely be said, however, that no purely mechanical legislative aid will eliminate the standing difficulty. The adoption of direct nomination, unless accompanied by a regeneration of public spirit in operating it, would only lead to the existence of some extra-legal machinery for selecting candidates as a preliminary to the preliminary election itself. The old evil of the ready-made "slate" would reappear, altered perhaps in form, but unchanged in substance. On the other hand the agitation in favor of direct nomination is itself a wholesome sign of the increasing protest against the dominance of the machine politics.

6. Party Machinery in Great Britain. In the United Kingdom party machinery is not found in the same highly organized state as in the United States. This has been due to the fact that it is not so necessary. The cabinet system, as has been seen, puts executive and legislative power into the same hands. In America the party organization forms the connection by which the two legally distinct branches of the government are brought into harmony. This function therefore is not needed in England. Add to this the fact that the

[1] In France if no candidate has an absolute majority over all the others a second election is held about a fortnight later. In this the candidate with most votes is elected. Owing to the great number of French parties the first election acts as a sort of trial nomination.

English parliamentary elections are much less numerous than the various elections for federal and state offices in the United States. Nevertheless the use of regular party machinery is growing in Great Britain; though long regarded by many English people with disfavor as an American importation, its obvious utility for election purposes has ensured its adoption.[1] At the centre of English party structure stand two great political organizations, — the National Conservative Union and the National Liberal Federation, — whose headquarters are in London. Of these bodies affiliations are formed in each polling district of a parliamentary constituency, made up of the active adherents of the party in that area. This is the germ cell of party structure, corresponding to the American primary. It elects representatives to a party council of the whole constituency, and from these constituency councils representatives are sent to form a council for the whole county or borough. Finally this last council elects representatives to the central body at London. The party leaders in Parliament naturally exercise a controlling influence, somewhat as the congressional caucus of the early nineteenth century aspired to do. The caucus broke down because under the American federal system the national congress is not the sole and supreme organ of national political life. But the different situation in which the British Parliament is placed naturally puts the party leaders in a position

[1] Few works on British government contain any reference to party organization. The student may consult Michael Macdonagh, *The Book of Parliament*; and Leonard Courtney, *The Working Constitution of the United Kingdom*. See also Ostrogorski, M., *Democracy and the Organization of Political Parties*.

to exercise a radiating control over all the constituencies. The affiliated branches of the organizations mentioned act as the means of giving definite direction to this control. With the gradual evolution of the "party convention" the system of party "platforms" is beginning to appear. Authoritative "open letters" or addresses of the great party leaders and resolutions passed by the councils, constituencies, etc., are of this character. Candidates are still selected in somewhat irregular and varying fashion, accentuated by the fact that residence in the constituencies is not needed as a qualification. The custom of reëlecting the same person again and again obviates the necessity of making a selection. If a new choice must be made, it is done either by the constituency council, or if they cannot agree, the central council at their suggestion proposes a likely candidate to them, or even indicates two or three from whom they may select.

7. The Party Groups of Continental Europe. On the continent of Europe party governance presents certain features differing markedly from the situation hitherto existing in America and Great Britain. Instead of two great political parties overshadowing all others, and alternating in the control of the government, we find in France, Germany, and Italy a considerable number of party groups, no one of which is strong enough to outnumber all the others. In France and Italy, this is a particularly disturbing element in public life, since the administration of those countries is based on the cabinet system, rendering the executive government dependent on the continued support of a majority in the lower house of the legislature. Under

the group system of party life, no one party is able to afford that support. It must therefore be obtained by means of a coalition of separate parties whose mutual support is given purely for reasons of expediency, and may be withdrawn at any time in favor of a more profitable combination. It is to this fact that is due the notorious instability of French ministries under the Third Republic. There exist in France about seven major political parties, with minor subdivisions. Following on the general elections of 1902, the classification of the Chamber of Deputies comprised 111 Government Republicans, 99 Progressist Republicans, 129 Radical Republicans, 90 Socialist Radicals, 59 Nationalists, 50 Conservatives, 49 Socialists. The first of these represent the supporters, *par excellence*, of the present régime. The Nationalists and Conservatives are the result of the reconstruction of the former monarchial parties. The others are of various degrees of radicalism and socialism. No one of these is strong enough to support a ministry by itself. All the ministries of the Third Republic, with the exception of the short-lived radical ministries, have been formed with the Government Republicans as the nucleus, with contributory support from other fluctuating groups. The instability which naturally resulted has been aggravated by the methods of French legislative procedure, it being customary for the cabinet to resign even if defeated on matters of minor moment, or in consequence of an "interpellation"[1] in the Chamber of Deputies. Even the members of the cabinet

[1] The "interpellation" differs from the "questions" raised in the British parliament in that a debate on the point raised is allowed after the interpellation, but not after a question.

itself are less interested in its continuance than is the case in England, since they may very possibly themselves form part of the reconstructed cabinet which supplants it. The relation of political parties to cabinet government thus stands upon quite a different footing in France from what it does in the United Kingdom. Indeed the commendation which it has so largely met in the latter country rests on the presumption of the existence of two great parties as a sort of natural phenomenon likely to continue. The absence of such in France upsets the whole calculation. In Italy and in the German empire, there is the same subdivision of party groups. The elections to the German Reichstag of June, 1903, showed at least a dozen different parties. The Reichstag contains 397 members, but even the most numerous of the parties, the clericals, had only a hundred seats. Several of the parties (anti-Semites, moderate Radicals, etc.) had less than ten. The subdivision of parties is, however, of much less national consequence in Germany than in France, since parliamentary government does not exist.

Looking at the institution of party government generally, it seems liable to one or the other of two grave dangers. If bisection of opinion on a paramount issue does not exist, then the consolidation of the party may become a purely mechanical affair. What was in its origin a natural bond of union may degenerate into the cohesion created by artificial party ties. On the other hand, where such cohesion, natural or artificial, is not forthcoming, parties assume the fragmentary and unmanageable form seen on the continent of Europe. In Great Britain, where the operation of the constitution

in its present shape is dependent on party government, the situation of public affairs at the opening of this century is at a very interesting juncture. Within the last two decades the older line of cleavage has been intersected in all directions with new divisions. The adoption of the Home Rule policy by Mr. Gladstone (1886) divided the Liberals into Unionists and Home-Rulers. The adhesion of the former to the Conservatives partially healed the breach thus created. But with the close of the century the division into Imperialists and anti-Imperialists, Protectionists and Free-Traders, and other minor rifts of opinion has violently disturbed the formation of parties. It remains to be seen whether the British political parties will disintegrate into groups, will adopt a formal system of union with pledges and platforms on the American plan, or will find some means of reverting to their earlier condition of "natural" opposition on a fundamental question. It is more in accord with the history of British parliamentary life to presume that the present dominant fiscal question will lead to a new division of parties on a single line of cleavage.

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TABLE OF LEGISLATURES

	Composition of Upper House			
er	*Clerical Representatives*	*Hereditary Representatives*	*Appointed*	*E*
	0	0	0	
less re- ved	2 archbishops 24 bishops	519	4 Lords of Appeal	28 fr Peer Irel from of S
ess ed	0	0	81	
ess ed	0	0	0	
ess ed	0	0	0	
ess ed	0	0	58	
ess ed	Representatives of chapters	103 and the princes of the royal house	*Ex officio*, 4; appointed by king on presentation by landowners, universities, chapters, etc., 170; others appointed, 45	
ess ed	0	80 maximum	100	1
ess ed	18	68	157	
ess ed	55	257	74 and 19 *ex officio*	3 (le from tia)
ess ed	0	4 princes	337	
	0	0	44 (appointed by cantons)	

two chambers; a few of the appointed members still
s, one consisting of members chosen by the Austria

TABLE OF LEGISLATURES

	Name of Upper House	Name of Lower House	No. of Members in Upper House	No. of Members in Lower House	Term of Upper House	Term of Lower House	Composition of Upper House: Clerical Representatives	Composition of Upper House: Hereditary Representatives	Composition of Upper House: Appointed	Composition of Upper House: Elected	Constitutional Relation of the Two Houses
UNITED STATES	Senate	House of Representatives	90	386	Each senator 6 years; one third renewed every 2 years	2 years	0	0	0	90	"All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills." Constitution, art. 1, § 7.
THE UNITED KINGDOM	House of Lords	House of Commons	593 (1905)	670	Life, except Peers representing Scotland	7 years unless Parliament previously dissolved	2 archbishops 24 bishops	519	4 Lords of Appeal	28 from Peers of Ireland; 16 from Peers of Scotland	The Commons have exclusive control of the raising and spending of money. In other matters the relations of the houses stand thus: "If there is a difference of opinion between the House of Lords and the House of Commons, the House of Lords ought at some point (not definitely fixed) to give way, and should the Peers not yield, and the House of Commons continue to enjoy the confidence of the country, it becomes the duty of the crown, or of its responsible advisers, to create or threaten to create enough new Peers to override the opposition of the House of Lords and thus restore harmony between the two branches of the Legislature." Dicey, "Law of the Constitution," pp. 384 *et seq.*
CANADA	Senate	House of Commons	81	214	Life	5 years unless sooner dissolved	0	0	81	0	"Bills for appropriating any part of the public revenue or for imposing any tax on imports shall originate in the House of Commons." British North America Act, 1867, § 53.
AUSTRALIA	Senate	House of Representatives	36	75	6 years	3 years unless sooner dissolved	0	0	0	36	"Proposed laws appropriating revenue or moneys or imposing taxation shall not originate in the Senate. The Senate may not amend proposed laws imposing taxation or proposed laws appropriating revenue or moneys for the ordinary annual services of the government." Commonwealth of Australia, Constitution Act, 1900, § 53.
FRANCE	Senate	Chamber of Deputies	300	584	9 years. One third of the senators retire every 3 years	4 years unless sooner dissolved	0	0	0[1]	300	"Finance bills must first be presented to the Chamber of Deputies and voted by them." Loi Constitutionelle, 24 Feb., 1875, § 8.
GERMAN EMPIRE	Bundesrath	Reichstag	58	397	At the discretion of the constituent parts of the Empire	5 years unless sooner dissolved	0	0	58	0	Coordinate powers. "Imperial legislation is effected by the Bundesrath and the Reichstag. The consent of the majority vote of both houses is necessary and is adequate for an imperial law." Constitution, art 5.
PRUSSIA	Herrenhaus	Abgeordnetenhaus	About 330	433	Life	5 years unless sooner dissolved	Representatives of chapters	103 and the princes of the royal house	*Ex officio*, 4; appointed by king on presentation by landowners, universities, chapters, etc., 170; others appointed, 45	0	"Finance bills shall be submitted first to the Chamber of Deputies; they shall be accepted or refused in their entirety by the House of Lords." Constitution, 1850, v. § 62.
SPAIN	Senate	Congress	360 maximum	431	Life	5 years unless sooner dissolved	0	80 maximum	100	180	"Laws in reference to the taxes and the public credit must be first presented to the Congress." Constitution, 1876, § 42.
AUSTRIA[2]	Herrenhaus	Abgeordnetenhaus	About 260	425	Life tenure	6 years unless sooner dissolved	18	68	157	0	"The consent of both houses and the consent of the emperor is necessary for every law. If in a finance law in regard to particular items, or in a law for raising recruits in regard to the number of the contingent to be raised, in despite of repeated consideration no agreement can be reached by the two houses, then the lower sum proposed shall be considered as adopted." Fundamental Law of 21 Dec., 1867, § 13.
HUNGARY	Förendiház (House of Magnates)	Képriselöház (House of Deputies)	408	453	Life tenure except *ex officio* members	5 years unless sooner dissolved	55	257	74 and 19 *ex officio*	3 (delegates from Croatia)	Coördinate. — Custom and Law of 1885, § 13.
ITALY	Senate	Chamber of Deputies	341 (year 1905)	508	Life	5 years unless sooner dissolved	0	4 princes	337	0	"Every law for imposing taxes or for sanctioning the balances or accounts of the state shall be presented first to the Chamber of Deputies." Statuto, art. 10.
SWITZERLAND	Ständerath	Nationalrath	44	167	At the discretion of the constituent cantons	3 years	0	0	44 (appointed by cantons)	0	Coordinate powers. — Constitutional Act 89. "Federal laws can only be passed with the consent of both houses."

1 By the law of 1875 (since repealed) seventy-five of the Senators were to be appointed for life by the two chambers; a few of the appointed members still remain.

2 Austria-Hungary has, for purposes of political union, two legislative bodies called the Delegations, one consisting of 60 members chosen by the Austrian Parliament, and one of a like number chosen by the Hungarian parliament. They sit and debate separately, but for the purpose of forcing an agreement they meet together for a general vote.

PART III

THE PROVINCE OF GOVERNMENT

CHAPTER I

INDIVIDUALISM

1. The Individualistic Theory of the Functions of Government. — 2. Individualism as based on a Theory of Justice. — 3. Based on a Theory of Profitability; the Doctrine of *Laissez Faire*. — 4. Based on a Biological Analogy; the Survival of the Fittest. — 5. Conflicting Forces.

1. The Individualistic Theory of the Functions of Government. In the first and second divisions of the present volume we have considered the general nature of the state, and the constitution and structure of governmental bodies. The discussion of the form of government has of necessity preceded the treatment of the proper sphere of its operation. Yet in our own time the latter topic in practice assumes the place of paramount importance. The general opinion of civilized countries recognizes the validity of the principles of popular sovereignty and democratic government, — whether expressed by means of a limited monarchy or in a republican form.[1] It is generally admitted also that the adoption of popular government does not, in and of itself, as the sanguine theorists of a hundred years

[1] In stating that the general consensus of opinion is in favor of democracy, it is not to be denied that popular government has found occasional detractors among writers of reputation and ability. Sir Henry Maine (*Popular Government*, 1886) declares it to be "extremely fragile," "not in harmony with the normal forces ruling human nature," and "apt therefore to lead to cruel disappointment or serious disaster."

ago hoped it might, offer a solution of all our political and economic problems. Even granting that the government is to be controlled by the people and for the people, we have yet to ask what is to be the proper sphere of its operation for the general benefit. We employ in ordinary discourse a variety of phrases to indicate the subject in question, speaking indifferently of the sphere of the state, state control, the functions of government, the province of government, etc. More special aspects of the problem are seen in connection with government ownership of railways, the control of trusts, and the management of public utilities. But whether in its general theoretical aspect or in particular form, the problem involved is emphatically the paramount question of the opening of the twentieth century. In the following three chapters we shall endeavor to deal with it in systematic form, considering one after another the solutions that have been offered in theory and practice to the open question of government control. First we shall deal with the individualistic solution, or system of natural liberty, to which we have already referred in a somewhat different connection in a preceding chapter. In the second place we shall discuss the ideals of collectivism, and the attempts that have been made for its partial realization. The discussion of the actual economic operations of modern states on what may be called an individualistic basis modified to a great extent by utilitarian and opportunistic considerations, will be considered in conclusion.

To the treatment of the individualistic doctrine of the functions of government belongs of right the pre-

cedence. For it constituted during a large part of modern times what might be called the official creed of enlightened governments; was, until our own generation, defended by the greatest theorists of the modern era, and although discredited in its extreme form, remains as the working basis of the economic operation of both the American and the British governments. The individualistic theory may be briefly stated in the proposition that the sole duty of government is to protect the individual from violence or fraud. According to this theory the positive interference of the state with the individual even in his own interest is not justified. Nor is the state justified in undertaking operations of an economic character, or in imposing restrictions (other than in prevention of violence or fraud) on the economic activities of its citizens. A schedule of government functions admissible on a purely individualistic plan would include the maintenance of an army and a navy, courts of justice and a force of police, the enforcement of a criminal law and of statutes in reference to sanitation, adulteration of food, inspection of steamboats, etc., these being indirectly protective in their character; but it could not comprise the conduct of the post-office, the maintenance of hospitals and poor-houses, or the operation of railroads. Only such actions on the part of the state as were directed to prevent the interference of its citizens with one another would be legitimate.

2. Individualism as based on a Theory of Justice. This system of individual liberty against the interference of government has been defended on different grounds. As a matter of justice it has been

argued that the individual has a right to be let alone. On economic grounds it has been contended that it pays to let him alone. Lastly, on purely scientific grounds, it has been argued that it is in general consonance with the evolutionary nature of human progress that the individual should struggle for himself and survive, or fail, according to his fitness. The first of these arguments — the restriction of the operation of government to the defense of the rights of the individual — is especially found in the writings of the political philosophers of the later eighteenth and early nineteenth centuries.[1] We find it in the theory of the state advanced by Kant and Fichte and following as a corollary upon their view of the doctrine of the social contract. Kant, actuated by a spirit of protest against the paternal interference of the Continental governments of his day, and their intrusion into the private life of the citizen, bases his views of governmental functions on the idea of liberty, and assigns to the state "the hindering of the hindering of liberty" as its proper policy.[2] But among German writers Wilhelm von Humboldt, in his "Sphere and Duties of Government," offers the most complete expression of the thoroughgoing political individualism characteristic of this period. Taking as his starting-point the "individual man and the highest ends of his existence," Humboldt finds the paramount consideration to be that of individual variety and self-development. On this the

[1] An excellent critique of the individualism of the eighteenth century, and its transmission to the nineteenth, is found in Michel, *L'Idée de l'Etat* (introduction and bk. iii).

[2] See above, bk. i, chap. v.

active interference of government can have none but a detrimental effect. For this reason "the state is to abstain from all solicitude for positive welfare, and not to proceed a step further than is necessary for mutual security and protection from foreign enemies." Even such examples of interference as national education and state relief of the poor are to be condemned. This political theory of non-interference received a decided stimulus from its false analogy with the doctrine of popular sovereignty. It was but natural that at the beginning of modern democratic government the idea of the right of the nation to govern itself should be confounded with the somewhat similar claim of the individual to be left alone to manage his own affairs. Political freedom and non-interference seemed synonymous terms. In America the idea of individual rights was dominant during the formative period of the republic. The original situation of the colonists, compelled to wring their sustenance from a reluctant wilderness, the discredit of government in general by the land fees, quit rents, and tea taxes of the royal régime, inspired the Americans with an intense belief in self-reliance and individual rights. We find it as the central feature of the political philosophy of Thomas Jefferson, and the writers of the period,[1] and it has persisted until to-day in the opinions held by a large section of the people of the United States.

The individualistic theory of governmental non-interference resting on a doctrine of individual rights has an attractive and undoubtedly plausible appearance. Its weak point lies in the fact that on closer

[1] See C. E. Merriam, *History of American Political Theories*.

examination it is seen to contain inconsistencies of a serious character. To carry it out fully and absolutely would involve the adoption of an attitude at variance with the dictates of common sense, and one which no government has ever found it practical to completely accept. Mill has shown that the limitation of the province of government to the prevention of force and fraud "excludes some of the most indispensable and unanimously recognized of the duties of government."[1] Every government recognizes and enforces the right of private property, but it can be objected that this, in the case at any rate of property in land, looks very much like positive interference, since the maintenance of the claim of one individual is equivalent to the exclusion of all others. In the case of the regulation of the right of bequest, the fact of interference, though universally approved, is still more evident. In matters such as the coining of money, and the conduct of the postal service, we have instances of governmental action in a positive direction of such obvious convenience and general utility as entirely to warrant the violation of individual liberty involved. In other cases, as has been shown in detail by Professor Sidgwick,[2] there is an obvious breach of public morality in a policy of complete abstention; that a government should leave deserted children to starve, and content itself with "not interfering" with the destitute poor, is a point of view that meets with almost universal condemnation. The positive duties of the state in regard to national edu-

[1] John Stuart Mill, *Principles of Political Economy*, bk. v, chaps. i and xi.

[2] Henry Sidgwick, *Principles of Political Economy*, bk. iii, chap. ii.

cation are also generally admitted, although it is hard to find a defense for such a function of government on a purely individualistic plan.

3. Based on a Theory of Profitability; the Doctrine of Laissez Faire. The view that social justice demands that the individual should be left in possesssion of his "natural rights" may therefore be discarded. Far more importance has attached to the economic defense of individualism, the claim that it is more profitable for the welfare of industry and commerce that every one should be left to follow his own interest as he himself understands it. This is the doctrine that was paramount in England during the rise of modern industrialism and which was to a large extent reflected in America and elsewhere. The cause of the peculiar dominance of individualism in the direction of economic policy is to be found partly in the industrial circumstances of the time, partly in the effect exercised upon public opinion by the writings of the political economists. During the period between 1750 and 1850, England, and in consequence the industrial world, underwent a series of economic changes of such fundamental importance as to earn the name of the Industrial Revolution.[1] The invention of special machinery for the textile industries (the spinning jenny, the mule, the power loom, the cotton gin), together with the application of steam as a motive power, changed the system of production from its previously restricted and domestic character and established the

[1] The student may with profit consult in this connection Toynbee's *Industrial Revolution*, Cunningham's *Growth of English Industry and Commerce*, and Hobson's *Evolution of Modern Capitalism*.

factory system. The contemporary improvements in the smelting of iron ore (coal being used as fuel), the improved means of transportation in the shape of better roads, canals, and later the introduction of steamboats (1807), the building of railroads (1830) enormously increased productive power and stimulated international exchange of products. At the same time the existing system of government regulation of industry (the tolls, duties, prohibitions, labor statutes, etc.) became entirely out of harmony with the industrial situation and with the need for mobility of capital and labor and opportunity to exploit foreign commerce.

The inadequacy and to a great extent the positive hindrance of the older system of state interference became apparent and contributed directly to the rise of modern political economy. Adam Smith in his "Wealth of Nations" (1776), followed by Ricardo, Malthus, Frédéric Bastiat and others, elaborated the economic system of individual liberty as the new guide of legislative policy. The fundamental argument of their system runs as follows: Every man is actuated in his economic relations mainly by the pursuit of his own interest. If individuals are left free to follow their own choice in the use of their capital, the sale of their labor, or the renting of their property, the liberty of each will be in the general interest of all. For capital and labor will by this means be directed to those operations in which they are most profitably employed, and in which the remuneration for them is in consequence the highest. A similar reasoning applies to prices; for if articles are freely exchanged, an increased

demand for any commodity will tend to raise the price and to call forth an additional supply, until by the operation of these balanced forces an equilibrium is obtained. International exchange of goods, if left unrestricted, will be effected in the quantity and kind most profitable to those making the exchange: every country will prefer to direct its labor towards the production of those articles for which it has the greatest adaptability and will rely on its trade with other nations to supply the commodities whose production it finds relatively difficult. We have thus a general economic harmony in which every individual seeks to obtain the greatest advantage for himself to the general wellbeing of all. In such a state of things government interference becomes needless and necessarily noxious. To fix prices and wages by legislative act, to assign a legal rate of interest and prescribe a legal schedule of rent, to prohibit importation or hamper the movement of labor from trade to trade or from place to place, — all this is contrary to a natural law which if left to itself will coördinate everything to the best advantage.

The effect of this teaching throughout the world, but especially in Great Britain, was momentous. It led to the repeal (1813–14) of the long-standing regulation of labor under the Elizabethan statute. It occasioned the abrogation of the laws against free combination of workingmen (1824) and of the laws of settlement restricting the movement of laborers, the repeal of the navigation code (1849) which since the reign of Charles II had sought to limit the trade with British colonies to the ships of the mother country, and the

abolition of the trade monopoly of the East India Company. It found its greatest triumph in the almost total repeal of the protective duties, the abolition of the corn laws (1846), and the establishment in the United Kingdom of the system of free trade.[1] In America, though the absence of positive interference in the past prevented the necessity of similar statutes of repeal, the same ideas exercised an enormous influence. The writings of earlier American economists reflect with what General Walker has called a "Chinese fidelity" the ideas of the English school; and the low-tariff movement before the war was based on the doctrine of free trade. In a succeeding chapter we shall have occasion to refer to the later criticism of natural liberty.

4. Based on a Biological Analogy: the Survival of the Fittest. The evolutionary basis of the individualistic theory of governmental functions has not enjoyed the same prominence as the economic doctrine. We see it especially in the political philosophy of Herbert Spencer. As we have already noticed in connection with the organic theory of society, Spencer endeavors to apply the biological theory of evolution to the interpretation of social and industrial progress. The government is regarded as one of the "organs" of society. It should be intrusted only with that function for which it is specially adapted; and with the advance of social complexity it must lose in scope what it gains in intensity. "A function to each organ, and each organ to its own function," says Spencer, "is the law of all organization. . . . The lungs cannot digest, the

[1] A. Mongredien, *History of the Free Trade Movement.*

heart cannot respire, the stomach cannot propel blood. . . . Must we not expect that with government also, special adaptation to one end implies nonadaptation to other ends?" Spencer, in his earlier writings at any rate, was willing to follow his theory to its logical outcome, and to erect the dogma of "the survival of the fittest" into a moral law. To interfere with its operation was to disturb the "natural" order of progress. Should the state aid the poor, the sick, and the aged, it thereby contributes to the survival of forms which have no claim to survive, and whose existence is a detriment to life in general. "It seems hard," he says, "that a laborer incapacitated by sickness from competing with his stronger fellows should have to bear the resulting privations. It seems hard that widows and orphans should be left to struggle for life or death. Nevertheless when regarded not separately, but in connection with the interests of universal humanity, these harsh fatalities are seen to be full of beneficence." The theory thus advanced is interesting as illustrating the extreme form which individualism was apt to assume during the period of its dominance, but hardly needs a detailed refutation. Such an argument would apply equally well to the suppression of private charity, private aid to the sick, and private maintenance of the poor as well as to government relief. If the sole test of fitness to survive is found in the fact of survival, then the prosperous burglar becomes an object of commendation, and the starving artisan a target of contempt. If it is assumed that widows will die unless the government helps them, and that usurers will grow rich unless the government stops them, this seems a

very poor reason for saying that widows *ought* to die and that usurers *ought* to grow rich. Even taking the evolutionary argument on its own ground, it can be urged with justice that as soon as the government does "interfere," then its interference becomes one of the facts of the situation, one of the operative forces to be taken into account. Indeed the attempt to thus apply the biological doctrine of evolution to the theory of the functions of government involves a distortion of the truly scientific point of view.

5. Conflicting Forces. Even in the first half of the nineteenth century, when the individualistic view of government was dominant in both theory and practice, its doctrines were not altogether unopposed. The wonderful progress made in productive industry by the factory system operating under a régime of natural liberty seemed the strongest possible argument in its favor. As against this the appalling distress of the working classes during the same period plainly called for a more active policy on the part of the state than mere non-intervention. The factory system under the play of free contract seemed inevitably to lead to oppressive hours of labor, unwholesome and brutalizing conditions of work, and the employment of children of immature age as a substitute for adult labor.[1] The degradation and insufficient remuneration of the workers as a consequence of their enjoyment of "natural liberty" called forth a strong current of opinion in opposition to the policy of non-interference. Thomas Carlyle in his "Past and Present"

[1] An account of the miseries occasioned by the factory system may be found in Spencer Walpole's *History of England*, vol. iii, chap. xiii.

(1843) and "Latter Day Pamphlets" (1856)[1] denounced the "dismal science" of the economists and ridiculed the doctrine of *laissez faire*. The practical effect of this humanitarian movement is seen in the legislative regulation of factory labor in Great Britain by acts of Parliament of 1833, 1844, 1847, 1850, and later statutes. These measures which limit the hours of employment for women and children are flatly at variance with the individualistic principle. They have however been subsequently imitated in the legislation of the great industrial states, including most of the manufacturing states of the American Union. The further disintegration of the principle of non-interference will be traced in the third chapter. From what has been said, however, it may safely be concluded that pure individualism in the conduct of government is impossible. Its adoption, in complete form, runs counter to the most instinctive impulses of humanity and would neglect governmental duties of the most evident character. As a matter of political justice it rests on a mechanical attempt to completely divorce individual and social rights. On an economic basis it overlooks the plain advantages of cooperation and regulated effort. As a scientific law it will not stand examination.

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[1] "Let us hope that the leave-alone principle has got its apotheosis. . . . Respectable Professors of the dismal science, your small 'Law of God' is hung up along with the multiplication table itself . . . the length of your tether is pretty well run." *Latter Day Pamphlets*, No. i.

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CHAPTER II

SOCIALISM

1. The Socialistic Theory: its Destructive Criticism. — 2. The Constructive Programme of Socialism. — 3. The German Social Democrats. — 4. Socialism in England and America.

1. The Socialistic Theory: its Destructive Criticism. Entirely opposed to the individualistic conception of government are the doctrines known as socialism, collectivism, communism, and which, subject to later distinction, may be spoken of together as the socialistic theory of the state. No socialistic state has actually existed on any except a small and experimental scale. Socialism is therefore mainly an ideal rather than an actuality. But the doctrines it embodies have appealed so strongly to so many minds, have exercised such an important influence on actual legislation and practical politics, and contain in spite of their fallacious nature so much that is of use and inspiration, as to merit a special treatment.

Socialistic theories present both a destructive and a constructive aspect. They offer in the first place a criticism of the existing industrial system (whose basis is individualistic), with a view to show its inherent unsoundness and its inevitable collapse. In the second place they propose to substitute for the present state a coöperative commonwealth to be founded on associated effort and joint control. The critical part of the socialistic doctrine is intended to show that the indi-

vidualistic system of industry is wasteful and ineffective from an economic point of view, and inequitable in that the remuneration which falls to the different classes of workers is not according to their relative deserts. The more celebrated writers of the school, as for instance the great German socialist Karl Marx in his "Capital," which has been called the gospel of socialism, criticise the existing state from a point of view elaborately historical. Mark alleges that the system of individual private property on which it rests is the outcome of original aggression of the strong against the weak, representing an appropriation of the means of existence by the stronger class, and their consequent exploitation of the mass of workmen, who remain in a state of dependence spoken of as wage slavery. The progressive improvement of the means of production renders the workmen more and more dependent on those who employ them. The appropriation of the land by private owners (a process practically complete in older countries) renders it impossible for any individual to apply his labor directly to the natural resources of the earth. The increasing use of machinery, although vastly more efficient than the hand labor which it has replaced, makes all productive operations more and more dependent on the possession of capital, on the ability to purchase machines, premises, etc., and to forego the prospect of immediate reward for the sake of future profit. In such a condition of things the isolated laborer has nothing whereon to subsist except his labor power, which he must sell as best he can to the highest bidder. In the nature of things he cannot receive less for it than what will enable him to barely

exist, but anything over and above this will depend on the bargain he is able to make with his employer. Now this bargain, although nominally effected under the rule of free contract, is in reality a forced one. The workman must sell his labor or die of starvation. But since the increase of population, as Malthus and others have shown, is continuous until some point where it is actually checked by lack of means of subsistence, the labor market will always be so crowded with laborers as to bring down the level of wages to that which practically amounts to the necessaries of life. Should wages rise above this, a responsive upward movement of population must bring them down again. Such is the famous "Iron Law of Wages" formulated by Lassalle on the basis of the Ricardian economics. The other side of the industrial bargain is represented by what the employer receives from the laborer. This consists each day of a certain amount of labor power, which results in the fabrication of a certain number of useful commodities produced by the application of the day's labor. From the nature of the bargain it does not follow that the commodities thus produced by the workman's labor need be exactly equivalent to the commodities given to him through the medium of his wages by the employer. Indeed, the socialistic writers assure us the two are by no means equal. The workman produces in the day more than he consumes (for otherwise the employer would have no motive in undertaking production), and the surplus thus created falls to the lot of his fortunate employer. The laborer who sells his labor under compulsion is compelled to submit to this fraudulent system. Such is the doctrine of sur-

plus value, which is particularly associated with the name of Karl Marx, and which is the foundation of the critical theory of socialism. The point in which it lies open to attack is that it attributes to labor the whole of the productive result, and does not allot a share to the machine which was used in coöperation and which is the property of the capitalist.

It is impossible here to enter into the economic discussion to which this question gives occasion. It is only intended to show on what grounds the socialistic contention accuses the present system of being essentially inequitable. Marx and the writers who have followed his lead are not content with alleging the present unfairness of the method of free contract and free competition. They claim that with the continued application of machinery and improvement of production, the continued appropriation of natural resources and constant growth of population, the inequity of the system will be emphasized, the gulf between the capitalists and the laborers, the rich and the poor will be further and further increased. Sooner or later, they maintain, the forces thus at work will precipitate a vast social catastrophe which can only be avoided by altering the industrial basis of our social system, and substituting associated effort for the economic anarchy of free competition. Their theory thus assumes the aspect of a social prophecy.

On more valid grounds the socialists draw attention to the wastefulness of the individualistic method of production and distribution. A vast amount of work is performed under it that has no social utility, a great deal of work is duplicated and even done several times

over with no general advantage. The labor wasted in competitive advertising, and efforts of a similar character intended merely to divert business from one person to another, is the most conspicuous instance of economic loss of the first class. Instances of work that is needlessly multiplied are seen in the case of competing railroads running trains over parallel lines, and in retail stores existing in considerable number where one general distributing establishment could do the work. Perhaps the simplest and best illustration of the point in question is seen in the contrast between the delivery of letters at consecutive houses and in neighboring streets by a postman (an official under collective management) and the waste of time and labor involved by the spasmodic delivery of milk and groceries at various houses throughout an extensive district by the employees under individual management. It is in the economic saving thus effected that the amalgamation of industry by large corporations proves economically superior to production and distribution by small concerns. The large industrial companies and departmental stores of the present are standing proof of the fact. These the socialists regard as indicating the necessary passing of the older system of individualism, the large corporations representing a transition stage towards the general industrial management by the state.

2. The Constructive Programme of Socialism. From what has been said it will be easily seen that the critical or destructive side of socialistic theory contains a great deal that is true and extremely useful in indicating the proper direction of measures of social reform.

The other side of socialism, its constructive programme for a coöperative commonwealth, is much weaker and cannot be worked out in detail without meeting with hostile criticism from socialists themselves. In general terms the programme of socialism is to substitute government management for private management, to put all productive industry under state administration, thus making the state the sole employer, and putting all the workers in the employ of the state. On this system the functions of government would extend to the whole domain of economic operations; it would manage all the railroads, the factories, the mines, and the farms. In place of competing retail stores, government distributing houses would be established for delivering to each citizen his share of the national production. Individuals would still have a property right to the things they actually intended to use, — houses, food, clothes, etc., — but all the means of production would be nationalized.

The inherent impracticability of such a system becomes evident when one turns from the general scheme of production to the question of distribution, — the method according to which the wages of the workers under the socialist state are to be managed. On this point there is a great variety of opinion. The most extreme view is found in those writers who recommend that everything produced should be common property, all persons taking from the general stock according to their needs. *La mise au tas, la prise au tas*, ran the formula adopted by Proudhon, the French anarchistic writer. Such a system would of course leave no such thing as individual wages, the remuneration of each laborer being according to his needs, not according to

his efficiency. Somewhat similar to this is the suggestion for a general equality of wages, all persons being compelled to work for an equal number of hours (or a number of hours equalized according to the relative attractiveness or repulsiveness of the trade) and all receiving the same remuneration. This, it will be remembered, is the solution of the wages problem offered by Edward Bellamy in his "Looking Backward," a presentation of the socialist state under the form of a romance, which attracted at the time of its publication (1888) a phenomenal attention. To all except the most sanguine visionaries any socialistic scheme involving equality of wages is totally impracticable. It is evident that under such an arrangement the individual stimulus to work would be gone and the efficiency of production hopelessly impaired by idleness. Bellamy and others attempt to argue that under the improved conditions brought by socialism, the elevation of the general moral tone would severely discountenance any such shirking of work, and that with the shortened hours of labor possible under coöperative work there would be no aversion to labor on the part of the individual. Such an argument is altogether of an idealistic character, and contains the most monstrous assumptions of a sudden and mechanical renovation of human nature, so sweeping as to beg the whole question of social reform. The argument is also in contradiction to the method (adopted by Bellamy) of lengthening or shortening the hours of labor in any trade in order to attract or repel workers according to the needs of any particular moment. This plan itself rests on the assumption of an aversion to work.

We come finally to the scheme of industrial organization that may be described as socialism proper, in opposition to communism and collectivism. In this case wages are to be awarded to each laborer according to his efficiency. The plan supposes a hierarchy of officials (on the elective principle) who control the productive process, drafting the workers from trade to trade as may be needed, and paying salaries, making promotions, etc., according to the industrial efficiency of the workers. The pay of a good workman would be high, of an inefficient or idle workman low. The scheme would be almost perfect, if one could assume the official persons who assign places, salaries, and promotions to be omniscient and impeccable. But the possibilities of corruption, the play of interested motives, intrigue, personal spite, and unfairness of all kinds would be so appalling under present conditions of public morality as to altogether remove such suggestions from the domain of the practicable. If all industry were forcibly appropriated by the government and private business prohibited, the individual who fell under the odium of the "bosses" and "cliques" that might very possibly control such a government, would feel himself to be under a despotism from which the organization offered no escape.

3. The German Social Democrats. Socialism, however, has more than a merely theoretical aspect. On the continent of Europe it has made itself a force in practical politics of the highest importance, and socialist political parties have of late assumed some importance in England and the United States. But it is in Germany especially that the socialist propaganda has

met with success, and has exercised a powerful influence on the legislative policy of the government. The evolution of socialism in Germany is not only interesting of itself, but is singularly instructive in the light it throws upon the probable future of socialist political parties, and the extent to which they are likely to succeed in modifying the attitude of existing governments. It arose, as also in France, in the earlier part of the nineteenth century, assuming at first an altogether ideal and utopian form.[1] The earlier socialists, or communists as they were at first called, greatly underestimated the enormous difficulties that stand in the path of social reform. Attributing all existing evils to the prevalence of the capitalistic system, they presumed that its immediate abolition in favor of state control would effect an almost immediate regeneration of mankind. The original programme of socialism, when it arrived at the stage of having a political programme, consisted in the uncompromising destruction of capitalistic industry. This was the attitude of the socialist wing of the revolutionists that for the time being overthrew monarchical government in France in 1848, and threatened its existence in the German convulsions of the same year. After the collapse of that great movement the German socialists fell into opposing groups, — some of them still aiming at a general universal revolution, and attempting to organize on a cosmopolitan basis, others recognizing the present national state as their starting-point, and desirous of gaining their ends by constitutional reform.

[1] Of the initial period of modern socialism in Germany, Weitling's *Die Welt wie sie ist und sein soll* (1838) and in France the writings of St. Simon and Fourier may be cited as illustrative.

By the latter plan socialism, instead of fighting itself into power, would vote itself into power. The greatest influence during this period was exercised by Ferdinand Lassalle, who organized a German Workingmen's Association, and advanced as an immediate programme the use of state credit for the foundation of workingmen's productive associations, which should act as the beginning of a socialist state. The secession of the revolutionary anarchists, the collapse of the international aspect of the movement,[1] aided the growing tendency of German socialism towards a national constitutional form whose immediate aim should be the attainment of practical measures, rather than the complete realization of the ideal state. At a congress at Gotha in 1875, a general union of the socialist party was effected on a basis of compromise. In the programme there adopted the "abolition of the system of wage labor" was indicated as the ideal of socialism, but certain immediate measures were proposed "in order to prepare the way for the solution of the social question."

In the period following (1878–1890) the party underwent a severe persecution at the hands of the German imperial government, which did not, however, drive it into revolutionary measures. At a congress held at Erfurt (1891) a revised platform was adopted, which became the official programme of the German social democratic party. It demands universal, equal, and direct suffrage by ballot (extending the franchise

[1] Karl Marx in 1864, while a refugee in London, founded the International Workingmen's Association, which aimed at social revolution without the help of existing governments; the movement collapsed after the Franco-Prussian War.

to women), proportional representation, direct legislation, substitution of a universal militia for a standing army, freedom of the press and of meeting, free justice, a graduated income tax, improved factory legislation, statutory limitations of the hours of labor. With these immediate demands are coupled a general denunciation of the evils of capitalistic industry. But it is asserted that the "struggle of the working classes against capitalistic exploitation must of necessity be a political struggle,"[1] and it will be seen that the present demands of the party include nothing that is not asked by various radical groups in Anglo-Saxon countries, except perhaps the item of a legal labor day. On this basis the progress of the Social Democrats in point of numbers has been extremely rapid. At the foundation of the German Empire they elected only two members to the Reichstag; in 1893 they elected forty-four members, representing 1,876,738 votes, and in the election of 1903 succeeded in returning eighty-one members, representing 3,011,114 votes. On the other hand it is generally conceded that the socialist party (including therein those who vote for socialist candidates) is not entirely made up of socialists. It has become to a large extent the party of discontent and of standing opposition to the imperial government, and is by no means to be looked upon as entirely made up of persons believing in the practicability of a coöperative state.

In all the Continental countries one of the vexed questions of present socialism is the extent to which the earlier doctrines of the socialistic theory are to be

[1] A translation of the text of the Erfurt programme may be found in Ely's *Socialism and Social Reform*, appendix i.

maintained. Some of the socialists tenaciously adhere to the original tenets of Karl Marx, and persist in believing in the imminence of the social cataclysm. This, however, in view of the evident improvement in the lot of the working classes during the nineteenth century, during which the actual wages of skilled labor have been about doubled, is an expectation that seems belied. A great many socialists believe in the progressive alteration of present conditions with a view to immediate social amelioration to the extent actually practicable. These "revisionists," as they are called, were voted down at the recent international congress of socialists at Amsterdam (1904), and a set of resolutions adopted reaffirming the inveterate hostility of the socialists to the system of capitalistic production. But in spite of this it may with authority be affirmed that the greater number of socialists now favor the amelioration of present conditions rather than their complete overthrow. The socialists, though extremely numerous in France and Italy, have nowhere else as much cohesion and unity of operation as in Germany. In France in particular they are divided into opposing factions. Some of them, under the name of "collectivists," are of the Marxian type, favoring a complete economic control exercised by a centralized government; others advocate the adoption of a socialistic programme by the development of municipal control; others again, the "possibilists," are inclined to accept any measures of amelioration that can be obtained and to coöperate with any existing governments that will meet their views.

4. Socialism in England and America. Various socialistic associations have been formed in Eng-

land, — the Social Democratic Federation (1881), the Socialist League (1884), now extinct, and the Fabian Society. The latter has contained among its members many persons of marked talent, — the two Webbs,[1] Mrs. Annie Besant, and others, — and the collection of papers published by it under the title of "Fabian Essays in Socialism" has had an extensive sale. The programme of the society consists in the gradual introduction of socialism, recognizing the need of a transitional stage in passing from capitalistic industry to collective management. In the United States there have been numerous examples of practical attempts at the realization of collective management in the foundation of various communities in which the principle of associated labor and common ownership was adopted.[2] Of these the Rappites of New Harmony (later of Economy) and the communists of Zoar, Amana, and Oneida are familiar examples. These experiments have always proved failures, except where the main motive was religious and not economic, and where the community of property was only incidental to aspirations of a higher character. Of late years socialism has appeared in the United States in the form of political parties which are developing a considerable voting power. The Socialist Labor party and the Social Democratic party are the most important. In the presidential elections of 1904 some 600,000 votes were given to socialist candidates. But in the case of both these parties,

[1] Sidney and Beatrice Webb, well known as joint authors of *History of Trade-Unionism*, etc.

[2] Consult in this connection Charles Nordhoff, *The Communistic Societies of the United States*.

though they preface their platforms with general statements in favor of the nationalization of production, special stress is laid on the immediate demands for state railroads, municipal control of lighting plants and street cars, a graduated income tax, etc. They thus illustrate in their practical programme a very close similarity with radical political parties whose basis is not socialistic. The present demands of socialist parties both in America and in Europe are very closely allied to those advanced by the Populists, the French Radicals, and the British Independent Labor party. The fundamental basis of radicalism is individualistic and hence represents in theory the opposing extreme from the socialistic conception of the state. But the progressive evolution of modern socialism is carrying it further and further from its original ideal. The latter many socialists admit to be utopian and unattainable, and many persons not socialists would concede that the theoretical ideal of a coöperative commonwealth may exercise a formative influence on the direction of actual legislation. The aims of the socialists in connection with municipal government we shall discuss in the next chapter.

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CHAPTER III

THE MODERN STATE

1. The New Environment. — 2. Theory of Protection to Industry. — 3. Modern Protective Tariffs. — 4. Interference with Competitive Prices; Trust and Railroad Legislation. — 5. Government Interference on Behalf of the Working Class; Factory Laws, State Insurance, and Pensions. — 6. Municipal Control.

1. The New Environment. We shall now consider in conclusion the actual functions exercised by modern governments and the existing state of opinion in reference to the economic duties of the state. The practical operation of all modern civilized governments remains, in a certain sense, on an individualistic basis. By this is meant that there is no state in which the principle of common property in the means of production, or of equality of wages, or of universal employment by the government, is adopted. Each individual is still left to earn his own living by his own efforts, and the amount of wages remains as a matter of free contract between employers and employed. But subject to this general reservation, it can easily be shown that the practice of modern governments is further than ever removed from complete individualism, and that the tendency towards state interference with industry is everywhere on the increase. We have but to consider the public policy of our time in reference to the regulation of railroads, of monopolies and tariffs, to realize that the former reliance upon the principle of unre-

stricted competition and individual self-interest has been completely lost. This obvious change in public policy has been accompanied by an equally evident change in public opinion. The economists and political philosophers of the present time are prepared to defend a degree of state interference quite at variance with the doctrines of their predecessors. The reason for this remarkable alteration both in theory and practice is found in the altered circumstances of our industrial environment. We have seen in a previous chapter that the rapid expansion of industry under the stimulus of the new mechanical processes of the industrial revolution seems to demand its liberation from all forms of governmental restraint, and that the consequent removal of the standing impediments to the free movement of capital and labor was accompanied, at any rate as far as the total volume of production was concerned, with marked success. But it has been seen also that in reference to the welfare of the laboring class the system of free competition, particularly in regard to the work of women and children, was open to serious objection. The further development of modern industry has emphasized many other disadvantages attendant upon unrestricted competition. The more important of these may be briefly discussed in theoretical form, after which we shall proceed to the treatment of the actual legislative policy adopted under the circumtances.

The theory of government functions laid down by Smith, Ricardo, and the classical economists was essentially a cosmopolitan theory. It was intended to show that if wages, prices, and trade were left to the

free play of individual bargaining, the self-interest of each would promote the general interest of all. Each individual would be enabled to apply his labor and his capital to the particular branch of industry in which he might expect the highest remuneration. In the same way each nation would be enabled to concentrate its production in the directions for which it had the greatest natural advantages, an unrestricted trade with its fellow nations supplying the commodities not produced at home. As applied to the conditions prevalent in England in Ricardo's day, the theory of international relations is generally admitted to have been correct. There could be no doubt as to England's paramount advantages at that time in nearly all lines of manufacturing industry. But the attempt to apply the free-trade theory to other nations and to later times has by no means met with a general acceptance. In the first place it is objected that the acceptance of the policy of free trade militates against national self-sufficiency and independence. In strict accord with the Ricardian doctrine it will follow that if a nation has especial advantages for agriculture and relatively poor facilities for manufacture it will, apart from government interference with the "natural" course of things, rely upon its neighbors for manufactured articles, and devote its energies mainly to agriculture. Conversely a nation with special facilities for manufacture, but poor in agricultural resources, will be led to leave its land untilled and to obtain its food-supply by exchanging its manufactured articles for agricultural products. It is clear that in these cases the welfare of each nation is absolutely dependent on its being able to carry on

an uninterrupted trade for the supply of its particular needs. Should such intercourse be interrupted by war, either between itself and the nation it trades with or between the latter and an outside power, its economic existence is at stake. The economic gain afforded by its trade in time of peace is thus offset by its economic feebleness in time of war. It is to be especially observed that it is not only a war of its own that it must apprehend, but a war undertaken by an outside nation on which it is in some degree economically dependent. On this ground it is argued that state interference in the shape of protection to manufactures (or to agriculture) is justified in so far as may be needed for establishing a proper quantity of economic independence. Even Adam Smith in his approval of the navigation acts[1] admits the validity of considerations of a similar character, and the argument is generally admitted by present economists to be of weight. There is a considerable divergence of opinion as to the extent to which economic independence should be attempted. It is, however, universally admitted that for the manufacture of the munitions of war no state should permit itself to be dependent on the outside world.

2. Theory of Protection to Industry. The foregoing is only one of the many grounds on which state interference in the form of protective duties has been advocated. More familiar, especially in America, is the line of reasoning known as the "infant industry" argument. It is claimed that the resources and circumstances of a country may be such that while the initial expense of setting a manufacturing system on foot in

[1] *Wealth of Nations*, bk. iv.

the face of foreign competition offers insuperable difficulties for the industrial producer, yet such a system once properly established would be of a sufficiently profitable character to compete on equal terms with the imports of foreign manufactures. In this case, it is urged, the government should impose a temporary duty which may make it possible for manufactures to be established, and which may later on be removed. The temporary help thus afforded by state interference will enable the community to advance to a higher stage of industrialism, and better to exploit the natural resources of its territory. This argument has met with especial support from American economists. The weak point in connection with the infant-industry argument is that in countries where duties of this kind have been adopted, the industries in question have never outgrown their infancy, as far as the protective tariff is concerned. In practice the duties have not only not been removed but have been increased.

A further ground of argument in favor of protective interference arises out of the cosmopolitan character of the free-trade doctrine. Assuming a complete international régime of free trade, the system might tend towards the denudation and impoverishment of the less favored nations in favor of those possessing the greatest resources and offering the best conditions for manufacture. The Ricardian theory presupposes that each nation will occupy itself with the pursuits for which its circumstances are best suited. It is admitted[1] that one nation may be worse suited in every respect than an-

[1] See John Stuart Mill, *Principles of Political Economy*, bk. iii, chaps. xvii, xviii.

other and yet continue to trade with it, because the people of the most favored nation will prefer to devote themselves to the occupation in which their advantage is greatest. Thus let us suppose that Portugal can produce both wine and corn with less labor than Morocco; and let it also be supposed that in the production of corn the advantage is but slight, whereas in the case of wine the advantage is enormous; the people of Portugal will still prefer to get their corn from Morocco, although produced there at greater pains than in Portugal, because the quantity of wine they exchange for it is produced at still less cost. On this ground the classical economists undertook to show that two nations might trade with mutual advantage even where the resources of the one were superior in every respect to those of the other. Such an argument however takes it for granted that the capital and labor of each country will remain within its own borders, and not emigrate to the more favored territory. Why should it not be supposed that with free intercourse and open markets, the capital, and what is far more important, the laborers of less favored communities would emigrate to places better suited for manufacture? It will be noted that this supposed denudation of poorer countries contains nothing at variance with the free-trade theory itself. The emigration of persons and capital under these circumstances would doubtless increase the gross total of the world's production, and would add something to the general productive efficiency of mankind. But it would assuredly not increase the gross total of the productiveness of the country out of which they emigrated. The question then is, whether the adoption of protective

duties in aid of home manufacture can prevent the desertion of poorer for richer countries. It may be argued that, even after the duties are imposed, the individual capitalist or laborer will still find it more profitable to use his capital and labor in the more favored country, and that the tendency to emigration of both of these is independent of protective interference. There are, however, a great many people in every country whose remaining there is not altogether a matter governed by economic motives; some will remain from sentimental reasons of attachment and patriotism, others because their material fortunes are already amply sufficient. Under a protective system the manufactured commodities consumed by these persons must needs be made at home and necessitate the continuing within the state of a sufficient manufacturing population for the purpose. Such manufacture will, under these premises, be conducted at an economic loss: the persons of means thus residing in the country will have to pay more for what they consume than if content to import it from abroad and to let the manufacturing population depart. But the upshot will be that a larger number of citizens remain within the state than would have remained without the state interference in the form of protective duties. It is plain, of course, that the applicability of such an argument depends on the particular circumstances of any country at any time. The situation of Great Britain at the present time naturally suggests itself for examination in this connection. It may conceivably be the case that the facilities both for agriculture and for manufacture are now inferior in Great Britain to those of the United States. The progressive appli-

cation of water power and electricity as motive forces may further emphasize this advantage. Under such circumstances according to the Ricardian doctrine the laboring people of England ought, each consulting his own advantage, to come to live in the United States. There would remain in England the persons of means, who would invest their capital in the manufacturing industries of America, and draw from that continent the various commodities of their consumption. The case is purely hypothetical and may be perfectly at variance with present facts. But it seems to show that, in pure theory, the system of free trade is not *of necessity* identical with national greatness. To grant this and to contend that it is always consistent with the general welfare of the world, even where fatal to the welfare of a particular nation as such, would be thought by many a quite insufficient argument.

3. Modern Protective Tariffs. Acting on the general considerations thus stated, almost all of the modern industrial states have seen fit to adopt a system of protective duties for the promotion of domestic manufacture. Such legislation in the United States was indeed adopted in a mild form at the very opening of the history of the present Constitution.[1] During the first half of the nineteenth century, the rival theories of free trade and protection struggled for mastery. The high tariff of 1828, the "tariff of abominations," was followed by the greatly reduced tariff of 1846, a measure partly due to the influence of the free-trade campaign in England, and by the reciprocity treaty with

[1] See Schouler, *History of the United States*, vol. i; Taussig, *Tariff History of the United States*.

Canada in 1854. But since the Civil War the system of protection to national industries has been strengthened, and extended to practically the whole range of industry. The Dingley tariff of 1897, while admitting free of duties a large number of raw materials for use in manufacture, imposed on manufactured articles duties amounting in some cases to more than fifty per cent. The Dominion of Canada, though granting a special rebate of one third of the duty to imports from Great Britain, is now on a high-tariff basis, the policy of protection having been explicitly adopted by the Conservative party in 1878, and transmitted to their opponents on their accession to power in 1896. The German Empire, since the tariff of 1879, has also adopted the policy of protection, the recent tariff of 1902 having further raised the existing duties, especially those on agricultural products.[1] France, Italy, and the other Continental countries are also under a system of tariff protection. Of the manufacturing countries of the world, Great Britain alone remains upon a free-trade basis, while even there the future retention of such a system has recently become a subject of acute controversy.

4. Interference with Competitive Prices; Trust and Railroad Legislation. Interference with the freedom of importation is only one instance of the present tendency towards legislation in contravention of the formerly dominant theory of natural liberty. We have already seen that in accordance with this system it was considered advisable that prices should be left altogether to the play of free competition among buyers and sellers. It was presumed that, under a régime of

[1] See W. H. Dawson, *Protection in Germany*, chap. ix.

unrestricted competition, the price of any article would be in proportion to the cost of producing it. For the attainment of the maximum economic efficiency, and for the satisfaction of the demands of social justice, it seemed necessary merely to leave people alone to buy and sell as they pleased at such prices as they should arrange between themselves. The essence of the position, however, lay in the assumption that there would be active competition among a number of persons producing the same article. The case is altered if we suppose the entire stock of any particular commodity in the hands of a single seller, or what is the same thing, in the hands of a group of sellers acting in concert. Where a person has a monopoly of the available stock of a commodity, there is no reason, in and of itself, why he should sell it at a price representing the cost of production, rather than at any other price. He is free to ask any price that he likes, subject always to the consideration that if he asks too high a price no one will buy the article he wishes to sell. When we come to inquire how prices will in such a case be settled, we find that a monopoly price follows a law quite different from that governing prices under free competition.[1] The adjustment of a monopoly price may be explained as follows. The seller obviously cannot sell below the cost of production, because that would entail a direct loss. He must, therefore, sell at a price somewhere above the cost of production. But it is clear that the lower the price the greater will be the number of articles that he sells. The whole amount of his profit

[1] For the law of monopoly price, see R. T. Ely, *Monopolies and Trusts*.

will depend, therefore, on two factors, the total number of sales and the amount of profit on each sale. As the price rises the number of buyers decreases, though probably not in a regular progression, but irregularly and in a jolting fashion. There will be found somewhere in the upward scale a point of maximum profit, at which the product of the number of sales multiplied by the profit on each is greater than at any other point. Now this point may in some cases be far above the cost of production: for example, in the case of an article of prime necessity, — bread, sugar, oil, etc., — any one having a complete monopoly of the available stock could exact a price much in excess of the actual cost of production.

In the economic situation of the earlier part of the nineteenth century, the monopolization of articles of ordinary production had not appeared to any great extent. The law of price applying to these conditions, though apprehended by the economists of the day, assumed no particular importance, nor did it seem to have any immediate bearing on public policy. But in our own day the possibility of monopolization of ordinary articles of production has become a significant factor in the industrial situation. To this, various causes have contributed. The increasing use of machinery renders the initial cost of embarking on any industrial process constantly greater. The evolution of the principle of joint-stock undertakings has rendered it possible to carry on production on a very large scale, and in consequence to considerably reduce the cost of each article produced. This has rendered it very difficult for small concerns to compete with large industrial corporations,

and has set up in the industrial world a tendency towards the amalgamation of similar businesses under a common management. When this amalgamation has proceeded far enough to cover, or at any rate to dominate, the whole production of a certain class of commodities, then the principle of competitive price-making no longer applies, and the law of monoply price comes into play. To prevent this state of things modern governments have seen fit in some instances to use their legislative power. This is particularly the case with the United States, where the process of industrial amalgamation has been most rapid and has occasioned the greatest public apprehension. The federal government in 1891 passed an anti-trust law (known as the Sherman Act) forbidding contracts or combinations in restraint of interstate trade, prohibiting the monopolizing of any part of the trade between the states, etc. About half of the states have legislated against the trusts, either by constitutional provisions or by statutes. A great deal of such legislation has, however, been declared invalid by the courts, or rendered inoperative by various kinds of evasion.[1]

A special case of the interference of the modern state in regard to prices is seen in legislation concerning railroad rates, which are of course prices charged for transportation of persons and freight. A little examination will show that railroad rates differ from most other prices in a very peculiar way. We have seen that under free competition in the production of ordinary commodities their selling price will approxi-

[1] For anti-trust statutes, see *Report of the U. S. Industrial Commission*, vol. ii. See also Ernst von Halle, *Trusts* (edition of 1900).

mate to the cost of production. Even where a single seller has a monopoly he will find no advantage in making sales below the cost of production. But in the case of a service performed by a railroad in transporting passengers or freight over a certain distance the "cost of production" is of a quite different character, and stands in a quite different relation to the price demanded. In the first place we can see that there is very little, almost no expense incurred by the railroad for the particular transportation of any single article. Supposing that a train is scheduled to run between two stations, ten miles apart, the cost of sending a barrel of flour on it (the additional expense, that is, actually incurred by taking that particular consignment) consists merely of the labor of two or three minutes' handling and an infinitesimal quantity of extra coal by reason of the extra weight added to the train. It must be noted in the second place that as between a distance of ten miles and a distance of one hundred miles the cost is practically the same, for only the same amount of handling is needed, and the other expense is insignificantly small. There is of course the expense of running the train itself (coal, wages, etc.). Very obviously some of the prices charged for the passengers and freight it carries must make this good or the train is being run at a loss. But there is no reason (none, that is, of an economic character, and apart from ideas of sentiment, justice, etc.) why this charge should be levied in a proportionate manner upon the different consignments. Suppose, for example, that the state of the cotton trade is such that consignments of cotton will be sent even if the railroad charges a high price,

and that the market for flour is such that no flour will be shipped except at a rate excessively low, it will clearly be to the advantage of the railroad to charge much for the one and little for the other. In other words each of these two rates will be of the nature of a monopoly price, the limitation of the charge being found in that above a certain point the number of consignments begins to fall off. Over and above the special expenses of running this individual train the railroad has to meet its permanent and standing expenses in the shape of the interest charge upon its original construction, and the cost of maintaining the roadbed and terminals. But there is no reason to assign these charges proportionately and uniformly among all the trains operated, and upon all the business handled. Each train and each consignment must of course repay the direct added cost which its operation entails. But above the extremely low minimum rate thus indicated, it is always worth while to accept business, even for a small charge where a larger cannot be had. In the practical levy of railroad rates it is therefore quite out of the question to distribute the total cost in a proportionate manner. Each service performed will be sold at a price representing "what the traffic will bear" and not what the traffic has cost. It will result in consequence that the different charges made by a railroad may be evidently and visibly out of proportion to their relative cost. It may happen that a greater charge is made for carrying a particular article a short distance than for carrying it a long one. Although at first sight this seems contrary to common sense and to common justice, it is quite in keeping with the principles we

have just laid down. In transporting goods between two places five hundred miles apart a railroad may have to encounter the opposition of competing lines or of transportation by water, and may be compelled to accept a very low rate on the freight it carries. But at the same time there may very well be, included in this five hundred miles, a strip of one hundred miles which is not covered by any competing railroad, and which has not access to water transportation. As between the towns on this strip the charges that the "traffic will bear" are very likely greater than the utmost charge that can be levied on the through traffic of five hundred miles.[1]

There is a further peculiarity in the economic situation of railroads in the fact that active and permanent competition between them is practically impossible. A state of keen competition induces the roads to reduce charges to a point which, while covering the actual and individual cost of the train service, makes no provision for the permanent interest and maintenance charges of the railway. In such a situation a poor road — particularly one whose interest charges are already in default, or which is even in the receiver's hands — is a stronger competitor than a good one, for it can indulge in a more reckless and suicidal rate-cutting. In practice, therefore, railroads have always found themselves compelled to enter into agreements, express or tacit, as to the regulation of their rates. From the point of view of the general public such understandings look very much like a combined attempt on the part of the roads to exploit the community for their own benefit.

[1] For the theory of railroad rates see A. T. Hadley, *Railroad Transportation*.

The distinctive position which the railroads thus occupy in the industrial world has induced all modern governments to subject them to special regulation, and to entirely abandon in reference to them the principle of non-interference. In some cases, as in Prussia, Austria, Hungary, the states of the Commonwealth of Australia, etc., the state itself owns and operates the railroads. In France charters are granted to private companies for limited periods, after which the roads revert to the state. The chief railroad systems of the country (some 20,500 miles of road out of a total 25,500) will become national property between the years 1950 and 1960. Even while the roads are in private hands their general relation to the state is very different from that of ordinary business enterprises. A large part of the original permanent cost was defrayed by the French government; the government also guaranteed the payment of a fixed dividend. In return the rates are fixed by the government itself, and the transportation of the mails, troops, prisoners, etc., is made gratuitous. In the United States, although the railroads[1] have been left in private hands, they have been the object of special legislative control of both the state and the federal governments. The Interstate Commerce Act (1887) provides that in the case of charges levied on commerce between the states, no railroad company shall unduly discriminate in favor of particular persons or particular localities. The same law forbids the railroads to charge more for transporta-

[1] A full account of the railroad question in the United States is found in Professor Emory Johnson's *American Railway Transportation.*

tion for a shorter than for a longer distance over the same line, and prohibits the pooling of railroad earnings. The statute also establishes an interstate commerce commission of five members appointed by the President of the United States; it is the duty of this body to supervise the operation of the act, but it has no power of itself to punish violations of its provisions or to fix rates. The provisions of the federal anti-trust statute of 1891 have also been applied by the courts against the railroads in regard of various forms of combination that were presumed to be in restraint of commerce between the states. In addition to the national legislation most of the states have passed laws intended to prevent discrimination in freight and passenger rates, and to hinder undue combination. In most states also railroad commissions are established, in some cases with duties that are mainly advisory and statistical, but in others with coercive powers for the making and enforcing of rates. The Massachusetts board of railroad commissioners is an example of the first class; it supervises the operation of the law in reference to the issue of securities, receives reports from the railroad companies, and has an advisory power in regard to freight and passenger rates. In practice its recommendations have great force, and are usually followed by the roads themselves or embodied in statutes of the legislature. On the other hand, commissions such as those of Minnesota and of Illinois are given power to directly fix rates for traffic within the state.[1]

[1] It has been laid down by the United States Supreme Court that an exercise of power of this kind — the making of a rate by the commission itself — must be subject to revision in the courts.

In the United Kingdom there is also a commission for the supervision of the operation of railroads, established in 1873, and rendered permanent by an act of Parliament of 1888. The schedule of maximum rates of each railroad is subject to the approval of the Board of Trade. Pooling is not prohibited, but discrimination is against the law.

5. Government Interference on Behalf of the Working Class; Factory Laws, State Insurance, and Pensions. The attitude of modern governments towards the laboring class is in many respects no longer one of unqualified individualism. The general recognition of the idea of social solidarity and of aggregate social duties towards the workers and the poorer members of the community has profoundly influenced the legislation of our day. The original factory acts adopted in England, to which reference has been already made, have been imitated in all the great industrial countries, and expanded into an elaborate code designed to protect the wage-earner against the rigor of unrestrained competition. Legislation of this kind in the United States falls under state and not under federal jurisdiction. There are still many states of the Union in which, factory industry being but little developed, no protective statutes have been passed. But in Massachusetts, New York, Pennsylvania, Ohio, Indiana, Illinois, and all the great manufacturing states, factory legislation of a thorough-going character has been adopted. The factory acts of these states prohibit working people from being employed under conditions dangerous to health or life. They contain provisions for fire-escapes, prevention of explosions, fencing of

machinery, ventilation, etc., and provide for the appointment of inspectors to supervise the operation of the acts. The hours of labor in the case of women and young persons are also limited by law. The labor of adult women is restricted in all the New England states (except Vermont) and in about ten other states; a ten-hour day is the usual limit prescribed. All the manufacturing states have legislated against excessive hours for young persons (of either sex) and have absolutely prohibited factory labor for children. In Massachusetts, New York, and several other states only children of at least fourteen years of age may be employed; in other states employment is permissible at lower ages. In England, under the general factory law of 1901, similar restrictions on industrial freedom of contract are imposed by the government, both the conditions of work and the permissible hours for employment of women, young persons, and children being made the subject of legislative interference. The German imperial government adopted in 1891 a factory act of similar scope. In the United States, Great Britain, and Germany legislation has not as yet limited the hours of employment of adult males; but in France and in Austria the law regulates the number of hours that even adult males may be employed in factory labor, eleven hours a day being assigned as the limit in Austria, and twelve in France.

The altered attitude of the state towards the working class is seen also in the systems of compulsory insurance and old-age pensions, now operative in various countries of continental Europe, and in certain Australasian colonies. In Germany an imperial law of June

15, 1883, provides for compulsory insurance against illness for all working people whose wages do not exceed $476 a year, the expenses of the insurance being imposed jointly on working people and employers, the former paying two thirds, the latter one third of the cost. A similar law of July 6, 1884, prescribes compulsory insurance against accidents. In each of these cases the government itself contributes nothing; but for the compulsory old-age pensions, established under an imperial statute of 1889, the government contributes yearly towards each pension a fixed sum of $11.90 over and above the amount accruing from the past contributions of the workingmen and their employers. France and Austria have also instituted compulsory state insurance against accidents (in Austria against illness also), and Italy, under a statute of 1899, has state insurance both against disability and old age. The colony of New Zealand, by a law of 1898, established a system of old-age pensions (with a maximum of £18 per annum) to be accorded by the government to persons of sixty-five years of age who had resided thirty-five years in the colony, no previous contribution being exacted from the recipient. Persons possessing an income from other sources are not eligible, or only eligible as pensioners to the extent that their income falls short of the pension. The tendency of the governments of the Australian colonies to interfere vigorously on behalf of the working class is seen in the New Zealand statute of 1894, applying compulsory arbitration to labor disputes, and in a similar statute of South Australia enacted in the same year.

Even the most extreme individualists admitted that

the protection which it was the primary duty of the state to afford to the citizen did not merely include safeguards against physical violence and forcible robbery. Protection of an indirect character, intended to prevent fraud or culpable negligence, was admitted to be within the proper sphere of the state action.' But in the course of the nineteenth century the category of legislation of an indirectly protective character has been enormously expanded. Such familiar examples as adulteration acts in reference to food, acts in reference to the inspection of steamboats and buildings, the granting of certificates to engineers, druggists, etc., will at once suggest themselves in this connection. Prohibition acts in restraint of the manufacture or sale of intoxicating liquors, acts in restraint of public gambling, etc., represent the same legislative principle carried to a further degree. In practice, the line is extremely difficult to draw between protective legislation — whose intention is to guarantee the individual against external harm and to prevent him from harming others — and paternal legislation, whose object is to compel him in a positive direction for his own good. The attitude of most modern governments is not clearly defined in this respect; but there is a large amount of modern legislation which is practically of a paternal character.

6. Municipal Control. Mention may be made in conclusion of the wide extension of state activity seen in the sphere of modern municipal control. Under present conditions the supply of water and light to towns and cities and the arrangement for interurban transportation, telephone communication, etc., offer problems

of a peculiar character. To a great extent these services are in their nature monopolies; they must be under a single control, and cannot, or at any rate can only at an economic loss, be performed for the community by rival purveyors. Separate telephone systems, separate gas and water companies, with parallel pipes, separate car lines upon the same streets, are plainly impracticable. On the other hand, where these enterprises are placed unreservedly in private hands, the principle of monopoly price, as already explained, asserts itself to the detriment of the general public. It is necessary, therefore, either that the public authorities should themselves directly perform these services for the community, or that the grant of privileges accorded to a monopoly company should be accompanied by special restrictions and special regulation of the prices to be charged. A brief summary of the present extent of municipal ownership may serve to show how greatly the functions of the local organs of government have been expanded under recent conditions. The control of waterworks is the most universal of all municipal activities. Of the thirty-eight cities of the United States having, under the census of 1900, a population over one hundred thousand, all except eight owned their own waterworks in 1903. In this majority are included the cities of New York, Chicago, Philadelphia, and Boston. In Canada more than three quarters of the towns and cities (including Montreal and Toronto) own their waterworks. In the United Kingdom the municipal ownership of waterworks is almost universal, and in the continental cities of Europe it is the usual rule. Very few gas works in the United States are

under municipal operation, but the larger British cities (except London, Liverpool, and Dublin) and most German cities operate their own gas plants. In the case of street railways municipal ownership is very rare in America, but has been adopted in about forty places in Great Britain, including London and Manchester. Municipal electric-lighting plants are extremely common in the United States, being found in Chicago, Detroit, and elsewhere, though ownership and operation by private companies is much more usual. In the United Kingdom, on the other hand, the majority of electric-lighting plants are operated by the municipalities. Telephone service is rarely found under municipal management, though in some cases, as in Japan and in Australia, it is directly conducted by the general government. Rarer examples of collective activity are seen in municipal house-building, sale of electric power, etc. It is, of course, impossible to enter here into the discussion of the economic advantages or disadvantages of municipal ownership. Reference is only made to it in this connection to illustrate the greatly widened sphere of state control characteristic of the present era.[1]

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