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AN OLD MASTER

AND

OTHER POLITICAL ESSAYS

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I

AN OLD MASTER

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WHY has no one ever written on the art of academic lecturing and its many notable triumphs? In some quarters new educational canons have spoken an emphatic condemnation of the college lecture, and it would seem to be high time to consider its value, as illustrative of an art about to be lost, if not as exemplary of forces to be retained, even if modified. Are not our college class-rooms, in being robbed of the old-time lecture, and getting instead a science-brief of *data* and bibliography, being deprived also of that literary atmosphere which once pervaded them? We are unquestionably gaining in thoroughness; but are we gaining in thoughtfulness? We are giving to many youths an insight, it may be profound, into specialties; but are we giving any of them a broad outlook?

There was too often a paralysis of dul-

ness in the old lecture, or, rather, in the old lecturer; and written lectures, like history and fashion in dress, have an inveterate tendency to repeat themselves; but, on the contrary, there was often a wealth of power also in the studied discourse of strong men. Masters bent upon instructing and inspiring—and there were many such—had to penetrate that central secret of literature and spoken utterance—the secret of style. Their only instrument of conquest was the sword of penetrating speech. Some of the subtlest and most lasting effects of genuine oratory have gone forth from secluded lecture desks into the hearts of quiet groups of students; and it would seem to be good policy to endure much indifferent lecturing—watchful trustees might reduce it to a minimum—for the sake of leaving places open for the men who have in them the inestimable force of chastened eloquence. For one man who can impart an undying impulse there are several score, presupposing the requisite training, who can impart a method; and here is the well understood ground for the cumulating disfavor of college lecturing and the rapid substitution

of 'laboratory drill.' But will not higher education be cut off from communion with the highest of all forces, the force of personal inspiration in the field of great themes of thought, if you interdict the literary method in the class-room?

I am not inclined to consume very many words in insisting on this point, for I believe that educators are now dealing more frankly with themselves than ever before, and that so obvious a point will by no means escape full recognition before reformed methods of college and university instruction take their final shape. But it is very well to be thinking explicitly about the matter meanwhile, in order that the lecture may be got ready to come fully militant into the final battle for territory. The best way to compass this end would seem to be, to study the art of the old masters of learned discourse. With Lanfranc one could get the infinite charm of the old monastic school life; with Abelard, the undying excitement of philosophical and religious controversy; with Colet, the fire of reforming zeal; with Blackstone, the satisfactions of clarified learning. But Bec and Paris and Oxford have by no

means monopolized the masters of this art, and I should prefer, for the nonce at least, to choose an exemplar from Scotland, and speak of Adam Smith. It will, no doubt, be possible to speak of him without going over again the well worn ground of the topics usually associated with his great fame.

There is much, besides the contents of his published works, to draw to Adam Smith the attention of those who are attracted by individual power. Scotchmen have long been reputed strong in philosophic doctrine, and he was a Scot of the Scots. But, though Scotland is now renowned for her philosophy, that renown is not of immemorial origin; it was not till the last century was well advanced that she began to add great speculative thinkers to her great preachers. Adam Smith, consequently, stands nearly at the opening of the greatest of the intellectual eras of Scotland. Yet by none of the great Scotch names which men have learned since his day has his name been eclipsed. The charm about the man consists, for those who do not regard him with the special interest of the political

economist, in his literary method, which exhibits his personality so attractively and makes his works so thoroughly his own, rather than in any facts about his eminency among Scotchmen. You bring away from your reading of Adam Smith a distinct and attractive impression of the man himself, such as you can get from the writings of no other author in the same field, and such as makes you wish to know still more of him. What was he like? What was his daily life?

Unhappily, we know very little that is detailed of Adam Smith as a man; and it may be deplored, without injustice to a respected name, that we owe that little to Dugald Stewart, who was too self-conscious and too stately to serve another efficiently as biographer. There was no suitable place amid the formal spaces of his palatial style for small illuminating details. Even from Dugald Stewart, however, we get a picture of Adam Smith which must please every one who loves simplicity and genuineness. He was not, perhaps, a companionable man; he was much too absent-minded to be companionable; but he was, in the highest sense,

interesting. His absent-mindedness was of that sort which indicates fulness of mind, which marks a mind content, much of the time, to live within itself, indulging in those delights of quiet contemplation which the riches of a full store of thought can always command. Often he would open to his companions his mind's fullest confidences, and, with a rare versatility, lavish a wealth of information and illustration upon topics the most varied and diverse, always to the wondering delight of those who heard him.

All who met Adam Smith in intimate intercourse are said to have been struck chiefly by the gentleness and benignity of his manner—traits which would naturally strike one in a Scotchman; for men of that unbending race are not often distinguished by easiness of temper or suavity of manner, but are generally both *fortiter in re et fortiter in modo*. His gentleness was, possibly, only one phase of that timidity which is natural to absent-minded men, and which was always conspicuous in him. That timidity made it rare with him to talk much. When he did talk, as I have said, his hearers marvelled at the ingenu-

ity of his reasoning, at the constructive power of his imagination, at the comprehensiveness of his memory, at the fertility of all his resources; but his inclination was always to remain silent. He was not, however, disinclined to public discourse, and it is chiefly to his unusual gifts as a lecturer that he seems to have owed his advancement in the literary, or, rather, in the university, world.

Acting upon the advice of Lord Kames, an eminent barrister and a man of some standing in the history of philosophy, he volunteered a course of lectures in Edinburgh almost immediately upon his return from Oxford; and the success of this course was hardly assured before he was elected to the chair of Logic in the University of Glasgow. In the following year he had the honor of succeeding to the chair of Moral Philosophy, once occupied by the learned and ingenious Hutcheson. He seems to have been at once successful in raising his new chair to a position of the very highest consideration. His immediate predecessor had been one Thomas Craigie, who has left behind him so shadowy a reputation that it is doubtless safe

to conclude that his department was, at his death, much in need of a fresh infusion of life. This it received from Adam Smith. The breadth and variety of the topics upon which he chose to lecture, and the felicity, strength, and vitality of the exposition he gave them (we are told by one who had sat under him), soon drew to Glasgow "a multitude of students from a great distance" to hear him. His mastery of the art of academic lecturing was presently an established fact. It appears clear that his success was due to two things: the broad outlook of his treatment and the fine art of his style. His chair was Moral Philosophy; and 'moral philosophy' seems to have been the most inclusive of general terms in the university usage of Scotland at that day, and, indeed, for many years afterward. Apparently it embraced all philosophy that did not directly concern the phenomena of the physical world, and, accordingly, allowed its doctors to give very free play to their tastes in the choice of subjects. Adam Smith, in Glasgow, could draw within the big family of this large-hearted philosophy not only the

science of mental phenomena, but also the whole of the history and organization of society; just as, years afterwards, John Wilson, in Edinburgh, could insist upon the adoption of something very like *belles-lettres* into the same generous and unconventional family circle.

Adam Smith sought to cover the field he had chosen with a fourfold course of lectures. First, he unfolded the principles of natural theology; second, he illustrated the principles of ethics, in a series of lectures which were afterwards embodied in his published work on the "Theory of Moral Sentiments;" third, he discoursed on that branch of morality which relates to the administration of justice; and, last, coming out upon the field with which his name is now identified, he examined those political regulations which are founded, not upon principles of justice, but upon considerations of expediency, and which are calculated to increase the riches, the power, and the prosperity of the State. His notes of his lectures he himself destroyed when he felt death approaching, and we are left

to conjecture what the main features of his treatment were, from the recorded recollections of his pupils and from those published works which remain as fragments of the great plan. These fragments consist of the "Theory of Moral Sentiments," the "Wealth of Nations," and "Considerations Concerning the First Formation of Languages;" besides which there are, to quote another's enumeration, "a very curious history of astronomy, left imperfect, and another fragment on the history of ancient physics, which is a kind of sequel to that part of the history of astronomy which relates to ancient astronomy; then a similar essay on the ancient logic and metaphysics; then another on the nature and development of the fine, or, as he calls them, the imitative, arts, painting, poetry, and music, in which was meant to have been included a history of the theatre—all forming part, his executors tell us, 'of a plan he had once formed for giving a connected history of the liberal and elegant arts;'" part, that is (to continue the quotation from Mr. Bagehot), of the "immense design of showing the origin

and development of cultivation and law, or . . . of saying how, from being a savage, man rose to be a Scotchman."

The wideness of view and amazing variety of illustration that characterized his treatment, in developing the several parts of this vast plan, can easily be inferred from an examination of the "Wealth of Nations."

"The 'Wealth of Nations,'" declares Mr. Buckle, from whom, for obvious reasons, I prefer to quote, "displays a breadth of treatment which those who cannot sympathize with, are very likely to ridicule. The phenomena, not only of wealth, but also of society in general, classified and arranged under their various forms; the origin of the division of labor, and the consequences which that division has produced; the circumstances which gave rise to the invention of money, and to the subsequent changes in its value; the history of those changes traced in different ages, and the history of the relations which the precious metals bear to each other; an examination of the connection between wages and profits, and of the laws which govern the rise and fall of both; another

examination of the way in which these are concerned, on the one hand with the rent of land, and, on the other hand, with the price of commodities; an inquiry into the reason why profits vary in different trades, and at different times; a succinct but comprehensive view of the progress of towns in Europe since the fall of the Roman Empire; the fluctuations, during several centuries, in the prices of the food of the people, and a statement of how it is, that, in different stages of society, the relative cost of meat and of land varies; the history of corporation laws and of municipal enactments, and their bearing on the four great classes of apprentices, manufacturers, merchants, and landlords; an account of the immense power and riches formerly enjoyed by the clergy, and of the manner in which, as society advances, they gradually lose their exclusive privileges; the nature of religious dissent, and the reason why the clergy of the Established Church can never contend with it on terms of equality, and, therefore, call on the State to help them, and wish to persecute when they cannot persuade; why some sects profess more ascetic principles, and

others more luxurious ones; how it was, that, during the feudal times, the nobles acquired their power, and how that power has, ever since, been gradually diminishing; how the rights of territorial jurisdiction originated, and how they died away; how the sovereigns of Europe obtained their revenue, what the sources of it are, and what classes are most heavily taxed in order to supply it; the cause of certain virtues, such as hospitality, flourishing in barbarous ages, and decaying in civilized ones; the influence of inventions and discoveries in altering the distribution of power among the various classes of society; a bold and masterly sketch of the peculiar sort of advantages which Europe derived from the discovery of America and of the passage round the Cape; the origin of universities, their degeneracy from the original plan, the corruption which has gradually crept over them, and the reason why they are so unwilling to adopt improvements, and to keep pace with the wants of the age; a comparison between public and private education, and an estimate of their relative advantages; these, and a vast number of other subjects, re-

specting the structure and development of society, such as the feudal system, slavery, emancipation of serfs, origin of standing armies and of mercenary troops, effects produced by tithes, laws of primogeniture, sumptuary laws, international treaties concerning trade, rise of European banks, national debts, influence of dramatic representations over opinions, colonies, poor-laws—all topics of a miscellaneous character, and many of them diverging from each other—all are fused into one great system, and irradiated by the splendor of one great genius. Into that dense and disorderly mass, did Adam Smith introduce symmetry, method, and law."

In fact, it is a book of digressions—digressions characterized by more order and method, but by little more compunction, than the wondrous digressions of Tristram Shandy.

It is interesting to note that even this vast miscellany of thought, the "Wealth of Nations," systematized though it be, was not meant to stand alone as the exposition of a complete system; it was only a supplement to the "Theory of Moral Sentiments;" and the two together constituted

only chapters in that vast book of thought which their author would have written. Adam Smith would have grouped all things that concern either the individual or the social life of man under the several greater principles of motive and action observable in human conduct. His method throughout is, therefore, necessarily abstract and deductive. In the "Wealth of Nations," he ignores the operation of love, of benevolence, of sympathy, and of charity in filling life with kindly influences, and concentrates his attention exclusively upon the operation of self-interest and expediency; because he had reckoned with the altruistic motives in the "Theory of Moral Sentiments," and he would not confuse his view of the economic life of man by again forcing these in where selfishness was unquestionably the predominant force. "The philosopher," he held, "is the man of speculation, whose trade is not to do anything, but to observe everything;" and certainly he satisfied his own definition. He does observe everything; and he stores his volumes full with the sagest practical maxims, fit to have fallen from the lips of the shrewd-

est of those Glasgow merchants in whose society he learned so much that might test the uses of his theories. But it is noticeable that none of the carefully noted facts of experience which play so prominent a part on the stage of his argument speaks of any other principle than the simple and single one which is the pivot of that part of his philosophy with which he is at the moment dealing. In the "Wealth of Nations" every apparent induction leads to self-interest, and to self-interest alone. In Mr. Buckle's phrase, his facts are subsequent to his argument; they are not used for demonstration, but for illustration. His historical cases, his fine generalizations, everywhere broadening and strengthening his matter, are only instances of the operation of the single abstract principle meant to be set forth.

When he was considering that topic in his course which has not come down to us in any of the remaining fragments of his lectures—the principles of justice, namely—although still always mindful of its relative position in the general scheme of his abstract philosophy of society, his subject led him, we are told, to speak

very much in the modern historical spirit. He followed upon this subject, says the pupil already quoted, "the plan which seems to have been suggested by Montesquieu; endeavoring to trace the gradual progress of jurisprudence, both public and private, from the rudest to the most refined ages, and to point out the effects of those arts which contribute to subsistence, and to the accumulation of property, in producing corresponding improvements or alterations in law and government." In following Montesquieu, he was, of course, following one of the forerunners of that great school of philosophical students of history which has done so much in our own time to clear away the fogs that surround the earliest ages of mankind, and to establish something like the rudiments of a true philosophy of history. And this same spirit was hardly less discernible in those later lectures on the "political institutions relating to commerce, to finances, and to the ecclesiastical and military establishments," which formed the basis of the "Wealth of Nations." Everywhere throughout his writings there is a pervasive sense of the real-

ities of fact and circumstance ; a luminous, bracing, work-a-day atmosphere. But the conclusions are, first of all, philosophical ; only secondarily practical.

It has been necessary to go over this somewhat familiar ground with reference to the philosophical method of Adam Smith, in order to come at the proper point of view from which to consider his place among the old masters of academic lecturing. It has revealed the extent of his outlook. There yet remains something to be said of his literary method, so that we may discern the qualities of that style which, after proving so effectual in imparting power to his spoken discourses, has since, transferred to the printed page, preserved his fame so far beyond the lifetime of those who heard him.

Adam Smith took strong hold upon his hearers, as he still takes strong hold upon his readers, by force, partly, of his native sagacity, but by virtue, principally, of his consummate style. The success of his lectures was not altogether a triumph of natural gifts ; it was, in great part, a triumph of sedulously cultivated art. With

the true instinct of the orator and teacher, Adam Smith saw—what every one must see who speaks not for the patient ear of the closeted student only, but also to the often shallow ear of the pupil in the class-room, and to the always callous ear of the great world outside, which must be tickled in order to be made attentive—that clearness, force, and beauty of style are absolutely necessary to one who would draw men to his way of thinking; nay, to any one who would induce the great mass of mankind to give so much as passing heed to what he has to say. He knew that wit was of no avail, without wit's proper words; sagacity mean, without sagacity's mellow measures of phrase. He bestowed the most painstaking care, therefore, not only upon what he was to say, but also upon the way in which he was to say it. Dugald Stewart speaks of "that flowing and apparently artless style, which he had studiously cultivated, but which, after all his experience in composition, he adjusted, with extreme difficulty, to his own taste." The results were such as to offset entirely his rugged utterance and his awkward, angular action, and to enable the timid

talker to exercise the spells of an orator. The charm of his discourses consisted in the power of statement which gave them life, in the clear and facile processes of proof which gave them speed, and in the vigorous, but chastened, imagination which lent them illumination. He constantly refreshed and rewarded his hearers, as he still constantly refreshes and rewards his readers, by bringing them to those clear streams of practical wisdom and happy illustration which everywhere irrigate his expositions. His counsel, even on the highest themes, was always undarkened. There were no clouds about his thoughts; the least of these could be seen without glasses through the transparent atmosphere of expression which surrounded them. He was a great thinker, —and that was much; but he also made men recognize him as a great thinker, because he was a great master of style—which was more. He did not put his candle under a bushel, but on a candlestick.

In Doctor Barnard's verses, addressed to Sir Joshua Reynolds and his literary friends, Adam Smith is introduced as a peer amidst that brilliant company:

"If I have thoughts and can't express 'em,
Gibbon shall teach me how to dress 'em
In words select and terse;
Jones teach me modesty and Greek,
Smith how to think, Burke how to speak,
And Beauclerc to converse."

It is this power of teaching other men how to think that has given to the works of Adam Smith an immortality of influence. In his first university chair, the chair of Logic, he had given scant time to the investigation of the formal laws of reasoning, and had insisted, by preference, upon the practical uses of discourse, as the living application of logic, treating of style and of the arts of persuasion and exposition; and here in his other chair, of Moral Philosophy, he was practically illustrating the vivifying power of the art he had formerly sought to expound to his pupils. "When the subject of his work," says Dugald Stewart, speaking of the "Theory of Moral Sentiments," "when the subject of his work leads him to address the imagination and the heart, the variety and felicity of his illustrations, the richness and fluency of his eloquence, and the skill with which he wins the at-

tention and commands the passions of his hearers, leave him, among our English moralists, without a rival."

Such, then, were the matters which this great lecturer handled, and such was the form he gave them. Two personal characteristics stand out in apparent contrast with what he accomplished: he is said to have been extremely unpractical in the management of his own affairs, and yet he fathered that science which tells how other people's affairs, how the world's affairs, are managed; he is known to have been shy and silent, and yet he was the most acceptable lecturer of his university. But it is not uncommon for the man who is both profound and accurate in his observation of the universal and permanent forces operative in the life about him, to be almost altogether wanting in that sagacity concerning the local and temporary practical details upon which the hourly facilitation and comfort of his own life depend; nor need it surprise any one to find the man who sits shy and taciturn in private, stand out dominant and eloquent in public. "Commonly, indeed," as Mr. Bagehot has said, "the silent man,

whose brain is loaded with unexpressed ideas, is more likely to be a successful public speaker than the brilliant talker who daily exhausts himself in sharp sayings." There are two distinct kinds of observation: that which makes a man alert and shrewd, cognizant of every trifle and quick with every trick of speech; and that which makes a man a philosopher, conscious of the steady set of affairs and ready in the use of all the substantial resources of wise thought. Commend me to the former for a chat; commend me to the latter for a book. The first will sparkle; the other burns a steady flame.

Here, then, is the picture of this Old Master: a quiet, awkward, forceful Scotchman, whose philosophy has entered everywhere into the life of politics and become a world force in thought; an impracticable Commissioner of Customs, who has left for the instruction of statesmen a theory of taxation; an unbusiness-like professor, who established the science of business; a man of books, who is universally honored by men of action; plain, eccentric, learned, inspired. The things that strike us most about him are, his boldness of

conception and wideness of outlook, his breadth and comprehensiveness of treatment, and his carefully clarified and beautified style. He was no specialist, except *in the relations of things.*

Of course, spreading his topics far and wide in the domain of history and philosophy, he was at many points superficial. He took most of his materials at second hand; and it has been said that he borrowed many of his ideas from the French. But no matter who mined the gold, he coined it; the image and superscription are his. Certain separate, isolated truths which served under him may have been doing individual, guerilla warfare elsewhere for the advancement of science; but it was he who marshalled them into drilled hosts for the conquering of the nations. Adam Smith was doubtless indebted to the Physiocrats, but all the world is indebted to Adam Smith. Education and the world of thought need men who, like this man, will dare to know a multitude of things. Without them and their bold synthetic methods, all knowledge and all thought would fall apart into a weak analysis. Their minds do not

lack in thoroughness; their thoroughness simply lacks in minuteness. It is only in their utterances that the mind finds the exhilaration and exaltation that come with the free air that blows over broad uplands. They excite you with views of the large aspects of thought; conduct you through the noblest scenery of the mind's domain; delight you with majesty of outline and sweep of prospect. In this day of narrow specialties, our thinking needs such men to fuse its parts, correlate its forces, and centre its results; and our thinking needs them in its college stage, in order that we may command horizons from our study windows in after days.

The breadth and comprehensiveness of treatment characteristic of the utterances of such a teacher are inseparable attributes of his manner of thought. He has the artist's eye. For him things stand in picturesque relations; their great outlines fit into each other; the touch of his treatment is necessarily broad and strong. The same informing influence of artistic conception and combination gives to his style its luminous and yet transparent qualities. His sentences cannot retain the

stiff joints of logic; it would be death to them to wear the chains of formal statement; they must take leave to deck themselves with eloquence. In a word, such men must write *literature*, or nothing. Their minds quiver with those broad sympathies which constitute the life of written speech. Their native catholicity makes all minds receive them as kinsmen. By reason of the very strength of their humanity, they are enabled to say things long waiting to be said, in such a way that all men may receive them. They hold commissions from the King of Speech. Such men will not, I am persuaded, always seek in vain invitations to those academic platforms which are their best coignes of vantage. But this is not just the time when they are most appreciated, or most freely encouraged to discover themselves; and it cannot be amiss to turn back to another order of things, and remind ourselves how a master of academic inspiration, possessing, in a great power to impart intellectual impulse, something higher than a trained capacity to communicate method, may sometimes be found even in a philosophical Scotchman.

II

THE STUDY OF POLITICS

THE STUDY OF POLITICS

It has long been an open secret that there is war among the political economists. John Stuart Mill no longer receives universal homage, but has to bear much irreverent criticism; even Adam Smith might be seriously cavilled at were not the habit of praise grown too old in his case. He is still 'the father of political economy;' but, like other fathers of his day, he seems to us decidedly old fashioned. The fact is, that these older writers, who professed to point out the laws of human business, are accused of leaving out of view a full half of human nature; in insisting that men love gain, they are said to have quite forgotten that men sometimes love each other, that they are not only prehensile, but also a great many other things less aggressive and less selfish.

Those who make these charges want to

leave nothing human out of their reckonings; they want to know 'all the facts,' and are ready, if necessary, to reduce every generalization of the older writers to the state—the wholly *exceptional* state—of a rule in German grammar. Their protest is significant, their purpose heroic, beyond a doubt; and what interesting questions are not raised by their programme! How is the world to contain the writings, statistical, historical, critical, which must be accumulated ere this enormous diagnosis of trade and manufacture shall be completed in its details? And after it shall have been completed in detail who is to be born great enough in genius and patience to reduce the mass to a system comprehensible by ordinary mortals? Moreover, who is going surety that these new economists will not be dreadful defaulters before they get through handling these immense assets of human nature, which Mill confessed himself unable to handle without wrecking his bookkeeping? Are they assured of the eventual collaboration of some Shakespeare who will set before the world all the standard types of economic char-

acter? Let the world hope so. Even those who cannot answer the questions I have broached ought to bid such sturdy workers 'God speed!'

The most interesting reflection suggested by the situation is, that political economists are being harassed by the same discipline of experience that, one day or another, sobers all constructors of systems. They cannot build in the air and then escape chagrin because men only gaze at their structures, and will not live in them. Closet students of politics are constantly undergoing new drill in the same lesson: the world is an inexorable schoolmaster; it will have none of any thought which does not recognize *it*. Sometimes theorists like Rousseau, being near enough the truth to deceive even those who know something of it, are so unfortunate as to induce men to rear fabrics of government after their aerial patterns out of earth's stuffs, with the result of bringing every affair of weight crashing about their ears, to the shaking of the world. But there are not many such coincidences as Rousseau and his times, happily; and other closet politicians,

more commonly cast and more ordinarily placed than he, have had no such perilous successes.

There is every reason to believe that in countries where men vote as well as write books, political writers at any rate give an honest recognition of act to these facts. They do not vote their opinions, they vote their party tickets; and they are the better citizens by far for doing so. Inside their libraries they go with their masters in thought—mayhap go great lengths with Adolph Wagner, or hold stiffly back, "man *versus* the state," with Spencer; outside their libraries they 'go with their party.' In a word, like sensible men, they frankly recognize the difference between what is possible in thought and what is practicable in action.

But the trouble is, that when they turn from voting to writing they call many of their abstract reflections on government studies of *politics*, and thereby lose the benefit of some very wholesome aids to just thought. Even when they draw near the actual life of living governments, as they frequently do, and read and compare statutes and constitutions, they stop short

of asking and ascertaining what the men of the street think and say of institutions and laws; what little, as well as what big, influences brought particular laws into existence; how much of each law actually lives in the regulation of public function or private activity, how much of it has degenerated into 'dead letter;' in brief, just what things it is—what methods, what habits, what human characteristics and social conditions—that make the appearance of politics outside the library so different from its appearance inside that quiet retreat; what it is that constitutes 'practical politics' a peculiar province. And yet these are the questions most necessary to be answered in order to reach the heart of their study.

Every one who has read great treatises on government which were not merely speculative in their method must have been struck by their exhaustive knowledge of statutes, of judicial precedents, and of legal and constitutional history; and equally by their tacit ignorance of anything more than this gaunt skeleton of institutions. Their best pages are often those on which a modest asterisk, an un-

obtrusive numeral, or a tiny dagger sticking high in the stately text, carries the eye down to a foot-note, packed close in small print, in which some hint is let drop of the fact that institutions have a *daily* as well as an epochal life, from which the student might 'learn something to his advantage.'

The inherent veakness of such a method is shown by the readiness with which it is discredited when once a better one is put beside it. What modern writer on political institutions has not felt, either directly or indirectly, the influence of de Tocqueville and Bagehot? Both these inimitable writers were men of extraordinary genius, and, whatever they might have written about, their writings would have been admiringly preserved, if only for the wonder of their luminous qualities. But their political works live, not only as models of effective style, but also as standards of stimulating wisdom; because Bagehot and de Tocqueville were not merely students, but also *men of the world*, for whom the only acceptable philosophy of politics was a generalization from actual daily observation of men and things.

They could see institutions writ small in the most trivial turns of politics, and read constitutions more clearly in a biography than in a statute-book. They were men who, had they written history, would have written the history of peoples, and not of courts or parliaments merely. Their methods have, therefore, because of their essential sanity, gone far toward discrediting all others; they have leavened the whole mass of political literature. Was it not Bagehot, for instance, who made it necessary for Professor Dicey to entitle his recent admirable work "The Law of the Constitution," that no one might think he mistook it for the *Life* of the Constitution?

Who has not wished that Burke had fused the permanent thoughts of his splendid sentences of wisdom together into a noble whole, an incomparable treatise whereby every mind that loved liberty might be strengthened and fertilized? He had handled affairs, and could pluck out the heart of their mystery with a skill that seldom blundered; he spoke hardly a word of mere hearsay or speculation. He, it would seem, better than any

other, could have shown writers on politics the difference between knowledge and insight, between an acquaintance with public law and a real mastery of the principles of government.

Not that all 'practical politicians' would be the best instructors in the deep—though they might be in the hidden—things of politics. Far from it. They are too thickly crowded by daily detail to see permanent outlines, too much pushed about by a thousand little influences to detect accurately the force or the direction of the big and lasting influences. They 'cannot see the forest for the trees.' They are no more fitted to be instructors *because* they are practical politicians than lawyers are fitted to fill law-school chairs because they are active practitioners. They must be something else besides to qualify them for the high function of teaching, and must be that something else in so masterful a fashion that no distraction of active politics can for a moment withdraw their vision from the great and continuous principles of their calling.

The active statesman is often an incomparable teacher, however, when he is him-

self least conscious that he is teaching at all, when he has no thought of being didactic, but has simply a heart full of the high purpose of leading his fellow-countrymen to do those things which he conceives to be right. Read the purposes of men like Patrick Henry and Abraham Lincoln, men untutored of the schools—read their words of leadership, and say whether there be anything wiser than their home-made wisdom.

It is such reflections as these—whether my examples be well chosen or not—which seem to me to lead directly to the right principle of study for every one who would go beyond the law and know the life of States. Not every State lets statutes die by mere disuse, as Scotland once did; and if you are going to read constitutions with only lawyers for your guides, be they never so learned, you must risk knowing only the anatomy of institutions, never learning anything of their biology.

"Men of letters and of thought," says Mr. Sidney Colvin, where one would least expect to find such a remark—in a "Life of Walter Savage Landor"—

"Men of letters and of thought are habitually too much given to declaiming at their ease against the delinquencies of men of action and affairs. The inevitable friction of practical politics generates heat enough already, and the office of the thinker and critic should be to supply not heat, but light. The difficulties which attend his own unmolested task, the task of seeking after and proclaiming salutary truths, should teach him to make allowance for the still more urgent difficulties which beset the politician—the man obliged, amidst the clash of interests and temptations, to practise from hand to mouth, and at his peril, the most uncertain and at the same time the most indispensable of the experimental arts."

Excellent! But why stop there? Must the man of letters and of thought observe the friction of politics only to make due allowance for the practical politician, only to keep his own placid conclusions free from any taint of scorn or cavil at men whose lives are thrown amidst affairs to endure the buffetings of interest and resist the tugs of temptation? Is not a just understanding of the conditions of practical politics also an indispensable prerequisite to the discovery and audible proclamation of his own "salutary truths?" No truth which does not on all

its sides touch human life can ever reach the heart of politics; and men of 'unmolested tasks,' of mere library calm, simply cannot think the thoughts which will tell amidst the noise of affairs. An alert and sympathetic perception of the infinite shifts of circumstance and play of motive which control the actual conduct of government ought to permeate the thinking, as well as check the criticisms, of writers on politics.

In a word, ought not the 'man of the world' and the 'man of books' to be merged in each other in the student of politics? Was not John Stuart Mill the better student for having served the East India Company and sat in the House of Commons? Are not Professor Bryce and Mr. John Morley more to be trusted in their books because they have proved themselves worthy to be trusted in the Cabinet?

The success of great popular preachers contains a lesson for students of politics who would themselves convert men to a saving doctrine. The preacher has, indeed, an incalculable advantage over the student of politics in having as his text-book that Bible which speaks of the

human heart with a Maker's knowledge of the thing He has made; by knowing his book he knows the deepest things of daily life. But the great preacher reaches the heart of his hearers not by knowledge, but by sympathy—by showing himself a brother-man to his fellow-men. And this is just the principle which the student of politics must heed. He must frequent the street, the counting-house, the drawing-room, the club-house, the administrative offices, the halls—yes, and the lobbies—of legislatures. He must cross-examine the experience of government officials; he must hear the din of conventions, and see their intrigues; he must witness the scenes of election day. He must know how men who are not students regard government and its affairs. He will get many valuable suggestions from such men on occasion; better than that, he will learn the available approaches to such men's thoughts. Government is meant for the good of ordinary people, and it is for ordinary people that the student should elucidate its problems; let him be anxious to keep within earshot of such.

This is not to commend the writer on

politics to narrow 'practical' views and petty comment; it is not to ask him to find a philosophy of government which will fit the understanding and please the taste of the 'ward politician:' it is only to ask him to keep his generalizations firmly bottomed on fact and experience. His philosophy will not overshoot the hearts of men because it is feathered with high thought, unless it be deliberately shot in air. Thoughts do not fail of acceptance because they are not commonplace enough, but because they are not true enough; and, in the sort of writing about which we are here speaking, truth is a thing which can be detected better by the man who knows life than by the man who knows only logic. You cannot lift truth so high that men cannot reach it; the only caution to be observed is, that you do not ask them to climb where they cannot go without leaving *terra firma*.

Nor is the student, who naturally and properly loves books, to leave books and sit all his time in wiseacre observation amidst busy men. His books are his balance—or, rather, his ballast. And of course the men of his own day are not

the only men from whom he can learn politics. Government is as old as man; men have always been politicians; the men of to-day are only politicians of a particular school; the past furnishes examples of politicians of every other school, and there is as much to be learned about government from them as from their successors.

Carlyle had the sort of eye for which one should pray when seeking to find men alive and things actual in the records left of them. Who has not profited by his humorous familiarity with the foibles and personal habits of the men who lived about the court of the Hohenzollerns? Who has not learned more than any other man could have told him of Prussian administration under its first great organizer by looking with Carlyle into the sociable informalities of Frederick William's 'tobacco parliament?' Carlyle knew these men well enough to joke with and rail at them. He twitted them with their family secrets, and, knowing what clay they were of, was not awed by their state ceremonials. Yet he saw them, as he himself bitterly complains, only through

the medium of crabbed documents and dry-as-dust books, with no seer like himself to help him in his interpretations. It was hard straining of the eyes to see so far back through the dense and murky atmosphere of formal record and set history; but he saw, nevertheless, because he did not need to be told all in order to know all; the dryest of historians could hardly avoid dropping some hint which would suffice Carlyle more than would tomes of 'profane history.'

If you know what you are looking for and are not expecting to find it advertised in the newspapers, but lying somewhere beneath the surface of things, the dullest fool may often help you to its discovery. It needs a good nose to do the thing, but look how excellent is the game to which a casual scent may bring you in such a domain as the study of politics. There are whole worlds of fact waiting to be discovered by inference. Do not expect to find the life of constitutions painted in the great 'standard authorities,' but, following with becoming patience their legal anatomy of institutions, watch their slightest movement toward an illustra-

tive foot-note, and try to find under that the scent you are in quest of. If they cite an instance, seek the recital of the same case elsewhere, where it is told with a different purpose; if it promise well there, hunt it further still, and make sure you catch every glimpse it affords of men's actual dealings with government. If your text mention names of consequence, seek them out in biographies, and scan there the personal relations of men with affairs, for hints of the methods by which governments are operated from day to day. You will not need any incentive to read all their gossip, in letters and journals, and so see governors as men; but do more: endure official interviews and sessions of Parliament with them; collate their private letters and their public despatches—there's no telling when or where you shall strike fresh trails of the game you seek. Interview judges off the bench, courtiers away from court, officers off duty. Go to France and live next door a prefect in the provinces; go to London and try to find out how things of weight are talked about in the smoking-room of the House of Commons.

Such excursions must, of course, lead the student far afield; he will often get quite out of sight of his starting-point, the 'standard authority;' but he will not on that account be lost. The fact is, that all literature teems with suggestions on this topic of politics. Just as the chance news item, the unstudied traveller's reminiscence, the passing social or financial scandal,* and every hint of any present contact of men with law or authority, illuminates directly, or by inference, the institutions of our own day, similar random rays thrown across the pages of old books by the unpremeditated words of writers quite guiltless of such instructive intent may light up, for those who are alert to see such things, the most intimate secrets of state. If it be beyond hoping for to find a *whole* Greville for every age of government, there may be found Grevillian scraps, at least, in the literature of almost every time. From men as far back and as well remembered as Cicero, down to men as recent and as easily forgotten

* Did not the Dilke trial in London, for instance, help us to understand at least one influence that may sometimes make a lawyer Home Secretary?

as several who might be named, politicians have loved to explain to posterity the part they took in conspicuous affairs; and that portion of posterity which studies politics by inference ought to be profoundly thankful to them for yielding to the taste.

Approach the life of States by such avenues, and you shall be convinced of the organic nature of political society. View society from what point you will, you always catch sight of some part of government; man is so truly a 'political animal' that you cannot examine him at all without seeing the points—points of his very structure—whereat he touches and depends upon, or upholds, the State.

In 1850, while Governor-General of Canada, Lord Elgin writes to Lord Grey:

"Our Reciprocity measure was pressed by us in Washington last session, just as a railway bill, in 1845 or 1846, would have been passed in Parliament. There was no Government to deal with, . . . it was all a matter of canvassing this member of Congress or the other." *

What? "No Government to deal with?"

* Letters and Journals of Lord Elgin, p. 121.

Here's a central truth to be found in none of the 'standard authorities,' and yet to be seen by a practised diplomatist all the way from Canada. About the same date M. Bacourt came to this country to represent the French Government and be made wretched by the crude deportment of the Americans. His chief concern was to get away to some country where people were less unconventionally at their ease in drawing-rooms; but he turned, when necessary, to the business of his legation; and whenever he did so he found that "here diplomatic affairs are not treated as everywhere else, where we communicate with the Minister of Foreign Affairs and arrange the matter with him alone." He must 'arrange' the matter with several committees of Congress. He must go to see Mrs. Kennedy and Mrs. Winthrop, whose "husbands are members of the House of Representatives, and on the committee having charge of commercial affairs, in which" he "is interested," for "they say that these gentlemen are very particular about visits from foreign ministers to their wives."* Just Lord Elgin's

* Souvenirs of a Diplomat, pp. 189, 281.

testimony. Again the 'standard authorities' are added to, and that in a quarter where we should least expect to find them supplemented. We need despair of no source.

These are only near and easily recognized illustrations of the errant mode of study I am expounding and advocating. Other systems besides our own receive similar chance illumination in the odd corners of all sorts of books. Now and again you strike mines like the "Mémoires of Madame de Rémusat," the "Letters" of Walpole, or the "Diary" of a Pepys or an Evelyn; at other periods you must be content to find only slender veins of the ore of familiar observation and intimate knowledge of affairs for which you are delving; but your search will seldom be altogether futile. Some newly opened archive office may offer *cahiers*, such as revealed to de Tocqueville, more than all other records, the *ancien régime*. Some elder Hamerton may tell you of the significant things to be seen 'round his house.' All correspondence and autobiography will repay perusal, even when not so soaked in affairs as the letters of Crom-

well, or so reminiscent of politics as the "Memoirs of Samuel Romilly."

Politics is the life of the State, and nothing which illustrates that life, nothing which reveals any habit contracted by man as a political animal, comes amiss in the study of politics. Public law is the formal basis of the political life of society, but it is not always an expression of its vital principle. We are inclined, oftentimes, to take laws and constitutions too seriously, to put implicit faith in their professions without examining their conduct. Do they affect to advance liberty, for instance? We ought to go, in person or in imagination, amongst the people whom they command, and see for ourselves whether those people enjoy liberty. With reference to laws and constitutions of our own day, we can learn such things best by supplementing books and study by travel and observation. The best-taught class in modern public law would be a travelling class. Other times than our own we must perforce be content to see through other men's eyes.

In other words, statute books and legal commentaries are all very well in the

study of politics, if only you quite thoroughly understand that they furnish only the crude body-colors for your picture of the State's life, upon which all your finer luminous and atmospheric effects are afterwards to be worked. It is high time to recognize the fact that politics can be effectually expounded only by means of the highest literary methods. Only master workers in language and in the grouping and interpretation of heterogeneous materials can achieve the highest success in making real *in words* the complex life of States. If I might act as the interpreter of the new-school economists of whom I have already spoken, I trust with due reverence, I should say that this is the thought which, despite their too frequent practical contempt for artistic literary form, is possessing them. John Stuart Mill and Ricardo made a sort of logic of political economy; in order to simplify their processes, they deliberately stripped man of all motives save self-interest alone, and the result was evidently '*doctrinaire*'—was not a picture of life, but a theorem of trade. Hence "the most dismal of all sciences;" hence Sid-

ney Smith's exhortation to his friend not to touch the hard, unnatural thing. The new-school economists revolt, and say they want "a more scientific method." What they really want is a higher literary method. They want to take account of how a man's wife affects his trade, how his children stiffen his prudence, how his prejudices condition his enterprise, how his lack of imagination limits his market, how strongly love of home holds him back from the good wages that might be had by emigration, how despotically the opinion of his neighbors forbids his insisting upon a cash business, how his position in local society prescribes the commodities he is *not* to deal in ; in brief, how men actually do labor, plan, and get gain. They are, therefore, portentously busy amassing particulars about the occupations, the habits, the earnings, the whole economic life of all classes and conditions of men. But these things are only the raw material of poetry and the literary art, and without the intervention of literary art must remain raw material. To make anything of them, the economist must become a literary artist and bring

his discoveries home to our imaginations —make these innumerable details of his pour in a concentrated fire upon the central citadels of men's understandings. A single step or two would then bring him within full sight of the longed for time when political economy is to dominate legislation.

It has fallen out that, by turning its thoughts toward becoming a science, politics, like political economy, has joined its literature to those books of *natural* science which boast a brief authority, and then make way for what is 'latest.' Unless it be of the constitution of those rare books which mark an epoch in scientific thought, a 'scientific work' may not expect to outlive the prevailing fashion in ladies' wraps. But books on politics are in the wrong company when they associate with works among which so high a rate of mortality obtains. The 'science' proper to them, as distinguished from that which is proper to the company they now affect, is a science whose very expositions are as deathless as itself. It is the science of the life of man in society. Nothing which elucidates that life ought

to be reckoned foreign to its art; and no true picture of that life can ever perish out of literature. Ripe scholarship in history and jurisprudence is not more indispensable to the student of politics than are a constructive imagination and a poet's eye for the detail of human incident. The heart of his task is insight and interpretation; no literary power that he can bring to bear upon it will be greater than he needs. Arthur Young's way of observing, Bagehot's way of writing, and Burke's way of philosophizing would make an ideal combination for the work he has to do. His materials are often of the most illusive sort, the problems which he has to solve are always of the most confounding magnitude and variety.

It is easy for him to say, for instance, that the political institutions of one country will not suit another country; but how infinitely difficult is it to answer the monosyllables How? and Why? To reply to the Why he must make out all the contrasts in the histories of the two countries. But it depends entirely upon what sort of eye he has whether those contrasts

will contain for him vital causes of the effect he is seeking to expound. He may let some anecdote escape him which gleams with the very spark needed to kindle his exposition. In looking only for grave political facts he may overlook some apparently trivial outlying detail which contains the very secret he would guess. He may neglect to notice what men are most talked about by the people; whose photographs are most frequently to be seen on the walls of peasant cottages; what books are oftenest on their shelves. Intent upon intrigue and legislation, he may pass over with only a laugh some piquant gossip about legislator or courtier without the least suspicion that it epitomizes a whole scheme of government. He may admire self-government so much as to forget that it is a very coarse, homely thing when alive, and so may really never know anything valuable about it. The man who thinks the polls disagreeable and uninteresting places has no business taking up a pen to write about government. The man who despises the sheriff because he is coarse and uncouth, and who studies the sheriff's

functions only from the drawing-room or the library, will realize the life of government no better than he realizes the vanity of 'good form.'

If politics were to be studied as a great department of human conduct, not to be understood by a scholar who is not also a man of the world, its literature might be made as imperishable as that of the imagination. There might then enter into it that individuality which is immortality. That personal equation which constitutes the power of all books which have aught of force in them would then rescue books on politics from the dismal category of 'treatises,' and exalt them to the patriciate of literature. The needed reaction against the still 'orthodox' methods of discoursing upon laws and constitutions, like that already set afoot against the 'orthodox' political economists, should be a 'literary movement'—a movement from formalism to life. In order really to know anything about government, you must *see it alive*; and the object of the writer on politics should be nothing less than this, to paint government to the life, to make it live again upon his page.

III

POLITICAL SOVEREIGNTY

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THE conception of political sovereignty is one of those interesting portions of doctrine which belong in common to several distinct branches of study. No systematic discussion of any part of the science of politics can advance very far without it; and it is even more indispensable to the student of legal systems than to the student of politics. It is a question central to the life of states and to the validity of law.

And it is rendered the more interesting by the fact that it is a critical question, used by all schools alike as a capital test of orthodoxy. No man who cares a whit about his standing among students of law or of politics can afford to approach it lightly. Whatever he says about it he must needs say with a profound sense of responsibility. He must undertake the discussion of it with the same sort of

gravity, with the same deep sense of personal risk, that the political economist evinces when he ventures an opinion about Value or hazards a theory of Distribution. When once he has committed himself to an opinion concerning it, he may be sure that with a large and influential number of his fellow-students he can never thereafter pass for a man of undoubted scholarship or unclouded sense.

If it is awkward, under such circumstances, that the conception s[illegible]'d be so indispensable, it doubtless has the advantage of forcing boldness upon us. If for nothing else than for the sake of a *modus vivendi*, we must out with whatever notion it is that we have accepted or invented with reference to the nature and lodgement of sovereignty. It is, on the whole, safer to be explicit than to hedge.

And yet it is not easy to be explicit; for there are no suitable terms to be explicit with. One no sooner begins to examine the field and the matter of controversy than he begins to suspect that it is all a question of terminology. After being hurried in bewilderment through one of Browning's short poems without being

permitted to be quite sure at any point of the full meaning, we are led in our disappointment to wonder, with Mr. Birrell, if it can be the punctuation. In what we read of sovereignty we are led to wonder if it can be the *words* that confuse us. It must be evident to every one who has not been sophisticated by the terms themselves, or committed beyond retrieval by the controversial use of them, that when, for example, the people of the United States and the Czar of Russia are put together in the same class as sovereigns, language has been forced to a very artificial use, and one term made to cover radically different things. There is clearly a striking contrast between these two sovereigns, in character, in method, and in power. Doubtless an excellent way by which to enter our subject would be through an examination of this difference. But another way is more direct.

Let us begin with an accepted definition of sovereignty. It is both decent and convenient to take that of Austin, that celebrated definition which he received through Bentham from Hobbes. Austin conceived a sovereign very con-

cretely, as a person or body of persons existing in an independent political society and accorded the habitual obedience of the bulk of the members of that society, while itself subordinate to no political superior. Law he defined to be the explicit or implicit command of such a person or body of persons, addressed to the members of the community, its inferiors or subjects. He took it for granted that in every independent community supreme political authority did actually vest in some such determinate sovereign person or body of persons.

By the very term used to describe it, moreover, this sovereignty is supremacy —is subject to no limitation. Every law is a command, not only, but the command of a supreme authority; and it would be a singular contradiction in terms to speak of this supreme power as limited by law. How can the supreme author of law within a state himself be subject to law: how can the creature bind the creator? How can one refrain from smiling at the logical incapacity of those who speak of limitations to sovereignty, or, more absurdly still, of divisions of sovereignty?

Is there a hierarchy of supremacies: can there be a co-ordination of creators?

Austin had studied in Bonn while it was the residence of such men as Niebuhr, Schlegel, Arndt, Welcher, Mackeldey, and Heffter, and at a period when controversy touching some of the fundamental questions concerning the province and method of jurisprudence was in its keen youth. His thought was mature, indeed, before he went abroad, and nature had very imperatively commanded of what sort that thought should be by giving him a mind framed for abstract conception and sharp logical processes; but contact with German thinking contributed many important elements to his mental equipment. Thibaut became scarcely less his master than Bentham. It was inevitable that it should be Thibaut rather than Savigny. Savigny believed that all law was rooted in old habit, and that legislation could modify law successfully and beneficially only by consenting to the secondary *rôle* of supplementing, formulating, or at most guiding custom. He was at weapons drawn with the school of Thibaut, which proposed to lay legislative hands on the

entire body of German law, make a code which should be common to all the German States, and so help to make Germany a national unit. To attempt thus to systematize law, where by natural development it was unsystematic, seemed to Savigny a deliberate effort to render it artificial. Law, he maintained, did not often grow into a logical system, but was the product of daily accretions of habit and sluggish formations of thought, which followed no system of philosophy. It was not the business of legal science to force it into logical categories; it was its function, rather, to give a clear explanation of the principles and order of its life and a satisfactory working analysis of its several parts and conceptions. Thibaut, on the other hand, believed it to be the legitimate function of the jurist to make piecemeal law up into organic wholes, rendering it clear where it had been obscure, correcting its inconsistencies, trimming away its irregularities, reducing the number of its exceptional provisions, discovering and filling in its gaps, running it through with threads of system, giving it elegance of style and completeness of method. He

thought it possible to change law from a system of habits into a system of commands. These were, of course, the ideas which were most attractive, most congenial, to the mind of Austin.

But, however natural such conceptions may have been to Austin, it must certainly be regarded as singular that, although rejected on the Continent, where sovereignty had throughout the most important formative periods of European history been quite unequivocally lodged in unmistakable sovereigns, these notions should have been accepted in England, the land where law had been least subject to doctrine, most observant of times and circumstances, most piecemeal in its manner of construction, least like a set of commands, and most like a set of habits and conventions. Doubtless we are to remember, however, that the feudal theory of law had long been held with perfect confidence by English lawyers in calm despite of fact. Probably it is true that the English mind (our own), with its practical habit, likes nice systems well enough because of their appearance of completeness, has a sense of order which enjoys

logic, without having any curiosity or capacity for the examination of premises. The Englishman has always been found ready to accept, from those who had the leisure to amuse themselves in that way, interesting explanations of his institutions which did not at all fit the actual facts. It has caused him no inconvenience, for he has not perceived the lack of adjustment between his actual transactions and the theory he has accepted concerning them. He has, of course, not troubled himself to alter his institutions to suit his philosophy. That philosophy satisfied his thought and inconvenienced neither Parliament nor the law courts. And so he had no doubt Austin was right.

Austin's logic is unrelenting, and the loyalty of his followers unflinching. Sir Henry Maine having shown that throughout the greater part of history the world has been full of independent political societies possessing no law-making sovereign at all, and it having become notorious that legislation has everywhere played a late and comparatively subordinate part in the production of law, the latest writers of the Austinian school have reduced

jurisprudence to a merely formal science, professing to care nothing for the actual manner in which law may originate, nothing even for most of the motives which induce men to obey law, provided you will but concede that there is, among a great many other imperative motives, one which is universally operative, namely, the fear of the compulsion of physical force, and that there is at least one sovereign function, namely, the application of that physical force in the carrying out of the law. They ask to be allowed to confine themselves to such a definition of positive law as will limit it to "rules which are *enforced* by a political superior in his capacity as such." They take for their province only a systematic description of the forms and method "of the influence of government upon human conduct" through the operation of law. They thus virtually abandon the attempt to find any universal doctrines respecting the *rôle* of government as a *maker* of laws. For them government is not a creative agent, but only an instrumentality for the effectuation of legal rules already in existence. So hard is the principle of life to

Not so - It is an organ of sort who makes the legal rule and in the last analysis the rule is a legal one only be there are other organs of sort to enforce it

get at that they give over all attempts to find it, and, turning away from the larger topics of the biology, restrict themselves to the morphology, of law.

When it came to pointing out the body of persons with which sovereignty was lodged in particular states of complex constitutional structure, Austin was sometimes very unsatisfactory. Sovereignty is lodged in England, he says, in the king, the peers, and—*not* the House of Commons, but—the electorate. For he holds the House of Commons to be merely a trustee of the electors, notwithstanding the fact that the electors exercise their right of franchise under laws which Parliament itself enacted and may change. In the United States he "believes" it to be lodged "in the States' governments, as forming an aggregate body;" and he explains that by the government of a State he does not mean its "ordinary legislature, but the body of its citizens which appoints its ordinary legislature, and which, the Union apart, is properly sovereign therein." Apparently he is led thus to go back of the House of Commons and the legislatures of our States to the elec-

torates by which they are chosen, because of his conception of sovereignty as *unlimited*. If he stopped short of the electors, some part of his sovereign body would be subject to political superiors. If he were to go beyond the electors, to the larger body of the people—to the women and the children and the men who cannot vote—he would come upon, not a "determinate," but an indeterminate body of persons.

Our own writers, however, having made bold to embrace the dogma of popular sovereignty with a certain fervor of patriotism, have no hesitation about taking the additional step. They maintain, with Lieber, that "according to the views of free men," sovereignty "can dwell with society, the nation, only." Writers like the late Judge Jameson, of Chicago, declare that they have very definite ideas of what this means. They think that Mr. Bryce expounded the doctrine when he wrote his chapter on "Government by Public Opinion." "When the true sovereign has spoken," says Judge Jameson, "at pubric meetings, by the press, or by personal argument or solicitation, the elec-

torate, when it acts, either registers the behests of the people or ceases betimes further to represent them." "The pressure of public opinion consciously brought to bear upon the electorate," he declares to be, even when "inarticulate" (whatever inarticulate pressure may be), "a clear and legitimate exercise of sovereign power;" and he thinks that Mr. Herbert Spencer meant the same thing when he declared that "that which, from hour to hour, in every country, governed despotically or otherwise, produces the obedience making political action possible, is the accumulated and organized sentiment felt towards inherited institutions made sacred by tradition," inasmuch as Mr. Spencer proceeds to say with all plainness, "Hence it is undeniable that, taken in its widest acceptation, the feeling of the community is the sole source of political power; in those communities, at least, which are not under foreign domination. It is so at the outset of social life, and it still continues substantially so." And yet, if Mr. Spencer means the same thing that Judge Jameson means, what are we to think of the present fraternization of

France and Russia? If the people be sovereign in France and the Czar sovereign in Russia, it is doubtless quite conceivable that one sovereign should love another; but if it be true, as Judge Jameson makes Mr. Spencer say, that it is the people, even in Russia, who are after all sovereign, what are we to think of the fondness of the French sovereign for a government which is holding the Russian sovereign in subjection? If this be correct thinking, it puts us into awkward quandaries, troubling our logic as well as condemning our lives.

Apply this doctrine of our masters in American law to our actual political conditions, and see how far it simplifies the matter. In the United States (so runs the orthodox creed) the People is sovereign. —the verb is singular because the people, under this doctrine, constitute a unit. And yet it is notorious that they never have acted as a unit, nor ever can act as a unit under our existing constitution. They have always acted, and must always act, in state groups. And in state groups what action do they take? They assent to constitutional provisions, or refuse to

assent to them; and they select certain persons to act as law-makers, as judges, or as executive officers of government. Do they choose policies? No. Do they frame constitutional provisions? Certainly not; they only accept or reject them. In the only case in which they speak directly concerning specific provisions of law, they neither command nor originate. They receive or decline what is offered them. They must wait until they are asked. They have neither initiative nor opportunity to construct. They must be consulted concerning government, but they do not conduct it.

Nor is it otherwise, upon last analysis, in Switzerland, where the *Referendum* exists, where, that is, the people vote upon specific measures of ordinary legislation not only, but where they are also provided with means of imperative initiative in legislation. By petitions bearing a certain large number of signatures they can propose definite legislation, compel action upon the matter of their petitions by their legislatures, and an ultimate submission of the question to popular vote. But see what this is, when examined. The eyes of

the community, the men of observation and progress, get up a petition; that is, an indeterminate body and a minority demand that certain laws be formulated and put to the vote. The thing is done, but the measure defeated, let us suppose, at the polls. The eyes of the community have desired certain things, have offered them to the slow digestive organs, and they have been rejected. Are the digestive organs, then, sovereign, and not the initiative parts, the eyes and the reason. Is it sovereign to stomach a thing, and not sovereign to purpose a thing?

But turn the chase in another direction, if peradventure we may yet run the sovereign people to cover. The more absolute democratic theorists decline to restrict the sovereign body to the electorate, to those who have formal votes. Voters are simply the agents of the community, they say. The press and the pulpit, the private argument and the curtain lecture, command—voters, if they are faithful, obey. Others, no less democratic, but more precise, seek for a more determinate body, content themselves with the qualified voters, and think with relief

that all difficulties are removed. The electorato is sovereign.

But is the electorate a more determinate body than the population? Does registration afford us any more certain results than the census yields? Do the electors act in determinate numbers? Is there a quorum? Have they any choice but to act under the forms and within the limits assigned by law? Can they command without invitation, or assent without suggestion? Are not the agencies which Judge Jameson calls sovereign after all more active, more self-directed, freer to criticise, to suggest, to insist? The newspapers, the clergymen, the mass-meeting orators, the urgent friends, the restless, ambitious wives, the pert and forward children can at any rate keep on talking in the intervals, when the electors are reduced to silence, patiently awaiting an opportunity to vote. Certainly, if we can accept this miscellaneous sovereign of men-women-and-children, the history of sovereignty is much simplified. This determinate body of persons, the free population, is always present, and always has been present, under all constitutions. All that we

have to inquire is, What means had they for expressing their will? How were their dispositions and judgments made to tell upon the consciousness of those who framed the laws? True, this sovereign body has its points of resemblance to the god Baal. Those who call upon it call in vain, if it be not the season appointed for voting; there is no voice, nor any that answer, nor any that regardeth. No fire consumes the sacrifice. Perhaps the People is talking, or is pursuing, or is in a journey, or peradventure it sleepeth, and must be awaked.

Surely this is a singular undertaking, this mad pursuit of a sovereign amidst the obvious phenomena of politics! If laws be indeed commands, the commands of a determinate person or body of persons, it ought to be possible to discover this determinate source of authority without much curious research. And yet it would seem that it demands ingenious analysis. Look how uneasily Mr. Sidgwick casts about in the last chapter of his recent "Elements of Politics," to find Supreme Political Power—which is his name for sovereignty. He has been looking for-

ward to this inquiry, not without nervousness, throughout the chapters which precede. Political power is exercised, he perceives, through some organ of government; but he cannot conceive that the power of this organ is its own power. He engages in a study of dynamics. What moves this organ: whence does it derive its power? How is it influenced? Is it itself commanded, overawed, constrained from any quarter? This is a door to the metaphysics of government. Taking a prince as a simple and normal organ of government, he analyzes the subjection of princes to their ministers, to priests, to mistresses, to the violent protests of an insubordinate people. No influence that the prince can throw off without losing his own authority, he thinks, can be a sovereign influence; but any influence which can threaten his power if he resist is a sovereign influence, the true depository of supreme political power. Sovereignty thus becomes a catalogue of influences.

Can we accept these singular processes? If a physicist were to discard all the separate laws, all the differential analysis of his science, and were to reduce its entire

body of principles to some general statement of the correlation of forces, he would hardly be conceived to have done physics a service. If in our study of anatomy we should turn away from structural adjustment and functional force to take account of the thousand and one influences which in individual cases affect the organs from without, we should obviously be abandoning the science itself. It seems to me that we do a very like thing if, in studying the structural forces and organic actions of society, its organs of origination and command, its organs of execution, its superior and its subordinate authorities, its habitual modes of structural life, we abandon all attempts at differentiation, throw all analysis into hotch-potch, and reduce everything to terms of the general forces which mould and govern society as a whole. We confuse our thought in our effort to simplify it. We lose, we do not gain, by putting powers of radically different sorts together into the same categories, and driving them abreast, as if they pulled together, in the same propositions.

There is no unlimited power, except /

the sum of all powers. Our legal theorists have sought unlimited sovereignty by a process of summation; have made it consist in the combined forces of the community. Sovereignty, if it be a definite and separable thing at all, is not unlimited power; is not identical with the powers of the community. It is not the general vitality of the organism, but the specific originative power of certain organs. Sovereigns have always been subject in greater or less degree to the community; have always been organs of the State; have never been the State itself. But they have been sovereigns none the less; they, and not the community over which they presided.

It is necessary, if there is to be any clear thinking at all upon this subject, to distinguish very sharply two radically different things; namely, the powers and processes of governing, on the one hand, from the relations of the people to those powers and processes, on the other. Those relations are relations of assent and obedience; and the degree of assent and obedience marks in every case the limits, that is, the sphere, of sovereignty. Sovereign-

ty is the daily operative power of framing and giving efficacy to laws. It is the originative, directive, governing power. It lives; it plans; it executes. It is the organic origination by the State of its law and policy; and the sovereign power is the highest originative organ of the State. It is none the less sovereign because it must be observant of the preferences of those whom it governs. The obedience of the subject has always limited the power of the sovereign. "The Eastern politicians never do anything," says Burke, "without the opinion of the astrologers on the fortunate moment. . . . Statesmen of a more judicious prescience look for the fortunate moment too; but they seek it, not in the conjunctions and oppositions of planets, but in the conjunctions and oppositions of men and things." This is the covert admission of the Austinian definition itself: the sovereign power is that to which "the bulk of the community *is habitually obedient*." When we discuss, with Mr. Sidgwick, the influences which tell upon the action of the originative organs of the State, we are not discussing sover-

eignty, but the natural and universal limitations of sovereignty, the structural checks and balances of the organism. There is no hope for theory if we neglect these obvious distinctions.

At all times and under all systems there have been two sets of phenomena visible in government: the phenomena of command and the phenomena of obedience, the phenomena of governing and the phenomena of being governed. Obedience, moreover, is not always an automatic or unconscious thing. It is a submission of the will—an acquiescence which is either the product of choice, of necessity, or of habit. This has been observed from the first; was observed by Bodin, from whom we get our word sovereignty, and much of our conception of the thing, sovereignty. He perceived that the supremacy of the sovereign—even of the mediæval French sovereign before his eyes—was in fact limited, the frontiers of sovereignty being marked by certain antecedent rights, by divers established prerogatives of property and vested privilege—not a scientific, but a natural frontier, lying along the old mountains of

habit, well-known [illegible]ers of prec-
dent.

We know that the history of politics has been the history of liberty; a history of the enlargement of the sphere of independent individual action at the expense of the sphere of dictatorial authority. It has revealed a process of differentiation. Certain freedoms of opinion and tolerance, of choice of occupation and of [illegible]iance, of fair trial and equitable condemnation, have been blocked out as inviolable territories, lying quite beyond the jurisdiction of political sovereignty. Beginning with that singular and interesting people of the classical states, the ancient world, under which the individual was [illegible]ged in the community and liberty became identical with a share in the exercise of the public power, we witness something like a gradual disintegration, a resolution of the State into its constituent elements, until at length the [illegible] and those who are [illegible]onger one and the same, [illegible]e to face treating with one another, agreeing upon terms of command and obedience, as at Runnymede. Conditional submission

have been contested, and, as liberty has gained upon authority, have been jealously formulated. The procedure and the prerogatives of authority have been agreed upon; liberty has encroached upon sovereignty and set bounds to it. The process is old; only some of its results are new. What both political philosophers and political revolutionists have sought for time out of mind has been a final definition for that part of the Austinian conception which concerns the *habitual obedience* of the community. These definitions, in their practical shape as institutions, we now call constitutions. At last peoples have become conscious of their relations to the highest powers of the State, and have sought to give permanence and certainty to those relations by setting the conditions of their subordination fast in stubborn practices or in the solemn covenants of written documents. A constitution government has always had; but not until this latest age these deliberate formulations of principle and practice which determine the whole organization and action of the State, the domain of authority, the neutral terri-

tory of liberty, the postulates of obedience.

Constitutions are definitive rather than creative. They sum up experiences. They register consents. Assuredly Mr. Spencer is right when he declares that that which in every country, under whatever system governed, "produces the obedience making political action possible, is the accumulated and organized sentiment of the community towards inherited institutions," and that "the feeling of the community is the sole source of political power." But this does not mean what Judge Jameson reads into it, that sovereignty and the feeling of the community are one and the same thing; that the conditions of sovereignty and the exercise of sovereignty are identical. Sovereignty has at all times and under all systems of government been dependent upon the temper and disposition of the people. The will of the community, the inclinations and desires of the body politic as a whole, are always, in the last analysis, the foundation, as they are also in many instances the direct and immediate source, of law. But these preferences of the general body

are exercised by way of approval or disapproval, acquiescence or resistance; they are not agencies of initial choice. The sanctioning judgments of a people are passive, dormant, waiting to have things put to them, unable themselves to suggest anything, because without organs of utterance or suggestion. I cannot predicate sovereignty of my physical parts, but must ascribe it to my will, notwithstanding the fact that my physical parts must assent to the purposes of my will, and that my will is dependent upon their obedience. The organism unquestionably dominates the organs; but there are organs, nevertheless, organs of origination, which direct and rule with a sovereign presidency.

A written constitution adopted by popular vote affords, perhaps, some of the nicest tests of theory. Here we have the most specific form of popular assent. In such a document the powers of the government are explicitly set forth and specifically lodged; and the means by which they may be differently constituted or bestowed are definitively determined. Now we know that these documents are the

result of experience, the outcome of a contest of forces, the fruits of struggle. Nations have taken knowledge of despotism. They have seen authority abused and have refused to submit; have perceived justice to be arbitrary and hidden away in secret tribunals, and have insisted that it be made uniform and open; have seen ministers chosen from among favorites, and have demanded that they be taken from among representatives of the people; have found legislation regardful of classes, and have clamored to have laws made by men selected without regard to class; have felt obedience irksome because government was disordered in form and confused in respect of responsibility, and have insisted that responsibility be fixed and forms of order and publicity observed. Sometimes only a steady practice has accomplished all this; sometimes documentary securities have been demanded. These documentary securities are written constitutions.

It is easy, as it is also impressive, to believe that a written constitution proceeds from the people, and constitutes their sovereign behest concerning govern-

ment. But of course it does not. It proceeds always either from some ordinary or from some extraordinary organ of the state; its provisions are the fruit of the debated determinations of a comparatively small deliberative body, acting usually under some form of legal commission. It is accepted as a whole and without discrimination by the diffused, undeliberative body of voters.

What confuses our view is the fact that these formal documentary statements of the kinds and degrees of obedience to which the people assent, the methods of power to which they submit, the sort of responsibility upon which they insist, have become, from the very necessity of their nature, a distinct and superior sort of precise and positive law. We seek the sovereign who utters them. But they are not the utterances of a sovereign. They are the covenants of a community. Time out of mind communities have made covenants with their sovereigns. When despotism in France was 'tempered by epigram,' the sharp tongues of the wits spoke, after a sort, the constitution of the country,—a positive law whose sanction

was ridicule. But the wits were not sovereign; the *salons* did not conduct government. Our written constitutions are only very formal statements of the standards to which the people, upon whom government depends for support, will hold those who exercise the sovereign power.

I do not, of course, deny the power of the people. Ultimately they condition the action of those who govern; and it is salutary that it should be so. It is wise also, if it be not indispensable, that the extent and manner of their control should be explicitly set forth and definitively agreed upon in documents of unmistakable tenor. I say simply that such control is no new thing. It is only the precise formulation of it that is new.

If it seem to be after all a question of words, a little closer scrunity will disclose the fact that it is much more than that. Mr. Ritchie, of Oxford University, in an able article on "The Conception of Sovereignty," contributed to the *Annals of the American Academy of Political and Social Science* (January, 1891), perceiving some part of the distinction that I have point-

ed out, and wishing to realize it in his thought, proposes to distinguish three several kinds of sovereigns: viz. a nominal sovereign—the English queen, for example; a legal sovereign—the law-making body; and a political sovereign—the voters, whom we might call the sovereign of appeal. But why not confine ourselves to substantives, if we may, and avoid the quicksands of adjectives? Sovereignty is something quite definite; so also is power; so also is control. Sovereignty is the highest political power in the state, lodged in active organs, for the purposes of governing. Sovereign power is a positive thing; control a negative thing. Power belongs to government, is lodged in organs of initiative; control belongs to the community, is lodged with the voters. To call these two things by the same name is simply to impoverish language by making one word serve for a variety of meanings.

It is never easy to point out in our complex modern governments the exact organs in which sovereignty is lodged. On the whole, however, it is always safe to ascribe sovereignty to the highest

originative or law-making body of the state,—the body by whose determinations both the tasks to be carried out by the Administration and the rules to be applied by the courts are fixed and warranted. Even where the courts utter authoritative interpretations of what we call the fundamental law—the law that is embodied in constitutions—they are rather the organs through which the limitations of sovereignty are determined than organs of sovereignty itself. They declare the principles of that higher, constituent law which is set above sovereignty, which expresses the restrictions set about the exercise of sovereign authority. Such restrictions exist in all states, but they are given definite formulation only in some. As for the Executive, that is the agent, not the organ, of sovereignty.

But, even if it be comparatively easy thus to fix upon the organs of sovereignty in a unitary state, what shall we say of a federal state? How apply our analysis to that? One is tempted to declare, with Dr. Merkel, of Strassburg, that federal states give direct contradiction of fact to prevailing theories respecting the neces-

sity for unity of power, indivisibility of sovereignty. Here, as he says, we have organs and authorities in possession of powers exclusively their own, for the furtherance of functions necessary to the ends of the state as a whole, existing side by side with organs also in full possession of powers exclusively their own, for the furtherance of the local and special functions of the member states. We know, moreover, that these two sets of organs are in fact co-ordinate; that the powers of the states were not derived from the federal authority, were even antecedent to the powers of the federal government, and historically quite independent of them. And yet no one who ponders either the life or the formal structure of a federal state can fail to perceive that there is, after all, an essential unity in it, the virtual creation of a central sovereignty. The constituent act—the manner in which the government was created—can, I conceive, have nothing to do with our analysis in this matter. The way in which the federal state came into existence is immaterial to the question of sovereignty within it after it has been created. Originative

life and action, the characteristic attributes of sovereignty, come after that. Character and choice are postponed to birth, sovereignty to the creation of the body politic. The constituent act creates a thing capable of exercising sovereignty. After the creative law has done its part, by whatever process, then the functions of independent life begin. Thereafter, in all federal states, even the amendment of the fundamental law becomes an organic act, depending, practically without exception, upon the initiative of the chief originative organ of the federal state. Confederations are here out of the question. They are, of course, associations of sovereigns. In the federal state self-determination with respect to their law as a whole has been lost by the member states. They cannot extend, they cannot even determine, their own powers conclusively without appeal to the federal authorities. They are unquestionably subject to a political superior. They are fused, subordinated, dominated. Though they do not exercise their powers by virtue of delegation, though their powers are indeed inherent and in a very im-

portant sense independent, they are yet inferior to a body whose own powers are in reality self-determined, however much that self-determination may be hedged about and clogged by the forms of the fundamental federal law. They are still states, because their powers are original and inherent, not derivative; because their political rights are not also legal duties; and because they can apply to their commands the full imperative sanctions of law. But their sphere is limited by the presiding and sovereign powers of a state superordinated to them, the extent of whose authority is determined, under constitutional forms and guarantees, by itself. They have dominion; but it has sovereignty. For with the federal state lie the highest powers of originative legal determination, the ultimate authority to warrant change and sanction jurisdiction.

Our thought is embarrassed throughout such an analysis by the very fact which invalidates the Austinian conception and makes a fresh analysis necessary. Very little law literally originates in command, though its formulation and enforcement must unquestionably be effected

through the commanding authorities of the state. It is their function to direct, to lead, rather than to command. They originate forms, but they do not discover principles. In a very profound sense law proceeds from the community. It is the result of its undeliberate as well as of its deliberate developments, of its struggles, class against class, interest against interest, and of its compromises and adjustments of opinion. It follows, slowly, its ethical judgments, more promptly its material necessities. But law issues thus from the body of the community only in vague and inchoate form. It must be taken out of the sphere of voluntary and uncertain action and made precise and invariable. It becomes positive law by receiving definition and being backed by an active and recognized power within the state. The sovereign organ of a state is, therefore, very properly said to be its law-*making* organ. It transmutes selected tendencies into stiff and urgent rules. It exercises a sovereign choice in so doing. It determines which tendencies shall be accepted, which checked and denied efficacy. It forms the pur-

poses of the state, avoiding revolution if it form them wisely and with a true insight. This is sovereignty:—to sit at the helm and steer, marking out such free courses for the stanch craft as wind and weather will permit. This is the only sort of sovereignty that can be exercised in human affairs. But the pilot is sovereign, and not the weather.

IV

CHARACTER OF DEMOCRACY IN THE UNITED STATES

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EVERYTHING apprises us of the fact that we are not the same nation now that we were when the government was formed. In looking back to that time, the impression is inevitable that we started with sundry wrong ideas about ourselves. We deemed ourselves rank democrats, whereas we were in fact only progressive Englishmen. Turn the leaves of that sage manual of constitutional interpretation and advocacy, the *Federalist*, and note the perverse tendency of its writers to refer to Greece and Rome for precedents,—that Greece and Rome which haunted all our earlier and even some of our more mature years. Recall, too, that familiar story of Daniel Webster which tells of his coming home exhausted from an interview with the first President-elect Harrison, whose Secretary of State he was to be,

and explaining that he had been obliged in the course of the conference, which concerned the inaugural address about to be delivered, to kill nine Roman consuls whom it had been the intention of the good conqueror of Tippecanoe publicly to take into office with him. The truth is that we long imagined ourselves related in some unexplained way to all ancient republicans. Strangely enough, too, we at the same time accepted the quite incompatible theory that we were related also to the French philosophical radicals. We claimed kinship with democrats everywhere,—with all democrats. We can now scarcely realize the atmosphere of such thoughts. We are no longer wont to refer to the ancients or to the French for sanction of what we do. We have had abundant experience of our own by which to reckon.

"Hardly any fact in history," says Mr. Bagehot, writing about the middle of the century, "is so incredible as that forty and a few years ago England was ruled by Mr. Perceval. It seems almost the same as being ruled by the *Record* newspaper." (Mr. Bagehot would now prob-

ably say the *Standard* newspaper.) "He had the same poorness of thought, the same petty conservatism, the same dark and narrow superstition." "The mere fact of such a premier being endured shows how deeply the whole national spirit and interest was absorbed in the contest with Napoleon, how little we understood the sort of man who should regulate its conduct,—'in the crisis of Europe,' as Sydney Smith said, 'he safely brought the Curates' Salaries Improvement Bill to a hearing;' and it still more shows the horror of all innovation which the recent events of French history had impressed on our wealthy and comfortable classes. They were afraid of catching revolution, as old women of catching cold. Sir Archibald Alison to this day holds that revolution is an infectious disease, beginning no one knows how, and going on no one knows where. There is but one rule of escape, explains the great historian: 'Stay still; don't move; do what you have been accustomed to do; and consult your grandmother on everything.'"

Almost equally incredible to us is the ardor of revolution that filled the world in

those first days of our national life,—the fact that one of the rulers of the world's mind in that generation was Rousseau, the apostle of all that is fanciful, unreal, and misleading in politics. To be ruled by him was like taking an account of life from Mr. Rider Haggard. And yet there is still much sympathy in this timid world for the dull people who felt safe in the hands of Mr. Perceval, and, happily, much sympathy also, though little justification, for such as caught a generous elevation of spirit from the speculative enthusiasm of Rousseau.

For us who stand in the dusty matter-of-fact world of to-day, there is a touch of pathos in recollections of the ardor for democratic liberty that filled the air of Europe and America a century ago with such quickening influences. We may sometimes catch ourselves regretting that the inoculations of experience have closed our systems against the infections of hopeful revolution.

"Bliss was it in that dawn to be alive,
But to be young was very heaven! O times
In which the meagre, stale, forbidding ways
Of custom, law, and statute took at once

The attraction of a country in romance!
When Reason seemed the most to assert her
rights,
When most intent on making of herself
A prime Enchantress, to assist the work
Which then was going forward in her name!
Not favored spots alone, but the whole earth,
The beauty wore of promise, that which sets
(As at some moment might not be unfelt
Among the bowers of paradise itself)
The budding rose above the rose full blown."

Such was the inspiration which not Wordsworth alone, but Coleridge also, and many another generous spirit whom we love, caught in that day of hope.

It is common to say, in explanation of our regret that the dawn and youth of democracy's day are past, that our principles are cooler now and more circumspect, with the coolness and circumspection of advanced years. It seems to some that our enthusiasms have become tamer and more decorous because our sinews have hardened; that as experience has grown idealism has declined. But to speak thus is to speak with the old self-deception as to the character of our politics. If we are suffering disappointment, it is the dis-

appointment of an awakening: we were dreaming. For we never had any business hearkening to Rousseau or consorting with Europe in revolutionary sentiment. The government which we founded one hundred years ago was no type of an experiment in advanced democracy, as we allowed Europe and even ourselves to suppose; it was simply an adaptation of English constitutional government. If we suffered Europe to study our institutions as instances in point touching experimentation in politics, she was the more deceived. If we began the first century of our national existence under a similar impression ourselves, there is the greater reason why we should start out upon a new century of national life with more accurate conceptions.

To this end it is important that the following, among other things, should be kept prominently in mind:—

(1.) That there are certain influences astir in this century which make for democracy the world over, and that these influences owe their origin in part to the radical thought of the last century; but that it was not such forces that made us

democratic, nor are we responsible for them.

(2.) That, so far from owing our governments to these general influences, we began, not by carrying out any theory, but by simply carrying out a history,—inventing nothing, only establishing a specialized species of English government; that we founded, not democracy, but constitutional government in America.

(3.) That the government which we thus set up in a perfectly normal manner has nevertheless changed greatly under our hands, by reason both of growth and of the operation of the general democratic forces,—the European, or rather world-wide, democratic forces of which I have spoken.

(4.) That two things, the great size to which our governmental organism has attained, and, still more, this recent exposure of its character and purposes to the common democratic forces of the age of steam and electricity, have created new problems of organization, which it behooves us to meet in the old spirit, but with new measures.

I.

First, then, for the forces which are bringing in democratic temper and method the world over. It is matter of familiar knowledge what these forces are, but it will be profitable to our thought to pass them once more in review. They are freedom of thought and the diffusion of enlightenment among the people. Steam and electricity have co-operated with systematic popular education to accomplish this diffusion. The progress of popular education and the progress of democracy have been inseparable. The publication of their great encyclopædia by Diderot and his associates in France in the last century, was the sure sign of the change that was setting in. Learning was turning its face away from the studious few towards the curious many. The intellectual movement of the modern time was emerging from the narrow courses of scholastic thought, and beginning to spread itself abroad over the extended, if shallow, levels of the common mind. The serious forces of democracy will be found, upon analysis, to reside, not in the dis-

turbing doctrines of eloquent revolutionary writers, not in the turbulent discontent of the pauperized and oppressed, so much as in the educational forces of the last hundred and fifty years, which have elevated the masses in many countries to a plane of understanding and of orderly, intelligent purpose more nearly on a level with the average man of the classes that have hitherto been permitted to govern. The movements towards democracy which have mastered all the other political tendencies of our day are not older than the middle of the last century; and that is just the age of the now ascendant movement toward systematic popular education.

Yet organized popular education is only one of the quickening influences that have been producing the general enlightenment which is everywhere becoming the promise of general liberty. Rather, it is only part of a great whole, vastly larger than itself. Schools are but separated seed-beds, in which the staple thoughts of the steady and stay-at-home people are prepared and nursed. Not much of the world, moreover, goes to school in the

school house. But through the mighty influences of commerce and the press the world itself has become a school. The air is alive with the multitudinous voices of information. Steady trade winds of intercommunication have sprung up which carry the seeds of education and enlightenment, wheresoever planted, to every quarter of the globe. No scrap of new thought can escape being borne away from its place of birth by these all-absorbing currents. No idea can be kept exclusively at home, but is taken up by the trader, the reporter, the traveller, the missionary, the explorer, and is given to all the world, in the newspaper, the novel, the memoir, the poem, the treatise, till every community may know, not only itself, but all the world as well, for the small price of learning to read and keeping its ears open. All the world, so far as its news and its most insistent thoughts are concerned, is fast being made every man's neighbor.

Carlyle unquestionably touched one of the obvious truths concerning modern democracy when he declared it to be the result of printing. In the newspaper

press a whole population is made critic of all human affairs; democracy is "virtually extant," and "democracy virtually extant will insist on becoming palpably extant." Looked at in the large, the newspaper press is a type of democracy, bringing all men without distinction under comment made by any man without distinction; every topic is reduced to a common standard of news; everything is noted and argued about by everybody. Nothing could give surer promise of popular power than the activity and alertness of thought which are made through such agencies to accompany the training of the public schools. The activity may often be misdirected or unwholesome, may sometimes be only feverish and mischievous, a grievous product of narrow information and hasty conclusion; but it is none the less a stirring and potent activity. It at least marks the initial stages of effective thought. It makes men conscious of the existence and interest of affairs lying outside the dull round of their own daily lives. It gives them nations, instead of neighborhoods, to look upon and think about. They catch

glimpses of the international connections of their trades, of the universal application of law, of the endless variety of life, of diversities of race, of a world teeming with men like themselves, and yet full of strange customs, puzzled by dim omens, stained by crime, ringing with voices familiar and unfamiliar.

And all this a man can nowadays get without stirring from home, by merely spelling out the print that covers every piece of paper about him. If men are thrown, for any reason, into the swift and easy currents of travel, they find themselves brought daily face to face with persons native of every clime, with practices suggestive of whole histories, with a thousand things which challenge curiosity, inevitably provoking inquiries such as enlarge knowledge of life and shake the mind imperatively loose from old preconceptions.

These are the forces which have established the drift towards democracy. When all sources of information are accessible to all men alike, when the world's thought and the world's news are scattered broadcast where the poorest may find them, the

non-democratic forms of government must find life a desperate venture. Exclusive privilege needs privacy, but cannot have it. Kingship of the elder patterns needs sanctity, but can find it nowhere obtainable in a world of news items and satisfied curiosity. The many will no longer receive submissively the thought of a ruling few, but insist upon having opinions of their own. The reaches of public opinion have been infinitely extended; the number of voices that must be heeded in legislation and in executive policy has been infinitely multiplied. Modern influences have inclined every man to clear his throat for a word in the world's debates. They have popularized everything they have touched.

In the newspapers, it is true, there is very little concert between the writers; little but piecemeal opinion is created by their comment and argument; there is no common voice amidst their counsellings. But the aggregate voice thunders with tremendous volume; and that aggregate voice is 'public opinion.' Popular education and cheap printing and travel vastly thicken the ranks of thinkers every-

where that their influence is felt, and by rousing the multitude to take knowledge of the affairs of government prepare the time when the multitude will, so far as possible, take charge of the affairs of government,—the time when, to repeat Carlyle's phrase, democracy will become palpably extant.

But, mighty as such forces are, democratic as they are, no one can fail to perceive that they are inadequate to produce of themselves such a government as ours. There is little in them of constructive efficacy. They could not of themselves build any government at all. They are critical, analytical, questioning, quizzing forces; not architectural, not powers that devise and build. The influences of popular education, of the press, of travel, of commerce, of the innumerable agencies which nowadays send knowledge and thought in quick pulsations through every part and member of society, do not necessarily mould men for effective endeavor. They may only confuse and paralyze the mind with their myriad stinging lashes of excitement. They may only strengthen the impression that "the world's a stage,"

and that no one need do more than sit and look on through his ready glass, the newspaper. They overwhelm one with impressions, but do they give stalwartness to his manhood? Do they make his hand any steadier on the plough, or his purpose any clearer with reference to the duties of the moment? They stream light about him, it may be, but do they clear his vision? Is he better able to see because they give him countless things to look at? Is he better able to judge because they fill him with a delusive sense of knowing everything? Activity of mind is not necessarily strength of mind. It may manifest itself in mere dumb show; it may run into jigs as well as into strenuous work at noble tasks. A man's farm does not yield its fruits the more abundantly in their season because he reads the world's news in the papers. A merchant's shipments do not multiply because he studies history. Banking is none the less hazardous to the banker's capital and taxing to his powers because the best writing of the best essayists is to be bought cheap.

II.

Very different were the forces behind us. Nothing establishes the republican state save trained capacity for self-government, practical aptitude for public affairs, habitual soberness and temperateness of united action. When we look back to the moderate sagacity and steadfast, self-contained habit in self-government of the men to whom we owe the establishment of our institutions in the United States, we are at once made aware that there is no communion between their democracy and the radical thought and restless spirit called by that name in Europe. There is almost nothing in common between popular outbreaks such as took place in France at her great Revolution and the establishment of a government like our own. Our memories of the year 1789 are as far as possible removed from the memories which Europe retains of that pregnant year. We manifested one hundred years ago what Europe lost, namely, self-command, self-possession. Democracy in Europe, outside of closeted Switzerland, has acted always in rebellion,

as a destructive force: it can scarcely be said to have had, even yet, any period of organic development. It has built such temporary governments as it has had opportunity to erect on the old foundations and out of the discredited materials of centralized rule, elevating the people's representatives for a season to the throne, but securing almost as little as ever of that every-day local self-government which lies so near to the heart of liberty. Democracy in America, on the other hand, and in the English colonies has had, almost from the first, a truly organic growth. There was nothing revolutionary in its movements; it had not to overthrow other polities; it had only to organize itself. It had not to create, but only to expand, self-government. It did not need to spread propaganda: it needed nothing but to methodize its ways of living.

In brief, we were doing nothing essentially new a century ago. Our strength and our facility alike inhered in our traditions; those traditions made our character and shaped our institutions. Liberty is not something that can be created by a

document; neither is it something which, when created, can be laid away in a document, a completed work. It is an organic principle,—a principle of life, renewing and being renewed. Democratic institutions are never done; they are like living tissue, always a-making. It is a strenuous thing, this of living the life of a free people; and our success in it depends upon training, not upon clever invention.

Our democracy, plainly, was not a body of doctrine; it was a stage of development. Our democratic state was not a piece of developed theory, but a piece of developed habit. It was not created by mere aspirations or by new faith; it was built up by slow custom. Its process was experience, its basis old wont, its meaning national organic oneness and effective life. It came, like manhood, as the fruit of youth. An immature people could not have had it, and the maturity to which it was vouchsafed was the maturity of freedom and self-control. Such government as ours is a form of conduct, and its only stable foundation is character. A particular form of government may no more be adopted than a particular type of

character may be adopted: both institutions and character must be developed by conscious effort and through transmitted aptitudes.

Governments such as ours are founded upon discussion, and government by discussion comes as late in political as scientific thought in intellectual development. It is a habit of state life created by long-established circumstance, and is possible for a nation only in the adult age of its political life. The people who successfully maintain such a government must have gone through a period of political training which shall have prepared them by gradual steps of acquired privilege for assuming the entire control of their affairs. Long and slowly widening experience in local self-direction must have prepared them for national self-direction. They must have acquired adult self-reliance, self-knowledge, and self-control, adult soberness and deliberateness of judgment, adult sagacity in self-government, adult vigilance of thought and quickness of insight. When practised, not by small communities, but by wide nations, democracy, far from being *a*

crude form of government, is possible only amongst peoples of the highest and steadiest political habit. It is the heritage of races purged alike of hasty barbaric passions and of patient servility to rulers, and schooled in temperate common counsel. It is an institution of political noonday, not of the half-light of political dawn. It can never be made to sit easily or safely on first generations, but strengthens through long heredity. It is poison to the infant, but tonic to the man. Monarchies may be made, but democracies must grow.

It is a deeply significant fact, therefore, again and again to be called to mind, that only in the United States, in a few other governments begotten of the English race, and in Switzerland, where old Teutonic habit has had the same persistency as in England, have examples yet been furnished of successful democracy of the modern type. England herself is close upon democracy. Her backwardness in entering upon its full practice is no less instructive as to the conditions prerequisite to democracy than is the forwardness of her offspring. She sent out to all

her colonies which escaped the luckless beginning of being made penal settlements, comparatively small, homogeneous populations of pioneers, with strong instincts of self-government, and with no social materials out of which to build government otherwise than democratically. She herself, meanwhile, retained masses of population never habituated to participation in government, untaught in political principle either by the teachers of the hustings or of the school house. She has had to approach democracy, therefore, by slow and cautious extensions of the franchise to those prepared for it; while her better colonies, born into democracy, have had to receive all comers within their pale. She has been paring down exclusive privileges and levelling classes; the colonies have from the first been asylums of civil equality. They have assimilated new while she has prepared old populations.

Erroneous as it is to represent government as only a commonplace sort of business, little elevated in method above merchandising, and to be regulated by counting-house principles, the favor easily won

for such views among our own people is very significant. It means self-reliance in government. It gives voice to the eminently modern democratic feeling that government is no hidden cult, to be left to a few specially prepared individuals, but a common, every-day concern of life, even if the biggest such concern. It is this self-confidence, in many cases mistaken, no doubt, which is gradually spreading among other peoples, less justified in it than are our own.

One cannot help marvelling that facts so obvious as these should have escaped the perception of some of the sagest thinkers and most thorough historical scholars of our day. Yet so it is. Sir Henry Maine, even, the great interpreter to Englishmen of the historical forces operative in law and social institutions, has utterly failed, in his plausible work on *Popular Government*, to distinguish the democracy, or rather the popular government, of the English race, which is bred by slow circumstance and founded upon habit, from the democracy of other peoples, which is bred by discontent and founded upon revolution. He

has missed that most obvious teaching of events, that successful democracy differs from unsuccessful in being a product of history, — a product of forces not suddenly become operative, but slowly working upon whole peoples for generations together. The level of democracy is the level of every-day habit, the level of common national experiences, and lies far below the elevations of ecstasy to which the revolutionist climbs.

III.

While there can be no doubt about the derivation of our government from habit rather than from doctrine, from English experience rather than from European thought; while it is evident that our institutions were originally but products of a long, unbroken, unperverted constitutional history; and certain that we shall preserve our institutions in their integrity and efficiency only so long as we keep true in our practice to the traditions from which our first strength was derived, there is, nevertheless, little doubt that the forces peculiar to the new civilization

of our day, and not only these, but also the restless forces of European democratic thought and anarchic turbulence brought to us in such alarming volume by immigration, have deeply affected and may deeply modify the forms and habits of our politics.

All vital governments — and by vital governments I mean those which have life in their outlying members as well as life in their heads — all systems in which self-government lives and retains its self-possession, must be governments by neighbors, by peoples not only homogeneous, but characterized within by the existence among their members of a quick sympathy and an easy neighborly knowledge of each other. Not foreseeing steam and electricity or the diffusion of news and knowledge which we have witnessed, our fathers were right in thinking it impossible for the government which they had founded to spread without strain or break over the whole of the continent. Were not California now as near neighbor to the Atlantic States as Massachusetts then was to New York, national self-government on our present scale would as-

suredly hardly be possible, or conceivable even. Modern science, scarcely less than our pliancy and steadiness in political habit, may be said to have created the United States of to-day.

Upon some aspects of this growth it is very pleasant to dwell, and very profitable. It is significant of a strength which it is inspiring to contemplate. The advantages of bigness accompanied by abounding life are many and invaluable. It is impossible among us to hatch in a corner any plot which will affect more than a corner. With life everywhere throughout the continent, it is impossible to seize illicit power over the whole people by seizing any central offices. To hold Washington would be as useless to a usurper as to hold Duluth. Self-government cannot be usurped.

A French writer has said that the autocratic ascendency of Andrew Jackson illustrated anew the long-credited tendency of democracies to give themselves over to one hero. The country is older now than it was when Andrew Jackson delighted in his power, and few can believe that it would again approve or ap-

plaud childish arrogance and ignorant arbitrariness like his; but even in his case, striking and ominous as it was, it must not be overlooked that he was suffered only to strain the Constitution, not to break it. He held his office by orderly election; he exercised its functions within the letter of the law; he could silence not one word of hostile criticism; and, his second term expired, he passed into private life as harmlessly as did James Monroe. A nation that can quietly reabsorb a vast victorious army is no more safely free and healthy than is a nation that could reabsorb such a President as Andrew Jackson, sending him into seclusion at the Hermitage to live without power, and die almost forgotten.

A huge, stalwart body politic like ours, with quick life in every individual town and county, is apt, too, to have the strength of variety of judgment. Thoughts which in one quarter kindle enthusiasm may in another meet coolness or arouse antagonism. Events which are fuel to the passions of one section may be but as a passing wind to another section. No single moment of indiscretion,

surely, can easily betray the whole country at once. There will be entire populations still cool, self-possessed, unaffected. Generous emotions sometimes sweep whole peoples, but, happily, evil passions, sinister views, base purposes, do not and cannot. Sedition cannot surge through the hearts of a wakeful nation as patriotism can. In such organisms poisons diffuse themselves slowly; only healthful life has unbroken course. The sweep of agitations set afoot for purposes unfamiliar or uncongenial to the customary popular thought is broken by a thousand obstacles. It may be easy to reawaken old enthusiasms, but it must be infinitely hard to create new ones, and impossible to surprise a whole people into unpremeditated action.

It is well to give full weight to these great advantages of our big and strenuous and yet familiar way of conducting affairs; but it is imperative at the same time to make very plain the influences which are pointing toward changes in our politics — changes which threaten loss of organic wholeness and soundness. The union of strength with big-

ness depends upon the maintenance of character, and it is just the character of the nation which is being most deeply affected and modified by the enormous immigration which, year after year, pours into the country from Europe. Our own temperate blood, schooled to self-possession and to the measured conduct of self-government, is receiving a constant infusion and yearly experiencing a partial corruption of foreign blood. Our own equable habits have been crossed with the feverish humors of the restless Old World. We are unquestionably facing an ever-increasing difficulty of self-command with ever-deteriorating materials, possibly with degenerating fibre. We have so far succeeded in retaining

"Some sense of duty, something of a faith,
Some reverence for the laws ourselves have made,
Some patient force to change them when we will,
Some civic manhood firm against the crowd;"

But we must reckon our power to continue to do so with a people made up of "minds cast in every mould of race,—

minds inheriting every bias of environment, warped by the diverse histories of a score of different nations, warmed or chilled, closed or expanded, by almost every climate on the globe."

What was true of our early circumstances is not true of our present. We are not now simply carrying out under normal conditions the principles and habits of English constitutional history. Our tasks of construction are not done. We have not simply to conduct, but also to preserve and freshly adjust our government. Europe has sent her habits to us, and she has sent also her political philosophy, a philosophy which has never been purged by the cold bath of practical politics. The communion which we did not have at first with her heated and mistaken ambitions, with her radical, speculative habit in politics, with her readiness to experiment in forms of government, we may possibly have to enter into now that we are receiving her populations. Not only printing and steam and electricity have gotten hold of us to expand our English civilization, but also those general, and yet to us alien, forces

of democracy of which mention has already been made; and these are apt to tell disastrously upon our Saxon habits in government.

IV

It is thus that we are brought to our fourth and last point. We have noted (1) the general forces of democracy which have been sapping old forms of government in all parts of the world; (2) the error of supposing ourselves indebted to those forces for the creation of our government, or in any way connected with them in our origins; and (3) the effect they have nevertheless had upon us as parts of the general influences of the age, as well as by reason of our vast immigration from Europe. What, now, are the new problems which have been prepared for our solution by reason of our growth and of the effects of immigration? They may require as much political capacity for their proper solution as any that confronted the architects of our government.

These problems are chiefly problems of organization and leadership. Were the nation homogeneous, were it composed

simply of later generations of the same stock by which our institutions were planted, few adjustments of the old machinery of our politics would, perhaps, be necessary to meet the exigencies of growth. But every added element of variety, particularly every added element of foreign variety, complicates even the simpler questions of politics. The dangers attending that variety which is heterogeneity in so vast an organism as ours are, of course, the dangers of disintegration—nothing less; and it is unwise to think these dangers remote and merely contingent because they are not as yet very menacing. We are conscious of oneness as a nation, of vitality, of strength, of progress; but are we often conscious of common thought in the concrete things of national policy? Does not our legislation wear the features of a vast conglomerate? Are we conscious of any national leadership? Are we not, rather, dimly aware of being pulled in a score of directions by a score of crossing influences, a multitude of contending forces?

This vast and miscellaneous democracy of ours must be led; its giant faculties

must be schooled and directed. Leadership cannot belong to the multitude; masses of men cannot be self-directed, neither can groups of communities. We speak of the sovereignty of the people, but that sovereignty, we know very well, is of a peculiar sort; quite unlike the sovereignty of a king or of a small, easily concerting group of confident men. It is judicial merely, not creative. It passes judgment or gives sanction, but it cannot direct or suggest. It furnishes standards, not policies. Questions of government are infinitely complex questions, and no multitude can of themselves form clear-cut, comprehensive, consistent conclusions touching them. Yet without such conclusions, without single and prompt purposes, government cannot be carried on. Neither legislation nor administration can be done at the ballot box. The people can only accept the governing act of representatives. But the size of the modern democracy necessitates the exercise of persuasive power by dominant minds in the shaping of popular judgments in a very different way from that in which it was exercised in former times. "It is said by

eminent censors of the press," said Mr. Bright on one occasion in the House of Commons, "that this debate will yield about thirty hours of talk, and will end in no result. I have observed that all great questions in this country require thirty hours of talk many times repeated before they are settled. There is much shower and much sunshine between the sowing of the seed and the reaping of the harvest, but the harvest is generally reaped after all." So it must be in all self-governing nations of to-day. They are not a single audience within sound of an orator's voice, but a thousand audiences. Their actions do not spring from a single thrill of feeling, but from slow conclusions following upon much talk. The talk must gradually percolate through the whole mass. It cannot be sent straight through them so that they are electrified as the pulse is stirred by the call of a trumpet. A score of platforms in every neighborhood must ring with the insistent voice of controversy; and for a few hundreds who hear what is said by the public speakers, many thousands must read of the matter in the newspapers, discuss it interjection-

ally at the breakfast-table, desultorily in the street-cars, laconically on the streets, dogmatically at dinner; all this with a certain advantage, of course. Through so many stages of consideration passion cannot possibly hold out. It gets chilled by over-exposure. It finds the modern popular state organized for giving and hearing counsel in such a way that those who give it must be careful that it is such counsel as will wear well. Those who hear it handle and examine it enough to test its wearing qualities to the utmost. All this, however, when looked at from another point of view, but illustrates an infinite difficulty of achieving energy and organization. There is a certain peril almost of disintegration attending such phenomena.

Every one now knows familiarly enough how we accomplished the wide aggregations of self-government characteristic of the modern time, how we have articulated governments as vast and yet as whole as continents like our own. The instrumentality has been representation, of which the ancient world knew nothing, and lacking which it always lacked national in-

tegration. Because of representation and the railroads to carry representatives to distant capitals, we have been able to rear colossal structures like the government of the United States as easily as the ancients gave political organization to a city; and our great building is as stout as was their little one.

But not until recently have we been able to see the full effects of thus sending men to legislate for us at capitals distant the breadth of a continent. It makes the leaders of our politics, many of them, mere names to our consciousness instead of real persons whom we have seen and heard, and whom we know. We have to accept rumors concerning them, we have to know them through the variously colored accounts of others; we can seldom test our impressions of their sincerity by standing with them face to face. Here certainly the ancient pocket republics had much the advantage of us: in them citizens and leaders were always neighbors; they stood constantly in each other's presence. Every Athenian knew Themistocles's manner, and gait, and address, and felt directly the just influence of Aristides.

No Athenian of a later period needed to be told of the vanities and fopperies of Alcibiades, any more than the elder generation needed to have described to them the personality of Pericles.

Our separation from our leaders is the greater peril, because democratic government more than any other needs organization in order to escape disintegration; and it can have organization only by full knowledge of its leaders and full confidence in them. Just because it is a vast body to be persuaded, it must know its persuaders; in order to be effective, it must always have choice of men who are impersonated policies. Just because none but the finest mental batteries, with pure metals and unadulterated acids, can send a current through so huge and yet so rare a medium as democratic opinion, it is the more necessary to look to the excellence of these instrumentalities. There is no permanent place in democratic leadership except for him who "hath clean hands and a pure heart." If other men come temporarily into power among us, it is because we cut our leadership up into so many small parts, and do not subject

any one man to the purifying influences of centred responsibility. Never before was consistent leadership so necessary; never before was it necessary to concert measures over areas so vast, to adjust laws to so many interests, to make a compact and intelligible unit out of so many fractions, to maintain a central and dominant force where there are so many forces.

It is a noteworthy fact that the admiration for our institutions which has during the past few years so suddenly grown to large proportions among publicists abroad is almost all of it directed to the restraints we have effected upon the action of government. Sir Henry Maine thought our federal Constitution an admirable reservoir, in which the mighty waters of democracy are held at rest, kept back from free destructive course. Lord Rosebery has wondering praise for the security of our Senate against usurpation of its functions by the House of Representatives. Mr. Goldwin Smith supposes the saving act of organization for a democracy to be the drafting and adoption of a written constitution. Thus it is always the static, never the dynamic, forces of our govern-

ment which are praised. The greater part of our foreign admirers find our success to consist in the achievement of stable safeguards against hasty or retrogressive action; we are asked to believe that we have succeeded because we have taken Sir Archibald Alison's advice, and have resisted the infection of revolution by staying quite still.

But, after all, progress is motion, government is action. The waters of democracy are useless in their reservoirs unless they may be used to drive the wheels of policy and administration. Though we be the most law-abiding and law-directed nation in the world, law has not yet attained to such efficacy among us as to frame, or adjust, or administer itself. It may restrain, but it cannot lead us; and I believe that unless we concentrate legislative leadership—leadership, that is, in progressive policy—unless we give leave to our nationality and practice to it by such concentration, we shall sooner or later suffer something like national paralysis in the face of emergencies. We have no one in Congress who stands for the nation. Each man stands but for his

part of the nation; and so management and combination, which may be effected in the dark, are given the place that should be held by centred and responsible leadership, which would of necessity work in the focus of the national gaze.

What is the valuable element in monarchy which causes men constantly to turn to it as to an ideal form of government, could it but be kept pure and wise? It is its cohesion, its readiness and power to act, its abounding loyalty to certain concrete things, to certain visible persons, its concerted organization, its perfect model of progressive order. Democracy abounds with vitality; but how shall it combine with its other elements of life and strength this power of the governments that know their own minds and their own aims? We have not yet reached the age when government may be made impersonal.

The only way in which we can preserve our nationality in its integrity and its old-time originative force in the face of growth and imported change is by concentrating it; by putting leaders forward, vested with abundant authority in the conception and execution of policy. There is plenty

of the old vitality in our national character to tell, if we will but give it leave. Give it leave, and it will the more impress and mould those who come to us from abroad. I believe that we have not made enough of leadership.

> "A people is but the attempt of many
> To rise to the completer life of one;
> And those who live as models for the mass
> Are singly of more value than they all."

We shall not again have a true national life until we compact it by such legislative leadership as other nations have. But once thus compacted and embodied, our nationality is safe. An acute English historical scholar has said that "the Americans of the United States are a nation because they once obeyed a king;" we shall remain a nation only by obeying leaders.

> "Keep but the model safe,
> New men will rise to study it."

V

GOVERNMENT UNDER THE CONSTITUTION

GOVERNMENT UNDER THE CONSTITUTION

It is by no means wholly to our advantage that our constitutional law is contained in definitive written documents. The fact that it is thus formulated and rendered fixed and definite has seriously misled us, it is to be feared, as to the true function and efficacy of constitutional law. That law is not made more valid by being written, but only more explicit; it is not rendered more sacred, but only more definite and secure. Written constitutions are simply more or less successful generalizations of political experience. Their tone of authority does not at all alter the historical realities and imperative practical conditions of government. They determine forms, utter distinct purposes, set the powers of the State in definite hierarchy; but they do not make the forms they originate workable, or the purposes they utter

feasible. All that must depend upon the men who become governors and upon the people over whom they are set in authority. Laws can have no other life than that which is given them by the men who administer and the men who obey them. Constitutional law affords no exception to the rule. The Constitution of the United States, happily, was framed by exceptional men thoroughly schooled in the realities of government. It consists, accordingly, not of principles newly invented, to be put into operation by means of devices originated for the occasion, but of sound pieces of tested experience. It has served its purpose beneficently, not because it was written, but because it has proved itself accordant in every essential part with tried principles of government—principles tested by the race for whose use it was intended, and therefore already embedded in their lives and practices. Its strength will be found, upon analysis, to lie in its definiteness and in its power to restrain rather than in any unusual excellence of its energetic parts. For the right operation of these it has had to depend, like other constitutions, upon the virtue and

discretion of the people and their ministers. "The public powers are carefully defined; the mode in which they are to be exercised is fixed; and the amplest securities are taken that none of the more important constitutional arrangements shall be altered without every guarantee of caution and every opportunity for deliberation. . . . It would seem that, by a wise constitution, democracy may be made nearly as calm as water in a great artificial reservoir." *

We possess, therefore, not a more suitable constitution than other countries, but a constitution which is perfectly definite and which is preserved by very formidable difficulties of amendment against inconsiderate change. The difference between our own case and that of Great Britain upon which we have most reason to congratulate ourselves is that here public opinion has definite *criteria* for its conservatism; whereas in England it has only shifting and uncertain precedent. In both countries there is the same respect for law. But there is not in Eng-

* Sir Henry Maine: Popular Government (Am. ed.), pp. 110, 111.

land the same certainty as to what the law of the constitution is. We have a fundamental law which is written, and which in its main points is read by all alike in a single accepted sense. There is no more quarrel about its main intent than there is in England about the meaning of Magna Charta. Much of the British constitution, on the contrary, has not the support of even a common statute. It may, in respect of many vital parts of it, be interpreted or understood in half a dozen different ways, *and amended by the prevalent understanding.* We are not more free than the English; we are only more secure.

The definiteness of our Constitution, nevertheless, apart from its outline of structural arrangements and of the division of functions among the several departments of the government, is negative rather than affirmative. Its very enumeration of the powers of Congress is but a means of indicating very plainly what Congress can *not* do. It is significant that one of the most important and most highly esteemed of the many legal commentaries on our government should be entitled 'Constitutional Limitations.' In

expounding the restrictions imposed by fundamental law upon state and federal action, Judge Cooley is allowed to have laid bare the most essential parts of our constitutional system. It was a prime necessity in so complex a structure that bounds should be set to authority. The 'may-nots' and the 'shall-nots' of our constitutions, consequently, give them their distinctive form and character. The strength which preserves the system is the strength of self-restraint.

And yet here again it must be understood that mere definiteness of legal provision has no saving efficacy of its own. These distinct lines run between power and power will not of their own virtue maintain themselves. It is not in having such a constitution but in obeying it that our advantage lies. The vitality of such provisions consists wholly in the fact that they receive our acquiescence. They rest upon the legal conscience, upon what Mr. Grote would have called the 'constitutional morality,' of our race. They are efficient because we are above all things law-abiding. The prohibitions of the law do not assert themselves as taskmasters

set over us by some external power. They are of our own devising. We are self-restrained.

This legal conscience manifestly constitutes the only guarantee, for example, of the division of powers between the state and federal governments, that chief arrangement of our constitutional system. The integrity of the powers possessed by the States has from the first depended solely upon the conservatism of the federal courts. State functions have certainly not decayed; but they have been preserved, not by virtue of any forces of self-defence of their own, but because the national government has been vouchsafed the grace of self-restraint. What curtailment their province might suffer has been illustrated in several notable cases in which the Supreme Court of the United States has confirmed to the general government extensive powers of punishing state judicial and executive officers for disobedience to state laws. Although the federal courts have generally held Congress back from aggressions upon the States, they have nevertheless once and again countenanced serious encroach-

ments upon state powers ; and their occasional laxity of principle on such points is sufficiently significant of the fact that there is *no balance* between the state and federal governments, but only the safeguard of a customary 'constitutional morality' on the part of the federal courts. The actual encroachments upon state rights which those courts have permitted, under the pressure of strong political interests at critical periods, were not, however, needed to prove the potential supremacy of the federal government. They only showed how that potential supremacy would on occasion become actual supremacy. There is no guarantee but that of conscience that justice will be accorded a suitor when his adversary is both court and opposing litigant. So strong is the instinct of those who administer our governments to keep within the sanction of the law, that even when the last three amendments to the Constitution were being forced upon the southern states by means which were revolutionary the outward forms of the Constitution were observed. It was none the less obvious, however, with what sovereign impunity the national government

might act in stripping those forms of their genuineness. As there are times of sorrow or of peril which try men's souls and lay bare the inner secrets of their characters, so there are times of revolution which act as fire in burning away all but the basic elements of constitutions. It is then, too, that dormant powers awake which are not afterward readily lulled to sleep again.

Such was certainly the effect of the civil war upon the Constitution of the Union. The implying of powers, once cautious, is now become bold and confident. In the discussions now going forward with reference to federal regulation of great corporations, and with reference to federal aid to education, there are scores of writers and speakers who tacitly assume the power of the federal government to act in such matters, for one that urges a constitutional objection. Constitutional objections, before the war habitual, have, it would seem, permanently lost their prominence.

The whole energy of origination under our system rests with Congress. It stands at the front of all government among us;

it is the single affirmative voice in national policy. First or last, it determines what is to be done. The President, indeed, appoints officers and negotiates treaties, but he does so subject to the 'yes' of the Senate. Congress organizes the executive departments, organizes the army, organizes the navy. It audits, approves, and pays expenses. It conceives and directs all comprehensive policy. All else is negation. The President says 'no' in his vetoes; the Supreme Court says 'no' in its restraining decisions. And it is as much the law of public opinion as the law of the Constitution that restrains the action of Congress.

It is the habit both of English and American writers to speak of the constitution of Great Britain as if it were 'writ in water,' because nothing but the will of Parliament stands between it and revolutionary change. But is there nothing back of the will of Parliament? Parliament dare not go faster than the public thought. There are vast barriers of conservative public opinion to be overrun before a ruinous speed in revolutionary change can be attained. In the last

analysis, our own Constitution has no better safeguard. We have, as I have already pointed out, the salient advantage of knowing just what the standards of our Constitution are. They are formulated in a written code, wherein all men may look and read; whereas many of the designs of the British system are to be sought only in a cloud-land of varying individual readings of affairs. From the constitutional student's point of view, there are, for instance, as many different Houses of Lords as there are writers upon the historical functions of that upper chamber. But the public opinion of Great Britain is no more a juggler of precedents than is the public opinion of this country. Perhaps the absence of a written constitution makes it even less a fancier of logical refinements. The arrangements of the British constitution have, for all their theoretical instability, a very firm and definite standing in the political habit of Englishmen: and the greatest of those arrangements can be done away with only by the extraordinary force of conscious revolution.

It is wholesome to observe how much of

our own institutions rests upon the same basis, upon no other foundations than those that are laid in the opinions of the people. It is within the undoubted constitutional power of Congress, for example, to overwhelm the opposition of the Supreme Court upon any question by increasing the number of justices and refusing to confirm any appointments to the new places which do not promise to change the opinion of the court. Once, at least, it was believed that a plan of this sort had been carried deliberately into effect. But we do not think of such a violation of the spirit of the Constitution as possible, simply because we share and contribute to that public opinion which makes such outrages upon constitutional morality impossible by standing ready to curse them. There is a close analogy between this virtual inviolability of the Supreme Court and the integrity hitherto vouchsafed to the English House of Lords. There may be an indefinite creation of peers at any time that a strong ministry chooses to give the sovereign its imperative advice in favor of such a course. It was, doubtless, fear of the final impres-

sion that would be made upon public opinion by action so extraordinary, as much as the timely yielding of the Lords upon the question at issue, that held the ministry back from such a measure, on one notable occasion. Hitherto that ancient upper chamber has had in this regard the same protection that shields our federal judiciary.

It is not essentially a different case as between Congress and the Executive. Here, too, at the very centre of the Constitution, Congress stands almost supreme, restrained by public opinion rather than by law. What with the covetous admiration of the presidency recently manifested by some alarmed theorists in England, and the renewed prestige lately given that office by the prominence of the question of civil service reform, it is just now particularly difficult to apply political facts to an analysis of the President's power. But a clear conception of his real position is for that very reason all the more desirable. While he is a dominant figure in politics would seem to be the best time to scrutinize and understand him.

It is clearly misleading to use the ascendant influence of the President in effecting the objects of civil service reform as an illustration of the constitutional size and weight of his office. The principal part in making administration pure, business-like, and efficient must always, under any conceivable system of government, be taken by the executive. It was certainly taken by the executive in England thirty years ago; and that much in opposition to the will of Parliament. The prominence of our President in administrative reform furnishes no sufficient ground for attributing a singularity of executive influence to the government of this country.

In estimating the actual powers of the President it is no doubt best to begin, as almost all writers in England and America now habitually begin, with a comparison between the executives of the two kindred countries. Whilst Mr. Bagehot has done more than any other thinker to clear up the facts of English constitutional practice, he has also, there is reason to believe, done something toward obscuring those facts. Everybody, for instance, has

accepted as wholly true his description of the ministry of the Crown as merely an executive committee of the House of Commons; and yet that description is only partially true. An English cabinet represents, not the Commons only, but also the Crown. Indeed, it is itself 'the Crown.' All executive prerogatives are prerogatives which it is within the discretion of the cabinet itself to make free use of. The fact that it is generally the disposition of ministers to defer to the opinion of Parliament in the use of the prerogative, does not make that use the less a privilege strictly beyond the sphere of direct parliamentary control, to be exercised independently of its sanction, even secretly on occasion, when ministers see their way clear to serving the state thereby. "The ministry of the day," says a perspicacious expounder of the English system,* "appears in Parliament, on the one hand, as personating the Crown in the legitimate exercise of its recognized prerogatives; and on the other hand, as the mere agent of Parliament itself, in the

* Mr. Sheldon Amos: Fifty Years of the English Constitution, page 338.

discharge of the executive and administrative functions of government cast upon them by law." Within the province of the prerogative "lie the stirring topics of foreign negotiations, the management of the army and navy, public finance, and, in some important respects, colonial administration." Very recent English history furnishes abundant and striking evidence of the vitality of the prerogative in these fields in the hands of the gentlemen who "personate the Crown" in Parliament. "No subject has been more eagerly discussed of late," declares Mr. Amos (page 187), "than that of the province of Parliament in respect of the making of treaties and the declaration of war. No prerogative of the Crown is more undisputed than that of taking the initiative in all negotiations with foreign governments, conducting them throughout, and finally completing them by the signature and ratification of a treaty. . . . It is a bare fact that during the progress of the British diplomatic movements which terminated in the Treaty of Berlin of 1878, or more properly in the Afghan war of that year,"—including the

secret treaty by which Turkey ceded Cyprus to England, and England assumed the protectorate of Asia Minor,—"Parliament never had an opportunity of expressing its mind on any one of the important and complicated engagements to which the country was being committed, or upon the policy of the war upon the northwest frontier of India. The subjects were, indeed, over and over again discussed in Parliament, but always subsequent to irreparable action having been taken by the government" (page 188). Had Mr. Amos lived to take his narrative of constitutional affairs beyond 1880, he would have had equally significant instances of ministerial initiative to adduce in the cases of Egypt and Burmah.

The unfortunate campaign in the Soudan was the direct outcome of the purchase of the Suez Canal shares by the British government in 1875. The result of that purchase was that "England became pledged in a wholly new and peculiar way to the support of the existing Turkish and Egyptian dominion in Egypt; that large English political in-

terests were rendered subservient to the decisions of local tribunals in a foreign country; and that English diplomatic and political action in Egypt, and indeed in Europe, was trammelled, or at least indirectly influenced, by a narrow commercial interest which could not but weigh, however slightly, upon the apparent purity and simplicity of the motives of the English government." And yet the binding engagements which involved all this were entered into "despite the absence of all assistance from, or consent of, Parliament."* Such exercises of the prerogatives of the Crown receive additional weight from "the almost recognized right of evolving an army of almost any size from the Indian seed-plot, of using reserve forces without communication to Parliament in advance, and of obtaining large votes of credit for prospective military operations of an indefinite character, the nature of which Parliament is allowed only dimly to surmise" (page 392). The latest evidence of the "almost recognized" character of such rights was the war prepa-

* Amos, page 384.

rations made by England against Russia in 1885. If to such powers of committing the country irrevocably to far-reaching foreign policies, of inviting or precipitating war, and of using Indian troops without embarrassment from the trammels of the Mutiny Act, there be added the great discretionary functions involved in the administration of colonial affairs, some measure may be obtained of the power wielded by ministers, not as the mere agents of Parliament, but as personating the Crown. Such is in England the independence of action possible to the executive.

As compared with this, the power of the President is insignificant. Of course, as everybody says, he is more powerful than the sovereign of Great Britain. If relative personal power were the principle of etiquette, Mr. Cleveland would certainly not have to lift his hat to the Queen, because the Queen is not the English executive. The prerogatives of the Crown are still much greater than the prerogatives of the presidency; they are exercised, however, not by the wearer of the crown, but by the ministry of the Crown.

As Sir Henry Maine rightly says, the framers of our Constitution, consciously or unconsciously, made the President's office like the King's office under the English constitution of their time,—the constitution, namely, of George III., who chose his advisers with or without the assent of Parliament. They took care, however, to pare down the model where it seemed out of measure with the exercise of the people's liberty. They allowed the President to choose his ministers freely, as George then seemed to have established his right to do; but they made the confirmation of the Senate a necessary condition to his appointments. They vested in him the right of negotiating treaties with foreign governments; but he was not to sign and ratify treaties until he had obtained the sanction of the Senate. That oversight of executive action which Parliament had not yet had the spirit or the inclination to exert, and which it had forfeited its independence by not exerting, was forever secured to our federal upper chamber by the fundamental law. The conditions of mutual confidence and co-operation between ex-

ecutive and legislature now existing in England had not then been developed, and consequently could not be reproduced in this country. The posture and disposition of mutual wariness which were found existing there were made constitutional here by express written provision. In short, the transitional relations of the Crown and Parliament of that day were crystallized in our Constitution, such guarantees of executive good faith and legislative participation in the weightier determinations of government as were lacking in the model being sedulously added in the copy.

The really subordinate position of the presidency is hidden from view partly by that dignity which is imparted to the office by its conspicuous place at the front of a great government, and its security and definiteness of tenure; partly by the independence apparently secured to it by its erection into an entirely distinct and separate 'branch' of the government; and partly by those circumstances of our history which have thrust our Presidents forward, during one or two notable periods, as real originators of policy and leaders in

affairs. The President has never been powerful, however, except at such times as he has had Congress at his back. While the new government was a-making —and principally because it was a-making — Washington and his secretaries were looked to by Congress for guidance; and during the presidencies of several of Washington's immediate successors the continued prominence of questions of foreign policy and of financial management kept the officers of the government in a position of semi-leadership. Jackson was masterful with or without right. He entered upon his presidency as he entered upon his campaign in Florida, without asking too curiously for constitutional warrant for what he was to undertake. In the settlement of the southern question Congress went for a time on all-fours with the President. He was powerful because Congress was acquiescent.

But such cases prove rather the usefulness than the strength of the presidency. Congress has, at several very grave crises in national affairs, been seasonably supplied with an energetic leader or agent in the person of the President. At other

times, when Congress was in earnest in pushing views not shared by the President, our executives have either been overwhelmed, as Johnson was, or have had to decline upon much humbler services. Their negotiations with foreign governments are as likely to be disapproved as approved; their budgets are cut down like a younger son's portion; their appointments are censured and their administrations criticised without chance for a counter-hearing. They create nothing. Their veto is neither revisory nor corrective. It is merely obstructive. It is, as I have said, a simple blunt negation, oftentimes necessarily spoken without discrimination against a good bill because of a single bad clause in it. In such a contest between origination and negation origination must always win, or government must stand still.

In England the veto of the Crown has not passed out of use, as is commonly said. It has simply changed its form. It does not exist as an imperative, obstructive 'No,' uttered by the sovereign. It has passed over into the privilege of the ministers to throw their party weight,

reinforced by their power to dissolve Parliament, against measures of which they disapprove. It is a much-tempered instrument, but for that reason all the more flexible and useful. The old, blunt, antagonistic veto is no longer needed. It is needed here, however, to preserve the presidency from the insignificance of merely administrative functions. Since executive and legislature cannot come into relations of mutual confidence and cooperation, the former must be put in a position to maintain a creditable competition for consideration and dignity.

A clear-headed, methodical, unimaginative President like Mr. Cleveland unaffectedly recognizes the fact that all creating, originating power rests with Congress, and that he can do no more than direct the details of such projects as he finds commended by its legislation. The suggestions of his message he acknowledges to be merely suggestions, which must depend upon public opinion for their weight. If Congress does not regard them, it must reckon with the people, not with him. It is his duty to tell Congress what he thinks concerning the

pending questions of the day; it is not his duty to assume any responsibility for the effect produced on Congressmen.

The English have transformed their Crown into a Ministry, and in doing so have recognized both the supremacy of Parliament and the rôle of leadership in legislation properly belonging to a responsible executive. The result has been that they have kept a strong executive without abating either the power or the independence of the representative chamber in respect of its legislative function. We, on the contrary, have left our executive separate, as the Constitution made it; chiefly, it is to be suspected, because the explicit and confident gifts of function contained in that positive instrument have blinded us by their very positiveness to the real subordination of the executive resulting from such a separation. We have supposed that our President was great because his powers were specific, and that our Congress was not supreme because it could not lay its hands directly upon his office and turn him out. In fact, neither the dignity and power of the executive nor the importance of Congress is served

by the arrangement. Being held off from authoritative suggestion in legislation, the President becomes, under ordinary circumstances, merely a ministerial officer; whilst Congress, on its part, deprived of such leadership, becomes a legislative mass meeting instead of a responsible co-operating member of a well-organized government. Being under the spell of the Constitution, we have been unable to see the facts which written documents can neither establish nor change.

Singularly enough, there is sharp opposition to the introduction into Congress of any such leadership on the part of the executive as the Ministers of the Crown enjoy in Parliament, on the ground of the increase of power which would accrue as a result to the legislature. It is said that such a change would, by centring party and personal responsibility in Congress, give too great a prominence to legislation; would make Congress the object of too excited an interest on the part of the people. Legislation in Parliament, instead of being piecemeal, tessellated work, such as is made

up in Congress of the various fragments contributed by the standing committees, is, under each ministry, a continuous, consistent, coherent whole; and, instead of bearing the sanction of both national parties, is the peculiar policy of only one of them. It is thought that, if such coherence of plan, definiteness and continuity of aim, and sanction of party were to be given the work of Congress, the resulting concentration of popular interest and opinion would carry Congress over all the barriers of the Constitution to an undisputed throne of illimitable power. In short, the potential supremacy of Congress is thought to be kept within bounds, not by the constitutional power of the executive and the judiciary, its co-ordinate branches, but by the intrinsic dulness and confusion of its own proceedings. It cannot make itself interesting enough to be great.

But this is a two-edged argument, which one must needs handle with great caution. It is evidently calculated to destroy every argument constructed on the assumption that it is written laws which are effective to the salvation of our con-

stitutional arrangements; for it is itself constructed on the opposite assumption, that it is the state of popular interest in the nation which balances the forces of the government. It would, too, serve with equal efficacy against any scheme whatever for reforming the present methods of legislation in Congress, with which almost everybody is dissatisfied. Any reform which should tend to give to national legislation that uniform, open, intelligent, and responsible character which it now lacks, would also create that popular interest in the proceedings of Congress which, it is said, would unhinge the Constitution. Democracy is so delicate a form of government that it must break down if given too great facility or efficacy of operation. No one body of men must be suffered to utter the voice of the people, lest that voice become, through it, directly supreme.

The fact of the overtopping power of Congress, however, remains. The houses create all governmental policy, with that wide latitude of 'political discretion' in the choice of means which the Supreme Court unstintingly accords them. Con-

gress has often come into conflict with the Supreme Court by attempting to extend the province of the federal government as against the States; but it has seldom, I believe, been brought effectually to book for any alleged exercise of powers as against its directly competing branch, the executive. Having by constitutional grant the last word as to foreign relations, the control of the finances, and even the oversight of executive appointments, Congress exercises what powers of direction and management it pleases, as fulfilling, not as straining, the Constitution. Government lives in the origination, not in the defeat, of measures of government. The President obstructs by means of his 'No;' the houses govern by means of their 'Yes.' He has killed some policies that are dead; they have given birth to all policies that are alive.

But the measures born in Congress have no common lineage. They have not even a traceable kinship. They are fathered by a score or two of unrelated standing committees: and Congress stands godfather to them all, without discrimination. Congress, in effect, parcels out its great pow-

ers amongst groups of its members, and so confuses its plans and obscures all responsibility. It is a leading complaint of Sir Henry Maine's against the system in England, which is just under his nose, that it confers the preliminary shaping and the initiation of all legislation upon the cabinet, a body which deliberates and resolves in strict secrecy, — and so reminds him, remotely enough, of the Spartan Ephors and the Venetian Council of Ten. He commends, by contrast, that constitution (our own, which he sees at a great distance) which reserves to the legislature itself the origination and drafting of its measures. It is hard for us, who have this commended constitution under our noses, to perceive wherein we have the advantage. British legislation is for the most part originated and shaped by a single committee, acting in secret, whose proposals, when produced, are eagerly debated and freely judged by the sovereign legislative body. Our legislation is framed and initiated by a great many committees, deliberating in secret, whose proposals are seldom debated and only perfunctorily judged by the sovereign legislative body. It is

impossible to mistake the position and privileges of the British cabinet, so great and conspicuous and much discussed are they. They simplify the whole British system for men's comprehension by merely standing at the centre of it. But our own system is simple only in appearance. It is easy to see that our legislature and executive are separate, and that the legislature matures its own measures by means of committees of its own members. But it may readily escape superficial observation that our legislature, instead of being served, is ruled by its committees; that those committees prepare their measures in private; that their number renders their privacy a secure secrecy, by making them too many to be watched, and individually too insignificant to be worth watching; that their division of prerogatives results in a loss, through diffusion, of all actual responsibility; and that their co-ordination leads to such a competition among them for the attention of their respective houses that legislation is rushed, when it is not paralyzed.

It is thus that, whilst all real power is in the hands of Congress, that power is

often thrown out of gear and its exercise brought almost to a standstill. The competition of the committees is the clog. Their reports stand in the way of each other, and so the complaint is warranted that Congress can get nothing done. Interests which press for attention in the nation are reported upon by the appropriate committee, perhaps, but the report gets pushed to the wall. Or they are not reported upon. They are brought to the notice of Congress, but they go to a committee which is unfavorable. The progress of legislation depends both upon the fortunes of competing reports and upon the opinions held by particular committees.

The same system of committee government prevails in our state legislatures, and has led to some notable results, which haverecently been pointed out in a pamphlet entitled *American Constitutions*, contributed to the Johns Hopkins series of Studies in History and Political Science by Mr. Horace Davis. In the state legislatures, as in Congress, the origination and control of legislation by standing committees has led to haphazard, inco-

herent, irresponsible law-making, and to a universal difficulty about getting anything done. The result has been that state legislatures have been falling into disrepute in all quarters. They are despised and mistrusted, and many States have revised their constitutions in order to curtail legislative powers and limit the number and length of legislative sessions. There is in some States an apparent inclination to allow legislators barely time enough to provide moneys for the maintenance of the governments. In some instances necessary powers have been transferred from the legislatures to the courts; in others to the governors. The intent of all such changes is manifest. It is thought safer to entrust power to a law court, performing definite functions under clear laws and in accordance with strict judicial standards, or to a single conspicuous magistrate, who can be watched and cannot escape responsibility for his official acts, than to entrust it to a numerous body which burrows toward its ends in committee-rooms, getting its light through lobbies; and which has a thousand devices for juggling away responsibility,

as well as scores of antagonisms wherewith to paralyze itself.

Like fear and distrus have often been felt and expressed of late years concerning Congress, for like reasons. But so far no attempt has been made to restrict either the powers or the time of Congress. Amendments to the Constitution are difficult almost to the point of impossibility, and the few definite schemes nowadays put forward for a revision of the Constitution involve extensions rather than limitations of the powers of Congress. The fact is that, though often quite as exasperating to sober public opinion as any state legislature, Congress is neither so much distrusted nor so deserving of distrust. Its high place and vast sphere in the government of the nation cause its members to be more carefully chosen, and its proceedings to be more closely watched, and frequently controlled by criticism. The whole country has its eyes on Congress, and Congress is aware of the fact. It has both the will and the incentive to be judicious and patriotic. Newspaper editors have constantly to be saying to their readers, 'Look what

our state legislators are doing;' they seldom have to urge, 'Look wha' Congress is doing.' It cannot, indeed, be watched easily, or to much advantage. It requires a distinct effort to watch it. It has no dramatic contests of party leaders to attract notice. Its methods are so much after the fashion of the game of hide-and-seek that the eye of the ordinary man is quite baffled in trying to understand or follow them, if he try only at leisure moments. But, at the same time, the interests handled by Congress are so vast that at least the newspapers and the business men, if no others, must watch its legislation as best they may. However hard it may be to observe, it is too influential in great affairs to make it safe for the country to give over trying to observe it.

But though Congress may always be watched, and so in a measure controlled, despite its clandestine and confusing methods, those methods must tend to increase the distrust with which Congress is widely regarded; and distrust cannot but enervate, belittle, and corrupt this will-centre of the Constitution. The question is not merely, How shall the

methods of Congress be clarified and its ways made purposeful and responsible? There is this greater question at stake: How shall the essential arrangements of the Constitution be preserved? Congress is the purposing, designing, aggressive power of the national government. Disturbing and demoralizing influences in the organism, if there be any, come out from its restless energies. Damaging encroachments upon ground forbidden to the federal government generally originate in measures of its planning. So long as it continues to be governed by unrelated standing committees, and to take its resolves in accordance with no clear plan, no single, definite purpose, so long as what it does continues to be neither evident nor interesting, so long must all its exertions of power be invidious; so long must its competition with the executive or the judiciary seem merely jealous and always underhand; so long must it remain virtually impossible to control it through public opinion. As well ask the stranger in the gallery of the New York Stock Exchange to judge of the proceedings on the floor. As well ask a

man who has not time to read all the newspapers in the Union to judge of passing sentiment in all parts of the country. Congress in its composition is the country in miniature. It realizes Hobbes's definition of liberty as political power divided into small fragments. The standing committees typify the individuals of the nation. Congress is better fitted for counsel than the voters simply because its members are less than four hundred instead of more than ten millions.

It has been impossible to carry out the programme of the Constitution; and, without careful reform, the national legislature will even more dangerously approach the perilous model of a mass meeting. There are several ways in which Congress can be so integrated as to impart to its proceedings system and party responsibility. That may be done by entrusting the preparation and initiation of legislation to a single committee in each house, composed of the leading men of the majority in that house. Such a change would not necessarily affect the present precedents as to the relations between the executive and the legislature. They

might still stand stiffly apart. Congress would be integrated and invigorated, however, though the whole system of the government would not be. To integrate that, some common meeting-ground of public consultation must be provided for the executive and the houses. That can be accomplished only by the admission to Congress, in whatever capacity,—whether simply to answer proper questions and to engage in debate, or with the full privileges of membership,—of official representatives of the executive who understand the administration and are interested and able to defend it. Let the tenure of ministers have what disconnection from legislative responsibility may seem necessary to the preservation of the equality of House and Senate, and the separation of administration from legislation; light would at least be thrown upon administration; it would be given the same advantages of public suggestion and unhampered self-defence that Congress, its competitor, has; and Congress would be constrained to apply system and party responsibility to its proceedings.

The establishment in the United States

of what is known as 'ministerial responsibility' would unquestionably involve some important changes in our constitutional system. I am strongly of the opinion that such changes would not be too great a price to pay for the advantages secured us by such a government. Ministerial responsibility supplies the only conditions which have yet proved efficacious, in the political experience of the world, for vesting recognized leadership in men chosen for their abilities by a natural selection of debate in a sovereign assembly of whose contests the whole country is witness. Such survival of the ablest in debate seems the only process available for selecting leaders under a popular government. The mere fact that such a contest proceeds with such a result is the strongest possible incentive to men of first-rate powers to enter legislative service; and popular governments, more than any other governments, need leaders so placed that, by direct contact with both the legislative and the executive departments of the government, they shall see the problems of government at first hand; and so trained that they shall

at the same time be, not mere administrators, but also men of tact and eloquence, fitted to persuade masses of men and to draw about themselves a loyal following.

If we borrowed ministerial responsibility from England, we should, too, unquestionably enjoy an infinite advantage over the English in the use of it. We should sacrifice by its adoption none of that great benefit and security which our federal system derives from a clear enumeration of powers and an inflexible difficulty of amendment. If anything would be definite under cabinet government, responsibility would be definite; and, unless I am totally mistaken in my estimate of the legal conscience of the people of this country,—which seems to me to be the heart of our whole system,—definite responsibility will establish rather than shake those arrangements of our Constitution which are really our own, and which our national pride properly attaches, namely, the distinct division of powers between the state and federal governments, the slow and solemn formalities of constitutional change, and the

interpretative functions of the federal courts. If we are really attached to these principles, the concentration of responsibility in government will doubly insure their preservation. If we are not, they are in danger of destruction in any case.

But we cannot have ministerial responsibility in its fulness under the Constitution as it stands. The most that we can have is distinct legislative responsibility, with or without any connection of co-operation or of mutual confidence between the executive and Congress. To have so much would be an immense gain. Changes made to this end would leave the federal system still an unwieldy mechanism of counteracting forces, still without unity or flexibility; but we should at least have made the very great advance of fastening upon Congress an even more positive form of accountability than now rests upon the President and the courts. Questions of vast importance and infinite delicacy have constantly to be dealt with by Congress; and there is an evident tendency to widen the range of those questions. The grave social and economic problems now thrusting themselves forward, as the result of the

tremendous growth and concentration of our population, and the consequent sharp competition for the means of livelihood, indicate that our system is already aging, and that any clumsiness, looseness, or irresponsibility in governmental action must prove a source of grave and increasing peril. There are already commercial heats and political distempers in our body politic which warn of an early necessity for carefully prescribed physic. Under such circumstances, some measure of legislative reform is clearly indispensable. We cannot afford to put up any longer with such legislation as we may happen upon. We must look and plan ahead. We must have legislation which has been definitely forecast in party programmes and explicitly sanctioned by the public voice. Instead of the present arrangements for compromise, piecemeal legislation, we must have coherent plans from recognized party leaders, and means for holding those leaders to a faithful execution of their plans in clear-cut Acts of Congress.

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