

ALEXIS DE TOCQUEVILLE

AMERICAN INSTITUTIONS
AND THEIR INFLUENCE

Alexis de Tocqueville
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Alexis de Tocqueville American Institutions and Their Influence

ADVERTISEMENT

The American publishers of M. De Tocqueville's "Democracy in America," have been frequently solicited to furnish the work in a form adapted to seminaries of learning, and at a price which would secure its more general circulation, and enable trustees of School District Libraries, and other libraries, to place it among their collections. Desirous to attain these objects, they have consulted several gentlemen, in whose judgment they confided, and particularly the editor of the American editions, to ascertain whether the work was capable of abridgment or condensation, so as to bring the expense of its publication within the necessary limits. They are advised that the nature of the work renders it impossible to condense it by omitting any remarks or illustrations of the author upon any subject discussed by him, even if common justice to him did not forbid any such attempt; and that the only mode of reducing its bulk, is to exclude wholly such subjects as are deemed not to be essential.

It will be recollected that the first volume was originally

published separately, and was complete in itself. It treated of the influence of democracy upon the political institutions of the United States, and exhibited views of the nature of our government, and of their complicated machinery, so new, so striking, and so just, as to excite the admiration and even the wonder of our countrymen. It was universally admitted to be the best, if not the first systematic and philosophic view of the great principles of our constitutions which has been presented to the world. As a treatise upon the spirit of our governments, it was full and finished, and was deemed worthy of being introduced as a text-book in some of our Seminaries of Learning. The publication of the first volume alone would therefore seem to be sufficient to accomplish in the main the objects of the publishers above stated.

And upon a careful re-examination of the second volume, this impression is confirmed. It is entirely independent of the first volume, and is in no way essential to a full understanding of the principles and views contained in that volume. It discusses the effects of the democratic principle upon the tastes, feelings, habits, and manners of the Americans; and although deeply interesting and valuable, yet the observations of the author on these subjects are better calculated for foreign countries than for our own citizens. As he wrote for Europe they were necessary to his plan. They follow naturally and properly the profound views which had already been presented, and which they carry out and illustrate. But they furnish no new developments of those views,

nor any facts that would be new to us.

The publishers were therefore advised that the printing of the first volume complete and entire, was the only mode of attaining the object they had in view. They have accordingly determined to adopt that course, intending, if the public sentiment should require it, hereafter to print the second volume in the same style, so that both may be had at the same moderate price.

A few notes, in addition to those contained in the former editions, have been made by the American editor, which upon a reperusal of the volume seemed useful if not necessary: and some statistical results of the census of 1840 have been added, in connection with similar results given by the author from returns previous to that year.

PREFACE TO THE AMERICAN EDITION

The following work of M. DE TOCQUEVILLE has attracted great attention throughout Europe, where it is universally regarded as a sound, philosophical, impartial, and remarkably clear and distinct view of our political institutions, and of our manners, opinions, and habits, as influencing or influenced by those institutions. Writers, reviewers, and statesmen of all parties, have united in the highest commendations of its ability and integrity. The people, described by a work of such a character, should not be the only one in Christendom unacquainted with its contents. At least, so thought many of our most distinguished men, who have urged the publishers of this edition to reprint the work, and present it to the American public. They have done so in the hope of promoting among their countrymen a more thorough knowledge of their frames of government, and a more just appreciation of the great principles on which they are founded.

But it seemed to them that a reprint in America of the views of an author so well entitled to regard and confidence, without any correction of the few errors or mistakes that might be found, would be in effect to give authenticity to the whole work, and that foreign readers, especially, would consider silence, under

such circumstances, as strong evidence of the accuracy of its statements. The preface to the English edition, too, was not adapted to this country, having been written, as it would seem, in reference to the political questions which agitate Great Britain. The publishers, therefore, applied to the writer of this, to furnish them with a short preface, and such notes upon the text as might appear necessary to correct any erroneous impressions. Having had the honor of a personal acquaintance with M. DE TOCQUEVILLE while he was in this country; having discussed with him many of the topics treated of in this book; having entered deeply into the feelings and sentiments which guided and impelled him in his task, and having formed a high admiration of his character and of this production, the writer felt under some obligation to aid in procuring for one whom he ventures to call his friend, a hearing from those who were the subjects of his observations. These circumstances furnish to his own mind an apology for undertaking what no one seemed willing to attempt, notwithstanding his want of practice in literary composition, and notwithstanding the impediments of professional avocations, constantly recurring, and interrupting that strict and continued examination of the work, which became necessary, as well to detect any errors of the author, as any misunderstanding or misrepresentation of his meaning by his translator. If the same circumstances will atone in the least for the imperfections of what the editor has contributed to this edition, and will serve to mitigate the severity of judgment upon those contributions, it is

all he can hope or ask.

The NOTES are confined, with very few exceptions, to the correction of what appeared to be misapprehensions of the author in regard to some matters of fact, or some principles of law, and to explaining his meaning where the translator had misconceived it. For the latter purpose the original was consulted; and it affords great pleasure to bear witness to the general fidelity with which Mr. REEVE has transferred the author's ideas from French into English. He has not been a literal translator, and this has been the cause of the very few errors which have been discovered: but he has been more and better: he has caught the spirit of M. DE TOCQUEVILLE, has understood the sentiment he meant to express, and has clothed it in the language which M. DE TOCQUEVILLE would have himself used, had he possessed equal facility in writing the English language.

Being confined to the objects before mentioned, the reader will not find any comments on the theoretical views of our author. He has discussed many subjects on which very different opinions are entertained in the United States; but with an ability, a candor, and an evident devotion to the cause of truth, which will commend his views to those who most radically dissent from them. Indeed, readers of the most discordant opinions will find that he frequently agrees with both sides, and as frequently differs from them. As an instance, his remarks on slavery will not be found to coincide throughout with the opinions either of

abolitionists or of slaveholders: but they will be found to present a masterly view of a most perplexing and interesting subject, which seems to cover the whole ground, and to lead to the melancholy conclusion of the utter impotency of human effort to eradicate this acknowledged evil. But on this, and on the various topics of the deepest interest which are discussed in this work, it was thought that the American readers would be fully competent to form their own opinions, and to detect any errors of the author, if such there are, without any attempt of the present editor to enlighten them. At all events, it is to be hoped that the citizens of the United States will patiently read, and candidly consider, the views of this accomplished foreigner, however hostile they may be to their own preconceived opinions or prejudices. He says: "There are certain truths which Americans can only learn from strangers, or from experience." Let us, then, at least listen to one who admires us and our institutions, and whose complaints, when he makes any, are, that we have not perfected our own glorious plans, and that there are some things yet to be amended. We shall thus furnish a practical proof, that public opinion in this country is not so intolerant as the author may be understood to represent it. However mistaken he may be, his manly appeal to our understandings and to our consciences, should at least be heard. "If ever," he says, "these lines are read in America, I am well assured of two things: in the first place, that all who peruse them will raise their voice to condemn me; and, in the second place, that very many of them will acquit me at the bottom of

their consciences." He is writing on that very sore subject, the tyranny of public opinion in the United States.

Fully to comprehend the scope of the present work, the author's motive and object in preparing it should be distinctly kept in view. He has written, not for America, but for France. "It was not, then, merely to satisfy a legitimate curiosity," he says, "that I have examined America: my wish has been to find instruction, by which we might ourselves profit."—"I sought the image of democracy itself, with its inclinations, its character, its prejudices, and its passions, in order to learn what we have to hope or fear from its progress." He thinks that the principle of democracy has sprung into new life throughout Europe, and particularly in France, and that it is advancing: with a firm and steady march to the control of all civilized governments. In his own country, he had seen a recent attempt to repress its energies within due bounds, and to prevent the consequences of its excesses. And it seems to be a main object with him, to ascertain whether these bounds can be relied upon; whether the dikes and embankments of human contrivance can keep within any appointed channel this mighty and majestic stream. Giving the fullest confidence to his declaration, that his book "is written to favor no particular views and with no design of serving or attacking any party," it is yet evident that his mind has been very open to receive impressions unfavorable to the admission into France of the unbounded and unlimited democracy which reigns in these United States. A knowledge of this inclination

of his mind will necessarily induce some caution in his readers, while perusing those parts of the work which treat of the effects of our democracy upon the stability of our government and its administration. While the views of the author, respecting the application of the democratic principle, in the extent that it exists with us, to the institutions of France, or to any of the European nations, are of the utmost importance to the people and statesmen of those countries, they are scarcely less entitled to the attention of Americans. He has exhibited, with admirable skill, the causes and circumstances which prepared our forefathers, gradually, for the enjoyment of free institutions, and which enable them to sustain, without abusing, the utmost liberty that was ever enjoyed by any people. In tracing these causes, in examining how far they continue to influence our conduct, manners, and opinions, and in searching for the means of preventing their decay or destruction, the intelligent American reader will find no better guide than M. DE TOCQUEVILLE.

Fresh from the scenes of the "three days" revolution in France, the author came among us to observe, carefully and critically, the operation of the new principle on which the happiness of his country, and, as he seems to believe, the destinies of the civilized world, depend. Filled with the love of liberty, but remembering the atrocities which, in its name, had been committed under former dynasties at home, he sought to discover the means by which it was regulated in America, and reconciled with social order. By his laborious investigations, and minute observations

of the history of the settlement of the country, and of its progress through the colonial state to independence, he found the object of his inquiry in the manners, habits, and opinions, of a people who had been gradually prepared, by a long course of peculiar circumstances, and by their local position, for self-government; and he has explained, with a pencil of light, the mystery that has baffled Europeans and perplexed Americans. He exhibits us, in our present condition, a new, and to Europeans, a strange people. His views of our political institutions are more general, comprehensive, and philosophic than have been presented by any writer, domestic or foreign. He has traced them from their source, democracy—the power of the people—and has steadily pursued this foundation-principle in all its forms and modifications: in the frame of our governments, in their administration by the different executives, in our legislation, in the arrangement of our judiciary, in our manners, in religion, in the freedom and licentiousness of the press, in the influence of public opinion, and in various subtle recesses, where its existence was scarcely suspected. In all these, he analyzes and dissects the tendencies of democracy; heartily applauds where he can, and faithfully and independently gives warning of dangers that he foresees. No one can read the result of his observations without better and clearer perceptions of the structure of our governments, of the great pillars on which they rest, and of the dangers to which they are exposed: nor without a more profound and more intelligent admiration of the harmony and

beauty of their formation, and of the safeguards provided for preserving and transmitting them to a distant posterity. The more that general and indefinite notions of our own liberty, greatness, happiness, &c., are made to give place to precise and accurate knowledge of the true merits of our institutions, the peculiar objects they are calculated to attain or promote, and the means provided for that purpose, the better will every citizen be enabled to discharge his great political duty of guarding those means against the approach of corruption, and of sustaining them against the violence of party commotions. No foreigner has ever exhibited such a deep, clear, and correct insight of the machinery of our complicated systems of federal and state governments. The most intelligent Europeans are confounded with our *imperium in imperio*; and their constant wonder is, that these systems are not continually jostling each other. M. DE TOCQUEVILLE has clearly perceived, and traced correctly and distinctly, the orbits in which they move, and has described, or rather defined, our federal government, with an accurate precision, unsurpassed even by an American pen. There is no citizen of this country who will not derive instruction from our author's account of our national government, or, at least, who will not find his own ideas systematised, and rendered more fixed and precise, by the perusal of that account.

Among other subjects discussed by the author, that of the *political influence* of the institution of trial by jury, is one of the most curious and interesting. He has certainly presented it in a

light entirely new, and as important as it is new. It may be that he has exaggerated its influence as "a gratuitous public school;" but if he has, the error will be readily forgiven.

His views of religion, as connected with patriotism, in other words, with the democratic principle, which he steadily keeps in view, are conceived in the noblest spirit of philanthropy, and cannot fail to confirm the principles already so thoroughly and universally entertained by the American people. And no one can read his observations on the union of "church and state," without a feeling of deep gratitude to the founders of our government, for saving us from such a prolific source of evil.

These allusions to topics that have interested the writer, are not intended as an enumeration of the various subjects which will arrest the attention of the American reader. They have been mentioned rather with a view of exciting an appetite for the whole feast, than as exhibiting the choice dainties which cover the board.

It remains only to observe, that in this edition the constitutions of the United States and of the state of New York, which had been published at large in the original and in the English edition, have been omitted, as they are documents to which every American reader has access. The map which the author annexed to his work, and which has been hitherto omitted, is now for the first time inserted in the American edition, to which has been added the census of 1840.

INTRODUCTION

Among the novel objects that attracted my attention during my stay in the United States, nothing struck me more forcibly than the general equality of conditions. I readily discovered the prodigious influence which this primary fact exercises on the whole course of society, by giving a certain direction to public opinion, and a certain tenor to the laws; by imparting new maxims to the governing powers, and peculiar habits to the governed.

I speedily perceived that the influence of this fact extends far beyond the political character and the laws of the country, and that it has no less empire over civil society than over the government; it creates opinions, engenders sentiments, the ordinary practices of life, and modifies whatever it does not produce.

The more I advanced in the study of American society, the more I perceived that the equality of conditions is the fundamental fact from which all others seem to be derived, and the central point at which all my observations constantly terminated.

I then turned my thoughts to our own hemisphere, where I imagined that I discerned something analogous to the spectacle which the New World presented to me. I observed that the equality of conditions is daily advancing towards those extreme

limits which it seems to have reached in the United States; and that the democracy which governs the American communities, appears to be rapidly rising into power in Europe.

I hence conceived the idea of the book which is now before the reader.

It is evident to all alike that a great democratic revolution is going on among us; but there are two opinions as to its nature and consequences. To some it appears to be a novel accident, which as such may still be checked; to others it seems irresistible, because it is the most uniform, the most ancient, and the most permanent tendency which is to be found in history.

Let us recollect the situation of France seven hundred years ago, when the territory was divided among a small number of families, who were the owners of the soil and the rulers of the inhabitants; the right of governing descended with the family inheritance from generation to generation; force was the only means by which man could act on man; and landed property was the sole source of power.

Soon, however, the political power of the clergy was founded, and began to exert itself; the clergy opened its ranks to all classes, to the poor and the rich, the villain and the lord; equality penetrated into the government through the church, and the being who, as a serf, must have vegetated in perpetual bondage, took his place as a priest in the midst of nobles, and not unfrequently above the heads of kings.

The different relations of men became more complicated and

more numerous, as society gradually became more stable and more civilized. Thence the want of civil laws was felt; and the order of legal functionaries soon rose from the obscurity of the tribunals and their dusty chambers, to appear at the court of the monarch, by the side of the feudal barons in their ermine and their mail.

While the kings were ruining themselves by their great enterprises, and the nobles exhausting their resources by private wars, the lower orders were enriching themselves by commerce. The influence of money began to be perceptible in state affairs. The transactions of business opened a new road to power, and the financier rose to a station of political influence in which he was at once flattered and despised.

Gradually the spread of mental acquirements, and the increasing taste for literature and art, opened chances of success to talent; science became the means of government, intelligence led to social power, and the man of letters took a part in the affairs of the state.

The value attached to the privileges of birth, decreased in the exact proportion in which new paths were struck out to advancement. In the eleventh century nobility was beyond all price; in the thirteenth it might be purchased; it was conferred for the first time in 1270; and equality was thus introduced into the government by the aristocracy itself.

In the course of these seven hundred years, it sometimes happened that, in order to resist the authority of the crown, or to

diminish the power of their rivals, the nobles granted a certain share of political rights to the people. Or, more frequently the king permitted the lower orders to enjoy a degree of power, with the intention of repressing the aristocracy.

In France the kings have always been the most active and the most constant of levellers. When they were strong and ambitious, they spared no pains to raise the people to the level of the nobles; when they were temperate or weak, they allowed the people to rise above themselves. Some assisted the democracy by their talents, others by their vices. Louis XI. and Louis XIV. reduced every rank beneath the throne to the same subjection; Louis XV. descended, himself and all his court, into the dust.

As soon as land was held on any other than a feudal tenure, and personal property began in its turn to confer influence and power, every improvement which was introduced in commerce or manufacture, was a fresh element of the equality of conditions. Henceforward every new discovery, every new want which it engendered, and every new desire which craved satisfaction, was a step toward the universal level. The taste for luxury, the love of war, the sway of fashion, the most superficial, as well as the deepest passions of the human heart, co-operated to enrich the poor and to impoverish the rich.

From the time when the exercise of the intellect became the source of strength and of wealth, it is impossible not to consider every addition to science, every fresh truth, and every new idea, as a germe of power placed within the reach of the

people. Poetry, eloquence, and memory, the grace of wit, the glow of imagination, the depth of thought, and all the gifts which are bestowed by Providence with an equal hand, turned to the advantage of the democracy; and even when they were in the possession of its adversaries, they still served its cause by throwing into relief the natural greatness of man; its conquests spread, therefore, with those of civilisation and knowledge; and literature became an arsenal, where the poorest and weakest could always find weapons to their hand.

In perusing the pages of our history, we shall scarcely meet with a single great event, in the lapse of seven hundred years, which has not turned to the advantage of equality.

The crusades and the wars of the English decimated the nobles, and divided their possessions; the erection of communes introduced an element of democratic liberty into the bosom of feudal monarchy; the invention of firearms equalized the villain and the noble on the field of battle; printing opened the same resources to the minds of all classes; the post was organized so as to bring the same information to the door of the poor man's cottage and to the gate of the palace; and protestantism proclaimed that all men are alike able to find the road to heaven. The discovery of America offered a thousand new paths to fortune, and placed riches and power within the reach of the adventurous and the obscure.

If we examine what has happened in France at intervals of fifty years, beginning with the eleventh century, we shall

invariably perceive that a twofold revolution has taken place in the state of society. The noble has gone down on the social ladder, and the *roturier* has gone up; the one descends as the other rises. Every half-century brings them nearer to each other, and they will very shortly meet.

Nor is this phenomenon at all peculiar to France. Whithersoever we turn our eyes, we shall discover the same continual revolution throughout the whole of Christendom.

The various occurrences of national existence have everywhere turned to the advantage of democracy; all men have aided it by their exertions; those who have intentionally labored in its cause, and those who have served it unwittingly—those who have fought for it, and those who have declared themselves its opponents—have all been driven along in the same track, have all labored to one end, some ignorantly, and some unwillingly; all have been blind instruments in the hands of God.

The gradual development of the equality of conditions is, therefore, a providential fact, and it possesses all the characteristics of a divine decree: it is universal, it is durable, it constantly eludes all human interference, and all events as well as all men contribute to its progress.

Would it, then, be wise to imagine that a social impulse which dates from so far back, can be checked by the efforts of a generation? Is it credible that the democracy which has annihilated the feudal system, and vanquished kings, will respect the citizen and the capitalist? Will it stop now that it has grown

so strong and its adversaries so weak?

None can say which way we are going, for all terms of comparison are wanting: the equality of conditions is more complete in the Christian, countries of the present day, than it has been at any time, or in any part of the world; so that the extent of what already exists prevents us from foreseeing what may be yet to come.

The whole book which is here offered to the public, has been written under the impression of a kind of religious dread, produced in the author's mind by the contemplation of so irresistible a revolution, which has advanced for centuries in spite of such amazing obstacles, and which is still proceeding in the midst of the ruins it has made.

It is not necessary that God himself should speak in order to disclose to us the unquestionable signs of his will; we can discern them in the habitual course of nature, and in the invariable tendency of events; I know, without a special revelation, that the planets move in the orbits traced by the Creator's fingers.

If the men of our time were led by attentive observation and by sincere reflection, to acknowledge that the gradual and progressive development of social equality is at once the past and future of their history, this solitary truth would confer the sacred character of a divine decree upon the change. To attempt to check democracy would be in that case to resist the will of God; and the nations would then be constrained to make the best of the social lot awarded to them by Providence.

The Christian nations of our age seem to me to present a most alarming spectacle; the impulse which is bearing them along is so strong that it cannot be stopped, but it is not yet so rapid that it cannot be guided: their fate is in their hands; yet a little while and it may be so no longer.

The first duty which is at this time imposed upon those who direct our affairs is to educate the democracy; to warm its faith, if that be possible; to purify its morals; to direct its energies; to substitute a knowledge of business for its inexperience, and an acquaintance with its true interests for its blind propensities; to adapt its government to time and place, and to modify it in compliance with the occurrences and the actors of the age.

A new science of politics is indispensable to a new world.

This, however, is what we think of least; launched in the middle of a rapid stream, we obstinately fix our eyes on the ruins which may still be descried upon the shore we have left, while the current sweeps us along, and drives us backward toward the gulf.

In no country in Europe has the great social revolution which I have been describing, made such rapid progress as in France; but it has always been borne on by chance. The heads of the state have never had any forethought for its exigences, and its victories have been obtained without their consent or without their knowledge. The most powerful, the most intelligent, and the most moral classes of the nation have never attempted to connect themselves with it in order to guide it. The people have consequently been abandoned to its wild propensities, and it has

grown up like those outcasts who receive their education in the public streets, and who are unacquainted with aught but the vices and wretchedness of society. The existence of a democracy was seemingly unknown, when, on a sudden, it took possession of the supreme power. Everything was then submitted to its caprices; it was worshipped as the idol of strength; until, when it was enfeebled by its own excesses, the legislator conceived the rash project of annihilating its power, instead of instructing it and correcting its vices; no attempt was made to fit it to govern, but all were bent on excluding it from the government.

The consequence of this has been that the democratic revolution has been effected only in the material parts of society, without that concomitant change in laws, ideas, customs, and manners, which was necessary to render such a revolution beneficial. We have gotten a democracy, but without the conditions which lessen its vices, and render its natural advantages more prominent; and although we already perceive the evils it brings, we are ignorant of the benefits it may confer.

While the power of the crown, supported by the aristocracy, peaceably governed the nations of Europe, society possessed, in the midst of its wretchedness, several different advantages which can now scarcely be appreciated or conceived.

The power of a part of his subjects was an insurmountable barrier to the tyranny of the prince; and the monarch who felt the almost divine character which he enjoyed in the eyes of the multitude, derived a motive for the just use of his power from

the respect which he inspired.

High as they were placed above the people, the nobles could not but take that calm and benevolent interest in its fate which the shepherd feels toward his flock; and without acknowledging the poor as their equals, they watched over the destiny of those whose welfare Providence had intrusted to their care.

The people, never having conceived the idea of a social condition different from its own, and entertaining no expectation of ever ranking with its chiefs, received benefits from them without discussing their rights. It grew attached to them when they were clement and just, but it submitted without resistance or servility to their exactions, as to the inevitable visitations of the arm of God. Custom, and the manners of the time, had moreover created a species of law in the midst of violence, and established certain limits to oppression.

As the noble never suspected that any one would attempt to deprive him of the privileges which he believed to be legitimate, and as the serf looked upon his own inferiority as a consequence of the immutable order of nature, it is easy to imagine that a mutual exchange of good-will took place between two classes so differently gifted by fate. Inequality and wretchedness were then to be found in society; but the souls of neither rank of men were degraded.

Men are not corrupted by the exercise of power or debased by the habit of obedience; but by the exercise of power which they believe to be illegal, and by obedience to a rule which they

consider to be usurped and oppressive.

On one side were wealth, strength, and leisure, accompanied by the refinement of luxury, the elegance of taste, the pleasures of wit, and the religion of art. On the other were labor, and a rude ignorance; but in the midst of this coarse and ignorant multitude, it was not uncommon to meet with energetic passions, generous sentiments, profound religious convictions, and independent virtues.

The body of a state thus organized, might boast of its stability, its power, and above all, of its glory.

But the scene is now changed, and gradually the two ranks mingle; the divisions which once severed mankind, are lowered; property is divided, power is held in common, the light of intelligence spreads, and the capacities of all classes are equally cultivated; the state becomes democratic, and the empire of democracy is slowly and peaceably introduced into the institutions and manners of the nation.

I can conceive a society in which all men would profess an equal attachment and respect for the laws of which they are the common authors; in which the authority of the state would be respected as necessary, though not as divine; and the loyalty of the subject to the chief magistrate would not be a passion, but a quiet and rational persuasion. Every individual being in the possession of rights which he is sure to retain, a kind of manly reliance and reciprocal courtesy would arise between all classes, alike removed from pride and meanness.

The people, well acquainted with its true interests, would allow, that in order to profit by the advantages of society, it is necessary to satisfy its demands. In this state of things, the voluntary association of the citizens might supply the individual exertions of the nobles, and the community would be alike protected from anarchy and from oppression.

I admit that in a democratic state thus constituted, society will not be stationary; but the impulses of the social body may be regulated and directed forward; if there be less splendor than in the halls of an aristocracy, the contrast of misery will be less frequent also; the pleasures of enjoyment may be less excessive, but those of comfort will be more general; the sciences may be less perfectly cultivated, but ignorance will be less common; the impetuosity of the feelings will be repressed, and the habits of the nation softened; there will be more vices and fewer crimes.

In the absence of enthusiasm and of an ardent faith, great sacrifices may be obtained from the members of a commonwealth by an appeal to their understandings and their experience: each individual will feel the same necessity for uniting with his fellow-citizens to protect his own weakness; and as he knows that if they are to assist he must co-operate, he will readily perceive that his personal interest is identified with the interest of the community.

The nation, taken as a whole, will be less brilliant, less glorious, and perhaps less strong; but the majority of the citizens will enjoy a greater degree of prosperity, and the people will

remain quiet, not because it despairs of melioration, but because it is conscious of the advantages of its condition.

If all the consequences of this state of things were not good or useful, society would at least have appropriated all such as were useful and good; and having once and for ever renounced the social advantages of aristocracy, mankind would enter into possession of all the benefits which democracy can afford.

But here it may be asked what we have adopted in the place of those institutions, those ideas, and those customs of our forefathers which we have abandoned.

The spell of royalty is broken, but it has not been succeeded by the majesty of the laws; the people have learned to despise all authority. But fear now extorts a larger tribute of obedience than that which was formerly paid by reverence and by love.

I perceive that we have destroyed those independent beings which were able to cope with tyranny single-handed; but it is the government that has inherited the privileges of which families, corporations, and individuals, have been deprived; the weakness of the whole community has, therefore, succeeded to that influence of a small body of citizens, which, if it was sometimes oppressive, was often conservative.

The division of property has lessened the distance which separated the rich from the poor; but it would seem that the nearer they draw to each other, the greater is their mutual hatred, and the more vehement the envy and the dread with which they resist each other's claims to power; the notion of right is alike

insensible to both classes, and force affords to both the only argument for the present, and the only guarantee for the future.

The poor man retains the prejudices of his forefathers without their faith, and their ignorance without their virtues; he has adopted the doctrine of self-interest as the rule of his actions, without understanding the science which controls it, and his egotism is no less blind than his devotedness was formerly.

If society is tranquil, it is not because it relies upon its strength and its well-being, but because it knows its weakness and its infirmities; a single effort may cost it its life; everybody feels the evil, but no one has courage or energy enough to seek the cure; the desires, the regret, the sorrows, and the joys of the time, produce nothing that is visible or permanent, like the passions of old men which terminate in impotence.

We have, then, abandoned whatever advantages the old state of things afforded, without receiving any compensation from our present condition; having destroyed an aristocracy, we seem inclined to survey its ruins with complacency, and to fix our abode in the midst of them.

The phenomena which the intellectual world presents, are not less deplorable. The democracy of France, checked in its course or abandoned to its lawless passions, has overthrown whatever crossed its path, and has shaken all that it has not destroyed. Its control over society has not been gradually introduced, or peaceably established, but it has constantly advanced in the midst of disorder, and the agitation of a conflict. In the heat of the

struggle each partisan is hurried beyond the limits of his opinions by the opinions and the excesses of his opponents, until he loses sight of the end of his exertions, and holds a language which disguises his real sentiments or secret instincts. Hence arises the strange confusion which we are beholding.

I cannot recall to my mind a passage in history more worthy of sorrow and of pity than the scenes which are happening under our eyes; it is as if the natural bond which unites the opinions of man to his tastes, and his actions to his principles, was now broken; the sympathy which has always been acknowledged between the feelings and the ideas of mankind, appears to be dissolved, and all the laws of moral analogy to be abolished.

Zealous Christians may be found among us, whose minds are nurtured in the love and knowledge of a future life, and who readily espouse the cause of human liberty, as the source of all moral greatness. Christianity, which has declared that all men are equal in the sight of God, will not refuse to acknowledge that all citizens are equal in the eye of the law. But, by a singular concurrence of events, religion is entangled in those institutions which democracy assails, and it is not unfrequently brought to reject the equality it loves, and to curse that cause of liberty as a foe, which it might hallow by its alliance.

By the side of these religious men I discern others whose looks are turned to the earth more than to heaven; they are the partisans of liberty, not only as the source of the noblest virtues, but more especially as the root of all solid advantages; and they sincerely

desire to extend its sway, and to impart its blessings to mankind. It is natural that they should hasten to invoke the assistance of religion, for they must know that liberty cannot be established without morality, nor morality without faith; but they have seen religion in the ranks of their adversaries, and they inquire no farther; some of them attack it openly, and the remainder are afraid to defend it.

In former ages slavery has been advocated by the venal and slavish-minded, while the independent and the warm-hearted were struggling without hope to save the liberties of mankind. But men of high and generous characters are now to be met with, whose opinions are at variance with their inclinations, and who praise that servility which they have themselves never known. Others, on the contrary, speak in the name of liberty as if they were able to feel its sanctity and its majesty, and loudly claim for humanity those rights which they have always disowned.

There are virtuous and peaceful individuals whose pure morality, quiet habits, affluence, and talents, fit them to be the leaders of the surrounding population; their love of their country is sincere, and they are prepared to make the greatest sacrifices to its welfare, but they confound the abuses of civilisation with its benefits, and the idea of evil is inseparable in their minds from that of novelty.

Not far from this class is another party, whose object is to materialise mankind, to hit upon what is expedient without heeding what is just; to acquire knowledge without faith, and

prosperity apart from virtue; assuming the title of the champions of modern civilisation, and placing themselves in a station which they usurp with insolence, and from which they are driven by their own unworthiness.

Where are we then?

The religionists are the enemies of liberty, and the friends of liberty attack religion; the high-minded and the noble advocate subjection, and the meanest and most servile minds preach independence; honest and enlightened citizens are opposed to all progress, while men without patriotism and without principles, are the apostles of civilisation and of intelligence.

Has such been the fate of the centuries which have preceded our own? and has man always inhabited a world, like the present, where nothing is linked together, where virtue is without genius, and genius without honor; where the love of order is confounded with a taste for oppression, and the holy rites of freedom with a contempt of law; where the light thrown by conscience on human actions is dim, and where nothing seems to be any longer forbidden or allowed, honorable or shameful, false or true?

I cannot, however, believe that the Creator made man to leave him in an endless struggle with the intellectual miseries which surround us: God destines a calmer and a more certain future to the communities of Europe; I am unacquainted with his designs, but I shall not cease to believe in them because I cannot fathom them, and I had rather mistrust my own capacity than his justice.

There is a country in the world where the great revolution

which I am speaking of seems nearly to have reached its natural limits; it has been effected with ease and simplicity, say rather that this country has attained the consequences of the democratic revolution which we are undergoing, without having experienced the revolution itself.

The emigrants who fixed themselves on the shores of America in the beginning of the seventeenth century, severed the democratic principle from all the principles which repressed it in the old communities of Europe, and transplanted it unalloyed to the New World. It has there been allowed to spread in perfect freedom, and to put forth its consequences in the laws by influencing the manners of the country.

It appears to me beyond a doubt, that sooner or later we shall arrive, like the Americans, at an almost complete equality of conditions. But I do not conclude from this, that we shall ever be necessarily led to draw the same political consequences which the Americans have derived from a similar social organization. I am far from supposing that they have chosen the only form of government which a democracy may adopt; but the identity of the efficient cause of laws and manners in the two countries is sufficient to account for the immense interest we have in becoming acquainted with its effects in each of them.

It is not, then, merely to satisfy a legitimate curiosity that I have examined America; my wish has been to find instruction by which we may ourselves profit. Whoever should imagine that I have intended to write a panegyric would be strangely mistaken,

and on reading this book, he will perceive that such was not my design: nor has it been my object to advocate any form of government in particular, for I am of opinion that absolute excellence is rarely to be found in any legislation; I have not even affected to discuss whether the social revolution, which I believe to be irresistible, is advantageous or prejudicial to mankind; I have acknowledged this revolution as a fact already accomplished or on the eve of its accomplishment; and I have selected the nation, from among those which have undergone it, in which its development has been the most peaceful and the most complete, in order to discern its natural consequences, and, if it be possible, to distinguish the means by which it may be rendered profitable. I confess that in America I saw more than America; I sought the image of democracy itself, with its inclinations, its character, its prejudices, and its passions, in order to learn what we have to fear or to hope from its progress.

In the first part of this work I have attempted to show the tendency given to the laws by the democracy of America, which is abandoned almost without restraint to its instinctive propensities; and to exhibit the course it prescribes to the government, and the influence it exercises on affairs. I have sought to discover the evils and the advantages which it produces. I have examined the precautions used by the Americans to direct it, as well as those which they have not adopted, and I have undertaken to point out the causes which enable it to govern society.

It was my intention to depict, in a second part, the influence which the equality of conditions and the rule of democracy exercise on the civil society, the habits, the ideas, and the manners of the Americans; I begin, however, to feel less ardor for the accomplishment of this project, since the excellent work of my friend and travelling companion M. de Beaumont has been given to the world.¹ I do not know whether I have succeeded in making known what I saw in America, but I am certain that such has been my sincere desire, and that I have never, knowingly, moulded facts to ideas, instead of ideas to facts.

Whenever a point could be established by the aid of written documents, I have had recourse to the original text, and to the most authentic and approved works.² I have cited my authorities in the notes, and any one may refer to them. Whenever an opinion, a political custom, or a remark on the manners of the country was concerned, I endeavored to consult the most enlightened men I met with. If the point in question was important or doubtful, I was not satisfied with one testimony,

¹ This work is entitled, *Marie, ou l'Esclavage aux Etats-Unis*.

² Legislative and administrative documents have been furnished me with a degree of politeness which I shall always remember with gratitude. Among the American functionaries who thus favored my inquiries I am proud to name Mr. Edward Livingston, then Secretary of State and late American minister at Paris. During my stay at the session of Congress, Mr. Livingston was kind enough to furnish me with the greater part of the documents I possess relative to the federal government. Mr. Livingston is one of those rare individuals whom one loves, respects, and admires, from their writings, and to whom one is happy to incur the debt of gratitude on further acquaintance.

but I formed my opinion on the evidence of several witnesses. Here the reader must necessarily believe me upon my word. I could frequently have quoted names which are either known to him, or which deserve to be so, in proof of what I advance; but I have carefully abstained from this practice. A stranger frequently hears important truths at the fireside of his host, which the latter would perhaps conceal even from the ear of friendship; he consoles himself with his guest, for the silence to which he is restricted, and the shortness of the traveller's stay takes away all fear of his indiscretion. I carefully noted every conversation of this nature as soon as it occurred, but these notes will never leave my writing-case; I had rather injure the success of my statements than add my name to the list of those strangers who repay the generous hospitality they have received by subsequent chagrin and annoyance.

I am aware that, notwithstanding my care, nothing will be easier than to criticise this book, if any one ever chooses to criticise it.

Those readers who may examine it closely will discover the fundamental idea which connects the several parts together. But the diversity of the subjects I have had to treat is exceedingly great, and it will not be difficult to oppose an isolated fact to the body of facts which I quote, or an isolated idea to the body of ideas I put forth. I hope to be read in the spirit which has guided my labors, and that my book may be judged by the general impression it leaves, as I have formed my own judgment not on

any single reason, but upon the mass of evidence.

It must not be forgotten that the author who wishes to be understood is obliged to push all his ideas to their utmost theoretical consequences, and often to the verge of what is false or impracticable; for if it be necessary sometimes to quit the rules of logic in active life, such is not the case in discourse, and a man finds that almost as many difficulties spring from inconsistency of language, as usually arise from consistency of conduct.

I conclude by pointing out myself what many readers will consider the principal defect of the work. This book is written to favor no particular views, and in composing it I have entertained no design of serving or attacking any party: I have undertaken not to see differently, but to look farther than parties, and while they are busied for the morrow, I have turned my thoughts to the future.

AMERICAN INSTITUTIONS

CHAPTER I

EXTERIOR FORM OF NORTH AMERICA

North America divided into two vast regions, one inclining toward the Pole, the other toward the Equator.—Valley of the Mississippi.—Traces of the Revolutions of the Globe.—Shore of the Atlantic Ocean, where the English Colonies were founded.—Difference in the Appearance of North and of South America at the Time of their Discovery.—Forests of North America.—Prairies.—Wandering Tribes of Natives.—Their outward Appearance, Manners, and Language.—Traces of an Unknown People.

North America presents in its external form certain general features, which it is easy to discriminate at the first glance.

A sort of methodical order seems to have regulated the separation of land and water, mountains and valleys. A simple but grand arrangement is discoverable amid the confusion of objects and the prodigious variety of scenes.

This continent is divided, almost equally, into two vast regions, one of which is bounded, on the north by the arctic pole, and by the two great oceans on the east and west. It stretches toward the south, forming a triangle, whose irregular sides meet at length below the great lakes of Canada.

The second region begins where the other terminates, and includes all the remainder of the continent.

The one slopes gently toward the pole, the other toward the equator.

The territory comprehended in the first regions descends toward the north with so imperceptible a slope that it may almost be said to form a level plain. Within the bounds of this immense tract of country there are neither high mountains nor deep valleys. Streams meander through it irregularly; great rivers mix their currents, separate and meet again, disperse and form vast marshes, losing all trace of their channels in the labyrinth of waters they have themselves created; and thus, at length, after innumerable windings, fall into the polar seas. The great lakes which bound this first region are not walled in, like most of those in the Old World, between hills and rocks. Their banks are flat, and rise but a few feet above the level of their waters; each of them thus forming a vast bowl filled to the brim. The slightest change in the structure of the globe would cause their waters to rush either toward the pole or to the tropical sea.

The second region is more varied on its surface, and better suited for the habitation of man. Two long chains of mountains

divide it from one extreme to the other; the Allegany ridge takes the form of the shores of the Atlantic ocean; the other is parallel with the Pacific.

The space which lies between these two chains of mountains contains 1,341,649 square miles.³ Its surface is therefore about six times as great as that of France.

This vast territory, however, forms a single valley, one side of which descends gradually from the rounded summits of the Alleghanies, while the other rises in an uninterrupted course toward the tops of the Rocky mountains.

At the bottom of the valley flows an immense river, into which the various streams issuing from the mountains fall from all parts. In memory of their native land, the French formerly called this the river St. Louis. The Indians, in their pompous language, have named it the Father of Waters, or the Mississippi.

The Mississippi takes its source above the limit of the two great regions of which I have spoken, not far from the highest point of the table-land where they unite. Near the same spot rises another river,⁴ which empties itself into the polar seas. The course of the Mississippi is at first devious: it winds several times toward the north, whence it rose; and, at length, after having been delayed in lakes and marshes, it flows slowly onward to the south.

Sometimes quietly gliding along the argillaceous bed which nature has assigned to it, sometimes swollen by storms, the

³ Darby's "View of the United States."

⁴ Mackenzie's river.

Mississippi waters 2,500 miles in its course.⁵ At the distance of 1,364 miles from its mouth this river attains an average depth of fifteen feet; and it is navigated by vessels of 300 tons burden for a course of nearly 500 miles. Fifty-seven large navigable rivers contribute to swell the waters of the Mississippi; among others the Missouri, which traverses a space of 2,500 miles; the Arkansas of 1,300 miles; the Red river 1,000 miles; four whose course is from 800 to 1000 miles in length, viz., the Illinois, the St. Peter's, the St. Francis, and the Moingona; besides a countless number of rivulets which unite from all parts their tributary streams.

The valley which is watered by the Mississippi seems formed to be the bed of this mighty river, which like a god of antiquity dispenses both good and evil in its course. On the shores of the stream nature displays an inexhaustible fertility; in proportion as you recede from its banks, the powers of vegetation languish, the soil becomes poor, and the plants that survive have a sickly growth. Nowhere have the great convulsions of the globe left more evident traces than in the valley of the Mississippi: the whole aspect of the country shows the powerful effects of water, both by its fertility and by its barrenness. The waters of the primeval ocean accumulated enormous beds of vegetable mould in the valley, which they levelled as they retired. Upon the right shore of the river are seen immense plains, as smooth as if the husbandman had passed over them with his roller.

⁵ Warden's "Description of the United States."

As you approach the mountains, the soil becomes more and more unequal and sterile; the ground is, as it were, pierced in a thousand places by primitive rocks, which appear like the bones of a skeleton whose flesh is partly consumed. The surface of the earth is covered with a granitic sand, and huge irregular masses of stone, among which a few plants force their growth, and give the appearance of a green field covered with the ruins of a vast edifice. These stones and this sand discover, on examination, a perfect analogy with those which compose the arid and broken summits of the Rocky mountains. The flood of waters which washed the soil to the bottom of the valley, afterward carried away portions of the rocks themselves; and these, dashed and bruised against the neighboring cliffs, were left scattered like wrecks at their feet.⁶

The valley of the Mississippi is, upon the whole, the most magnificent dwelling-place prepared by God for man's abode; and yet it may be said that at present it is but a mighty desert.

On the eastern side of the Alleghanies, between the base of these mountains and the Atlantic ocean, lies a long ridge of rocks and sand, which the sea appears to have left behind as it retired. The mean breadth of this territory does not exceed one hundred miles; but it is about nine hundred miles in length. This part of the American continent has a soil which offers every obstacle to the husbandman, and its vegetation is scanty and unvaried.

Upon this inhospitable coast the first united efforts of human

⁶ See Appendix A.

industry were made. This tongue of arid land was the cradle of those English colonies which were destined one day to become the United States of America. The centre of power still remains there; while in the backward States the true elements of the great people, to whom the future control of the continent belongs, are secretly springing up.

When the Europeans first landed on the shores of the Antilles, and afterwards on the coast of South America, they thought themselves transported into those fabulous regions of which poets had sung. The sea sparkled with phosphoric light, and the extraordinary transparency of its waters discovered to the view of the navigator all that had hitherto been hidden in the deep abyss.⁷ Here and there appeared little islands perfumed with odoriferous plants, and resembling baskets of flowers, floating on the tranquil surface of the ocean. Every object which met the sight, in this enchanting region, seemed prepared to satisfy the wants, or contribute to the pleasures of man. Almost all the trees were loaded with nourishing fruits, and those which were useless as food, delighted the eye by the brilliancy and variety of their colors. In groves of fragrant lemon-trees, wild figs, flowering myrtles, acacias, and oleanders, which were hung with festoons of various climbing-plants, covered with flowers, a multitude

⁷ Malte Brun tells us (vol. v., p. 726) that the water of the Caribbean sea is so transparent, that corals and fish are discernible at a depth of sixty fathoms. The ship seemed to float in the air, the navigator became giddy as his eye penetrated through the crystal flood, and beheld submarine gardens, or beds of shells, or gilded fishes gliding among tufts and thickets of seaweed.

of birds unknown in Europe displayed their bright plumage, glittering with purple and azure, and mingled their warbling in the harmony of a world teeming with life and motion.⁸

Underneath this brilliant exterior death was concealed. The air of these climates had so enervating an influence that man, completely absorbed by the present enjoyment, was rendered regardless of the future.

North America appeared under a very different aspect; there, everything was grave, serious, and solemn; it seemed created to be the domain of intelligence, as the south was that of sensual delight. A turbulent and foggy ocean washed its shores. It was girded round by a belt of granite rocks, or by wide plains of sand. The foliage of its woods was dark and gloomy; for they were composed of firs, larches, evergreen oaks, wild olive-trees, and laurels.

Beyond this outer belt lay the thick shades of the central forests, where the largest trees which are produced in the two hemispheres grow side by side. The plane, the catalpa, the sugar-maple, and the Virginian poplar, mingled their branches with those of the oak, the beech, and the lime.

In these, as in the forests of the Old World, destruction was perpetually going on. The ruins of vegetation were heaped upon each other; but there was no laboring hand to remove them, and their decay was not rapid enough to make room for the continual work of reproduction. Climbing-plants, grasses and other herbs,

⁸ See Appendix B.

forced their way through the moss of dying trees; they crept along their bending trunks, found nourishment in their dusty cavities, and a passage beneath the lifeless bark. Thus decay gave its assistance to life, and their respective productions were mingled together. The depths of these forests were gloomy and obscure, and a thousand rivulets, undirected in their course by human industry, preserved in them a constant moisture. It was rare to meet with flowers, wild fruits, or birds, beneath their shades. The fall of a tree overthrown by age, the rushing torrent of a cataract, the lowing of the buffalo, and the howling of the wind, were the only sounds which broke the silence of nature.

To the east of the great river the woods almost disappeared; in their stead were seen prairies of immense extent. Whether nature in her infinite variety had denied the germes of trees to these fertile plains, or whether they had once been covered with forests, subsequently destroyed by the hand of man, is a question which neither tradition nor scientific research has been able to resolve.

These immense deserts were not, however, devoid of human inhabitants. Some wandering tribes had been for ages scattered among the forest shades or the green pastures of the prairie. From the mouth of the St. Lawrence to the Delta of the Mississippi, and from the Atlantic to the Pacific ocean, these savages possessed certain points of resemblance which bore witness of their common origin: but at the same time they differed from all other known races of men:⁹ they were neither

⁹ With the progress of discovery, some resemblance has been found to exist between

white like the Europeans, nor yellow like most of the Asiatics, nor black like the negroes. Their skin was reddish brown, their hair long and shining, their lips thin, and their cheek-bones very prominent. The languages spoken by the North American tribes were various as far as regarded their words, but they were subject to the same grammatical rules. Those rules differed in several points from such as had been observed to govern the origin of language.

The idiom of the Americans seemed to be the product of new combinations, and bespoke an effort of the understanding, of which the Indians of our days would be incapable.¹⁰

The social state of these tribes differed also in many respects from all that was seen in the Old World. They seemed to have multiplied freely in the midst of their deserts, without coming in contact with other races more civilized than their own.

Accordingly, they exhibited none of those indistinct, incoherent notions of right and wrong, none of that deep corruption of manners that is usually joined with ignorance and rudeness among nations which, after advancing to civilisation, have relapsed into a state of barbarism. The Indian was indebted

the physical conformation, the language, and the habits of the Indians of North America, and those of the Tongous, Mantchous, Moguls, Tartars, and other wandering tribes of Asia. The land occupied by these tribes is not very distant from Behring's strait; which allows of the supposition, that at a remote period they gave inhabitants to the desert continent of America. But this is a point which has not yet been clearly elucidated by science. See Malte Brun, vol. v.; the works of Humboldt; Fischer, "Conjecture sur l'Origine des Américains;" Adair, "History of the American Indians."

¹⁰ See Appendix C.

to no one but himself; his virtues, his vices, and his prejudices, were his own work; he had grown up in the wild independence of his nature.

If, in polished countries, the lowest of the people are rude and uncivil, it is not merely because they are poor and ignorant, but that, being so, they are in daily contact with rich and enlightened men. The sight of their own hard lot and of their weakness, which are daily contrasted with the happiness and power of some of their fellow creatures, excites in their hearts at the same time the sentiments of anger and of fear: the consciousness of their inferiority and of their dependence irritates while it humiliates them. This state of mind displays itself in their manners and language; they are at once insolent and servile. The truth of this is easily proved by observation; the people are more rude in aristocratic countries than elsewhere; in opulent cities than in rural districts. In those places where the rich and powerful are assembled together, the weak and the indigent feel themselves oppressed by their inferior condition. Unable to perceive a single chance of regaining their equality, they give up to despair, and allow themselves to fall below the dignity of human nature.

This unfortunate effect of the disparity of conditions is not observable in savage life; the Indians, although they are ignorant and poor, are equal and free.

At the period when Europeans first came among them, the natives of North America were ignorant of the value of riches, and indifferent to the enjoyments which civilized man procures

to himself by their means. Nevertheless there was nothing coarse in their demeanor; they practised an habitual reserve, and a kind of aristocratic politeness.

Mild and hospitable when at peace, though merciless in war beyond any known degree of human ferocity, the Indian would expose himself to die of hunger in order to succor the stranger who asked admittance by night at the door of his hut—yet he could tear in pieces with his hands the still quivering limbs of his prisoner. The famous republics of antiquity never gave examples of more unshaken courage, more haughty spirits, or more intractable love of independence, than were hidden in former times among the wild forests of the New World.¹¹ The Europeans produced no great impression when they landed upon the shores of North America: their presence engendered neither envy nor fear. What influence could they possess over such men as we have described? The Indian could live without wants, suffer without complaint, and pour out his death-song at the stake.¹²

¹¹ We learn from President Jefferson's "Notes upon Virginia," p. 148, that among the Iroquois, when attacked by a superior force, aged men refused to fly, or to survive the destruction of their country; and they braved death like the ancient Romans when their capital was sacked by the Gauls. Further on, p. 150, he tells us, that there is no example of an Indian, who, having fallen into the hands of his enemies, begged for his life; on the contrary, the captive sought to obtain death at the hands of his conquerors by the use of insult and provocation.

¹² See "Histoire de la Louisiane," by Lepage Dupratz; Charlevoix, "Histoire de la Nouvelle France;" "Lettres du Rev. G. Hecwelder;" "Transactions of the American Philosophical Society," v. i.; Jefferson's "Notes on Virginia," pp. 135-190. What is said by Jefferson is of especial weight, on account of the personal merit of the writer,

Like all the other members of the great human family, these savages believed in the existence of a better world, and adored, under different names, God, the Creator of the universe. Their notions on the great intellectual truths were, in general, simple and philosophical.¹³

Although we have here traced the character of a primitive people, yet it cannot be doubted that another people, more civilized and more advanced in all respects, had preceded it in the same regions.

An obscure tradition, which prevailed among the Indians to the north of the Atlantic, informs us that these very tribes formerly dwelt on the west side of the Mississippi. Along the banks of the Ohio, and throughout the central valley, there are frequently found, at this day, *tumuli* raised by the hands of men. On exploring these heaps of earth to their centre, it is usual to meet with human bones, strange instruments, arms and utensils of all kinds, made of a metal, or destined for purposes, unknown to the present race.

The Indians of our time are unable to give any information relative to the history of this unknown people. Neither did those who lived three hundred years ago, when America was first discovered, leave any accounts from which even an hypothesis could be formed. Tradition—that perishable, yet ever-renewed monument of the pristine world—throws no light upon the

and of the matter-of-fact age in which he lived.

¹³ See Appendix D.

subject. It is an undoubted fact, however, that in this part of the globe thousands of our fellow-beings had lived. When they came hither, what was their origin, their destiny, their history, and how they perished, no one can tell.

How strange does it appear that nations have existed, and afterward so completely disappeared from the earth, that the remembrance of their very name is effaced: their languages are lost; their glory is vanished like a sound without an echo; but perhaps there is not one which has not left behind it a tomb in memory of its passage. The most durable monument of human labor is that which recalls the wretchedness and nothingness of man.

Although the vast country which we have been describing was inhabited by many indigenous tribes, it may justly be said, at the time of its discovery by Europeans, to have formed one great desert. The Indians occupied, without possessing it. It is by agricultural labor that man appropriates the soil, and the early inhabitants of North America lived by the produce of the chase. Their implacable prejudices, their uncontrolled passions, their vices, and still more, perhaps, their savage virtues, consigned them to inevitable destruction. The ruin of these nations began from the day when Europeans landed on their shores: it has proceeded ever since, and we are now seeing the completion of it. They seemed to have been placed by Providence amid the riches of the New World to enjoy them for a season, and then surrender them. Those coasts, so admirably adapted for commerce and

industry; those wide and deep rivers; that inexhaustible valley of the Mississippi; the whole continent, in short, seemed prepared to be the abode of a great nation, yet unborn.

In that land the great experiment was to be made by civilized man, of the attempt to construct society upon a new basis; and it was there, for the first time, that theories hitherto unknown, or deemed impracticable, were to exhibit a spectacle for which the world had not been prepared by the history of the past.

CHAPTER II

ORIGIN OF THE ANGLO-AMERICANS AND ITS IMPORTANCE, IN RELATION TO THEIR FUTURE CONDITION

Utility of knowing the Origin of Nations in order to understand their social Condition and their Laws.—America the only Country in which the Starting-Point of a great People has been clearly observable.—In what respects all who emigrated to British America were similar.—In what they differed.—Remark applicable to all the Europeans who established themselves on the shores of the New World.—Colonization of Virginia.—Colonization of New England.—Original Character of the first inhabitants of New England.—Their Arrival.—Their first Laws.—Their social Contract.—Penal Code borrowed from the Hebrew Legislation.—Religious Fervor.—Republican Spirit.—Intimate Union of the Spirit of Religion with the Spirit of Liberty.

After the birth of a human being, his early years are obscurely spent in the toils or pleasures of childhood. As he grows up, the world receives him, when his manhood begins, and he enters into contact with his fellows. He is then studied for the first time, and

it is imagined that the germe of the vices and the virtues of his maturer years is then formed.

This, if I am not mistaken, is a great error. We must begin higher up; we must watch the infant in his mother's arms; we must see the first images which the external world casts upon the dark mirror of his mind; the first occurrences which he beholds; we must hear the first words which awaken the sleeping powers of thought, and stand by his earliest efforts, if we would understand the prejudices, the habits, and the passions, which will rule his life. The entire man is, so to speak, to be seen in the cradle of the child.

The growth of nations presents something analogous to this; they all bear some marks of their origin; and the circumstances which accompanied their birth and contributed to their rise, affect the whole term of their being.

If we were able to go back to the elements of states, and to examine the oldest monuments of their history, I doubt not that we should discover the primary cause of the prejudices, the habits, the ruling passions, and in short of all that constitutes what is called the national character: we should then find the explanation of certain customs which now seem at variance with prevailing manners, of such laws as conflict with established principles, and of such incoherent opinions as are here and there to be met with in society, like those fragments of broken chains which we sometimes see hanging from the vault of an edifice, and supporting nothing. This might explain the destinies

of certain nations which seem borne along by an unknown force to ends of which they themselves are ignorant. But hitherto facts have been wanting to researches of this kind: the spirit of inquiry has only come upon communities in their latter days; and when they at length turned their attention to contemplate their origin, time had already obscured it, or ignorance and pride adorned it with truth-concealing fables.

America is the only country in which it has been possible to study the natural and tranquil growth of society, and where the influence exercised on the future condition of states by their origin is clearly distinguishable.

At the period when the people of Europe landed in the New World, their national characteristics were already completely formed; each of them had a physiognomy of its own; and as they had already attained that stage of civilisation at which men are led to study themselves, they have transmitted to us a faithful picture of their opinions, their manners, and their laws. The men of the sixteenth century are almost as well known to us as our contemporaries. America consequently exhibits in the broad light of day the phenomena which the ignorance or rudeness of earlier ages conceals from our researches. Near enough to the time when the states of America were founded to be accurately acquainted with their elements, and sufficiently removed from that period to judge of some of their results. The men of our own day seem destined to see farther than their predecessors into the series of human events. Providence has given us a torch

which our forefathers did not possess, and has allowed us to discern fundamental causes in the history of the world which the obscurity of the past concealed from them.

If we carefully examine the social and political state of America, after having studied its history, we shall remain perfectly convinced that not an opinion, not a custom, not a law, I may even say not an event, is upon record which the origin of that people will not explain. The readers of this book will find the germe of all that is to follow in the present chapter, and the key to almost the whole work.

The emigrants who came at different periods to occupy the territory now covered by the American Union, differed from each other in many respects; their aim was not the same, and they governed themselves on different principles.

These men had, however, certain features in common, and they were all placed in an analogous situation. The tie of language is perhaps the strongest and most durable that can unite mankind. All the emigrants spoke the same tongue; they were all offsets from the same people. Born in a country which had been agitated for centuries by the struggles of faction, and in which all parties had been obliged in their turn to place themselves under the protection of the laws, their political education had been perfected in this rude school, and they were more conversant with the notions of right, and the principles of true freedom, than the greater part of their European contemporaries. At the period of the first emigrations, the parish system, that fruitful germe of

free institutions, was deeply rooted in the habits of the English; and with it the doctrine of the sovereignty of the people had been introduced even into the bosom of the monarchy of the house of Tudor.

The religious quarrels which have agitated the Christian world were then rife. England had plunged into the new order of things with headlong vehemence. The character of its inhabitants, which had always been sedate and reflecting, became argumentative and austere. General information had been increased by intellectual debate, and the mind had received a deeper cultivation. While religion was the topic of discussion, the morals of the people were reformed. All these national features are more or less discoverable in the physiognomy of those adventurers who came to seek a new home on the opposite shores of the Atlantic.

Another remark, to which we shall hereafter have occasion to recur, is applicable not only to the English, but to the French, the Spaniards, and all the Europeans who successively established themselves in the New World. All these European colonies contained the elements, if not the development of a complete democracy. Two causes led to this result. It may safely be advanced, that on leaving the mother-country the emigrants had in general no notion of superiority over one another. The happy and the powerful do not go into exile, and there are no surer guarantees of equality among men than poverty and misfortune. It happened, however, on several occasions that persons of rank

were driven to America by political and religious quarrels. Laws were made to establish a gradation of ranks; but it was soon found that the soil of America was entirely opposed to a territorial aristocracy. To bring that refractory land into cultivation, the constant and interested exertions of the owner himself were necessary; and when the ground was prepared, its produce was found to be insufficient to enrich a master and a farmer at the same time. The land was then naturally broken up into small portions, which the proprietor cultivated for himself. Land is the basis of an aristocracy, which clings to the soil that supports it; for it is not by privileges alone, nor by birth, but by landed property handed down from generation to generation, that an aristocracy is constituted. A nation may present immense fortunes and extreme wretchedness; but unless those fortunes are territorial, there is no aristocracy, but simply the class of the rich and that of the poor.

All the British colonies had then a great degree of similarity at the epoch of their settlement. All of them, from their first beginning, seemed destined to behold the growth, not of the aristocratic liberty of their mother-country, but of that freedom of the middle and lower orders of which the history of the world has as yet furnished no complete example.

In this general uniformity several striking differences were however discernible, which it is necessary to point out. Two branches may be distinguished in the Anglo-American family, which have hitherto grown up without entirely commingling; the one in the south, the other in the north.

Virginia received the first English colony; the emigrants took possession of it in 1607. The idea that mines of gold and silver are the sources of national wealth, was at that time singularly prevalent in Europe; a fatal delusion, which has done more to impoverish the nations which adopted it, and has cost more lives in America, than the united influence of war and bad laws. The men sent to Virginia¹⁴ were seekers of gold, adventurers without resources and without character, whose turbulent and restless spirits endangered the infant colony,¹⁵ and rendered its progress uncertain. The artisans and agriculturists arrived afterward; and although they were a more moral and orderly race of men, they were in nowise above the level of the inferior classes in England.¹⁶ No lofty conceptions, no intellectual system directed the foundation of these new settlements. The colony was scarcely established when slavery was introduced,¹⁷ and this was the main

¹⁴ The charter granted by the crown of England, in 1609, stipulated, among other conditions, that the adventurers should pay to the crown a fifth of the produce of all gold and silver mines. See Marshall's "Life of Washington," vol i., pp. 18-66.

¹⁵ A large portion of the adventurers, says Stith (History of Virginia), were unprincipled young men of family, whom their parents were glad to ship off, discharged servants, fraudulent bankrupts, or debauchees: and others of the same class, people more apt to pillage and destroy than to assist the settlement, were the seditious chiefs who easily led this band into every kind of extravagance and excess. See for the history of Virginia the following works:—"History of Virginia, from the first Settlements in the year 1624," by Smith."History of Virginia," by William Stith."History of Virginia, from the earliest Period," by Beverley.

¹⁶ It was not till some time later that a certain number of rich English capitalists came to fix themselves in the colony.

¹⁷ Slavery was introduced about the year 1620, by a Dutch vessel, which landed

circumstance which has exercised so prodigious an influence on the character, the laws, and all the future prospects of the south.

Slavery, as we shall afterward show, dishonors labor; it introduces idleness into society, and, with idleness, ignorance and pride, luxury and distress. It enervates the powers of the mind, and benumbs the activity of man. The influence of slavery, united to the English character, explains the manners and the social condition of the southern states.

In the north, the same English foundation was modified by the most opposite shades of character; and here I may be allowed to enter into some details. The two or three main ideas which constitute the basis of the social theory of the United States, were first combined in the northern British colonies, more generally denominated the states of New England.¹⁸ The principles of New England spread at first to the neighboring states; they then passed successively to the more distant ones; and at length they embued the whole confederation. They now extend their influence beyond its limits over the whole American world. The civilisation of New England has been like a beacon lit upon a hill, which, after it has diffused its warmth around, tinges the distant horizon with its glow.

The foundation of New England was a novel spectacle, and all the circumstances attending it were singular and original. The

twenty negroes on the banks of the river James. See Chalmer.

¹⁸ The states of New England are those situated to the east of the Hudson; they are now six in number: 1. Connecticut; 2. Rhode Island; 3. Massachusetts; 4. Vermont; 5. New Hampshire; 6. Maine.

large majority of colonies have been first inhabited either by men without education and without resources, driven by their poverty and their misconduct from the land which gave them birth, or by speculators and adventurers greedy of gain. Some settlements cannot even boast so honorable an origin: St. Domingo was founded by buccaneers; and, at the present day, the criminal courts of England supply the population of Australia.

The settlers who established themselves on the shores of New England all belonged to the more independent classes of their native country. Their union on the soil of America at once presented the singular phenomenon of a society containing neither lords nor common people, neither rich nor poor. These men possessed, in proportion to their number, a greater mass of intelligence than is to be found in any European nation of our own time. All, without a single exception, had received a good education, and many of them were known in Europe for their talents and their acquirements. The other colonies had been founded by adventurers without family; the emigrants of New England brought with them the best elements of order and morality, they landed in the desert accompanied by their wives and children. But what most especially distinguished them was the aim of their undertaking. They had not been obliged by necessity to leave their country, the social position they abandoned was one to be regretted, and their means of subsistence were certain. Nor did they cross the Atlantic to improve their situation, or to increase their wealth; the call which

summoned them from the comforts of their homes was purely intellectual; and in facing the inevitable sufferings of exile, their object was the triumph of an idea.

The emigrants, or, as they deservedly styled themselves, the pilgrims, belonged to that English sect, the austerity of whose principles had acquired for them the name of puritans. Puritanism was not merely a religious doctrine, but it corresponded in many points with the most absolute democratic and republican theories. It was this tendency which had aroused its most dangerous adversaries. Persecuted by the government of the mother-country, and disgusted by the habits of a society opposed to the rigor of their own principles, the puritans went forth to seek some rude and unfrequented part of the world, where they could live according to their own opinions, and worship God in freedom.

A few quotations will throw more light upon the spirit of these pious adventurers than all we can say of them. Nathaniel Morton,¹⁹ the historian of the first years of the settlement, thus opens his subject:—

"GENTLE READER: I have for some length of time looked upon it as a duty incumbent, especially on the immediate successors of those that have had so large experience of those many memorable and signal demonstrations of God's goodness, viz., the first beginning of this plantation in New England, to

¹⁹ "New England's Memorial," p. 13. Boston, 1826. See also "Hutchinson's History," vol. ii., p. 440

commit to writing his gracious dispensations on that behalf; having so many inducements thereunto, not only otherwise, but so plentifully in the Sacred Scriptures: that so, what we have seen, and what our fathers have told us (Psalm lxxviii., 3, 4), we may not hide from our children, showing to the generations to come the praises of the Lord; that especially the seed of Abraham his servant, and the children of Jacob his chosen (Psalm cv., 5, 6), may remember his marvellous works in the beginning and progress of the planting of New England, his wonders and the judgments of his mouth; how that God brought a vine into this wilderness; that he cast out the heathen and planted it; that he made room for it, and caused it to take deep root; and it filled the land (Psalm lxxx., 8, 9). And not onely so, but also that he hath guided his people by his strength to his holy habitation, and planted them in the mountain of his inheritance in respect of precious gospel enjoyments: and that as especially God may have the glory of all unto whom it is most due; so also some rays of glory may reach the names of those blessed saints, that were the main instruments and the beginning of this happy enterprise."

It is impossible to read this opening paragraph without an involuntary feeling of religious awe; it breathes the very savor of gospel antiquity. The sincerity of the author heightens his power of language. The band, which to his eyes was a mere party of adventurers, gone forth to seek their fortune beyond the seas, appears to the reader as the germe of a great nation wafted by Providence to a predestined shore.

The author thus continues his narrative of the departure of the first pilgrims:—

"So they left that goodly and pleasant city of Leyden, which had been their resting-place for above eleven years; but they knew that they were pilgrims and strangers here below, and looked not much on these things, but lifted up their eyes to Heaven, their dearest country, where God hath prepared for them a city (Heb. xi., 16), and therein quieted their spirits. When they came to Delfs-Haven they found the ship and all things ready; and such of their friends as could come with them, followed after them, and sundry came from Amsterdam to see them shipt, and to take their leaves of them. One night was spent with little sleep with the most, but with friendly entertainment and Christian discourse, and other real expressions of true Christian love. The next day they went on board, and their friends with them, where truly doleful was the sight of that sad and mournful parting, to hear what sighs and sobs and prayers did sound among them; what tears did gush from every eye, and pithy speeches pierced each other's heart, that sundry of the Dutch strangers that stood on the key as spectators could not refrain from tears. But the tide (which stays for no man) calling them away that were thus loath to depart, their reverend pastor falling down on his knees, and they all with him, with watery cheeks commended them with most fervent prayers unto the Lord and his blessing; and then, with mutual embraces and many tears, they took their leaves one of another, which proved to be the last leave to many of them."

The emigrants were about 150 in number, including the women and the children. Their object was to plant a colony on the shores of the Hudson; but after having been driven about for some time in the Atlantic ocean, they were forced to land on that arid coast of New England which is now the site of the town of Plymouth. The rock is still shown on which the pilgrims disembarked.²⁰

"But before we pass on," continues our historian, "let the reader with me make a pause, and seriously consider this poor people's present condition, the more to be raised up to admiration of God's goodness toward them in their preservation: for being now passed the vast ocean, and a sea of troubles before them in expectation, they had now no friends to welcome them, no inns to entertain or refresh them, no houses, or much less towns to repair unto to seek for succor; and for the season it was winter, and they that know the winters of the country know them to be sharp and violent, subject to cruel and fierce storms, dangerous to travel to known places, much more to search unknown coasts. Besides, what could they see but a hideous and desolate wilderness, full of wilde beasts, and wilde men? and what multitudes of them there were, they then knew not: for which way soever they turned their

²⁰ This rock is become an object of veneration in the United States. I have seen bits of it carefully preserved in several towns of the Union. Does not this sufficiently show that all human power and greatness is in the soul of man? Here is a stone which the feet of a few outcasts pressed for an instant, and this stone becomes famous; it is treasured by a great nation, its very dust is shared as a relic; and what is become of the gateways of a thousand palaces?

eyes (save upward to Heaven) they could have but little solace or content in respect of any outward object; for summer being ended, all things stand in appearance with a weather-beaten face, and the whole country full of woods and thickets represented a wild and savage hue; if they looked behind them, there was the mighty ocean which they had passed, and was now as a main bar or gulph to separate them from all the civil parts of the world."

It must not be imagined that the piety of the puritans was of a merely speculative kind, or that it took no cognizance of the course of worldly affairs. Puritanism, as I have already remarked, was scarcely less a political than a religious doctrine. No sooner had the emigrants landed on the barren coast, described by Nathaniel Morton, than their first care was to constitute a society, by passing the following act:²¹—

"IN THE NAME OF GOD, AMEN! We, whose names are underwritten, the loyal subjects of our dread sovereign lord King James, &c., &c., having undertaken for the glory of God and advancement of the Christian faith, and the honor of our king and country, a voyage to plant the first colony in the northern parts of Virginia: do by these presents solemnly and mutually, in the presence of God and one another, covenant and combine ourselves together into a civil body politic, for our better ordering and preservation, and furtherance of the ends aforesaid: and by virtue hereof do enact, constitute, and frame, such just and equal laws, ordinances, acts, constitutions, and officers, from

²¹ "New England Memorial," p. 37.

time to time, as shall be thought most meet and convenient for the general good of the colony: unto which we promise all due submission and obedience," &c.²²

This happened in 1620, and from that time forward the emigration went on. The religious and political passions which ravished the British empire during the whole reign of Charles I., drove fresh crowds of sectarians every year to the shores of America. In England the stronghold of puritanism was in the middle classes, and it was from the middle classes that the majority of the emigrants came. The population of New England increased rapidly; and while the hierarchy of rank despotically classed the inhabitants of the mother-country, the colony continued to present the novel spectacle of a community homogeneous in all its parts. A democracy, more perfect than any which antiquity had dreamed of, started in full size and panoply from the midst of an ancient feudal society.

The English government was not dissatisfied with an emigration which removed the elements of fresh discord and of future revolutions. On the contrary, everything was done to encourage it, and little attention was paid to the destiny of those who sought a shelter from the rigor of their country's laws on the soil of America. It seemed as if New England was a region given up to the dreams of fancy, and the unrestrained experiments of

²² The emigrants who founded the state of Rhode Island in 1638, those who landed at New Haven in 1637, the first settlers in Connecticut in 1639, and the founders of Providence in 1640, began in like manner by drawing up a social contract, which was submitted to the approval of all the interested parties. See "Pitkin's History," pp 42, 47.

innovators.

The English colonies (and this is one of the main causes of their prosperity) have always enjoyed more internal freedom and more political independence than the colonies of other nations; but this principle of liberty was nowhere more extensively applied than in the states of New England.

It was generally allowed at that period that the territories of the New World belonged to that European nation which had been the first to discover them. Nearly the whole coast of North America thus became a British possession toward the end of the sixteenth century. The means used by the English government to people these new domains were of several kinds: the king sometimes appointed a governor of his own choice, who ruled a portion of the New World in the name and under the immediate orders of the crown;²³ this is the colonial system adopted by the other countries of Europe. Sometimes grants of certain tracts were made by the crown to an individual or to a company,²⁴ in which case all the civil and political power fell into the hands of one or more persons, who, under the inspection and control of the crown, sold the lands and governed the inhabitants. Lastly, a third system consisted in allowing a certain number of emigrants to constitute a political society under the protection of the mother-country, and to govern themselves in whatever was not contrary

²³ This was the case in the state of New York.

²⁴ Maryland, the Carolinas, Pennsylvania, and New Jersey, were in this situation. See Pitkin's History, vol. i., pp. 11-31.

to her laws. This mode of colonization, so remarkably favorable to liberty, was adopted only in New England.²⁵

In 1628,²⁶ a charter of this kind was granted by Charles I. to the emigrants who went to form the colony of Massachusetts. But, in general, charters were not given to the colonies of New England till they had acquired a certain existence. Plymouth, Providence, New Haven, the state of Connecticut, and that of Rhode Island,²⁷ were founded without the co-operation, and almost without the knowledge of the mother-country. The new settlers did not derive their incorporation from the head of the empire, although they did not deny its supremacy; they constituted a society of their own accord, and it was not till thirty or forty years afterward, under Charles II., that their existence was legally recognised by a royal charter.

This frequently renders it difficult to detect the link which

²⁵ See the work entitled, "*Historical Collection of State Papers and other Authentic Documents intended as Materials for a History of the United States of America*" by Ebenezer Hazard, Philadelphia, 1792, for a great number of documents relating to the commencement of the colonies, which are valuable from their contents and their authenticity; among them are the various charters granted by the king of England, and the first acts of the local governments. See also the analysis of all these charters given by Mr. Story, judge of the supreme court of the United States, in the introduction to his *Commentary on the Constitution of the United States*. It results from these documents that the principles of representative government and the external forms of political liberty were introduced into all the colonies at their origin. These principles were more fully acted upon in the North than in the South, but they existed everywhere.

²⁶ See Pitkin's History, p. 35. See the History of the Colony of Massachusetts Bay, by Hutchinson, vol. i., p. 9.

²⁷ See Pitkin's History, pp. 42, 47.

connected the emigrants with the land of their forefathers, in studying the earliest historical and legislative records of New England. They perpetually exercised the rights of sovereignty; they named their magistrates, concluded peace or declared war, made police regulations, and enacted laws, as if their allegiance was due only to God.²⁸ Nothing can be more curious, and at the same time more instructive than the legislation of that period; it is there that the solution of the great social problem which the United States now present to the world is to be found.

Among these documents we shall notice as especially characteristic, the code of laws promulgated by the little state of Connecticut in 1650.²⁹

The legislators of Connecticut³⁰ begin with the penal laws, and, strange to say, they borrow their provisions from the text of holy writ.

"Whoever shall worship any other God than the Lord," says the preamble of the code, "shall surely be put to death." This is followed by ten or twelve enactments of the same kind, copied verbatim from the books of Exodus, Leviticus, and

²⁸ The inhabitants of Massachusetts had deviated from the forms which are preserved in the criminal and civil procedure of England: in 1650 the decrees of justice were not yet headed by the royal style. See Hutchinson, vol. i., p. 452.

²⁹ Code of 1650, p. 28. Hartford, 1830.

³⁰ See also in Hutchinson's History, vol. i., pp. 435, 456, the analysis of the penal code adopted in 1648, by the colony of Massachusetts: this code is drawn up on the same principles as that of Connecticut.

Deuteronomy. Blasphemy, sorcery, adultery,³¹ and rape were punished with death; an outrage offered by a son to his parents, was to be expiated by the same penalty. The legislation of a rude and half-civilized people was thus transferred to an enlightened and moral community. The consequence was, that the punishment of death was never more frequently prescribed by the statute, and never more rarely enforced toward the guilty.

The chief care of the legislators, in this body of penal laws, was the maintenance of orderly conduct and good morals in the community: they constantly invaded the domain of conscience, and there was scarcely a sin which they did not subject to magisterial censure. The reader is aware of the rigor with which these laws punished rape and adultery; intercourse between unmarried persons was likewise severely repressed. The judge was empowered to inflict a pecuniary penalty, a whipping, or marriage,³² on the misdemeanants; and if the records of the old

³¹ Adultery was also punished with death by the law of Massachusetts; and Hutchinson, vol. i., p. 441, says that several persons actually suffered for this crime. He quotes a curious anecdote on this subject, which occurred in the year 1663. A married woman had had criminal intercourse with a young man; her husband died, and she married the lover. Several years had elapsed, when the public began to suspect the previous intercourse of this couple; they were thrown into prison, put upon trial, and very narrowly escaped capital punishment.

³² Code of 1650, p. 48. It seems sometimes to have happened that the judge superadded these punishments to each other, as is seen in a sentence pronounced in 1643 (New Haven Antiquities, p. 114), by which Margaret Bedford, convicted of loose conduct, was condemned to be whipped, and afterward to marry Nicolas Jemmings her accomplice.

courts of New Haven may be believed, prosecutions of this kind were not infrequent. We find a sentence bearing date the first of May, 1660, inflicting a fine and a reprimand on a young woman who was accused of using improper language, and of allowing herself to be kissed.³³ The code of 1650 abounds in preventive measures. It punishes idleness and drunkenness with severity.³⁴ Innkeepers are forbidden to furnish more than a certain quantity of liquor to each customer; and simple lying, whenever it may be injurious,³⁵ is checked by a fine or a flogging. In other places, the legislator, entirely forgetting the great principles of religious toleration which he had himself upheld in Europe, renders attendance on divine service compulsory,³⁶ and goes so far as to visit with severe punishment,³⁷ and even with death, the Christians who chose to worship God according to

³³ New Haven Antiquities, p. 104. See also Hutchinson's History for several causes equally extraordinary.

³⁴ Code of 1650, pp. 50, 57.

³⁵ Ibid, p. 64.

³⁶ Ibid, p. 44.

³⁷ This was not peculiar to Connecticut. See for instance the law which, on the 13th of September, 1644, banished the ana-baptists from the state of Massachusetts. (Historical Collection of State Papers, vol. i., p. 538.) See also the law against the quakers, passed on the 14th of October, 1656. "Whereas," says the preamble, "an accursed race of heretics called quakers has sprung up," &c. The clauses of the statute inflict a heavy fine on all captains of ships who should import quakers into the country. The quakers who may be found there shall be whipped and imprisoned with hard labor. Those members of the sect who should defend their opinions shall be first fined, then imprisoned, and finally driven out of the province. (Historical Collection of State Papers, vol. i., p. 630.)

a ritual differing from his own.³⁸ Sometimes indeed, the zeal of his enactments induces him to descend to the most frivolous particulars: thus a law is to be found in the same code which prohibits the use of tobacco.³⁹ It must not be forgotten that these fantastical and vexatious laws were not imposed by authority, but that they were freely voted by all the persons interested, and that the manners of the community were even more austere and more puritanical than the laws. In 1649 a solemn association was formed in Boston to check the worldly luxury of long hair.⁴⁰

These errors are no doubt discreditable to the human reason; they attest the inferiority of our nature, which is incapable of laying firm hold upon what is true and just, and is often reduced to the alternative of two excesses. In strict connection with this penal legislation, which bears such striking marks of a narrow sectarian spirit, and of those religious passions which had been warmed by persecution, and were still fermenting among the people, a body of political laws is to be found, which, though written two hundred years ago, is still ahead of the liberties of our age.

The general principles which are the groundwork of modern constitutions—principles which were imperfectly known in Europe, and not completely triumphant even in Great Britain, in

³⁸ By the penal law of Massachusetts, any catholic priest who should set foot in the colony after having been once driven out of it, was liable to capital punishment.

³⁹ Code of 1650, p. 96.

⁴⁰ New England's Memorial, p. 316. See Appendix E.

the seventeenth century—were all recognised and determined by the laws of New England: the intervention of the people in public affairs, the free voting of taxes, the responsibility of authorities, personal liberty, and trial by jury, were all positively established without discussion.

From these fruitful principles, consequences have been derived and applications have been made such as no nation in Europe has yet ventured to attempt.

In Connecticut the electoral body consisted, from its origin, of the whole number of citizens; and this is readily to be understood,⁴¹ when we recollect that this people enjoyed an almost perfect equality of fortune, and a still greater uniformity of capacity.⁴² In Connecticut, at this period, all the executive functionaries were elected, including the governor of the state.⁴³ The citizens above the age of sixteen were obliged to bear arms; they formed a national militia, which appointed its own officers, and was to hold itself at all times in readiness to march for the defence of the country.⁴⁴

In the laws of Connecticut, as well as in those of New England, we find the germe and gradual development of that township

⁴¹ Constitution of 1638, p. 17.

⁴² In 1641 the general assembly of Rhode Island unanimously declared that the government of the state was a democracy, and that the power was vested in the body of free citizens, who alone had the right to make the laws and to watch their execution. Code of 1650, p. 70.

⁴³ Pitkin's History, p. 47.

⁴⁴ Constitution of 1638, p. 12.

independence, which is the life and mainspring of American liberty at the present day. The political existence of the majority of the nations of Europe commenced in the superior ranks of society, and was gradually and always imperfectly communicated to the different members of the social body. In America, on the other hand, it may be said that the township was organized before the county, the county before the state, the state before the Union.

In New England, townships were completely and definitively constituted as early as 1650. The independence of the township was the nucleus around which the local interests, passions, rights, and duties, collected and clung. It gave scope to the activity of a real political life, most thoroughly democratic and republican. The colonies still recognised the supremacy of the mother-country; monarchy was still the law of the state; but the republic was already established in every township.

The towns named their own magistrates of every kind, rated themselves, and levied their own taxes.⁴⁵ In the townships of New England the law of representation was not adopted, but the affairs of the community were discussed, as at Athens, in the market-place, by a general assembly of the citizens.

In studying the laws which were promulgated at this first era of the American republics, it is impossible not to be struck by the remarkable acquaintance with the science of government, and the advanced theory of legislation, which they display. The ideas

⁴⁵ Code of 1650, p 80.

there formed of the duties of society toward its members, are evidently much loftier and more comprehensive than those of the European legislators at that time: obligations were there imposed which were elsewhere slighted. In the states of New England, from the first, the condition of the poor was provided for;⁴⁶ strict measures were taken for the maintenance of roads, and surveyors were appointed to attend to them;⁴⁷ registers were established in every parish, in which the results of public deliberations, and the births, deaths, and marriages of the citizens were entered;⁴⁸ clerks were directed to keep these registers;⁴⁹ officers were charged with the administration of vacant inheritances, and with the arbitration of litigated landmarks; and many others were created whose chief functions were the maintenance of public order in the community.⁵⁰ The law enters into a thousand useful provisions for a number of social wants which are at present very inadequately felt in France.

But it is by the attention it pays to public education that the original character of American civilisation is at once placed in the clearest light. "It being," says the law, "one chief project of Satan to keep men from the knowledge of the Scripture by persuading from the use of tongues, to the end that learning may

⁴⁶ Code of 1650, p. 78.

⁴⁷ Code of 1750, p. 94.

⁴⁸ Ibid, p. 86.

⁴⁹ See Hutchinson's History, vol. i. p. 455.

⁵⁰ Ibid, p. 40.

not be buried in the graves of our forefathers, in church and commonwealth, the Lord assisting our endeavors."⁵¹ Here follow clauses establishing schools in every township, and obliging the inhabitants, under pain of heavy fines, to support them. Schools of a superior kind were founded in the same manner in the more populous districts. The municipal authorities were bound to enforce the sending of children to school by their parents; they were empowered to inflict fines upon all who refused compliance; and in cases of continued resistance, society assumed the place of the parent, took possession of the child, and deprived the father of those natural rights which he used to so bad a purpose. The reader will undoubtedly have remarked the preamble of these enactments: in America, religion is the road to knowledge, and the observance of the divine laws leads men to civil freedom.

If, after having cast a rapid glance over the state of American society in 1650, we turn to the condition of Europe, and more especially to that of the continent, at the same period, we cannot fail to be struck with astonishment. On the continent of Europe, at the beginning of the seventeenth century, absolute monarchy had everywhere triumphed over the ruins of the oligarchical and feudal liberties of the middle ages. Never were the notions of right more completely confounded than in the midst of the splendor and literature of Europe; never was there less political activity among the people; never were the principles of true

⁵¹ Code of 1650, p. 90.

freedom less widely circulated, and at that very time, those principles, which were scorned or unknown by the nations of Europe, were proclaimed in the deserts of the New World, and were accepted as the future creed of a great people. The boldest theories of the human reason were put into practice by a community so humble, that not a statesman condescended to attend to it; and a legislation without precedent was produced off-hand by the imagination of the citizens. In the bosom of this obscure democracy, which had as yet brought forth neither generals, nor philosophers, nor authors, a man might stand up in the face of a free people, and pronounce amid general acclamations the following fine definition of liberty:⁵²—

"Nor would I have you to mistake in the point of your own liberty. There is a liberty of corrupt nature, which is affected both by men and beasts to do what they list; and this liberty is inconsistent with authority, impatient of all restraint; by this liberty '*sumus omnes deteriores*;' it is the grand enemy of truth and peace, and all the ordinances of God are bent against it. But there is a civil, a moral, a federal liberty, which is the proper end and object of authority; it is a liberty for that only which is just and good: for this liberty you are to stand with the hazard of your very lives, and whatsoever crosses it is not authority,

⁵² Mather's *Magnalia Christi Americana*, vol. ii., p. 13. This speech was made by Winthrop; he was accused of having committed arbitrary actions during his magistracy, but after having made the speech of which the above is a fragment, he was acquitted by acclamation, and from that time forward he was always re-elected governor of the state. See Marshall, vol. i., p. 166.

but a distemper thereof. This liberty is maintained in a way of subjection to authority; and the authority set over you will, in all administrations for your good, be quietly submitted unto by all but such as have a disposition to shake off the yoke and lose their true liberty, by their murmuring at the honor and power of authority."

The remarks I have made will suffice to display the character of Anglo-American civilisation in its true light. It is the result (and this should be constantly present to the mind) of two distinct elements, which in other places have been in frequent hostility, but which in America have admirably incorporated and combined with one another. I allude to the spirit of religion and the spirit of liberty.

The settlers of New England were at the same time ardent sectarians and daring innovators. Narrow as the limits of some of their religious opinions were, they were entirely free from political prejudices.

Hence arose two tendencies, distinct but not opposite, which are constantly discernible in the manners as well as in the laws of the country.

It might be imagined that men who sacrificed their friends, their family, and their native land, to a religious conviction, were absorbed in the pursuit of the intellectual advantages which they purchased at so dear a rate. The energy, however, with which they strove for the acquirements of wealth, moral enjoyment, and the comforts as well as the liberties of the world, was scarcely

inferior to that with which they devoted themselves to Heaven.

Political principles, and all human laws and institutions were moulded and altered at their pleasure; the barriers of the society in which they were born were broken down before them; the old principles which had governed the world for ages were no more; a path without a turn, and a field without a horizon, were opened to the exploring and ardent curiosity of man; but at the limits of the political world he checks his researches, he discreetly lays aside the use of his most formidable faculties, he no longer consents to doubt or to innovate, but carefully abstaining from raising the curtain of the sanctuary, he yields with submissive respect to truths which he will not discuss.

Thus in the moral world, everything is classed, adapted, decided, and foreseen; in the political world everything is agitated, uncertain, and disputed: in the one is a passive, though a voluntary obedience; in the other an independence, scornful of experience and jealous of authority.

These two tendencies, apparently so discrepant, are far from conflicting; they advance together, and mutually support each other.

Religion perceives that civil liberty affords a noble exercise to the faculties of man, and that the political world is a field prepared by the Creator for the efforts of the intelligence. Contented with the freedom and the power which it enjoys in its own sphere, and with the place which it occupies, the empire of religion is never more surely established than when it reigns in the

hearts of men unsupported by aught besides its native strength.

Religion is no less the companion of liberty in all its battles and its triumphs; the cradle of its infancy, and the divine source of its claims. The safeguard of morality is religion, and morality is the best security of law as well as the surest pledge of freedom.⁵³

REASONS OF CERTAIN ANOMALIES WHICH THE LAWS AND CUSTOMS OF THE ANGLO-AMERICANS PRESENT

Remains of aristocratic Institutions in the midst of a complete Democracy.—Why?—Distinction carefully to be drawn between what is of Puritanical and what is of English Origin.

The reader is cautioned not to draw too general or too absolute an inference from what has been said. The social condition, the religion, and the manners of the first emigrants undoubtedly exercised an immense influence on the destiny of their new country. Nevertheless it was not in their power to found a state of things originating solely in themselves; no man can entirely shake off the influence of the past, and the settlers, unintentionally or involuntarily, mingled habits derived from their education and from the traditions of their country, with those habits and notions

⁵³ See Appendix F.

which were exclusively their own. To form a judgment on the Anglo-Americans of the present day, it is therefore necessary carefully to distinguish what is of puritanical from what is of English origin.

Laws and customs are frequently to be met with in the United States which contrast strongly with all that surrounds them. These laws seem to be drawn up in a spirit contrary to the prevailing tenor of the American legislation; and these customs are no less opposed to the general tone of society. If the English colonies had been founded in an age of darkness, or if their origin was already lost in the lapse of years, the problem would be insoluble.

I shall quote a single example to illustrate what I advance.

The civil and criminal procedure of the Americans has only two means of action—committal or bail. The first measure taken by the magistrate is to exact security from the defendant, or, in case of refusal, to incarcerate him: the ground of the accusation, and the importance of the charges against him are then discussed.

It is evident that a legislation of this kind is hostile to the poor man, and favorable only to the rich. The poor man has not always a security to produce, even in a civil cause: and if he is obliged to wait for justice in prison, he is speedily reduced to distress. The wealthy individual, on the contrary, always escapes imprisonment in civil causes; nay, more, he may readily elude the punishment which awaits him for a delinquency, by breaking his bail. So that all the penalties of the law are, for him, reducible

to fines.⁵⁴ Nothing can be more aristocratic than this system of legislation. Yet in America it is the poor who make the law, and they usually reserve the greatest social advantages to themselves. The explanation of the phenomenon is to be found in England; the laws of which I speak are English,⁵⁵ and the Americans have retained them, however repugnant they may be to the tenor of their legislation, and the mass of their ideas.

Next to its habits, the thing which a nation is least apt to change is its civil legislation. Civil laws are only familiarly known to legal men, whose direct interest it is to maintain them as they are, whether good or bad, simply because they themselves are conversant with them. The body of the nation is scarcely acquainted with them: it merely perceives their action in particular cases; but it has some difficulty in seizing their tendency, and obeys them without reflection.

I have quoted one instance where it would have been easy to adduce a great number of others.

The surface of American society is, if I may use the expression, covered with a layer of democracy, from beneath which the old aristocratic colors sometimes peep.⁵⁶

⁵⁴ Crimes no doubt exist for which bail is inadmissible, but they are few in number.

⁵⁵ See Blackstone; and Delolme, book i., chap. x.

⁵⁶ The author is not quite accurate in this statement. A person accused of crime is, in the first instance, arrested by virtue of a warrant issued by the magistrate, upon a complaint granted upon proof of a crime having been committed by the person charged. He is then brought before the magistrate, the complainant examined in his presence, other evidence adduced, and he is heard in explanation or defence. If the

magistrate is satisfied that a crime has been committed, and that the accused is guilty, the latter is, then, and then only, required to give security for his appearance at the proper court to take his trial, if an indictment shall be found against him by a Grand Jury of twenty-three of his fellow-citizens. In the event of his inability or refusal to give the security he is incarcerated, so as to secure his appearance at a trial. In France, after the preliminary examination, the accused, unless absolutely discharged, is in all cases incarcerated, to secure his presence at the trial. It is the relaxation of this practice in England and the United States, in order to attain the ends of justice at the least possible inconvenience to the accused, by accepting what is deemed an adequate pledge for his appearance, which our author considers hostile to the poor man and favorable to the rich. And yet it is very obvious, that such is not its design or tendency. Good character, and probable innocence, ordinarily obtain for the accused man the required security. And if they do not, how can complaint be justly made that others are not treated with unnecessary severity, and punished in anticipation, because some are prevented by circumstances from availing themselves of a benign provision so favorable to humanity, and to that innocence which our law presumes, until guilt is proved? To secure the persons of suspected criminals, that they may abide the sentence of the law, is indispensable to all jurisprudence. And instead of reproof or aristocratic tendency, our system deserves credit for having ameliorated, as far as possible, the condition of persons accused. That this amelioration cannot be made in all instances, flows from the necessity of the case. It would be a mistake to suppose, as the author seems to have done, that the forfeiture of the security given, exonerates the accused from punishment. He may be again arrested and detained in prison, as security would not ordinarily be received from a person who had given such evidence of his guilt as would be derived from his attempt to escape. And the difficulty of escape is rendered so great by our constitutional provisions for the delivery, by the different states, of fugitives from justice, and by our treaties with England and France for the same purpose, that the instances of successful evasion are few and rare.

CHAPTER III

SOCIAL CONDITION OF THE ANGLO-AMERICANS

A Social condition is commonly the result of circumstances, sometimes of laws, oftener still of these two causes united; but wherever it exists, it may justly be considered as the source of almost all the laws, the usages, and the ideas, which regulate the conduct of nations: whatever it does not produce, it modifies.

It is, therefore, necessary, if we would become acquainted with the legislation and the manners of a nation, to begin by the study of its social condition.

THE STRIKING CHARACTERISTIC OF THE SOCIAL CONDITION OF THE ANGLO-AMERICANS IS ITS ESSENTIAL DEMOCRACY

The first Emigrants of New England.—Their Equality.—Aristocratic Laws introduced in the South.—Period of the Revolution.—Change in the Law of Descent.—Effects produced by this Change.—Democracy carried to its utmost Limits in the

new States of the West.—Equality of Education.

Many important observations suggest themselves upon the social condition of the Anglo-Americans; but there is one which takes precedence of all the rest. The social condition of the Americans is eminently democratic; this was its character at the foundation of the colonies, and is still more strongly marked at the present day.

I have stated in the preceding chapter that great equality existed among the emigrants who settled on the shores of New England. The germe of aristocracy was never planted in that part of the Union. The only influence which obtained there was that of intellect; the people were used to reverence certain names as the emblems of knowledge and virtue. Some of their fellow-citizens acquired a power over the rest which might truly have been called aristocratic, if it had been capable of invariable transmission from father to son.

This was the state of things to the east of the Hudson: to the southwest of that river, and in the direction of the Floridas, the case was different. In most of the states situated to the southwest of the Hudson some great English proprietors had settled, who had imported with them aristocratic principles and the English law of descent. I have explained the reasons why it was impossible ever to establish a powerful aristocracy in America; these reasons existed with less force to the southwest of the Hudson. In the south, one man, aided by slaves, could cultivate a great extent of country: it was therefore common to

see rich landed proprietors. But their influence was not altogether aristocratic as that term is understood in Europe, since they possessed no privileges; and the cultivation of their estates being carried on by slaves, they had no tenants depending on them, and consequently no patronage. Still, the great proprietors south of the Hudson constituted a superior class, having ideas and tastes of its own, and forming the centre of political action. This kind of aristocracy sympathized with the body of the people, whose passions and interests it easily embraced; but it was too weak and too short-lived to excite either love or hatred for itself. This was the class which headed the insurrection in the south, and furnished the best leaders of the American revolution.

At the period of which we are now speaking, society was shaken to its centre: the people, in whose name the struggle had taken place, conceived the desire of exercising the authority which it had acquired; its democratic tendencies were awakened; and having thrown off the yoke of the mother-country, it aspired to independence of every kind. The influence of individuals gradually ceased to be felt, and custom and law united together to produce the same result.

But the law of descent was the last step to equality. I am surprised that ancient and modern jurists have not attributed to this law a greater influence on human affairs.⁵⁷ It is true that

⁵⁷ I understand by the law of descent all those laws whose principal object it is to regulate the distribution of property after the death of its owner. The law of entail is of this number: it certainly prevents the owner from disposing of his possessions before his death; but this is solely with a view of preserving them entire for the heir. The

these laws belong to civil affairs: but they ought nevertheless to be placed at the head of all political institutions; for, while political laws are only the symbol of a nation's condition, they exercise an incredible influence upon its social state. They have, moreover, a sure and uniform manner of operating upon society, affecting, as it were, generations yet unknown.

Through their means man acquires a kind of preternatural power over the future lot of his fellow-creatures. When the legislator has once regulated the law of inheritance, he may rest from his labor. The machine once put in motion will go on for ages, and advance, as if self-guided, toward a given point. When framed in a particular manner, this law unites, draws together, and vests property and power in a few hands: its tendency is clearly aristocratic. On opposite principles its action is still more rapid; it divides, distributes, and disperses both property and power. Alarmed by the rapidity of its progress, those who despair of arresting its motion endeavor to obstruct by difficulties and impediments; they vainly seek to counteract its effect by contrary efforts: but it gradually reduces or destroys every obstacle, until by its incessant activity the bulwarks of the influence of wealth are ground down to the fine and shifting sand which is the basis of democracy. When the law of inheritance permits, still more when it decrees, the equal division of a father's property among all his children, its effects are of two kinds: it is important to

principal object, therefore, of the law of entail is to regulate the descent of property after the death of its owner: its other provisions are merely means to this end.

distinguish them from each other, although they tend to the same end.

In virtue of the law of partible inheritance, the death of every proprietor brings about a kind of revolution in property: not only do his possessions change hands, but their very nature is altered, since they are parcelled into shares, which become smaller and smaller at each division. This is the direct, and, as it were, the physical effect of the law. It follows, then, that in countries where equality of inheritance is established by law, property, and especially landed property, must have a tendency to perpetual diminution. The effects, however, of such legislation would only be perceptible after a lapse of time, if the law was abandoned to its own working; for supposing a family to consist of two children (and in a country peopled as France is, the average number is not above three), these children, sharing among them the fortune of both parents, would not be poorer than their father or mother.

But the law of equal division exercises its influence not merely upon the property itself, but it affects the minds of the heirs, and brings their passions into play. These indirect consequences tend powerfully to the destruction of large fortunes, and especially of large domains.

Among the nations whose law of descent is founded upon the right of primogeniture, landed estates often pass from generation to generation without undergoing division. The consequence of which is, that family feeling is to a certain degree incorporated with the estate. The family represents the estate, the estate the

family; whose name, together with its origin, its glory, its power, and its virtues, is thus perpetuated in an imperishable memorial of the past, and a sure pledge of the future.

When the equal partition of property is established by law, the intimate connection is destroyed between family feeling and the preservation of the paternal estate; the property ceases to represent the family; for, as it must inevitably be divided after one or two generations, it has evidently a constant tendency to diminish, and must in the end be completely dispersed. The sons of the great landed proprietor, if they are few in number, or if fortune befriend them, may indeed entertain the hope of being as wealthy as their father, but not that of possessing the same property as he did; their riches must necessarily be composed of elements different from his.

Now, from the moment when you divest the land-owner of that interest in the preservation of his estate which he derives from association, from tradition, and from family pride, you may be certain that sooner or later he will dispose of it; for there is a strong pecuniary interest in favor of selling, as floating capital produces higher interest than real property, and is more readily available to gratify the passions of the moment.

Great landed estates which have once been divided, never come together again; for the small proprietor draws from his land a better revenue in proportion, than the large owner does from his; and of course he sells it at a higher rate.⁵⁸ The calculations of

⁵⁸ I do not mean to say that the small proprietor cultivates his land better, but he

gain, therefore, which decided the rich man to sell his domain, will still more powerfully influence him against buying small estates to unite them into a large one.

What is called family pride is often founded upon an illusion of self-love. A man wishes to perpetuate and immortalize himself, as it were, in his great-grandchildren. Where the *esprit de famille* ceases to act, individual selfishness comes into play. When the idea of family becomes vague, indeterminate, and uncertain, a man thinks of his present convenience; he provides for the establishment of the succeeding generation, and no more.

Either a man gives up the idea of perpetuating his family, or at any rate he seeks to accomplish it by other means than that of a landed estate.

Thus not only does the law of partible inheritance render it difficult for families to preserve their ancestral domains entire, but it deprives them of the inclination to attempt it, and compels them in some measure to co-operate with the law in their own extinction.

The law of equal distribution proceeds by two methods: by acting upon things, it acts upon persons; by influencing persons, it affects things. By these means the law succeeds in striking at the root of landed property, and dispersing rapidly both families and fortunes.⁵⁹

cultivates it with more ardor and care; so that he makes up by his labor for his want of skill.

⁵⁹ Land being the most stable kind of property, we find, from time to time, rich individuals who are disposed to make great sacrifices in order to obtain it, and who

Most certainly is it not for us, Frenchmen of the nineteenth century, who daily behold the political and social changes which the law of partition is bringing to pass, to question its influence. It is perpetually conspicuous in our country, overthrowing the walls of our dwellings and removing the landmarks of our fields. But although it has produced great effects in France, much still remains for it to do. Our recollections, opinions, and habits, present powerful obstacles to its progress.

In the United States it has nearly completed its work of destruction, and there we can best study its results. The English laws concerning the transmission of property were abolished in almost all the states at the time of the revolution. The law of entail was so modified as not to interrupt the free circulation of property.⁶⁰ The first having passed away, estates began to be parcelled out; and the change became more and more rapid with the progress of time. At this moment, after a lapse of little more than sixty years, the aspect of society is totally

willingly forfeit a considerable part of their income to make sure of the rest. But these are accidental cases. The preference for landed property is no longer found habitually in any class but among the poor. The small land-owner, who has less information, less imagination, and fewer passions, than the great one, is generally occupied with the desire of increasing his estate; and it often happens that by inheritance, by marriage, or by the chances of trade, he is gradually furnished with the means. Thus, to balance the tendency which leads men to divide their estates, there exists another, which incites them to add to them. This tendency, which is sufficient to prevent estates from being divided *ad infinitum*, is not strong enough to create great territorial possessions, certainly not to keep them up in the same family.

⁶⁰ See Appendix G.

altered; the families of the great landed proprietors are almost all commingled with the general mass. In the state of New York, which formerly contained many of these, there are but two who still keep their heads above the stream; and they must shortly disappear. The sons of these opulent citizens have become merchants, lawyers, or physicians. Most of them have lapsed into obscurity. The last trace of hereditary ranks and distinctions is destroyed—the law of partition has reduced all to one level.

I do not mean that there is any deficiency of wealthy individuals in the United States; I know of no country, indeed, where the love of money has taken stronger hold on the affections of men, and where a profounder contempt is expressed for the theory of the permanent equality of property. But wealth circulates with inconceivable rapidity, and experience shows that it is rare to find two succeeding generations in the full enjoyment of it.

This picture, which may perhaps be thought overcharged, still gives a very imperfect idea of what is taking place in the new states of the west and southwest. At the end of the last century a few bold adventurers began to penetrate into the valleys of the Mississippi, and the mass of the population very soon began to move in that direction: communities unheard of till then were seen to emerge from their wilds: states, whose names were not in existence a few years before, claimed their place in the American Union; and in the western settlements we may behold democracy arrived at its utmost extreme. In these states, founded

off hand, and as it were by chance, the inhabitants are but of yesterday. Scarcely known to one another, the nearest neighbors are ignorant of each other's history. In this part of the American continent, therefore, the population has not experienced the influence of great names and great wealth, nor even that of the natural aristocracy of knowledge and virtue. None are there to wield that respectable power which men willingly grant to the remembrance of a life spent in doing good before their eyes. The new states of the west are already inhabited; but society has no existence among them.

It is not only the fortunes of men which are equal in America; even their acquirements partake in some degree of the same uniformity. I do not believe there is a country in the world where, in proportion to the population, there are so few uninstructed, and at the same time so few learned individuals. Primary instruction is within the reach of everybody; superior instruction is scarcely to be obtained by any. This is not surprising; it is in fact the necessary consequence of what we have advanced above. Almost all the Americans are in easy circumstances, and can therefore obtain the elements of human knowledge.

In America there are comparatively few who are rich enough to live without a profession. Every profession requires an apprenticeship, which limits the time of instruction to the early years of life. At fifteen they enter upon their calling, and thus their education ends at the age when ours begins. Whatever is done afterward, is with a view to some special and lucrative

object; a science is taken up as a matter of business, and the only branch of it which is attended to is such as admits of an immediate practical application.

{This paragraph does not fairly render the meaning of the author. The original French is as follows:—

"En Amérique il y a peu de riches; presque tous les Américains ont donc besoin d'exercer une profession. Or, toute profession exige un apprentissage. Les Américains ne peuvent donc donner à la culture générale de l'intelligence que les premières années de la vie: à quinze ans ils entrent dans une carrière: ainsi leur éducation finit le plus souvent à l'époque où la nôtre commence."

What is meant by the remark; that "at fifteen they enter upon a career, and thus their education is very often finished at the epoch when ours commences," is not clearly perceived. Our professional men enter upon their course of preparation for their respective professions, wholly between eighteen and twenty-one years of age. Apprentices to trades are bound out, ordinarily, at fourteen, but what general education they receive is after that period. Previously, they have acquired the mere elements of reading, writing, and arithmetic. But it is supposed there is nothing peculiar to America, in the age at which apprenticeship commences. In England, they commence at the same age, and it is believed that the same thing occurs throughout Europe. It is feared that the author has not here expressed himself with his usual clearness and precision.—*American Editor.*}

In America most of the rich men were formerly poor; most of those who now enjoy leisure were absorbed in business during their youth; the consequence of which is, that when they might have had a taste for study they had no time for it, and when the time is at their disposal they have no longer the inclination.

There is no class, then, in America in which the taste for intellectual pleasures is transmitted with hereditary fortune and leisure, and by which the labors of the intellect are held in honor. Accordingly there is an equal want of the desire and the power of application to these objects.

A middling standard is fixed in America for human knowledge. All approach as near to it as they can; some as they rise, others as they descend. Of course, an immense multitude of persons are to be found who entertain the same number of ideas on religion, history, science, political economy, legislation, and government. The gifts of intellect proceed directly from God, and man cannot prevent their unequal distribution. But in consequence of the state of things which we have here represented, it happens, that although the capacities of men are widely different, as the Creator has doubtless intended they should be, they are submitted to the same method of treatment.

In America the aristocratic element has always been feeble from its birth; and if at the present day it is not actually destroyed, it is at any rate so completely disabled that we can scarcely assign to it any degree of influence in the course of affairs.

The democratic principle, on the contrary, has gained so much

strength by time, by events, and by legislation, as to have become not only predominant but all-powerful. There is no family or corporate authority, and it is rare to find even the influence of individual character enjoy any durability.

America, then, exhibits in her social state a most extraordinary phenomenon. Men are there seen on a greater equality in point of fortune and intellect, or in other words, more equal in their strength, than in any other country of the world, or, in any age of which history has preserved the remembrance.

POLITICAL CONSEQUENCES OF THE SOCIAL CONDITION OF THE ANGLO-AMERICANS

The political consequences of such a social condition as this are easily deducible.

It is impossible to believe that equality will not eventually find its way into the political world as it does everywhere else. To conceive of men remaining for ever unequal upon one single point, yet equal on all others, is impossible; they must come in the end to be equal upon all.

Now I know of only two methods of establishing equality in the political world: every citizen must be put in possession of his rights, or rights must be granted to no one. For nations which have arrived at the same stage of social existence as the Anglo-Americans, it is therefore very difficult to discover a medium

between the sovereignty of all and the absolute power of one man: and it would be vain to deny that the social condition which I have been describing is equally liable to each of these consequences.

There is, in fact, a manly and lawful passion for equality, which excites men to wish all to be powerful and honored. This passion tends to elevate the humble to the rank of the great; but there exists also in the human heart a depraved taste for equality, which impels the weak to attempt to lower the powerful to their own level, and reduces men to prefer equality in slavery to inequality with freedom. Not that those nations whose social condition is democratic naturally despise liberty; on the contrary, they have an instinctive love of it. But liberty is not the chief and constant object of their desires; equality is their idol: they make rapid and sudden efforts to obtain liberty, and if they miss their aim, resign themselves to their disappointment; but nothing can satisfy them except equality, and rather than lose it they resolve to perish.

On the other hand, in a state where the citizens are nearly on an equality, it becomes difficult for them to preserve their independence against the aggression of power. No one among them being strong enough to engage singly in the struggle with advantage, nothing but a general combination can protect their liberty: and such a union is not always to be found.

From the same social position, then, nations may derive one or the other of two great political results; these results are extremely

different from each other, but they may both proceed from the same cause.

The Anglo-Americans are the first who, having been exposed to this formidable alternative, have been happy enough to escape the dominion of absolute power. They have been allowed by their circumstances, their origin, their intelligence, and especially by their moral feeling, to establish and maintain the sovereignty of the people.

CHAPTER IV

THE PRINCIPLE OF THE SOVEREIGNTY OF THE PEOPLE IN AMERICA

It predominates over the whole of Society in America.—Application made of this Principle by the Americans even before their Revolution.—Development given to it by that Revolution.—Gradual and irresistible Extension of the elective Qualification.

Whenever the political laws of the United States are to be discussed, it is with the doctrine of the sovereignty of the people that we must begin.

The principle of the sovereignty of the people, which is to be found, more or less, at the bottom of almost all human institutions, generally remains concealed from view. It is obeyed without being recognised, or if for a moment it be brought to light, it is hastily cast back into the gloom of the sanctuary.

"The will of the nation" is one of those expressions which have been most profusely abused by the wily and the despotic of every age. To the eyes of some it has been represented by the venal suffrages of a few of the satellites of power; to others, by the

votes of a timid minority; and some have even discovered it in the silence of a people, on the supposition that the fact of submission established the right of command.

In America, the principle of the sovereignty of the people is not either barren or concealed, as it is with some other nations; it is recognised by the customs and proclaimed by the laws; it spreads freely, and arrives without impediment at its most remote consequences. If there be a country in the world where the doctrine of the sovereignty of the people can be fairly appreciated, where it can be studied in its application to the affairs of society, and where its dangers and its advantages may be foreseen, that country is assuredly America.

I have already observed that, from their origin, the sovereignty of the people was the fundamental principle of the greater number of the British colonies in America. It was far, however, from then exercising as much influence on the government of society as it now does. Two obstacles, the one external, the other internal, checked its invasive progress.

It could not ostensibly disclose itself in the laws of the colonies, which were still constrained to obey the mother country; it was therefore obliged to spread secretly, and to gain ground in the provincial assemblies, and especially in the townships.

American society was not yet prepared to adopt it with all its consequences. The intelligence of New England, and the wealth of the country to the south of the Hudson (as I have shown

in the preceding chapter), long exercised a sort of aristocratic influence, which tended to limit the exercise of social authority within the hands of a few. The public functionaries were not universally elected, and the citizens were not all of them electors. The electoral franchise was everywhere placed within certain limits, and made dependant on a certain qualification, which was exceedingly low in the north, and more considerable in the south.

The American revolution broke out, and the doctrine of the sovereignty of the people, which had been nurtured in the townships, took possession of the state; every class was enlisted in its cause; battles were fought, and victories obtained for it; until it became the law of laws.

A scarcely less rapid change was effected in the interior of society, where the law of descent completed the abolition of local influences.

At the very time when this consequence of the laws and of the revolution became apparent to every eye, victory was irrevocably pronounced in favor of the democratic cause. All power was, in fact, in its hands, and resistance was no longer possible. The higher orders submitted without a murmur and without a struggle to an evil which was thenceforth inevitable. The ordinary fate of falling powers awaited them; each of their several members followed his own interest; and as it was impossible to wring the power from the hands of a people which they did not detest sufficiently to brave, their only aim was to secure its good-will at any price. The most democratic laws were consequently voted by

the very men whose interests they impaired; and thus, although the higher classes did not excite the passions of the people against their order, they accelerated the triumph of the new state of things; so that, by a singular change, the democratic impulse was found to be most irresistible in the very states where the aristocracy had the firmest hold.

The state of Maryland, which had been founded by men of rank, was the first to proclaim universal suffrage,⁶¹ and to introduce the most democratic forms into the conduct of its government.

When a nation modifies the elective qualification, it may easily be foreseen that sooner or later that qualification will be entirely abolished. There is no more invariable rule in the history of society: the farther electoral rights are extended, the more is felt the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength. The ambition of those who are below the appointed rate is irritated in exact proportion to the great number of those who are above it. The exception at last becomes the rule, concession follows concession, and no stop can be made short of universal suffrage.

At the present day the principle of the sovereignty of the people has acquired, in the United States, all the practical development which the imagination can conceive. It is unencumbered by those fictions which have been thrown

⁶¹ See the amendments made to the constitution of Maryland in 1801 and 1809.

over it in other countries, and it appears in every possible form according to the exigency of the occasion. Sometimes the laws are made by the people in a body, as at Athens; and sometimes its representatives, chosen by universal suffrage, transact business in its name, and almost under its immediate control.

In some countries a power exists which, though it is in a degree foreign to the social body, directs it, and forces it to pursue a certain track. In others the ruling force is divided, being partly within and partly without the ranks of the people. But nothing of the kind is to be seen in the United States; there society governs itself for itself. All power centres in its bosom; and scarcely an individual is to be met with who would venture to conceive, or, still more, to express, the idea of seeking it elsewhere. The nation participates in the making of its laws by the choice of its legislators, and in the execution of them by the choice of the agents of the executive government; it may almost be said to govern itself, so feeble and so restricted is the share left to the administration, so little do the authorities forget their popular origin and the power from which they emanate.⁶²

⁶² See Appendix H.

CHAPTER V

NECESSITY OF EXAMINING THE CONDITION OF THE STATES BEFORE THAT OF THE UNION AT LARGE

It is proposed to examine in the following chapter, what is the form of government established in America on the principle of the sovereignty of the people; what are its resources, its hindrances, its advantages, and its dangers. The first difficulty which presents itself arises from the complex nature of the constitution of the United States, which consists of two distinct social structures, connected, and, as it were, encased, one within the other; two governments, completely separate, and almost independent, the one fulfilling the ordinary duties, and responding to the daily and indefinite calls of a community, the other circumscribed within certain limits, and only exercising an exceptional authority over the general interests of the country. In short, there are twenty-four small sovereign nations, whose agglomeration constitutes the body of the Union. To examine the Union before we have studied the states, would be to adopt a method filled with obstacles. The Federal government of the United States was the last which was adopted; and it is

in fact nothing more than a modification or a summary of these republican principles which were current in the whole community before it existed, and independently of its existence. Moreover, the federal government is, as I have just observed, the exception; the government of the states is the rule. The author who should attempt to exhibit the picture as a whole, before he had explained its details, would necessarily fall into obscurity and repetition.

The great political principles which govern American society at this day, undoubtedly took their origin and their growth in the state. It is therefore necessary to become acquainted with the state in order to possess a clew to the remainder. The states which at present compose the American Union, all present the same features as far as regards the external aspect of their institutions. Their political or administrative existence is centred in three foci of action, which may not inaptly be compared to the different nervous centres which convey motion to the human body. The township is in the lowest order, then the county, and lastly the state; and I propose to devote the following chapter to the examination of these three divisions.

THE AMERICAN SYSTEM OF TOWNSHIPS AND MUNICIPAL BODIES. ⁶³

Why the Author begins the Examination of the Political Institutions with the Township.—Its Existence in all Nations.—Difficulty of Establishing and Preserving Independence.—Its Importance.—Why the Author has selected the Township System of New England as the main Object of his Inquiry.

It is not undesignedly that I begin this subject with the township. The village or township is the only association which is so perfectly natural, that wherever a number of men are collected, it seems to constitute itself.

⁶³ It is by this periphrasis that I attempt to render the French expressions "*Commune*" and "*Système Communal*." I am not aware that any English word precisely corresponds to the general term of the original. In France every association of human dwellings forms a *commune*, and every commune is governed by a *maire* and a *conseil municipal*. In other words, the *municipium* or municipal privilege, which belongs in England to chartered corporations alone, is alike extended to every commune into which the cantons and departments of France were divided at the revolution. Thence the different application of the expression, which is general in one country and restricted in the other. In America, the counties of the northern states are divided into townships, those of the southern into parishes; besides which, municipal bodies, bearing the name of corporations, exist in the cities. I shall apply these several expressions to render the term *commune*. The term "parish," now commonly used in England, belongs exclusively to the ecclesiastical division; it denotes the limits over which a *parson's* (*personae ecclesiae* or perhaps *parochianus*) rights extend.—*Translator's Note*.

The town, or tithing, as the smallest division of a community, must necessarily exist in all nations, whatever their laws and customs may be: if man makes monarchies, and establishes republics, the first association of mankind seems constituted by the hand of God. But although the existence of the township is coeval with that of man, its liberties are not the less rarely respected and easily destroyed. A nation is always able to establish great political assemblies, because it habitually contains a certain number of individuals fitted by their talents, if not by their habits, for the direction of affairs. The township is, on the contrary, composed of coarser materials, which are less easily fashioned by the legislator. The difficulties which attend the consolidation of its independence rather augment than diminish with the increasing enlightenment of the people. A highly-civilized community spurns the attempts of a local independence, is disgusted at its numerous blunders, and is apt to despair of success before the experiment is completed. Again, no immunities are so ill-protected from the encroachments of the supreme power as those of municipal bodies in general: they are unable to struggle, single-handed, against a strong or an enterprising government, and they cannot defend their cause with success unless it be identified with the customs of the nation and supported by public opinion. Thus, until the independence of townships is amalgamated with the manners of a people, it is easily destroyed; and it is only after a long existence in the laws that it can be thus amalgamated. Municipal freedom eludes

the exertions of man; it is rarely created; but it is, as it were, secretly and spontaneously engendered in the midst of a semi-barbarous state of society. The constant action of the laws and the national habits, peculiar circumstances, and above all, time, may consolidate it; but there is certainly no nation on the continent of Europe which has experienced its advantages. Nevertheless, local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science; they bring it within the people's reach, they teach men how to use and how to enjoy it. A nation may establish a system of free government, but without the spirit of municipal institutions it cannot have the spirit of liberty. The transient passions, and the interests of an hour, or the chance of circumstances, may have created the external forms of independence; but the despotic tendency which has been repelled will, sooner or later, inevitably reappear on the surface.

In order to explain to the reader the general principles on which the political organisations of the counties and townships of the United States rest, I have thought it expedient to choose one of the states of New England as an example, to examine the mechanism of its constitution, and then to cast a general glance over the country.

The township and the county are not organized in the same manner in every part of the Union; it is, however, easy to perceive that the same principles have guided the formation of both of them throughout the Union. I am inclined to believe that

these principles have been carried farther in New England than elsewhere, and consequently that they offer greater facilities to the observations of a stranger.

The institutions of New England form a complete and regular whole; they have received the sanction of time, they have the support of the laws, and the still stronger support of the manners of the community, over which they exercise the most prodigious influence; they consequently deserve our attention on every account.

LIMITS OF THE TOWNSHIP

The township of New England is a division which stands between the commune and the canton of France, and which corresponds in general to the English tithing, or town. Its average population is from two to three thousand;⁶⁴ so that, on the one hand, the interests of the inhabitants are not likely to conflict, and, on the other, men capable of conducting its affairs are always to be found among its citizens.

AUTHORITIES OF THE TOWNSHIP IN NEW ENGLAND

The People the Source of all Power here as Elsewhere.—

⁶⁴ In 1830, there were 305 townships in the state of Massachusetts and 610,014 inhabitants; which gives an average of about 2,000 inhabitants to each township.

Manages its own Affairs. No Corporation.—The greater part of the Authority vested in the Hands of the Selectmen.—How the Selectmen act.—Town-meeting.—Enumeration of the public Officers of the Township Obligatory and remunerated Functions.

In the township, as well as everywhere else, the people is the only source of power; but in no stage of government does the body of citizens exercise a more immediate influence. In America, the people is a master whose exigences demand obedience to the utmost limits of possibility.

In New England the majority acts by representatives in the conduct of the public business of the state; but if such an arrangement be necessary in general affairs, in the township, where the legislative and administrative action of the government is in more immediate contact with the subject, the system of representation is not adopted. There is no corporation; but the body of electors, after having designated its magistrates, directs them in anything that exceeds the simple and ordinary executive business of the state.⁶⁵

This state of things is so contrary to our ideas, and so different from our customs, that it is necessary for me to adduce some examples to explain it thoroughly.

⁶⁵ The same rules are not applicable to the great towns, which generally have a mayor, and a corporation divided into two bodies; this, however, is an exception which requires a sanction of a law. See the act of 22d February, 1822, for appointing the authorities of the city of Boston. It frequently happens that small towns as well as cities are subject to a peculiar administration. In 1832, 104 townships in the state of New York were governed in this manner.—*Williams's Register*.

The public duties in the township are extremely numerous and minutely divided, as we shall see farther on; but the large proportion of administrative power is vested in the hands of a small number of individuals called "the selectmen."⁶⁶

The general laws of the state impose a certain number of obligations on the selectmen, which may they fulfil without the authorization of the body they govern, but which they can only neglect on their own responsibility. The law of the state obliges them, for instance, to draw up the list of electors in the townships; and if they omit this part of their functions, they are guilty of a misdemeanor. In all the affairs, however, which are determined by the town-meeting, the selectmen are the organs of the popular mandate, as in France the maire executes the decree of the municipal council. They usually act upon their own responsibility, and merely put in practice principles which have been previously recognised by the majority. But if any change is to be introduced in the existing state of things, or if they wish to undertake any new enterprise, they are obliged to refer to the source of their power. If, for instance, a school is to be established, the selectmen convoke the whole body of electors on a certain day at an appointed place; they explain the urgency

⁶⁶ Three selectmen are appointed in the small townships, and nine in the large ones. See "The Town Officer," p. 186. See also the principal laws of the state of Massachusetts relative to the selectmen:—Act of the 20th February, 1786, vol. i, p. 219; 24th February, 1796, vol. i., p. 488, 7th March, 1801, vol. ii., p. 45; 16th June, 1795, vol. i., p. 475; 12th March, 1808, vol. ii., p. 186; 28th February, 1787, vol. i., p. 302; 22d June, 1797, vol. i., p. 539.

of the case; they give their opinion on the means of satisfying it, on the probable expense, and the site which seems to be most favorable. The meeting is consulted on these several points; it adopts the principle, marks out the site, votes the rate, and confides the execution of its resolution to the selectmen.

The selectmen alone have the right of calling a town-meeting; but they may be requested to do so: if the citizens are desirous of submitting a new project to the assent of the township, they may demand a general convocation of the inhabitants; the selectmen are obliged to comply, but they have only the right of presiding at the meeting.⁶⁷

The selectmen are elected every year in the month of April or of May. The town-meeting chooses at the same time a number of municipal magistrates, who are intrusted with important administrative functions. The assessors rate the township; the collectors receive the rate. A constable is appointed to keep the peace, to watch the streets, and to forward the execution of the laws; the town-clerk records all the town votes, orders, grants, births, deaths, and marriages; the treasurer keeps the funds; the overseer of the poor performs the difficult task of superintending the action of the poor laws; committee-men are appointed to attend to the schools and to public instruction; and the road-surveyors, who take care of the greater and lesser thoroughfares of the township, complete the list of the principal functionaries. They are, however, still farther subdivided; and among the

⁶⁷ See laws of Massachusetts, vol. i., p. 150 Act of the 25th March, 1786.

municipal officers are to be found parish commissioners, who audit the expenses of public worship; different classes of inspectors, some of whom are to direct the citizens in case of fire; tithing-men, listers, haywards, chimney-viewers, fence-viewers to maintain the bounds of property, timber-measurers, and sealers of weights and measures.⁶⁸

There are nineteen principal offices in a township. Every inhabitant is constrained, on pain of being fined, to undertake these different functions; which, however, are almost all paid, in order that the poor citizens may be able to give up their time without loss. In general the American system is not to grant a fixed salary to its functionaries. Every service has its price, and they are remunerated in proportion to what they have done.

EXISTENCE OF THE TOWNSHIP

Every one the best Judge of his own Interest.—Corollary of the Principle of the Sovereignty of the People.—Application of these Doctrines in the Townships of America.—The Township of New England is Sovereign in that which concerns itself alone; subject to the State in all other matters.—Bond of Township and the State.—In France the Government lends its Agents to the *Commune*.—In America the Reverse occurs.

⁶⁸ All these magistrates actually exist; their different functions are all detailed in a book called, "The Town Officer," by Isaac Goodwin, Worcester, 1827; and in the Collection of the General Laws of Massachusetts, 3 vols., Boston, 1823.

I have already observed, that the principle of the sovereignty of the people governs the whole political system of the Anglo-Americans. Every page of this book will afford new instances of the same doctrine. In the nations by which the sovereignty of the people is recognised, every individual possesses an equal share of power, and participates alike in the government of the state. Every individual is therefore supposed to be as well informed, as virtuous, and as strong, as any of his fellow-citizens. He obeys the government, not because he is inferior to the authorities which conduct it, or that he is less capable than his neighbor of governing himself, but because he acknowledges the utility of an association with his fellow-men, and because he knows that no such association can exist without a regulating force. If he be a subject in all that concerns the mutual relations of citizens, he is free and responsible to God alone for all that concerns himself. Hence arises the maxim that every one is the best and the sole judge of his own private interest, and that society has no right to control a man's actions, unless they are prejudicial to the common weal, or unless the common weal demands his co-operation. This doctrine is universally admitted in the United States. I shall hereafter examine the general influence which it exercises on the ordinary actions of life: I am now speaking of the nature of municipal bodies.

The township, taken as a whole, and in relation to the government of the country, may be looked upon as an individual to whom the theory I have just alluded to is applied. Municipal

independence is therefore a natural consequence of the principle of the sovereignty of the people in the United States, all the American republics recognise it more or less; but circumstances have peculiarly favored its growth in New England.

In this part of the Union the impulsion of political activity was given in the townships; and it may almost be said that each of them originally formed an independent nation. When the kings of England asserted their supremacy, they were contented to assume the central power of the state. The townships of New England remained as they were before; and although they are now subject to the state, they were at first scarcely dependent upon it. It is important to remember that they have not been invested with privileges, but that they seem, on the contrary, to have surrendered a portion of their independence to the state. The townships are only subordinate to the state in those interests which I shall term *social*, as they are common to all the citizens. They are independent in all that concerns themselves; and among the inhabitants of New England I believe that not a man is to be found who would acknowledge that the state has any right to interfere in their local interests. The towns of New England buy and sell, prosecute or are indicted, augment or diminish their rates, without the slightest opposition on the part of the administrative authority of the state.

They are bound, however, to comply with the demands of the community. If the state is in need of money, a town can neither give nor withhold the supplies. If the state projects a

road, the township cannot refuse to let it cross its territory; if a police regulation is made by the state, it must be enforced by the town. A uniform system of instruction is organised all over the country, and every town is bound to establish the schools which the law ordains. In speaking of the administration of the United States, I shall have occasion to point out the means by which the townships are compelled to obey in these different cases: I here merely show the existence of the obligation. Strict as this obligation is, the government of the state imposes it in principle only, and in its performance the township resumes all its independent rights. Thus, taxes are voted by the state, but they are assessed and collected by the township; the existence of a school is obligatory, but the township builds, pays, and superintends it. In France the state collector receives the local imposts; in America the town collector receives the taxes of the state. Thus the French government lends its agents to the commune; in America, the township is the agent of the government. This fact alone shows the extent of the differences which exist between the two nations.

PUBLIC SPIRIT OF THE TOWNSHIPS OF NEW ENGLAND

How the Township of New England wins the Affections of its Inhabitants.—Difficulty of creating local public Spirit in Europe.—The Rights and Duties of the American Township

favorable to it.—Characteristics of Home in the United States.—Manifestations of public Spirit in New England.—Its happy Effects.

In America, not only do municipal bodies exist, but they are kept alive and supported by public spirit. The township of New England possesses two advantages which infallibly secure the attentive interest of mankind, namely, independence and authority. Its sphere is indeed small and limited, but within that sphere its action is unrestrained; and its independence would give to it a real importance, even if its extent and population did not ensure it.

It is to be remembered that the affections of men are generally turned only where there is strength. Patriotism is not durable in a conquered nation. The New Englander is attached to his township, not only because he was born in it, but because it constitutes a strong and free social body of which he is a member, and whose government claims and deserves the exercise of his sagacity. In Europe, the absence of local public spirit is a frequent subject of regret to those who are in power; every one agrees that there is no surer guarantee of order and tranquillity, and yet nothing is more difficult to create. If the municipal bodies were made powerful and independent, the authorities of the nation might be disunited, and the peace of the country endangered. Yet, without power and independence, a town may contain good subjects, but it can have no active citizens. Another important fact is, that the township of New England is so constituted as

to excite the warmest of human affections, without arousing the ambitious passions of the heart of man. The officers of the county are not elected, and their authority is very limited. Even the state is only a second-rate community, whose tranquil and obscure administration offers no inducement sufficient to draw men away from the circle of their interests into the turmoil of public affairs. The federal government confers power and honor on the men who conduct it; but these individuals can never be very numerous. The high station of the presidency can only be reached at an advanced period of life; and the other federal functionaries are generally men who have been favored by fortune, or distinguished in some other career. Such cannot be the permanent aim of the ambitious. But the township serves as a centre for the desire of public esteem, the want of exciting interests, and the taste for authority and popularity, in the midst of the ordinary relations of life: and the passions which commonly embroil society, change their character when they find a vent so near the domestic hearth and the family circle.

In the American states power has been disseminated with admirable skill, for the purpose of interesting the greatest possible number of persons in the common weal. Independently of the electors who are from time to time called into action, the body politic is divided into innumerable functionaries and officers, who all, in their several spheres, represent the same powerful corporation in whose name they act. The local administration thus affords an unfailing source of profit and

interest to a vast number of individuals.

The American system, which divides the local authority among so many citizens, does not scruple to multiply the functions of the town officers. For in the United States, it is believed, and with truth, that patriotism is a kind of devotion, which is strengthened by ritual observance. In this manner the activity of the township is continually perceptible; it is daily manifested in the fulfilment of a duty, or the exercise of a right; and a constant though gentle motion is thus kept up in society which animates without disturbing it.

The American attaches himself to his home, as the mountaineer clings to his hills, because the characteristic features of his country are there more distinctly marked than elsewhere. The existence of the townships of New England is in general a happy one. Their government is suited to their tastes, and chosen by themselves. In the midst of the profound peace and general comfort which reign in America, the commotions of municipal discord are infrequent. The conduct of local business is easy. The political education of the people has long been complete; say rather that it was complete when the people first set foot upon the soil. In New England no tradition exists of a distinction of ranks; no portion of the community is tempted to oppress the remainder; and the abuses which may injure isolated individuals are forgotten in the general contentment which prevails. If the government is defective (and it would no doubt be easy to point out its deficiencies), the fact that it really emanates from

those it governs, and that it acts, either ill or well, casts the protecting spell of a parental pride over its faults. No term of comparison disturbs the satisfaction of the citizen: England formerly governed the mass of the colonies, but the people was always sovereign in the township, where its rule is not only an ancient, but a primitive state.

The native of New England is attached to his township because it is independent and free; his co-operation in its affairs ensures his attachment to its interest; the well-being it affords him secures his affection; and its welfare is the aim of his ambition and of his future exertions; he takes a part in every occurrence in the place; he practises the art of government in the small sphere within his reach; he accustoms himself to those forms which can alone ensure the steady progress of liberty; he imbibes their spirit; he acquires a taste for order, comprehends the union of the balance of powers, and collects clear practical notions on the nature of his duties and the extent of his rights.

THE COUNTIES OF NEW ENGLAND

The division of the counties in America has considerable analogy with that of the arrondissements of France. The limits of the counties are arbitrarily laid down, and the various districts which they contain have no necessary connexion, no common traditional or natural sympathy; their object is simply to facilitate the administration of public affairs.

The extent of the township was too small to contain a system of judicial institutions; each county has, however, a court of justice,⁶⁹ a sheriff to execute its decrees, and a prison for criminals. There are certain wants which are felt alike by all the townships of a county; it is therefore natural that they should be satisfied by a central authority. In the state of Massachusetts this authority is vested in the hands of several magistrates who are appointed by the governor of the state, with the advice⁷⁰ of his council.⁷¹ The officers of the county have only a limited and occasional authority, which is applicable to certain predetermined cases. The state and the townships possess all the power requisite to conduct public business. The budget of the county is only drawn up by its officers, and is voted by the legislature.⁷² There is no assembly which directly or indirectly represents the county; it has, therefore, properly speaking, no political existence.

A twofold tendency may be discerned in the American constitutions, which impels the legislator to centralize the legislative, and to disperse the executive power. The township of New England has in itself an indestructible element of independence; but this distinct existence could only be fictitiously introduced into the county, where its utility had not

⁶⁹ See the act of 14th February, 1821. Laws of Massachusetts, vol i., p. 551.

⁷⁰ See the act of 20th February, 1819. Laws of Massachusetts, vol ii., p. 494.

⁷¹ The council of the governor is an elective body.

⁷² See the act of 2d November, 1791. Laws of Massachusetts, vol i., p. 61.

been felt. All the townships united have but one representation, which is the state, the centre of the national authority: beyond the action of the township and that of the nation, nothing can be said to exist but the influence of individual exertion.

ADMINISTRATION IN NEW ENGLAND

Administration not perceived in America.—Why?—The Europeans believe that Liberty is promoted by depriving the social Authority of some of its Rights; the Americans, by dividing its Exercise.—Almost all the Administration confined to the Township, and divided among the town Officers.—No trace of an administrative Hierarchy to be perceived either in the Township, or above it.—The Reason of this.—How it happens that the Administration of the State is uniform.—Who is empowered to enforce the Obedience of the Township and the County to the Law.—The introduction of judicial Power into the Administration.—Consequence of the Extension of the elective Principle to all Functionaries.—The Justice of the Peace in New England.—By whom Appointed.—County Officer.—Ensures the Administration of the Townships.—Court of Sessions.—Its Action.—Right of Inspection and Indictment disseminated like the other administrative Functions.—Informers encouraged by the division of Fines.

Nothing is more striking to a European traveller in the United States than the absence of what we term government, or the

administration. Written laws exist in America, and one sees that they are daily executed; but although everything is in motion, the hand which gives the impulse to the social machine can nowhere be discovered. Nevertheless, as all people are obliged to have recourse to certain grammatical forms, which are the foundation of human language, in order to express their thoughts; so all communities are obliged to secure their existence by submitting to a certain portion of authority, without which they fall a prey to anarchy. This authority may be distributed in several ways, but it must always exist somewhere.

There are two methods of diminishing the force of authority in a nation.

The first is to weaken the supreme power in its very principle, by forbidding or preventing society from acting in its own defence under certain circumstances. To weaken authority in this manner is what is generally termed in Europe to lay the foundations of freedom.

The second manner of diminishing the influence of authority does not consist in stripping society of any of its rights, nor in paralysing its efforts, but in distributing the exercise of its privileges among various hands, and in multiplying functionaries, to each of whom the degree of power necessary for him to perform his duty is intrusted. There may be nations whom this distribution of social powers might lead to anarchy; but in itself it is not anarchical. The action of authority is indeed thus rendered less irresistible, and less perilous, but it is not totally suppressed.

The revolution of the United States was the result of a mature and deliberate taste for freedom, not of a vague or ill-defined craving for independence. It contracted no alliance with the turbulent passions of anarchy; but its course was marked, on the contrary, by an attachment to whatever was lawful and orderly.

It was never assumed in the United States that the citizen of a free country has a right to do whatever he pleases: on the contrary, social obligations were there imposed upon him more various than anywhere else; no idea was ever entertained of attacking the principles, or of contesting the rights of society; but the exercise of its authority was divided, to the end that the office might be powerful and the officer insignificant, and that the community should be at once regulated and free. In no country in the world does the law hold so absolute a language as in America; and in no country is the right of applying it vested in so many hands. The administrative power in the United States presents nothing either central or hierarchical in its constitution, which accounts for its passing unperceived. The power exists, but its representative is not to be discerned.

We have already seen that the independent townships of New England protect their own private interests; and the municipal magistrates are the persons to whom the execution of the laws of the state is most frequently intrusted.⁷³ Beside the general

⁷³ See "The Town Officer," especially at the words SELECTMEN, ASSESSORS, COLLECTORS, SCHOOLS, SURVEYORS OF HIGHWAYS. I take one example in a thousand: the state prohibits travelling on a Sunday; the *tything-men*, who are town-officers, are especially charged to keep watch and to execute the law. See the laws

laws, the state sometimes passes general police regulations; but more commonly the townships and town officers, conjointly with the justices of the peace, regulate the minor details of social life, according to the necessities of the different localities, and promulgate such enactments as concern the health of the community, and the peace as well as morality of the citizens.⁷⁴ Lastly, these municipal magistrates provide of their own accord and without any delegated powers, for those unforeseen emergencies which frequently occur in society.⁷⁵

It results, from what we have said, that in the state of Massachusetts the administrative authority is almost entirely restricted to the township,⁷⁶ but that it is distributed among a great number of individuals. In the French commune there is properly but one official functionary, namely, the maire; and in New England we have seen that there are nineteen.

of Massachusetts, vol. i., p. 410. The selectmen draw up the lists of electors for the election of the governor, and transmit the result of the ballot to the secretary of the state. See act of 24th February, 1796; *Ib.*, vol. i., p. 488.

⁷⁴ Thus, for instance, the selectmen authorise the construction of drains, point out the proper sites for slaughter-houses and other trades which are a nuisance to the neighborhood. See the act of 7th June, 1735; *Laws of Massachusetts*, vol. i., p. 193.

⁷⁵ The selectmen take measures for the security of the public in case of contagious disease, conjointly with the justices of the peace. See the act of 22d June, 1797; vol. i., p. 539.

⁷⁶ I say *almost*, for there are various circumstances in the annals of a township which are regulated by the justice of the peace in his individual capacity, or by the justices of the peace, assembled in the chief town of the county; thus licenses are granted by the justices. See the act of 28th Feb., 1787; vol. i., p. 297.

These nineteen functionaries do not in general depend upon one another. The law carefully prescribes a circle of action to each of these magistrates; and within that circle they have an entire right to perform their functions independently of any other authority. Above the township scarcely any trace of a series of official dignities is to be found. It sometimes happens that the county officers alter a decision of the townships, or town magistrates,⁷⁷ but in general the authorities of the county have no right to interfere with the authorities of the township,⁷⁸ except in such matters as concern the county.

The magistrates of the township, as well as those of the county, are bound to communicate their acts to the central government in a very small number of predetermined cases.⁷⁹ But the central government is not represented by an individual whose business it is to publish police regulations and ordinances

⁷⁷ Thus licenses are only granted to such persons as can produce a certificate of good conduct from the selectmen. If the selectmen refuse to give the certificate, the party may appeal to the justices assembled in the court of sessions; and they may grant the license. See the act of 12th March, 1808; vol. ii., p. 186. The townships have the right to make by-laws, and to enforce them by fines which are fixed by law; but these by-laws must be approved by the court of sessions. See the act of 23d March, 1786; vol. i., p. 254.

⁷⁸ In Massachusetts the county-magistrates are frequently called upon to investigate the acts of the town-magistrates; but it will be shown farther on that this investigation is a consequence, not of their administrative, but of their judicial power.

⁷⁹ The town committees of schools are obliged to make an annual report to the secretary of the state on the condition of the School. See the act of 10th March, 1827; vol. iii., p. 183.

enforcing the execution of the laws; to keep up a regular communication with the officers of the township and the county; to inspect their conduct, to direct their actions, or reprimand their faults. There is no point which serves as a centre to the radii of the administration.

What, then, is the uniform plan on which the government is conducted, and how is the compliance of the counties and their magistrates, or the townships and their officers, enforced? In the states of New England the legislative authority embraces more subjects than it does in France; the legislator penetrates to the very core of the administration; the law descends to the most minute details; the same enactment prescribes the principle and the method of its application, and thus imposes a multitude of strict and rigorously defined obligations on the secondary functionaries of the state. The consequence of this is, that if all the secondary functionaries of the administration conform to the law, society in all its branches proceeds with the greatest uniformity; the difficulty remains of compelling the secondary functionaries of the administration to conform to the law. It may be affirmed that, in general, society has only two methods of enforcing the execution of the laws at its disposal; a discretionary power may be intrusted to a superior functionary of directing all the others, and of cashiering them in case of disobedience; or the courts of justice may be authorized to inflict judicial penalties on the offender: but these two methods are not always available.

The right of directing a civil officer pre-supposes that of

cashiering him if he does not obey orders, and of rewarding him by promotion if he fulfils his duties with propriety. But an elected magistrate can neither be cashiered nor promoted. All elective functions are inalienable until their term is expired. In fact, the elected magistrate has nothing either to expect or to fear from his constituents; and when all public offices are filled by ballot, there can be no series of official dignities, because the double right of commanding and of enforcing obedience can never be vested in the same individual, and because the power of issuing an order can never be joined to that of inflicting a punishment or bestowing a reward.

The communities therefore in which the secondary functionaries of the government are elected, are perforce obliged to make great use of judicial penalties as a means of administration. This is not evident at first sight; for those in power are apt to look upon the institution of elective functionaries as one concession, and the subjection of the elective magistrate to the judges of the land as another. They are equally averse to both these innovations; and as they are more pressingly solicited to grant the former than the latter, they accede to the election of the magistrate, and leave him independent of the judicial power. Nevertheless, the second of these measures is the only thing that can possibly counter-balance the first; and it will be found that an elective authority which is not subject to judicial power will, sooner or later, either elude all control or be destroyed. The courts of justice are the only possible medium

between the central power and the administrative bodies; they alone can compel the elected functionary to obey, without violating the rights of the elector. The extension of judicial power in the political world ought therefore to be in the exact ratio of the extension of elective offices; if these two institutions do not go hand in hand, the state must fall into anarchy or into subjection.

It has always been remarked that habits of legal business do not render men apt to the exercise of administrative authority. The Americans have borrowed from the English, their fathers, the idea of an institution which is unknown upon the continent of Europe: I allude to that of justices of the peace.

The justice of the peace is a sort of *mezzo termine* between the magistrate and the man of the world, between the civil officer and the judge. A justice of the peace is a well-informed citizen, though he is not necessarily versed in the knowledge of the laws. His office simply obliges him to execute the police regulations of society; a task in which good sense and integrity are of more avail than legal science. The justice introduces into the administration a certain taste for established forms and publicity, which renders him a most unserviceable instrument of despotism; and, on the other hand, he is not blinded by those superstitions which render legal officers unfit members of a government. The Americans have adopted the system of English justices of the peace, but they have deprived it of that aristocratic character which is discernible in the mother-country.

The governor of Massachusetts⁸⁰ appoints a certain number of justices of the peace in every county, whose functions last seven years.⁸¹ He farther designates three individuals from among the whole body of justices, who form in each county what is called the court of sessions. The justices take a personal share in public business; they are sometimes intrusted with administrative functions in conjunction with elected officers;⁸² they sometimes constitute a tribunal, before which the magistrates summarily prosecute a refractory citizen or the citizens inform against the abuses of the magistrate. But it is in the court of sessions that they exercise their most important functions. This court meets twice a year in the county town; in Massachusetts it is empowered to enforce the obedience of the greater number⁸³ of public

⁸⁰ We shall hereafter learn what a governor is; I shall content myself with remarking in this place, that he represents the executive power of the whole state.

⁸¹ See the constitution of Massachusetts, chap ii., § 1; chap iii., § 3.

⁸² Thus, for example, a stranger arrives in a township from a country where a contagious disease prevails, and he falls ill. Two justices of the peace can, with the assent of the selectmen, order the sheriff of the county to remove and take care of him. Act of 22d June, 1797; vol. i., p. 540. In general the justices interfere in all the important acts of the administration, and give them a semi-judicial character.

⁸³ I say the greater number because certain administrative misdemeanors are brought before the ordinary tribunals. If, for instance, a township refuses to make the necessary expenditure for its schools, or to name a school-committee, it is liable to a heavy fine. But this penalty is pronounced by the supreme judicial court or the court of common pleas. See the act of 10th March, 1827; laws of Massachusetts, vol. iii., p. 190. Or when a township neglects to provide the necessary war-stores. Act of 21st February, 1822; Id. vol. ii., p. 570.

officers.⁸⁴ It must be observed that in the state of Massachusetts the court of sessions is at the same time an administrative body, properly so called, and a political tribunal. It has been asserted that the county is a purely administrative division. The court of sessions presides over that small number of affairs which, as they concern several townships, or all the townships of the county in common, cannot be intrusted to any of them in particular.⁸⁵

In all that concerns county business, the duties of the court of sessions are therefore purely administrative; and if in its investigations it occasionally borrows the forms of judicial procedure, it is only with a view to its own information,⁸⁶ or as a guarantee to the community over which it presides. But when the administration of the township is brought before it, it almost always acts as a judicial body, and in some few cases as an administrative assembly.

The first difficulty is to procure the obedience of an authority so entirely independent of the general laws of the state as the township is. We have stated that assessors are annually named

⁸⁴ In their individual capacity, the justices of the peace take a part in the business of the counties and townships. The more important acts of the municipal government are rarely decided upon without the co-operation of one of their body.

⁸⁵ These affairs may be brought under the following heads: 1. The erection of prisons and courts of justice. 2. The county budget, which is afterward voted by the state. 3. The assessment of the taxes so voted. 4. Grants of certain patents. 5. The laying down and repairs of the county roads.

⁸⁶ Thus, when a road is under consideration, almost all difficulties are disposed of by the aid of the jury.

by the town meetings, to levy the taxes. If a township attempts to evade the payment of the taxes by neglecting to name its assessors, the court of sessions condemns it to a heavy penalty.⁸⁷ The fine is levied on each of the inhabitants; and the sheriff of the county, who is an officer of justice, executes the mandate. Thus it is that in the United States the authority of the government is mysteriously concealed under the forms of a judicial sentence; and the influence is at the same time fortified by that irresistible power with which men have invested the formalities of law.

These proceedings are easy to follow, and to understand. The demands made upon a township are in general plain and accurately defined; they consist in a simple fact without any complication, or in a principle without its application in detail.⁸⁸ But the difficulty increases when it is not the obedience of the township, but that of the town officers, which is to be enforced. All the reprehensible actions of which a public functionary may be guilty are reducible to the following heads:

He may execute the law without energy or zeal;

He may neglect to execute the law;

⁸⁷ See the act of the 20th February, 1786; laws of Massachusetts, vol. 1., p. 217.

⁸⁸ There is an indirect method of enforcing the obedience of a township. Suppose that the funds which the law demands for the maintenance of the roads have not been voted; the town-surveyor is then authorized, *ex-officio*, to levy the supplies. As he is personally responsible to private individuals for the state of the roads, and indictable before the court of sessions, he is sure to employ the extraordinary right which the law gives him against the township. Thus by threatening the officer, the court of sessions exacts compliance from the town. See the act of 5th March, 1787; laws of Massachusetts, vol. 1., p. 305.

He may do what the law enjoins him not to do.

The last two violations of duty can alone come under the cognizance of a tribunal; a positive and appreciable fact is the indispensable foundation of an action at law. Thus, if the selectmen omit to fulfil the legal formalities usual to town elections, they may be condemned to pay a fine;⁸⁹ but when the public officer performs his duty without ability, and when he obeys the letter of the law without zeal or energy, he is at least beyond the reach of judicial interference. The court of sessions, even when it is invested with its administrative powers, is in this case unable to compel him to a more satisfactory obedience. The fear of removal is the only check to these quasi offences; and as the court of sessions does not originate the town authorities, it cannot remove functionaries whom it does not appoint. Moreover, a perpetual investigation would be necessary to convict the subordinate officer of negligence or lukewarmness; and the court of sessions sits but twice a year, and then only judges such offences as are brought before its notice. The only security for that active and enlightened obedience, which a court of justice cannot impose upon public officers, lies in the possibility of their arbitrary removal. In France this security is sought for in powers exercised by the heads of the administration; in America it is sought for in the principle of election.

Thus, to recapitulate in a few words what I have been showing:

⁸⁹ Laws of Massachusetts, vol. 2., p. 45.

If a public officer in New England commits a crime in the exercise of his functions, the ordinary courts of justice are always called upon to pass sentence upon him.

If he commits a fault in his official capacity, a purely administrative tribunal is empowered to punish him; and, if the affair is important or urgent, the judge supplies the omission of the functionary.⁹⁰

Lastly, if the same individual is guilty of one of those intangible offences, of which human justice has no cognizance, he annually appears before a tribunal from which there is no appeal, which can at once reduce him to insignificance, and deprive him of his charge. This system undoubtedly possesses great advantages, but its execution is attended with a practical difficulty which it is important to point out.

I have already observed, that the administrative tribunal, which is called the court of sessions, has no right of inspection over the town officers. It can only interfere when the conduct of a magistrate is specially brought under its notice; and this is the delicate part of the system. The Americans of New England are unacquainted with the office of public prosecutor in the court of sessions,⁹¹ and it may readily be perceived that it could not have been established without difficulty. If an accusing magistrate had

⁹⁰ If, for instance, a township persists in refusing to name its assessors, the court of sessions nominates them; and the magistrates thus appointed are invested with the same authority as elected officers See the act quoted above, 20th February, 1787.

⁹¹ I say the court of sessions, because in common courts there is a magistrate who exercises some of the functions of a public prosecutor.

merely been appointed in the chief town of each county, and if he had been unassisted by agents in the townships, he would not have been better acquainted with what was going on in the county than the members of the court of sessions. But to appoint agents in each township, would have been to centre in his person the most formidable of powers, that of a judicial administration. Moreover, laws are the children of habit, and nothing of the kind exists in the legislation of England. The Americans have therefore divided the officers of inspection and of prosecution as well as all the other functions of the administration. Grand-jurors are bound by the law to apprise the court to which they belong of all the misdemeanors which may have been committed in their county.⁹² There are certain great offences which are officially prosecuted by the state;⁹³ but more frequently the task of punishing delinquents devolves upon the fiscal officer, whose province it is to receive the fine; thus the treasurer of the township is charged with the prosecution of such administrative offences as fall under his notice. But a more especial appeal is made by American legislation to the private interest of the citizen,⁹⁴ and this great principle is constantly to be met with in

⁹² The grand-jurors are, for instance, bound to inform the court of the bad state of the roads. Laws of Massachusetts, vol. i., p. 308.

⁹³ If, for instance, the treasurer of the county holds back his account. Laws of Massachusetts, vol. i., p. 406.

⁹⁴ Thus, if a private individual breaks down or is wounded in consequence of the badness of a road, he can sue the township or the county for damages at the sessions. Laws of Massachusetts, vol. i., p. 309.

studying the laws of the United States. American legislators are more apt to give men credit for intelligence than for honesty; and they rely not a little on personal cupidity for the execution of the laws. When an individual is really and sensibly injured by an administrative abuse, it is natural that his personal interest should induce him to prosecute. But if a legal formality be required which, however advantageous to the community, is of small importance to individuals, plaintiffs may be less easily found; and thus, by a tacit agreement, the laws might fall into disuse. Reduced by their system to this extremity, the Americans are obliged to encourage informers by bestowing on them a portion of the penalty in certain cases;⁹⁵ and to ensure the execution of the laws by the dangerous expedient of degrading the morals of the people.

The only administrative authority above the county magistrates is, properly speaking, that of the government.

⁹⁵ In cases of invasion or insurrection, if the town officers neglect to furnish the necessary stores and ammunition for the militia, the township may be condemned to a fine of from two to five hundred dollars. It may readily be imagined that in such a case it might happen that no one cared to prosecute: hence the law adds that all the citizens may indict offences of this kind, and that half the fine shall belong to the plaintiff. See the act of 6th March, 1810; vol. ii., p. 236. The same clause is frequently to be met with in the laws of Massachusetts. Not only are private individuals thus incited to prosecute public officers, but the public officers are encouraged in the same manner to bring the disobedience of private individuals to justice. If a citizen refuses to perform the work which has been assigned to him upon a road, the road-surveyor may prosecute him, and he receives half the penalty for himself. See the laws above quoted, vol. i., p. 308.

GENERAL REMARKS ON THE ADMINISTRATION OF THE UNITED STATES

Difference of the States of the Union in their Systems of Administration.—Activity and Perfection of the local Authorities decreases towards the South.—Power of the Magistrates increases; that of the Elector diminishes.—Administration passes from the Township to the County.—States of New York, Ohio, Pennsylvania.—Principles of Administration applicable to the whole Union.—Election of public Officers, and Inalienability of their Functions.—Absence of Gradation of Ranks.—Introduction of judicial Resources into the Administration.

I have already promised that after having examined the constitution of the township and the county of New England in detail, I should take a general view of the remainder of the Union. Townships and a local activity exist in every state; but in no part of the confederation is a township to be met with precisely similar to those in New England. The more we descend toward the south, the less active does the business of the township or parish become; the number of magistrates, of functions, and of rights, decreases; the population exercises a less immediate influence on affairs; town-meetings are less frequent, and the subjects of debates less numerous. The power of the elected

magistrate is augmented, and that of the elector diminished, while the public spirit of the local communities is less awakened and less influential.⁹⁶

These differences may be perceived to a certain extent in the state of New York; they are very sensible in Pennsylvania, but they become less striking as we advance to the northwest. The majority of the emigrants who settle in the northwestern states are natives of New England, and they carry the habits of their mother-country with them into that which they adopt. A township in Ohio is by no means dissimilar from a township in Massachusetts.

We have seen that in Massachusetts the principal part of the public administration lies in the township. It forms the common centre of the interests and affections of the citizens. But this ceases to be the case as we descend to states in which knowledge is less generally diffused, and where the township consequently offers fewer guarantees of a wise and active administration. As we leave New England, therefore, we find that the importance of the town is gradually transferred to the county, which becomes the centre of administration, and the intermediate

⁹⁶ For details, see Revised Statutes of the state of New York, part I, chap. xi., vol. i., pp. 336-364, entitled, "Of the Powers, Duties, and Privileges of Towns." See in the digest of the laws of Pennsylvania, the words, ASSESSORS, COLLECTOR, CONSTABLES, OVERSEER OF THE POOR, SUPERVISORS OF HIGHWAYS: and in the acts of a general nature of the state of Ohio, the act of 25th February, 1834, relating to townships, p. 412; beside the peculiar dispositions relating to divers town officers, such as township's clerks, trustees, overseers of the poor, fence-viewers, appraisers of property, township's treasurer, constables, supervisors of highways.

power between the government and the citizen. In Massachusetts the business of the town is conducted by the court of sessions, which is composed of a *quorum* named by the governor and his council; but the county has no representative assembly, and its expenditure is voted by the national⁹⁷ legislature. In the great state of New York, on the contrary, and in those of Ohio and Pennsylvania, the inhabitants of each county choose a certain number of representatives, who constitute the assembly of the county.⁹⁸ The county assembly has the right of taxing the inhabitants to a certain extent; and in this respect it enjoys the privileges of a real legislative body: at the same time it exercises an executive power in the county, frequently directs the administration of the townships, and restricts their authority within much narrower bounds than in Massachusetts.

Such are the principal differences which the systems of county and town administration present in the federal states. Were it my intention to examine the provisions of American law minutely, I should have to point out still farther differences in the executive details of the several communities. But what I have

⁹⁷ The author means the state legislature. The congress has no control over the expenditure of the counties or of the states.

⁹⁸ See the Revised Statutes of the state of New York, part i., chap. xi., vol. i., p. 410. *Idem*, chap, xii., p. 366: also in the acts of the state of Ohio, an act relating to county commissioners, 26th February, 1824, p. 263. See the Digest of the Laws of Pennsylvania, at the words, COUNTY-RATES AND LEVIES, p. 170. In the state of New York, each township elects a representative, who has a share in the administration of the county as well as in that of the township.

already said may suffice to show the general principles on which the administration of the United States rests. These principles are differently applied; their consequences are more or less numerous in various localities; but they are always substantially the same. The laws differ, and their outward features change, but their character does not vary. If the township and the county are not everywhere constituted in the same manner, it is at least true that in the United States the county and the township are always based upon the same principle, namely, that every one is the best judge of what concerns himself alone, and the person most able to supply his private wants. The township and the county are therefore bound to take care of their special interests: the state governs, but it does not interfere with their administration. Exceptions to this rule may be met with, but not a contrary principle.

The first consequence of this doctrine has been to cause all the magistrates to be chosen either by, or at least from among the citizens. As the officers are everywhere elected or appointed for a certain period, it has been impossible to establish the rules of a dependent series of authorities; there are almost as many independent functionaries as there are functions, and the executive power is disseminated in a multitude of hands. Hence arose the indispensable necessity of introducing the control of the courts of justice over the administration, and the system of pecuniary penalties, by which the secondary bodies and their representatives are constrained to obey the laws. The system

obtains from one end of the Union to the other. The power of punishing the misconduct of public officers, or of performing the part of the executive, in urgent cases, has not, however, been bestowed on the same judges in all the states. The Anglo-Americans derived the institution of justices of the peace from a common source; but although it exists in all the states, it is not always turned to the same use. The justices of the peace everywhere participate in the administration of the townships and the counties,⁹⁹ either as public officers or as the judges of public misdemeanors, but in most of the states the more important classes of public offences come under the cognisance of the ordinary tribunals.

The election of public officers, or the inalienability of their functions, the absence of a gradation of powers, and the introduction of a judicial control over the secondary branches of the administration, are the universal characteristics of the American system from Maine to the Floridas. In some states (and that of New York has advanced most in this direction) traces of a centralised administration begin to be discernible. In the state of New York the officers of the central government exercise, in certain cases, a sort of inspection of control over the secondary bodies.¹⁰⁰ At other times they constitute a court

⁹⁹ In some of the southern states the county-courts are charged with all the details of the administration. See the Statutes of the State of Tennessee, *arts.* JUDICIARY, TAXES, &c.

¹⁰⁰ For instance, the direction of public instruction centres in the hands of the government. The legislature names the members of the university, who are

of appeal for the decision of affairs.¹⁰¹ In the state of New York judicial penalties are less used than in other parts as a means of administration; and the right of prosecuting the offences of public officers is vested in fewer hands.¹⁰² The same tendency is faintly observable in some other states;¹⁰³ but in general the

denominated regents; the governor and lieutenant-governor of the state are necessarily of the number. Revised Statutes, vol. i., p. 455. The regents of the university annually visit the colleges and academies, and make their report to the legislature. Their superintendence is not inefficient, for several reasons: the colleges in order to become corporations stand in need of a charter, which is only granted on the recommendation of the regents: every year funds are distributed by the state for the encouragement of learning, and the regents are the distributors of this money. See chap. xv., "Public Instruction," Revised Statutes, vol. i., p. 455. The school commissioners are obliged to send an annual report to the superintendent of the state. *Idem*, p. 448. A similar report is annually made to the same person on the number and condition of the poor. *Idem*, p. 631.

¹⁰¹ If any one conceives himself to be wronged by the school commissioners (who are town-officers), he can appeal to the superintendent of the primary schools, whose decision is final. Revised Statutes, vol. i., p. 487. Provisions similar to those above cited are to be met with from time to time in the laws of the state of New York: but in general these attempts at centralisation are weak and unproductive. The great authorities of the state have the right of watching and controlling the subordinate agents, without that of rewarding or punishing them. The same individual is never empowered to give an order and to punish disobedience; he has therefore the right of commanding, without the means of exacting compliance. In 1830 the superintendent of schools complained in his annual report addressed to the legislature, that several school commissioners had neglected, notwithstanding his application, to furnish him with the accounts which were due. He added, that if this omission continued, he should be obliged to prosecute them, as the law directs, before the proper tribunals.

¹⁰² Thus the district-attorney is directed to recover all fines, unless such a right has been specially awarded to another magistrate. Revised Statutes, vol. i., p. 383.

¹⁰³ Several traces of centralisation may be discovered in Massachusetts, for instance,

prominent feature of the administration in the United States is its excessive local independence.

OF THE STATE

I have described the townships and the administration: it now remains for me to speak of the state and government. This is ground I may pass over rapidly, without fear of being misunderstood; for all I have to say is to be found in written forms of the various constitutions, which are easily to be procured.¹⁰⁴ These constitutions rest upon a simple and rational theory; their forms have been adopted by all constitutional nations, and are become familiar to us.

In this place, therefore, it is only necessary for me to give a short analysis; I shall endeavor afterward to pass judgment upon what I now describe.

LEGISLATIVE POWER OF THE STATE

Division of the Legislative Body into two Houses.—Senate.—House of Representatives.—Different functions of these two Bodies.

The legislative power of the state is vested in two assemblies,

the committees of the town-schools are directed to make an annual report to the secretary of state. See Laws of Massachusetts, vol. i., p. 367.

¹⁰⁴ See the constitution of New York.

the first of which generally bears the name of the senate.

The senate is commonly a legislative body; but it sometimes becomes an executive and judicial one. It takes a part in the government in several ways, according to the constitution of the different states;¹⁰⁵ but it is in the nomination of public functionaries that it most commonly assumes an executive power. It partakes of judicial power in the trial of certain political offences, and sometimes also in the decision of certain civil cases.¹⁰⁶ The number of its members is always small. The other branch of the legislature, which is usually called the house of representatives, has no share whatever in the administration, and only takes a part in the judicial power inasmuch as it impeaches public functionaries before the senate.

The members of the two houses are nearly everywhere subject to the same conditions of election. They are chosen in the same manner, and by the same citizens.

The only difference which exists between them is, that the term for which the senate is chosen, is in general longer than that of the house of representatives. The latter seldom remain in office longer than a year; the former usually sit two or three years.

By granting to the senators the privilege of being chosen for several years, and being renewed seriatim, the law takes care to preserve in the legislative body a nucleus of men already accustomed to public business, and capable of exercising a

¹⁰⁵ In Massachusetts the Senate is not invested with any administrative functions.

¹⁰⁶ As in the state of New York.

salutary influence upon the junior members.

The Americans, plainly, did not desire, by this separation of the legislative body into two branches, to make one house hereditary and the other elective; one aristocratic and the other democratic. It was not their object to create in the one a bulwark to power, while the other represented the interests and passions of the people. The only advantages which result from the present constitution of the United States, are, the division of the legislative power, and the consequent check upon political assemblies; with the creation of a tribunal of appeal for the revision of the laws.

Time and experience, however, have convinced the Americans that if these are its only advantages, the division of the legislative power is still a principle of the greatest necessity. Pennsylvania was the only one of the United States which at first attempted to establish a single house of assembly; and Franklin himself was so far carried away by the necessary consequences of the principle of the sovereignty of the people, as to have concurred in the measure; but the Pennsylvanians were soon obliged to change the law, and to create two houses. Thus the principle of the division of the legislative power was finally established, and its necessity may henceforward be regarded as a demonstrated truth.

This theory, which was nearly unknown to the republics of antiquity—which was introduced into the world almost by accident, like so many other great truths—and misunderstood

by several modern nations, is at length become an axiom in the political science of the present age.

THE EXECUTIVE POWER OF THE STATE

Office of Governor in an American State.—The Place he occupies in relation to the Legislature.—His Rights and his Duties.—His Dependence on the People.

The executive power of the state may with truth be said to be *represented* by the governor, although he enjoys but a portion of its rights. The supreme magistrate, under the title of governor, is the official moderator and counsellor of the legislature. He is armed with a suspensive veto, which allows him to stop, or at least to retard, its movements at pleasure. He lays the wants of the country before the legislative body, and points out the means which he thinks may be usefully employed in providing for them; he is the natural executor of its decrees in all the undertakings which interest the nation at large.¹⁰⁷ In the absence of the legislature, the governor is bound to take all necessary steps to guard the state against violent shocks and unforeseen dangers.

The whole military power of the state is at the disposal of the

¹⁰⁷ Practically speaking, it is not always the governor who executes the plans of the legislature; it often happens that the latter, in voting a measure, names special agents to superintend the execution of it.

governor. He is commander of the militia and head of the armed force. When the authority, which is by general consent awarded to the laws, is disregarded, the governor puts himself at the head of the armed force of the state, to quell resistance and to restore order.

Lastly, the governor takes no share in the administration of townships and counties, except it be indirectly in the nomination of justices of the peace, which nomination he has not the power to revoke.¹⁰⁸

The governor is an elected magistrate, and is generally chosen for one or two years only; so that he always continues to be strictly dependent on the majority who returned him.

POLITICAL EFFECTS OF THE SYSTEM OF LOCAL ADMINISTRATION IN THE UNITED STATES

Necessary Distinction between the general Centralisation of Government and the Centralisation of the local Administration.—Local Administration not centralized in the United States; great general Centralisation of the Government.—Some bad Consequences resulting to the United States from the local Administration.—Administrative Advantages attending the Order of things.—The Power which conducts the Government

¹⁰⁸ In some of the states the Justices of the peace are not nominated by the governor.

is less regular, less enlightened, less learned, but much greater than in Europe.—Political Advantages of this Order of things.—In the United States the Interests of the Country are everywhere kept in View.—Support given to the Government by the Community.—Provincial Institutions more necessary in Proportion as the social Condition becomes more democratic.—Reason of this.

Centralisation is become a word of general and daily use, without any precise meaning being attached to it. Nevertheless, there exist two distinct kinds of centralisation, which it is necessary to discriminate with accuracy.

Certain interests are common to all parts of a nation, such as the enactment of its general laws, and the maintenance of its foreign relations. Other interests are peculiar to certain parts of the nation; such, for instance, as the business of different townships. When the power which directs the general interests is centred in one place, or in the same persons, it constitutes a central government. The power of directing partial or local interests, when brought together, in like manner constitutes what may be termed a central administration.

Upon some points these two kinds of centralisation coalesce; but by classifying the objects which fall more particularly within the province of each of them, they may easily be distinguished.

It is evident that a central government acquires immense power when united to administrative centralisation. Thus combined, it accustoms men to set their own will habitually and

completely aside; to submit, not only for once or upon one point, but in every respect, and at all times. Not only, therefore, does the union of power subdue them by force, but it affects them in the ordinary habits of life, and influences each individual, first separately, and then collectively.

These two kinds of centralisation mutually assist and attract each other: but they must not be supposed to be inseparable. It is impossible to imagine a more completely central government than that which existed in France under Louis XIV.; when the same individual was the author and the interpreter of the laws, and being the representative of France at home and abroad, he was justified in asserting that the state was identified with his person. Nevertheless, the administration was much less centralized under Louis XIV., than it is at the present day.

In England the centralisation of the government is carried to great perfection; the state has the compact vigor of a man, and by the sole act of its will it puts immense engines in motion, and wields or collects the efforts of its authority. Indeed, I cannot conceive that a nation can enjoy a secure or prosperous existence without a powerful centralisation of government. But I am of opinion that a central administration enervates the nations in which it exists by incessantly diminishing their public spirit. If such an administration succeeds in condensing at a given moment on a given point all the disposable resources of a people, it impairs at least the renewal of those resources. It may ensure a victory in the hour of strife, but it gradually relaxes the sinews of

strength. It may contribute admirably to the transient greatness of a man, but it cannot ensure the durable prosperity of a people.

If we pay proper attention, we shall find that whenever it is said that a state cannot act because it has no central point, it is the centralisation of the government in which it is deficient. It is frequently asserted, and we are prepared to assent to the proposition, that the German empire was never able to bring all its powers into action. But the reason was, that the state has never been able to enforce obedience to its general laws, because the several members of that great body always claimed the right, or found the means, of refusing their co-operation to the representatives of the common authority, even in the affairs which concerned the mass of the people; in other words, because there was no centralisation of government. The same remark is applicable to the middle ages; the cause of all the confusion of feudal society was that the control, not only of local but of general interests, was divided among a thousand hands, and broken up in a thousand different ways; the absence of a central government prevented the nations of Europe from advancing with energy in any straightforward course.

We have shown that in the United States no central administration, and no dependent series of public functionaries, exist. Local authority has been carried to lengths which no European nation could endure without great inconvenience, and which have even produced some disadvantageous consequences in America. But in the United States the centralisation of the

government is complete; and it would be easy to prove that the national power is more compact than it has ever been in the old monarchies of Europe. Not only is there but one legislative body in each state; not only does there exist but one source of political authority; but numerous district assemblies and county courts have in general been avoided, lest they should be tempted to exceed their administrative duties and interfere with the government. In America the legislature of each state is supreme; nothing can impede its authority; neither privileges, nor local immunities, nor personal influence, nor even the empire of reason, since it represents that majority which claims to be the sole organ of reason. Its own determination is, therefore, the only limit to its action. In juxtaposition to it, and under its immediate control, is the representative of the executive power, whose duty it is to constrain the refractory to submit by superior force. The only symptom of weakness lies in certain details of the action of the government. The American republics have no standing armies to intimidate a discontented minority; but as no minority has as yet been reduced to declare open war, the necessity of an army has not been felt. The state usually employs the officers of the township or the county, to deal with the citizens. Thus, for instance, in New England the assessor fixes the rate of taxes; the collector receives them; the town treasurer transmits the amount to the public treasury; and the disputes which may arise are brought before the ordinary courts of justice. This method of collecting taxes is slow as well as inconvenient, and it would

prove a perpetual hindrance to a government whose pecuniary demands were large. In general it is desirable that in what ever materially affects its existence, the government should be served by officers of its own, appointed by itself, removable at pleasure, and accustomed to rapid methods of proceeding. But it will always be easy for the central government, organized as it is in America, to introduce new and more efficacious modes of action proportioned to its wants.

The absence of a central government will not, then, as has often been asserted, prove the destruction of the republics of the New World; far from supposing that the American governments are not sufficiently centralized, I shall prove hereafter that they are too much so. The legislative bodies daily encroach upon the authority of the government, and their tendency, like that of the French convention, is to appropriate it entirely to themselves. Under these circumstances the social power is constantly changing hands, because it is subordinate to the power of the people, which is too apt to forget the maxims of wisdom and of foresight in the consciousness of its strength: hence arises its danger; and thus its vigor, and not its impotence, will probably be the cause of its ultimate destruction.

The system of local administration produces several different effects in America. The Americans seem to me to have outstepped the limits of sound policy, in isolating the administration of the government; for order, even in second-rate

affairs, is a matter of national importance.¹⁰⁹ As the state has no administrative functionaries of its own, stationed on different parts of its territory, to whom it can give a common impulse, the consequence is that it rarely attempts to issue any general police regulations. The want of these regulations is severely felt, and is frequently observed by Europeans. The appearance of disorder which prevails on the surface, leads them at first to imagine that society is in a state of anarchy; nor do they perceive their mistake till they have gone deeper into the subject. Certain undertakings are of importance to the whole state; but they cannot be put in execution, because there is no national administration to direct

¹⁰⁹ The authority which represents the state ought not, I think, to waive the right of inspecting the local administration, even when it does not interfere more actively. Suppose, for instance, that an agent of the government was stationed at some appointed spot, in the county, to prosecute the misdemeanors of the town and county officers, would not a more uniform order be the result, without in any way compromising the independence of the township? Nothing of the kind, however, exists in America; there is nothing above the county courts, which have, as it were, only an accidental cognizance of the offences they are meant to repress. {This note seems to have been written without reference to the provision existing, it is believed in every state of the Union, by which a local officer is appointed in each county, to conduct all public prosecutions at the expense of the state. And in each county, a grand-jury is assembled three or four times at least in every year, to which all who are aggrieved have free access, and where every complaint, particularly those against public officers, which has the least color of truth, is sure to be heard and investigated. Such an agent as the author suggests would soon come to be considered a public informer, the most odious of all characters in the United States; and he would lose all efficiency and strength. With the provision above mentioned, there is little danger that a citizen, oppressed by a public officer, would find any difficulty in becoming his own informer, and inducing a rigid inquiry into the alleged misconduct.—*American Editor.*}

them. Abandoned to the exertions of the towns or counties, under the care of elected or temporary agents, they lead to no result, or at least to no durable benefit.

The partisans of centralisation in Europe maintain that the government directs the affairs of each locality better than the citizens could do it for themselves: this may be true when the central power is enlightened, and when the local districts are ignorant; when it is as alert as they are slow; when it is accustomed to act, and they to obey. Indeed, it is evident that this double tendency must augment with the increase of centralisation, and that the readiness of the one, and the incapacity of the others, must become more and more prominent. But I deny that such is the case when the people is as enlightened, as awake to its interests, and as accustomed to reflect on them, as the Americans are. I am persuaded, on the contrary, that in this case the collective strength of the citizens will always conduce more efficaciously to the public welfare than the authority of the government. It is difficult to point out with certainty the means of arousing a sleeping population, and of giving it passions and knowledge which it does not possess; it is, I am well aware, an arduous task to persuade men to busy themselves about their own affairs; and it would frequently be easier to interest them in the punctilios of court etiquette than in the repairs of their common dwelling. But whenever a central administration affects to supersede the persons most interested, I am inclined to suppose that it is either misled, or desirous

to mislead. However enlightened and however skilful a central power may be, it cannot of itself embrace all the details of the existence of a great nation. Such vigilance exceeds the powers of man. And when it attempts to create and set in motion so many complicated springs, it must submit to a very imperfect result, or consume itself in bootless efforts.

Centralisation succeeds more easily, indeed, in subjecting the external actions of men to a certain uniformity, which at last commands our regard, independently of the objects to which it is applied, like those devotees who worship the statue and forget the deity it represents. Centralisation imparts without difficulty an admirable regularity to the routine of business; rules the details of the social police with sagacity; represses the smallest disorder and the most petty misdemeanors; maintains society in a *status quo*, alike secure from improvement and decline; and perpetuates a drowsy precision in the conduct of affairs, which is hailed by the heads of the administration as a sign of perfect order and public tranquillity;¹¹⁰ in short, it excels more in prevention than in action. Its force deserts it when society is to be disturbed or accelerated in its course; and if once the co-operation of private citizens is

¹¹⁰ China appears to me to present the most perfect instance of that species of well-being which a completely central administration may furnish to the nations among which it exists. Travellers assure us that the Chinese have peace without happiness, industry without improvement, stability without strength, and public order without public morality. The condition of society is always tolerable, never excellent. I am convinced that, when China is opened to European observation, it will be found to contain the most perfect model of a central administration which exists in the universe.

necessary to the furtherance of its measures, the secret of its impotence is disclosed. Even while it invokes their assistance, it is on the condition that they shall act exactly as much as the government chooses, and exactly in the manner it appoints. They are to take charge of the details, without aspiring to guide the system; they are to work in a dark and subordinate sphere, and only to judge the acts in which they have themselves co-operated, by their results. These, however, are not conditions on which the alliance of the human will is to be obtained; its carriage must be free, and its actions responsible, or (such is the constitution of man) the citizen had rather remain a passive spectator than a dependent actor in schemes with which he is unacquainted.

It is undeniable, that the want of those uniform regulations which control the conduct of every inhabitant of France is not unfrequently felt in the United States. Gross instances of social indifference and neglect are to be met with; and from time to time disgraceful blemishes are seen, in complete contrast with the surrounding civilisation. Useful undertakings, which cannot succeed without perpetual attention and rigorous exactitude, are very frequently abandoned in the end; for in America, as well as in other countries, the people is subject to sudden impulses and momentary exertions. The European who is accustomed to find a functionary always at hand to interfere with all he undertakes, has some difficulty in accustoming himself to the complex mechanism of the administration of the townships. In general it may be affirmed that the lesser details of the police, which

render life easy and comfortable, are neglected in America; but that the essential guarantees of man in society are as strong there as elsewhere. In America the power which conducts the government is far less regular, less enlightened, and less learned, but a hundredfold more authoritative, than in Europe. In no country in the world do the citizens make such exertions for the common weal; and I am acquainted with no people which has established schools as numerous and as efficacious, places of public worship better suited to the wants of the inhabitants, or roads kept in better repair. Uniformity or permanence of design, the minute arrangement of details,¹¹¹ and the perfection of an

¹¹¹ A writer of talent, who, in the comparison which he has drawn between the finances of France and those of the United States, has proved that ingenuity cannot always supply the place of a knowledge of facts, very justly reproaches the Americans for the sort of confusion which exists in the accounts of the expenditure in the townships; and after giving the model of a departmental budget in France, he adds: "We are indebted to centralisation, that admirable invention of a great man, for the uniform order and method which prevail alike in all the municipal budgets, from the largest town to the humblest commune." Whatever may be my admiration of this result, when I see the communes of France, with their excellent system of accounts, plunged in the grossest ignorance of their true interests, and abandoned to so incorrigible an apathy that they seem to vegetate rather than to live; when, on the other hand, I observe the activity, the information, and the spirit of enterprise which keeps society in perpetual labor, in those American townships whose budgets are drawn up with small method and with still less uniformity, I am struck by the spectacle; for to my mind the end of a good government is to ensure the welfare of a people, and not to establish order and regularity in the midst of its misery and its distress. I am therefore led to suppose that the prosperity of the American townships and the apparent confusion of their accounts, the distress of the French communes and the perfection of their budget, may be attributable to the same cause. At any rate I am suspicious of a benefit which is united to so many evils, and I am not averse to an evil which is compensated by

ingenious administration, must not be sought for in the United States; but it will be easy to find, on the other hand, the symptoms of a power, which, if it is somewhat barbarous, is at least robust; and of an existence, which is checkered with accidents indeed, but cheered at the same time by animation and effort.

Granting for an instant that the villages and counties of the United States would be more usefully governed by a remote authority, which they had never seen, than by functionaries taken from the midst of them—admitting, for the sake of argument, that the country would be more secure, and the resources of society better employed, if the whole administration centred in a single arm, still the *political* advantages which the Americans derive from their system would induce me to prefer it to the contrary plan. It profits me but little, after all, that a vigilant authority protects the tranquillity of my pleasures, and constantly averts all danger from my path, without my care or my concern, if the same authority is the absolute mistress of my liberty and of my life, and if it so monopolises all the energy of existence, that when it languishes everything languishes around it, that when it sleeps everything must sleep, that when it dies the state itself must perish.

In certain countries of Europe the natives consider themselves as a kind of settlers, indifferent to the fate of the spot upon which they live. The greatest changes are effected without their concurrence and (unless chance may have apprised them of

the event) without their knowledge; nay more, the citizen is unconcerned as to the condition of his village, the police of his street, the repairs of the church or the parsonage; for he looks upon all these things as unconnected with himself, and as the property of a powerful stranger whom he calls the government. He has only a life-interest in these possessions, and he entertains no notions of ownership or of improvement. This want of interest in his own affairs goes so far, that if his own safety or that of his children is endangered, instead of trying to avert the peril, he will fold his arms, and wait till the nation comes to his assistance. This same individual, who has so completely sacrificed his own free will, has no natural propensity to obedience; he cowers, it is true, before the pettiest officer; but he braves the law with the spirit of a conquered foe as soon as its superior force is removed: his oscillations between servitude and license are perpetual. When a nation has arrived at this state, it must either change its customs and its laws, or perish: the source of public virtue is dry; and though it may contain subjects, the race of citizens is extinct. Such communities are a natural prey to foreign conquest; and if they do not disappear from the scene of life, it is because they are surrounded by other nations similar or inferior to themselves; it is because the instinctive feeling of their country's claims still exists in their hearts; and because an involuntary pride in the name it bears, or the vague reminiscence of its by-gone fame, suffices to give them the impulse of self-preservation.

Nor can the prodigious exertions made by certain people in

the defence of a country, in which they may almost be said to have lived as aliens, be adduced in favor of such a system; for it will be found that in these cases their main incitement was religion. The permanence, the glory, and the prosperity of the nation, were become parts of their faith; and in defending the country they inhabited, they defended that holy city of which they were all citizens. The Turkish tribes have never taken an active share in the conduct of the affairs of society, but they accomplished stupendous enterprises as long as the victories of the sultans were the triumphs of the Mohammedan faith. In the present age they are in rapid decay, because their religion is departing, and despotism only remains. Montesquieu, who attributed to absolute power an authority peculiar to itself, did it, as I conceive, undeserved honor; for despotism, taken by itself, can produce no durable results. On close inspection we shall find that religion, and not fear, has ever been the cause of the long-lived prosperity of absolute governments. Whatever exertions may be made, no true power can be founded among men which does not depend upon the free union of their inclinations; and patriotism and religion are the only two motives in the world which can permanently direct the whole of a body politic to one end.

Laws cannot succeed in rekindling the ardor of an extinguished faith; but men may be interested in the fate of their country by the laws. By this influence, the vague impulse of patriotism, which never abandons the human heart, may be

directed and revived: and if it be connected with the thoughts, the passions and daily habits of life, it may be consolidated into a durable and rational sentiment. Let it not be said that the time for the experiment is already past; for the old age of nations is not like the old age of men, and every fresh generation is a new people ready for the care of the legislator.

It is not the *administrative*, but the *political* effects of the local system that I most admire in America. In the United States the interests of the country are everywhere kept in view; they are an object of solicitude to the people of the whole Union, and every citizen is as warmly attached to them as if they were his own. He takes pride in the glory of his nation; he boasts of his success, to which he conceives himself to have contributed; and he rejoices in the general prosperity by which he profits. The feeling he entertains toward the state is analogous to that which unites him to his family, and it is by a kind of egotism that he interests himself in the welfare of his country.

The European generally submits to a public officer because he represents a superior force; but to an American he represents a right. In America it may be said that no one renders obedience to man, but to justice and to law. If the opinion which the citizen entertains of himself is exaggerated, it is at least salutary; he unhesitatingly confides in his own powers, which appear to him to be all-sufficient. When a private individual meditates an undertaking, however directly connected it may be with the welfare of society, he never thinks of soliciting the co-operation

of the government: but he publishes his plan, offers to execute it himself, courts the assistance of other individuals, and struggles manfully against all obstacles. Undoubtedly he is less successful than the state might have been in his position; but in the end, the sum of these private undertakings far exceeds all that the government could effect.

As the administrative authority is within the reach of the citizens, whom it in some degree represents, it excites neither their jealousy nor their hatred: as its resources are limited, every one feels that he must not rely solely on its assistance. Thus when the administration thinks fit to interfere, it is not abandoned to itself as in Europe; the duties of the private citizens are not supposed to have lapsed because the state assists in their fulfilment; but every one is ready, on the contrary, to guide and to support it. This action of individual exertions, joined to that of the public authorities, frequently performs what the most energetic central administration would be unable to execute. It would be easy to adduce several facts in proof of what I advance, but I had rather give only one, with which I am more thoroughly acquainted.¹¹² In America, the means which the authorities have at their disposal for the discovery of crimes and the arrest of criminals are few. A state police does not exist, and passports are unknown. The criminal police of the United States cannot be compared with that of France; the magistrates and public prosecutors are not numerous, and the examinations

¹¹² See Appendix I.

of prisoners are rapid and oral. Nevertheless in no country does crime more rarely elude punishment. The reason is that every one conceives himself to be interested in furnishing evidence of the act committed, and in stopping the delinquent. During my stay in the United States, I saw the spontaneous formation of committees for the pursuit and prosecution of a man who had committed a great crime in a certain county. In Europe a criminal is an unhappy being, who is struggling for his life against the ministers of justice, while the population is merely a spectator of the conflict: in America he is looked upon as an enemy of the human race, and the whole of mankind is against him.

I believe that provincial institutions are useful to all nations, but nowhere do they appear to me to be more indispensable than among a democratic people. In an aristocracy, order can always be maintained in the midst of liberty; and as the rulers have a great deal to lose, order is to them a first-rate consideration. In like manner an aristocracy protects the people from the excesses of despotism, because it always possesses an organized power ready to resist a despot. But a democracy without provincial institutions has no security against these evils. How can a populace, unaccustomed to freedom in small concerns, learn to use it temperately in great affairs? What resistance can be offered to tyranny in a country where every private individual is impotent, and where the citizens are united by no common tie? Those who dread the license of the mob, and those who fear the rule of absolute power, ought alike to desire the progressive

growth of provincial liberties.

On the other hand, I am convinced that democratic nations are most exposed to fall beneath the yoke of a central administration, for several reasons, among which is the following:—

The constant tendency of these nations is to concentrate all the strength of the government in the hands of the only power which directly represents the people: because, beyond the people nothing is to be perceived but a mass of equal individuals confounded together. But when the same power is already in possession of all the attributes of the government, it can scarcely refrain from penetrating into the details of the administration; and an opportunity of doing so is sure to present itself in the end, as was the case in France. In the French revolution there were two impulses in opposite directions, which must never be confounded; the one was favorable to liberty, the other to despotism. Under the ancient monarchy the king was the sole author of the laws; and below the power of the sovereign, certain vestiges of provincial institutions half-destroyed, were still distinguishable. These provincial institutions were incoherent, ill-compacted, and frequently absurd; in the hands of the aristocracy they had sometimes been converted into instruments of oppression. The revolution declared itself the enemy of royalty and of provincial institutions at the same time; it confounded all that had preceded it—despotic power and the checks to its abuses—in an indiscriminate hatred; and its tendency was at once to republicanism and to centralisation.

This double character of the French revolution is a fact which has been adroitly handled by the friends of absolute power. Can they be accused of laboring in the cause of despotism, when they are defending of the revolution?¹¹³ In this manner popularity may be conciliated with hostility to the rights of the people, and the secret slave of tyranny may be the professed admirer of freedom.

I have visited the two nations in which the system of provincial liberty has been most perfectly established, and I have listened to the opinions of different parties in those countries. In America I met with men who secretly aspired to destroy the democratic institutions of the Union; in England, I found others who attacked aristocracy openly; but I know of no one who does not regard provincial independence as a great benefit. In both countries I have heard a thousand different causes assigned for the evils of the state; but the local system was never mentioned among them. I have heard citizens attribute the power and prosperity of their country to a multitude of reasons: but they *all* placed the advantages of local institutions in the foremost rank.

Am I to suppose that when men who are naturally so divided on religious opinions, and on political theories, agree on one point (and that, one of which they have daily experience), they are all in error? The only nations which deny the utility of provincial liberties are those which have fewest of them; in other words, those who are unacquainted with the institution are the only persons who pass a censure upon it.

¹¹³ See Appendix K.

CHAPTER VI

JUDICIAL POWER IN THE UNITED STATES, AND ITS INFLUENCE ON POLITICAL SOCIETY

The Anglo-Americans have retained the Characteristics of judicial Power which are common to all Nations.—They have, however, made it a powerful political Organ.—How.—In what the judicial System of the Anglo-Americans differs from that of all other Nations.—Why the American Judges have the right of declaring the Laws to be Unconstitutional.—How they use this Right.—Precautions taken by the Legislator to prevent its abuse.

I have thought it essential to devote a separate chapter to the judicial authorities of the United States, lest their great political importance should be lessened in the reader's eyes by a merely incidental mention of them. Confederations have existed in other countries beside America; and republics have not been established on the shores of the New World alone: the representative system of government has been adopted in several states of Europe; but I am not aware that any nation of the globe has hitherto organized a judicial power on the principle adopted by the Americans. The judicial organization of the United States

is the institution which the stranger has the greatest difficulty in understanding. He hears the authority of a judge invoked in the political occurrences of every day, and he naturally concludes that in the United States the judges are important political functionaries: nevertheless, when he examines the nature of the tribunals, they offer nothing which is contrary to the usual habits and privileges of those bodies; and the magistrates seem to him to interfere in public affairs by chance, but by a chance which recurs every day.

When the Parliament of Paris remonstrated, or refused to enregister an edict, or when it summoned a functionary accused of malversation to its bar, its political influence as a judicial body was clearly visible; but nothing of the kind is to be seen in the United States. The Americans have retained all the ordinary characteristics of judicial authority, and have carefully restricted its action to the ordinary circle of its functions.

The first characteristic of judicial power in all nations is the duty of arbitration. But rights must be contested in order to warrant the interference of a tribunal; and an action must be brought to obtain the decision of a judge. As long, therefore, as a law is uncontested, the judicial authority is not called upon to discuss it, and it may exist without being perceived. When a judge in a given case attacks a law relating to that case, he extends the circle of his customary duties, without, however, stepping beyond it; since he is in some measure obliged to decide upon the law, in order to decide the case. But if he pronounces upon a law

without resting upon a case, he clearly steps beyond his sphere, and invades that of the legislative authority.

The second characteristic of judicial power is, that it pronounces on special cases, and not upon general principles. If a judge, in deciding a particular point, destroys a general principle, by passing a judgment which tends to reject all the inferences from that principle, and consequently to annul it, he remains within the ordinary limits of his functions. But if he directly attacks a general principle without having a particular case in view, he leaves the circle in which all nations have agreed to confine his authority; he assumes a more important, and perhaps a more useful influence than that of the magistrate, but he ceases to represent the judicial power.

The third characteristic of the judicial power is its inability to act unless it is appealed to, or until it has taken cognizance of an affair. This characteristic is less general than the other two; but notwithstanding the exceptions, I think it may be regarded as essential. The judicial power is by its nature devoid of action; it must be put in motion in order to produce a result. When it is called upon to repress a crime, it punishes the criminal; when a wrong is to be redressed, it is ready to redress it; when an act requires interpretation, it is prepared to interpret it; but it does not pursue criminals, hunt out wrongs, or examine into evidence of its own accord. A judicial functionary who should open proceedings, and usurp the censorship of the laws, would in some measure do violence to the passive nature of his authority.

The Americans have retained these three distinguishing characteristics of the judicial power; an American judge can only pronounce a decision when litigation has arisen, he is only conversant with special cases, and he cannot act until the cause has been duly brought before the court. His position is therefore perfectly similar to that of the magistrate of other nations; and he is nevertheless invested with immense political power. If the sphere of his authority and his means of action are the same as those of other judges, it may be asked whence he derives a power which they do not possess. The cause of this difference lies in the simple fact that the Americans have acknowledged the right of the judges to found their decisions on the constitution, rather than on the laws. In other words, they have left them at liberty not to apply such laws as may appear to them to be unconstitutional.

I am aware that a similar right has been claimed—but claimed in vain—by courts of justice in other countries; but in America it is recognized by all the authorities; and not a party, nor so much as an individual, is found to contest it. This fact can only be explained by the principles of the American constitution. In France the constitution is (or at least is supposed to be) immutable; and the received theory is that no power has the right of changing any part of it. In England, the parliament has an acknowledged right to modify the constitution: as, therefore, the constitution may undergo perpetual changes, it does not in reality exist; the parliament is at once a legislative and a constituent assembly. The political theories of America are more simple and

more rational. An American constitution is not supposed to be immutable as in France; nor is it susceptible of modification by the ordinary powers of society as in England. It constitutes a detached whole, which, as it represents the determination of the whole people, is no less binding on the legislator than on the private citizen, but which may be altered by the will of the people in predetermined cases, according to established rules. In America the constitution may, therefore, vary, but as long as it exists it is the origin of all authority, and the sole vehicle of the predominating force.¹¹⁴

It is easy to perceive in what manner these differences must act upon the position and the rights of the judicial bodies in the three countries I have cited. If in France the tribunals were authorized to disobey the laws on the ground of their being opposed to the constitution, the supreme power would in fact be placed in their hands, since they alone would have the right of interpreting a constitution, the clauses of which can be modified by no authority. They would, therefore, take the place of the nation, and exercise as absolute a sway over society as the inherent weakness of judicial power would allow them to do. Undoubtedly, as the French judges are incompetent to declare a law to be unconstitutional, the power of changing the constitution is indirectly given to the legislative body, since no legal barrier would oppose the alterations which it might prescribe. But it is better to grant the power of changing the constitution of the

¹¹⁴ See Appendix L.

people to men who represent (however imperfectly) the will of the people, than to men who represent no one but themselves.

It would be still more unreasonable to invest the English judges with the right of resisting the decisions of the legislative body, since the parliament which makes the laws also makes the constitution; and consequently a law emanating from the three powers of the state can in no case be unconstitutional. But neither of these remarks is applicable to America.¹¹⁵

In the United States the constitution governs the legislator as much as the private citizen: as it is the first of laws, it cannot be modified by a law; and it is therefore just that the tribunals should obey the constitution in preference to any law. This condition is essential to the power of the judicature; for to select that legal obligation by which he is most strictly bound, is the natural right of every magistrate.

In France the constitution is also the first of laws, and the judges have the same right to take it as the ground of their decisions; but were they to exercise this right, they must perforce encroach on rights more sacred than their own, namely, on those of society, in whose name they are acting. In this case the state motive clearly prevails over the motives of an individual. In America, where the nation can always reduce its magistrates to obedience by changing its constitution, no danger of this kind is to be feared. Upon this point therefore the political and the logical reason agree, and the people as well as the judges preserve

¹¹⁵ See Appendix M.

their privileges.

Whenever a law which the judge holds to be unconstitutional is argued in a tribunal of the United States, he may refuse to admit it as a rule; this power is the only one which is peculiar to the American magistrate, but it gives rise to immense political influence. Few laws can escape the searching analysis; for there are few which are not prejudicial to some private interest or other, and none which may not be brought before a court of justice by the choice of parties, or by the necessity of the case. But from the time that a judge has refused to apply any given law in a case, that law loses a portion of its moral sanction. The persons to whose interest it is prejudicial, learn that means exist of evading its authority; and similar suits are multiplied, until it becomes powerless. One of two alternatives must then be resorted to: the people must alter the constitution, or the legislature must repeal the law.

The political power which the Americans have intrusted to their courts of justice is therefore immense; but the evils of this power are considerably diminished, by the obligation which has been imposed of attacking the laws through the courts of justice alone. If the judge had been empowered to contest the laws on the ground of theoretical generalities; if he had been enabled to open an attack or to pass a censure on the legislator, he would have played a prominent part in the political sphere; and as the champion or the antagonist of a party, he would have arrayed the hostile passions of the nation in the conflict. But when a judge

contests a law, applied to some particular case in an obscure proceeding, the importance of his attack is concealed from the public gaze; his decision bears upon the interest of an individual, and if the law is slighted, it is only collaterally. Moreover, although it be censured, it is not abolished; its moral force may be diminished, but its cogency is by no means suspended; and its final destruction can only be accomplished by the reiterated attacks of judicial functionaries. It will readily be understood that by connecting the censorship of the laws with the private interests of members of the community, and by intimately uniting the prosecution of the law with the prosecution of an individual, the legislation is protected from wanton assailants, and from the daily aggressions of party spirit. The errors of the legislator are exposed whenever their evil consequences are most felt; and it is always a positive and appreciable fact which serves as the basis of a prosecution.

I am inclined to believe this practice of the American courts to be at once the most favorable to liberty as well as to public order. If the judge could only attack the legislator openly and directly, he would sometimes be afraid to oppose any resistance to his will; and at other moments party spirit might encourage him to brave it every day. The laws would consequently be attacked when the power from which they emanate is weak, and obeyed when it is strong. That is to say, when it would be useful to respect them, they would be contested; and when it would be easy to convert them into an instrument of oppression, they

would be respected. But the American judge is brought into the political arena independently of his own will. He only judges the law because he is obliged to judge a case. The political question which he is called upon to resolve is connected with the interest of the parties, and he cannot refuse to decide it without abdicating the duties of his post. He performs his functions as a citizen by fulfilling the strict duties which belong to his profession as a magistrate. It is true that upon this system the judicial censorship which is exercised by the courts of justice over the legislation cannot extend to all laws indiscriminately, inasmuch as some of them can never give rise to that precise species of contestation which is termed a lawsuit; and even when such a contestation is possible, it may happen that no one cares to bring it before a court of justice. The Americans have often felt this disadvantage, but they have left the remedy incomplete, lest they should give it efficacy which in some cases might prove dangerous. Within these limits, the power vested in the American courts of justice of pronouncing a statute to be unconstitutional, forms one of the most powerful barriers which have ever been devised against the tyranny of political assemblies.

OTHER POWERS GRANTED TO THE AMERICAN JUDGES

In the United States all the Citizens have the Right of indicting the public Functionaries before the ordinary Tribunals.—How

they use this Right.—Art. 75 of the An VIII.—The Americans and the English cannot understand the Purport of this Clause.

It is perfectly natural that in a free country like America all the citizens should have the right of indicting public functionaries before the ordinary tribunals, and that all the judges should have the power of punishing public offences. The right granted to the courts of justice, of judging the agents of the executive government, when they have violated the laws, is so natural a one that it cannot be looked upon as an extraordinary privilege. Nor do the springs of government appear to me to be weakened in the United States by the custom which renders all public officers responsible to the judges of the land. The Americans seem, on the contrary, to have increased by this means that respect which is due to the authorities, and at the same time to have rendered those who are in power more scrupulous of offending public opinion. I was struck by the small number of political trials which occur in the United States; but I have no difficulty in accounting for this circumstance. A lawsuit, of whatever nature it may be, is always a difficult and expensive undertaking. It is easy to attack a public man in a journal, but the motives which can warrant an action at law must be serious. A solid ground of complaint must therefore exist, to induce an individual to prosecute a public officer, and public officers careful not to furnish these grounds of complaint, when they are afraid of being prosecuted.

This does not depend upon the republican form of the American institutions, for the same facts present themselves in

England. These two nations do not regard the impeachment of the principal officers of state as a sufficient guarantee of their independence. But they hold that the right of minor prosecutions, which are within the reach of the whole community, is a better pledge of freedom than those great judicial actions which are rarely employed until it is too late.

In the middle ages, when it was very difficult to overtake offenders, the judges inflicted the most dreadful tortures on the few who were arrested, which by no means diminished the number of crimes. It has since been discovered that when justice is more certain and more mild, it is at the same time more efficacious. The English and the Americans hold that tyranny and oppression are to be treated like any other crime, by lessening the penalty and facilitating conviction.

In the year VIII. of the French republic, a constitution was drawn up in which the following clause was introduced: "Art. 75. All the agents of the government below the rank of ministers can only be prosecuted for offences relating to their several functions by virtue of a decree of the conseil d'etat; in which case the prosecution takes place before the ordinary tribunals." This clause survived the "Constitution de l'an VIII.," and it is still maintained in spite of the just complaints of the nation. I have always found the utmost difficulty in explaining its meaning to Englishmen or Americans. They were at once led to conclude that the conseil d'etat in France was a great tribunal, established in the centre of the kingdom, which exercised a preliminary and

somewhat tyrannical jurisdiction in all political causes. But when I told them that the conseil d'etat was not a judicial body, in the common sense of the term, but an administrative council composed of men dependent on the crown—so that the king, after having ordered one of his servants, called a prefect, to commit an injustice, has the power of commanding another of his servants, called a councillor of state, to prevent the former from being punished—when I demonstrated to them that the citizen who had been injured by the order of the sovereign is obliged to solicit from the sovereign permission to obtain redress, they refused to credit so flagrant an abuse, and were tempted to accuse me of falsehood or of ignorance. It frequently happened before the revolution that a parliament issued a warrant against a public officer who had committed an offence; and sometimes the proceedings were annulled by the authority of the crown. Despotism then displayed itself openly, and obedience was extorted by force. We have then retrograded from the point which our forefathers had reached, since we allow things to pass under the color of justice and the sanction of the law, which violence alone could impose upon them.

CHAPTER VII

POLITICAL JURISDICTION IN THE UNITED STATES

Definition of political Jurisdiction.—What is understood by political Jurisdiction in France, in England, and in the United States.—In America the political Judge can only pass Sentence on public Officers.—He more frequently passes a Sentence of Removal from Office than a Penalty.—Political Jurisdiction, as it Exists in the United States, is, notwithstanding its Mildness, and perhaps in Consequence of that Mildness, a most powerful Instrument in the Hands of the Majority.

I understand, by political jurisdiction, that temporary right of pronouncing a legal decision with which a political body may be invested.

In absolute governments no utility can accrue from the introduction of extraordinary forms of procedure; the prince, in whose name an offender is prosecuted, is as much the sovereign of the courts of justice as of everything else, and the idea which is entertained of his power is of itself a sufficient security. The only thing he has to fear is, that the external formalities of justice may be neglected, and that his authority may be dishonored, from a wish to render it more absolute. But in most free countries,

in which the majority can never exercise the same influence upon the tribunals as an absolute monarch, the judicial power has occasionally been vested for a time in the representatives of society. It has been thought better to introduce a temporary confusion between the functions of the different authorities, than to violate the necessary principle of the unity of government.

England, France, and the United States, have established this political jurisdiction in their laws; and it is curious to examine the different use which these three great nations have made of the principle. In England and in France the house of lords and the chambre des pairs constitute the highest criminal court of their respective nations; and although they do not habitually try all political offences, they are competent to try them all. Another political body enjoys the right of impeachment before the house of lords: the only difference which exists between the two countries in this respect is, that in England the commons may impeach whomsoever they please before the lords, while in France the deputies can only employ this mode of prosecution against the ministers of the crown.

In both countries the upper house make use of all the existing penal laws of the nation to punish the delinquents.

In the United States, as well as in Europe, one branch of the legislature is authorized to impeach, and another to judge: the house of representatives arraigns the offender, and the senate awards his sentence. But the senate can only try such persons as are brought before it by the house of representatives, and those

persons must belong to the class of public functionaries. Thus the jurisdiction of the senate is less extensive than that of the peers of France, while the right of impeachment by the representatives is more general than that of the deputies. But the great difference which exists between Europe and America is, that in Europe political tribunals are empowered to inflict all the dispositions of the penal code, while in America, when they have deprived the offender of his official rank, and have declared him incapable of filling any political office for the future, their jurisdiction terminates and that of the ordinary tribunals begins.

Suppose, for instance, that the president of the United States has committed the crime of high treason; the house of representatives impeaches him, and the senate degrades him; he must then be tried by a jury, which alone can deprive him of his liberty or his life. This accurately illustrates the subject we are treating. The political jurisdiction which is established by the laws of Europe is intended to try great offenders, whatever may be their birth, their rank, or their powers in the state; and to this end all the privileges of the courts of justice are temporarily extended to a great political assembly. The legislator is then transformed into a magistrate: he is called upon to admit, to distinguish, and to punish the offence; and as he exercises all the authority of a judge, the law restricts him to the observance of all the duties of that high office, and of all the formalities of justice. When a public functionary is impeached before an English or a French political tribunal, and is found guilty, the sentence

deprives him *ipso facto* of his functions, and it may pronounce him to be incapable of resuming them or any others for the future. But in this case the political interdict is a consequence of the sentence, and not the sentence itself. In Europe the sentence of a political tribunal is therefore to be regarded as a judicial verdict, rather than as an administrative measure. In the United States the contrary takes place; and although the decision of the senate is judicial in its form, since the senators are obliged to comply with the practices and formalities of a court of justice; although it is judicial in respect to the motives on which it is founded, since the senate is in general obliged to take an offence at common law as the basis of its sentence; nevertheless the object of the proceeding is purely administrative.

If it had been the intention of the American legislator to invest a political body with great judicial authority, its action would not have been limited to the circle of public functionaries, since the most dangerous enemies of the state may be in the possession of no functions at all; and this is especially true in republics, where party favor is the first of authorities, and where the strength of many a leader is increased by his exercising no legal power. If it had been the intention of the American legislator to give society the means of repressing state offences by exemplary punishment, according to the practice of ordinary judgment, the resources of the penal code would all have been placed at the disposal of the political tribunals. But the weapon with which they are intrusted is an imperfect one, and it can never reach the most dangerous

offenders; since men who aim at the entire subversion of the laws are not likely to murmur at a political interdict.

The main object of the political jurisdiction which obtains in the United States is, therefore, to deprive the citizen of an authority which he has used amiss, and to prevent him from ever acquiring it again. This is evidently an administrative measure sanctioned by the formalities of judicial investigation. In this matter the Americans have created a mixed system: they have surrounded the act which removes a public functionary with the securities of a political trial; and they have deprived all political condemnations of their severest penalties. Every link of the system may easily be traced from this point; we at once perceive why the American constitutions subject all the civil functionaries to the jurisdiction of the senate, while the military, whose crimes are nevertheless more formidable, are exempt from that tribunal. In the civil service none of the American functionaries can be said to be removeable; the places which some of them occupy are inalienable, and the others derive their rights from a power which cannot be abrogated. It is therefore necessary to try them all in order to deprive them of their authority. But military officers are dependent on the chief magistrate of the state, who is himself a civil functionary; and the decision which condemns him is a blow upon them all.

If we now compare the American and European systems, we shall meet with differences no less striking in the different effects which each of them produces or may produce. In France and in

England the jurisdiction of political bodies is looked upon as an extraordinary resource, which is only to be employed in order to rescue society from unwonted dangers. It is not to be denied that these tribunals, as they are constituted in Europe, are apt to violate the conservative principle of the balance of power in the state, and to threaten incessantly the lives and liberties of the subject. The same political jurisdiction in the United States is only indirectly hostile to the balance of power; it cannot menace the lives of the citizens, and it does not hover, as in Europe, over the heads of the community, since those only who have beforehand submitted to its authority upon accepting office are exposed to its severity. It is at the same time less formidable and less efficacious; indeed, it has not been considered by the legislators of the United States as a remedy for the more violent evils of society, but as an ordinary means of conducting the government. In this respect it probably exercises more real influence on the social body in America than in Europe. We must not be misled by the apparent mildness of the American Legislation in all that relates to political jurisdiction. It is to be observed, in the first place, that in the United States the tribunal which passes sentence is composed of the same elements, and subject to the same influences, as the body which impeaches the offender, and that this uniformity gives an almost irresistible impulse to the vindictive passions of parties. If political judges in the United States cannot inflict such heavy penalties as those of Europe, there is the less chance of their acquitting a prisoner;

and the conviction, if it is less formidable, is more certain. The principal object of the political tribunals of Europe is to punish the offender; the purpose of those in America is to deprive him of his authority. A political condemnation in the United States may, therefore, be looked upon as a preventive measure, and there is no reason for restricting the judges to the exact definitions of criminal law. Nothing can be more alarming than the excessive latitude with which political offences are described in the laws of America. Article II., section iv., of the constitution of the United States runs thus: "The president, vice-president, and all the civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, *or other high crimes and misdemeanors.*" Many of the constitutions of the states are even less explicit. "Public officers," says the constitution of Massachusetts,¹¹⁶ "shall be impeached for misconduct or mal-administration." The constitution of Virginia declares that all the civil officers who shall have offended against the state by mal-administration, corruption, or other high crimes, may be impeached by the house of delegates: in some constitutions no offences are specified, in order to subject the public functionaries to an unlimited responsibility.¹¹⁷ But I will venture to affirm, that it is precisely their mildness which renders the American laws most formidable in this respect. We have shown that in Europe the removal of a functionary and his

¹¹⁶ Chapter I., sect. ii., § 8.

¹¹⁷ See the constitutions of Illinois, Maine, Connecticut, and Georgia.

political interdiction are consequences of the penalty he is to undergo, and that in America they constitute the penalty itself. The result is, that in Europe political tribunals are invested with rights which they are afraid to use, and that the fear of punishing too much hinders them from punishing at all. But in America no one hesitates to inflict a penalty from which humanity does not recoil. To condemn a political opponent to death, in order to deprive him of his power, is to commit what all the world would execrate as a horrible assassination; but to declare that opponent unworthy to exercise that authority, to deprive him of it, and to leave him uninjured in life and liberty, may appear to be the fair issue of the struggle. But this sentence, which is so easy to pronounce, is not the less fatally severe to the majority of those upon whom it is inflicted. Great criminals may undoubtedly brave its intangible rigor, but ordinary offenders will dread it as a condemnation which destroys their position in the world, casts a blight upon their honor, and condemns them to a shameful inactivity worse than death. The influence exercised in the United States upon the progress of society by the jurisdiction of political bodies may not appear to be formidable, but it is only the more immense. It does not act directly upon the governed, but it renders the majority more absolute over those who govern; it does not confer an unbounded authority on the legislator which can only be exerted at some momentous crisis, but it establishes a temperate and regular influence, which is at all times available. If the power is decreased, it can, on the

other hand, be more conveniently employed, and more easily abused. By preventing political tribunals from inflicting judicial punishments, the Americans seem to have eluded the worst consequences of legislative tyranny, rather than tyranny itself; and I am not sure that political jurisdiction, as it is constituted in the United States, is not the most formidable which has ever been placed in the rude grasp of a popular majority. When the American republics begin to degenerate, it will be easy to verify the truth of this observation, by remarking whether the number of political impeachments augments.¹¹⁸

¹¹⁸ See Appendix N.

CHAPTER VIII

THE FEDERAL CONSTITUTION

I have hitherto considered each state as a separate whole, and I have explained the different springs which the people sets in motion, and the different means of action which it employs. But all the states which I have considered as independent are forced to submit, in certain cases, to the supreme authority of the Union. The time is now come for me to examine the partial sovereignty which has been conceded to the Union, and to cast a rapid glance over the federal constitution.¹¹⁹

HISTORY OF THE FEDERAL CONSTITUTION

Origin of the first Union.—Its Weakness.—Congress appeals to the constituent Authority.—Interval of two Years between the Appeal and the Promulgation of the new Constitution.

The thirteen colonies which simultaneously threw off the yoke of England toward the end of the last century, possessed, as I have already observed, the same religion, the same language, the

¹¹⁹ See the constitution of the United States.

same customs, and almost the same laws; they were struggling against a common enemy; and these reasons were sufficiently strong to unite them one to another, and to consolidate them into one nation. But as each of them had enjoyed a separate existence, and a government within its own control, the peculiar interests and customs which resulted from this system, were opposed to a compact and intimate union, which would have absorbed the individual importance of each in the general importance of all. Hence arose two opposite tendencies, the one prompting the Anglo-Americans to unite, the other to divide their strength. As long as the war with the mother-country lasted, the principle of union was kept alive by necessity; and although the laws which constituted it were defective, the common tie subsisted in spite of their imperfections.¹²⁰ But no sooner was peace concluded than the faults of the legislation became manifest, and the state seemed to be suddenly dissolved. Each colony became an independent republic, and assumed an absolute sovereignty. The federal government, condemned to impotence by its constitution, and no longer sustained by the presence of a common danger, saw the outrages offered to its flag by the great nations of Europe, while it was scarcely able to maintain its ground against the Indian tribes, and to pay the interest of the debt which had been contracted during the war of independence. It was already on the

¹²⁰ See the articles of the first confederation formed in 1778. This constitution was not adopted by all the states until 1781. See also the analysis given of this constitution in the *Federalist*, from No. 15 to No. 22 inclusive, and Story's "Commentary on the Constitution of the United States," pp. 85-115.

verge of destruction, when it officially proclaimed its inability to conduct the government, and appealed to the constituent authority of the nation.¹²¹

If America ever approached (for however brief a time) that lofty pinnacle of glory to which the proud fancy of its inhabitants is wont to point, it was at the solemn moment at which the power of the nation abdicated, as it were, the empire of the land. All ages have furnished the spectacle of a people struggling with energy to win its independence; and the efforts of the Americans in throwing off the English yoke have been considerably exaggerated. Separated from their enemies by three thousand miles of ocean, and backed by a powerful ally, the success of the United States may be more justly attributed to their geographical position, than to the valor of their armies or the patriotism of their citizens. It would be ridiculous to compare the American war to the wars of the French revolution, or the efforts of the Americans to those of the French, who, when they were attacked by the whole of Europe, without credit and without allies, were still capable of opposing a twentieth part of their population to their foes, and of bearing the torch of revolution beyond their frontiers while they stifled its devouring flame within the bosom of their country. But it is a novelty in the history of society to see a great people turn a calm and scrutinizing eye upon itself when apprised by the legislature that the wheels of government had stopped; to see it carefully

¹²¹ Congress made this declaration on the 21st of February, 1787.

examine the extent of the evil, and patiently wait for two whole years until a remedy was discovered, which it voluntarily adopted without having wrung a tear or a drop of blood from mankind. At the time when the inadequacy of the first constitution was discovered, America possessed the double advantage of that calm which had succeeded the effervescence of the revolution, and of those great men who had led the revolution to a successful issue. The assembly which accepted the task of composing the second constitution was small;¹²² but George Washington was its president, and it contained the choicest talents and the noblest hearts which had ever appeared in the New World. This national commission, after long and mature deliberation, offered to the acceptance of the people the body of general laws which still rules the Union. All the states adopted it successively.¹²³ The new federal government commenced its functions in 1789, after an interregnum of two years. The revolution of America terminated when that of France began.

¹²² It consisted of fifty-five members: Washington, Madison, Hamilton, and the two Morrisises, were among the number.

¹²³ It was not adopted by the legislative bodies, but representatives were elected by the people for this sole purpose; and the new constitution was discussed at length in each of these assemblies.

SUMMARY OF THE FEDERAL CONSTITUTION

Division of Authority between the Federal Government and the States.—The Government of the States is the Rule: the Federal Government the Exception.

The first question which awaited the Americans was intricate, and by no means easy of solution; the object was so to divide the authority of the different states which composed the Union, that each of them should continue to govern itself in all that concerned its internal prosperity, while the entire nation, represented by the Union, should continue to form a compact body, and to provide for the exigencies of the people. It was as impossible to determine beforehand, with any degree of accuracy, the share of authority which each of the two governments was to enjoy, as to foresee all the incidents in the existence of a nation.

The obligations and the claims of the federal government were simple and easily definable, because the Union had been formed with the express purpose of meeting the general exigencies of the people; but the claims and obligations of the states were, on the other hand, complicated and various, because those governments penetrated into all the details of social life. The attributes of the federal government were, therefore, carefully enumerated, and all that was not included among them was declared to constitute

a part of the privileges of the several governments of the states. Thus the government of the states remained the rule, and that of the confederation became the exception.¹²⁴

But as it was foreseen, that, in practice, questions might arise as to the exact limits of this exceptional authority, and that it would be dangerous to submit these questions to the decision of the ordinary courts of justice, established in the states by the states themselves, a high federal court was created,¹²⁵ which was destined, among other functions, to maintain the balance of power which had been established by the constitution between the two rival governments.¹²⁶

¹²⁴ See the amendment to the federal constitution; Federalist, No. 32. Story, p. 711. Kent's Commentaries, Vol. i., p. 364. It is to be observed, that whenever the *exclusive* right of regulating certain matters is not reserved to congress by the constitution, the states may take up the affair, until it is brought before the national assembly. For instance, congress has the right of making a general law of bankruptcy, which, however, it neglects to do. Each state is then at liberty to make a law for itself. This point, however, has been established by discussion in the law-courts, and may be said to belong more properly to jurisprudence.

¹²⁵ The action of this court is indirect, as we shall hereafter show.

¹²⁶ It is thus that the Federalist, No. 45, explains the division of supremacy between the union and the states: "The powers delegated by the constitution to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce. The powers reserved to the several states will extend to all the objects which, in the ordinary course of affairs, concern the internal order and prosperity of the state." I shall often have occasion to quote the Federalist in this work. When the bill which has since become the constitution of the United States was submitted to the approval of the people, and the discussions were still pending, three men who had already acquired a portion of that

PREROGATIVE OF THE FEDERAL GOVERNMENT

Power of declaring War, making Peace, and levying general Taxes vested in the Federal Government.—What Part of the internal Policy of the Country it may direct.—The Government of the Union in some respects more central than the King's Government in the old French monarchy.

The external relations of a people may be compared to those of private individuals, and they cannot be advantageously maintained without the agency of the single head of a government. The exclusive right of making peace and war, of concluding treaties of commerce, of raising armies, and equipping fleets, was therefore granted to the Union.¹²⁷ The necessity of a national government was less imperiously felt in the conduct of the internal affairs of society; but there are certain general interests which can only be attended to with advantage by a general authority. The Union was invested with

celebrity which they have since enjoyed, John Jay, Hamilton, and Madison, formed an association with the intention of explaining to the nation the advantages of the measure which was proposed. With this view they published a series of articles in the shape of a journal, which now form a complete treatise. They entitled their journal, "The Federalist," a name which has been retained in the work. The Federalist is an excellent book, which ought to be familiar to the statesmen of all countries, although it especially concerns America.

¹²⁷ See constitution, sect. 8. Federalist, Nos. 41 and 42. Kent's Commentaries, vol. i., p. 207. Story, pp. 358-382; 409-426.

the power of controlling the monetary system, of directing the post-office, and of opening the great roads which were to establish communication between the different parts of the country.¹²⁸ The independence of the government of each state was formally recognized in its sphere; nevertheless the federal government was authorized to interfere in the internal affairs of the states¹²⁹ in a few predetermined cases, in which an indiscreet abuse of their independence might compromise the security of the Union at large. Thus, while the power of modifying and changing their legislation at pleasure was preserved in all the republics, they were forbidden to enact *ex post facto* laws, or to create a class of nobles in their community.¹³⁰ Lastly, as it was necessary that the federal government should be able to fulfil its engagements, it was endowed with an unlimited power of levying taxes.¹³¹

In examining the balance of power as established by the federal constitution; in remarking on the one hand the portion of sovereignty which has been reserved to the several states, and on the other the share of power which the Union has assumed,

¹²⁸ Several other privileges of the same kind exist, such as that which empowers the Union to legislate on bankruptcy, to grant patents, and other matters in which its intervention is clearly necessary.

¹²⁹ Even in these cases its interference is indirect. The Union interferes by means of the tribunals, as will be hereafter shown.

¹³⁰ Federal Constitution, sect. 10, art. 1.

¹³¹ Constitution, sect. 8, 9, and 10. Federalist, Nos. 30-36 inclusive, and 41-44. Kent's Commentaries, vol. i., pp. 207 and 381. Story pp. 329 and 514.

it is evident that the federal legislators entertained the clearest and most accurate notions on the nature of the centralisation of government. The United States form not only a republic, but a confederation; nevertheless the authority of the nation is more central than it was in several of the monarchies of Europe when the American constitution was formed. Take, for instance, the two following examples:—

Thirteen supreme courts of justice existed in France, which, generally speaking, had the right of interpreting the law without appeal; and those provinces, styled *pays d'etats*, were authorized to refuse their assent to an impost which had been levied by the sovereign who represented the nation.

In the Union there is but one tribunal to interpret, as there is one legislature to make the laws; and an impost voted by the representatives of the nation is binding upon all the citizens.

In these two essential points, therefore, the Union exercises more central authority than the French monarchy possessed, although the Union is only an assemblage of confederate republics.

In Spain certain provinces had the right of establishing a system of customhouse duties peculiar to themselves, although that privilege belongs, by its very nature, to the national sovereignty. In America the congress alone has the right of regulating the commercial relations of the states. The government of the confederation is therefore more centralized in this respect than the kingdom of Spain. It is true that the power

of the crown in France or in Spain was always able to obtain by force whatever the constitution of the country denied, and that the ultimate result was consequently the same; and I am here discussing the theory of the constitution.

FEDERAL POWERS

After having settled the limits within which the federal government was to act, the next point was to determine the powers which it was to exert.

LEGISLATIVE POWERS

Division of the legislative Body into two Branches.—Difference in the Manner of forming the two Houses.—The Principle of the Independence of the States predominates in the Formation of the Senate.—The Principle of the Sovereignty of the Nation in the Composition of the House of Representatives.—Singular Effects of the Fact that a Constitution can only be Logical in the early Stages of a Nation.

The plan which had been laid down beforehand for the constitution of the several states was followed, in many points, in the organization of the powers of the Union. The federal legislature of the Union was composed of a senate and a house of Representatives. A spirit of conciliation prescribed the observance of distinct principles in the formation of each of

these two assemblies. I have already shown that two contrary interests were opposed to each other in the establishment of the federal constitution. These two interests had given rise to two opinions. It was the wish of one party to convert the Union into a league of independent states, or a sort of congress, at which the representatives of the several peoples would meet to discuss certain points of their common interests. The other party desired to unite the inhabitants of the American colonies into one sole nation, and to establish a government, which should act as the sole representative of the nation, as far as the limited sphere of its authority would permit. The practical consequences of these two theories were exceedingly different.

The question was, whether a league was to be established instead of a national government; whether the majority of the states, instead of a majority of the inhabitants of the Union, was to give the law; for every state, the small as well as the great, then retained the character of an independent power, and entered the Union upon a footing of perfect equality. If, on the contrary, the inhabitants of the United States were to be considered as belonging to one and the same nation, it was natural that the majority of the citizens of the Union should prescribe the law. Of course the lesser states could not subscribe to the application of this doctrine without, in fact, abdicating their existence in relation to the sovereignty of the confederation; since they would have passed from the condition of a co-equal and co-legislative authority, to that of an insignificant fraction of

a great people. The former system would have invested them with an excessive authority, the latter would have annulled their influence altogether. Under these circumstances, the result was, that the strict rules of logic were evaded, as is usually the case when interests are opposed to arguments. A middle course was hit upon by the legislators, which brought together by force two systems theoretically irreconcilable.

The principle of the independence of the states prevailed in the formation of the senate, and that of the sovereignty of the nation predominated in the composition of the house of representatives. It was decided that each state should send two senators to congress, and a number of representatives proportioned to its population.¹³² It results from this arrangement that the state of New York has at the present day forty representatives, and only two senators; the state of Delaware has two senators, and only one representative; the state of Delaware is therefore equal to the state of New York in the senate, while the latter has forty times the influence of the former in the

¹³² Every ten years congress fixes anew the number of representatives which each state is to furnish. The total number was 69 in 1789, and 240 in 1833. (See American Almanac, 1834, p. 194.) The constitution decided that there should not be more than one representative for every 30,000 persons; but no minimum was fixed upon. The congress has not thought fit to augment the number of representatives in proportion to the increase of population. The first act which was passed on the subject (14th April, 1792: see Laws of the United States, by Story, vol. i., p. 235) decided that there should be one representative for every 33,000 inhabitants. The last act, which was passed in 1822, fixes the proportion at one for 48,000. The population represented is composed of all the freemen and of three-fifths of the slaves.

house of representatives. Thus, if the minority of the nation preponderates in the senate, it may paralyze the decisions of the majority represented in the other house, which is contrary to the spirit of constitutional government.

The facts show how rare and how difficult it is rationally and logically to combine all the several parts of legislation. In the course of time different interests arise, and different principles are sanctioned by the same people; and when a general constitution is to be established, these interests and principles are so many natural obstacles to the rigorous application of any political system, with all its consequences. The early stages of national existence are the only periods at which it is possible to maintain the complete logic of legislation; and when we perceive a nation in the enjoyment of this advantage, before we hasten to conclude that it is wise, we should do well to remember that it is young. When the federal constitution was formed, the interest of independence for the separate states, and the interest of union for the whole people, were the only two conflicting interests which existed among the Anglo-Americans; and a compromise was necessarily made between them.

It is, however, just to acknowledge that this part of the constitution has not hitherto produced those evils which might have been feared. All the states are young and contiguous; their customs, their ideas, and their wants, are not dissimilar; and the differences which result from their size or inferiority do not suffice to set their interests at variance. The small states

have consequently never been induced to league themselves together in the senate to oppose the designs of the larger ones; and indeed there is so irresistible an authority in the legitimate expression of the will of a people, that the senate could offer but a feeble opposition to the vote of the majority of the house of representatives.

It must not be forgotten, on the other hand, that it was not in the power of the American legislators to reduce to a single nation the people for whom they were making laws. The object of the federal constitution was not to destroy the independence of the states, but to restrain it. By acknowledging the real authority of these secondary communities (and it was impossible to deprive them of it), they disavowed beforehand the habitual use of constraint in enforcing the decisions of the majority. Upon this principle the introduction of the influence of the states into the mechanism of the federal government was by no means to be wondered at; since it only attested the existence of an acknowledged power, which was to be humored, and not forcibly checked.

A FARTHER DIFFERENCE BETWEEN THE SENATE AND THE HOUSE OF REPRESENTATIVES

The Senate named by the provincial Legislature—the Representatives, by the People.—Double Election of the Former

—Single Election of the Latter.—Term of the different Offices.
—Peculiar Functions of each House.

The senate not only differs from the other house in the principle which it represents, but also in the mode of its election, in the term for which it is chosen, and in the nature of its functions. The house of representatives is named by the people, the senate by the legislators of each state; the former is directly elected; the latter is elected by an elected body; the term for which the representatives are chosen is only two years, that of the senators is six. The functions of the house of representatives are purely legislative, and the only share it takes in the judicial power is in the impeachment of public officers. The senate co-operates in the work of legislation, and tries those political offences which the house of representatives submits to its decision. It also acts as the great executive council of the nation; the treaties which are concluded by the president must be ratified by the senate; and the appointments he may make must be definitively approved by the same body.¹³³

THE EXECUTIVE POWER. ¹³⁴

Dependence of the President—He is Elective and

¹³³ See the Federalist, Nos. 52-66, inclusive. Story, pp. 199-314 Constitution of the United States, sections 2 and 3.

¹³⁴ See the Federalist, Nos. 67-77. Constitution of the United States, a. t. 2. Story, pp. 115; 515-780. Kent's Commentaries, p. 255.

Responsible.—He is Free to act in his own Sphere under the Inspection, but not under the Direction, of the Senate.—His Salary fixed at his Entry into Office.—Suspensive Veto.

The American legislators undertook a difficult task in attempting to create an executive power dependent on the majority of the people and nevertheless sufficiently strong to act without restraint in its own sphere. It was indispensable to the maintenance of the republican form of government that the representatives of the executive power should be subject to the will of the nation.

The president is an elective magistrate. His honor, his property, his liberty, and his life, are the securities which the people has for the temperate use of his power. But in the exercise of his authority he cannot be said to be perfectly independent; the senate takes cognizance of his relations with foreign powers, and of the distribution of public appointments, so that he can neither be bribed, nor can he employ the means of corruption. The legislators of the Union acknowledged that the executive power would be incompetent to fulfill its task with dignity and utility, unless it enjoyed a greater degree of stability and of strength than had been granted to it in the separate states.

The president is chosen for four years, and he may be re-elected; so that the chances of a prolonged administration may inspire him with hopeful undertakings for the public good, and with the means of carrying them into execution. The president was made the sole representative of the executive power of the

Union; and care was taken not to render his decisions subordinate to the vote of a council—a dangerous measure, which tends at the same time to clog the action of the government and to diminish its responsibility. The senate has the right of annulling certain acts of the president; but it cannot compel him to take any steps, nor does it participate in the exercise of the executive power.

The action of the legislature on the executive power may be direct; and we have just shown that the Americans carefully obviated this influence; but it may, on the other hand, be indirect. Public assemblies which have the power of depriving an officer of state of his salary, encroach upon his independence; and as they are free to make the laws, it is to be feared lest they should gradually appropriate to themselves a portion of that authority which the constitution had vested in his hands. This dependence of the executive power is one of the defects inherent in republican constitutions. The Americans have not been able to counteract the tendency which legislative assemblies have to get possession of the government, but they have rendered this propensity less irresistible. The salary of the president is fixed, at the time of his entering upon office, for the whole period of his magistracy. The president is, moreover, provided with a suspensive veto, which allows him to oppose the passing of such laws as might destroy the portion of independence which the constitution awards him. The struggle between the president and the legislature must always be an unequal one, since the latter is certain of bearing down all resistance by persevering in its

plans; but the suspensive veto forces it at least to reconsider the matter, and, if the motion be persisted in, it must then be backed by a majority of two-thirds of the whole house. The veto is, in fact, a sort of appeal to the people. The executive power, which, without this security, might have been secretly oppressed, adopts this means of pleading its cause and stating its motives. But if the legislature is certain of overpowering all resistance by persevering in its plans, I reply, that in the constitutions of all nations, of whatever kind they may be, a certain point exists at which the legislator is obliged to have recourse to the good sense and the virtue of his fellow-citizens. This point is more prominent and more discoverable in republics, while it is more remote and more carefully concealed in monarchies, but it always exists somewhere. There is no country in the world in which everything can be provided for by the laws, or in which political institutions can prove a substitute for common sense and public morality.

DIFFERENCE BETWEEN THE POSITION OF THE PRESIDENT OF THE UNITED STATES AND THAT OF A CONSTITUTIONAL KING OF FRANCE

Executive Power in the United States as Limited and as Partial as the Supremacy which it Represents.—Executive Power in

France as Universal as the Supremacy it Represents.—The King a Branch of the Legislature.—The President the mere Executor of the Law.—Other Differences resulting from the Duration of the two Powers.—The President checked in the Exercise of the executive Authority.—The King Independent in its Exercise.—Notwithstanding these Discrepancies, France is more akin to a Republic than the Union to a Monarchy.—Comparison of the Number of public Officers depending upon the executive Power in the two countries.

The executive power has so important an influence on the destinies of nations that I am inclined to pause for an instant at this portion of my subject, in order more clearly to explain the part it sustains in America. In order to form an accurate idea of the position of the president of the United States, it may not be irrelevant to compare it to that of one of the constitutional kings of Europe. In this comparison I shall pay but little attention to the external signs of power, which are more apt to deceive the eye of the observer than to guide his researches. When a monarchy is being gradually transformed into a republic, the executive power retains the titles, the honors, the etiquette, and even the funds of royalty, long after its authority has disappeared. The English, after having cut off the head of one king, and expelled another from his throne, were accustomed to accost the successors of those princes upon their knees. On the other hand, when a republic falls under the sway of a single individual, the demeanor of the sovereign is simple and unpretending, as

if his authority was not yet paramount. When the emperors exercised an unlimited control over the fortunes and the lives of their fellow-citizens, it was customary to call them Caesar in conversation, and they were in the habit of supping without formality at their friends' houses. It is therefore necessary to look below the surface.

The sovereignty of the United States is shared between the Union and the states, while in France it is undivided and compact: hence arises the first and the most notable difference which exists between the president of the United States and the king of France. In the United States the executive power is as limited and partial as the sovereignty of the Union in whose name it acts; in France it is as universal as the authority of the state. The Americans have a federal, and the French a national government.

The first cause of inferiority results from the nature of things, but it is not the only one; the second in importance is as follows: sovereignty may be defined to be the right of making laws: in France, the king really exercises a portion of the sovereign power, since the laws have no weight till he has given his assent to them; he is moreover the executor of all they ordain. The president is also the executor of the laws, but he does not really cooperate in their formation, since the refusal of his assent does not annul them. He is therefore merely to be considered as the agent of the sovereign power. But not only does the king of France exercise a portion of the sovereign power, he also contributes to the nomination of the legislature, which exercises the other

portion. He has the privilege of appointing the members of one chamber, and of dissolving the other at his pleasure; whereas the president of the United States has no share in the formation of the legislative body, and cannot dissolve any part of it. The king has the same right of bringing forward measures as the chambers; a right which the president does not possess. The king is represented in each assembly by his ministers, who explain his intentions, support his opinions, and maintain the principles of the government. The president and his ministers are alike excluded from congress; so that his influence and his opinions can only penetrate indirectly into that great body. The king of France is therefore on an equal footing with the legislature, which can no more act without him, than he can without it. The president exercises an authority inferior to, and depending upon, that of the legislature.

Even in the exercise of the executive power, properly so called, the point upon which his position seems to be almost analogous to that of the king of France—the president labors under several causes of inferiority. The authority of the king, in France, has, in the first place, the advantage of duration over that of the president: and durability is one of the chief elements of strength; nothing is either loved or feared but what is likely to endure. The president of the United States is a magistrate elected for four years. The king, in France, is an hereditary sovereign.

In the exercise of the executive power the president of the United States is constantly subject to jealous scrutiny. He may

make, but he cannot conclude a treaty; he may designate, but he cannot appoint, a public officer.¹³⁵ The king of France is absolute in the sphere of the executive power.

The president of the United States is responsible for his actions; but the person of the king is declared inviolable by the French charter.

Nevertheless, the supremacy of public opinion is no less above the head of one than of the other. This power is less definite, less evident, and less sanctioned by the laws in France than in America, but in fact exists. In America it acts by elections and decrees; in France it proceeds by revolutions; but notwithstanding the different constitutions of these two countries, public opinion is the predominant authority in both of them. The fundamental principle of legislation—a principle essentially republican—is the same in both countries, although its consequences may be different, and its results more or less extensive. Whence I am led to conclude, that France with its king is nearer akin to a republic, than the Union with its president is to a monarchy.

In what I have been saying I have only touched upon the main points of distinction; and if I could have entered into details, the

¹³⁵ The constitution had left it doubtful whether the president was obliged to consult the senate in the removal as well as in the appointment of federal officers. The *Federalist* (No. 77) seemed to establish the affirmative; but in 1789, congress formally decided that as the president was responsible for his actions, he ought not to be forced to employ agents who had forfeited his esteem. See Kent's *Commentaries*, vol. i., p. 289.

contrast would have been rendered still more striking.

I have remarked that the authority of the president in the United States is only exercised within the limits of a partial sovereignty, while that of the king, in France, is undivided. I might have gone on to show that the power of the king's government in France exceeds its natural limits, however extensive they may be, and penetrates in a thousand different ways into the administration of private interests. Among the examples of this influence may be quoted that which results from the great number of public functionaries, who all derive their appointments from the government. This number now exceeds all previous limits; it amounts to 138,000¹³⁶ nominations, each of which may be considered as an element of power. The president of the United States has not the exclusive right of making any public appointments, and their whole number scarcely exceeds 12,000.¹³⁷

{Those who are desirous of tracing the question respecting the power of the president to remove every executive officer of the government without the sanction of the senate, will find some light upon it by referring to 5th Marshall's Life of Washington, p.

¹³⁶ The sums annually paid by the state to these officers amount to 200,000,000 francs (eight millions sterling).

¹³⁷ This number is extracted from the "National Calendar," for 1833. The National Calendar is an American almanac which contains the names of all the federal officers. It results from this comparison that the king of France has eleven times as many places at his disposal as the president, although the population of France is not much more than double that of the Union.

196: 5 Sergeant and Rawle's Reports (Pennsylvania), 451: Elliot's Debates on the Federal Constitution, vol iv., p. 355, contains the debate in the House of Representatives, June 16, 1799, when the question was first mooted: Report of a committee of the senate in 1822, in Niles's Register of 29th August in that year. It is certainly very extraordinary that such a vast power, and one so extensively affecting the whole administration of the government, should rest on such slight foundations, as an *inference* from an act of congress, providing that when the secretary of the treasury should be removed by the president, his assistant should discharge the duties of the office. How congress could confer the power, even by a direct act, is not perceived. It must be a necessary implication from the words of the constitution, or it does not exist. It has been repeatedly denied in and out of congress, and must be considered, as yet, an unsettled question.—*American Editor.* }

ACCIDENTAL CAUSES WHICH MAY INCREASE THE INFLUENCE OF THE EXECUTIVE

External security of the Union.—Army of six thousand Men.—Few Ships.—The President has no Opportunity of exercising his great Prerogatives.—In the Prerogatives he exercises he is weak.

If the executive power is feebler in America than in France,

the cause is more attributable to the circumstances than to the laws of the country.

It is chiefly in its foreign relations that the executive power of a nation is called upon to exert its skill and vigor. If the existence of the Union were perpetually threatened, and its chief interest were in daily connexion with those of other powerful nations, the executive government would assume an increased importance in proportion to the measures expected of it, and those which it would carry into effect. The president of the United States is the commander-in-chief of the army, but of an army composed of only six thousand men; he commands the fleet, but the fleet reckons but few sail; he conducts the foreign relations of the Union, but the United States are a nation without neighbors. Separated from the rest of the world by the ocean, and too weak as yet to aim at the dominion of the seas, they have no enemies, and their interests rarely come into contact with those of any other nation of the globe.

The practical part of a government must not be judged by the theory of its constitution. The president of the United States is in the possession of almost royal prerogatives, which he has no opportunity of exercising; and those privileges which he can at present use are very circumscribed: the laws allow him to possess a degree of influence which circumstances do not permit him to employ.

On the other hand, the great strength of the royal prerogative in France arises from circumstances far more than from the laws.

There the executive government is constantly struggling against prodigious obstacles, and exerting all its energies to repress them; so that it increases by the extent of its achievements, and by the importance of the events it controls, without, for that reason, modifying its constitution. If the laws had made it as feeble and as circumscribed as it is in the Union, its influence would very soon become much greater.

WHY THE PRESIDENT OF THE UNITED STATES DOES NOT REQUIRE THE MAJORITY OF THE TWO HOUSES IN ORDER TO CARRY ON THE GOVERNMENT

It is an established axiom in Europe that a constitutional king cannot persevere in a system of government which is opposed by the two other branches of the legislature. But several presidents of the United States have been known to lose the majority in the legislative body, without being obliged to abandon the supreme power, and without inflicting a serious evil upon society. I have heard this fact quoted as an instance of the independence and power of executive government in America: a moment's reflection will convince us, on the contrary, that it is a proof of its extreme weakness.

A king in Europe requires the support of the legislature to

enable him to perform the duties imposed upon him by the constitution, because those duties are enormous. A constitutional king in Europe is not merely the executor of the law, but the execution of its provisions devolves so completely upon him, that he has the power of paralyzing its influence if it opposes his designs. He requires the assistance of the legislative assemblies to make the law, but those assemblies stand in need of his aid to execute it: these two authorities cannot subsist without each other, and the mechanism of government is stopped as soon as they are at variance.

In America the president cannot prevent any law from being passed, nor can he evade the obligation of enforcing it. His sincere and zealous co-operation is no doubt useful, but it is not indispensable in the carrying on of public affairs. All his important acts are directly or indirectly submitted to the legislature; and where he is independent of it he can do but little. It is therefore his weakness, and not his power, which enables him to remain in opposition to congress. In Europe, harmony must reign between the crown and the other branches of the legislature, because a collision between them may prove serious; in America, this harmony is not indispensable, because such a collision is impossible.

ELECTION OF THE PRESIDENT

Dangers of the elective System increase in Proportion to the

Extent of the Prerogative.—This System possible in America because no powerful executive Authority is required.—What Circumstances are favorable to the elective System.—Why the Election of the President does not cause a Deviation from the Principles of the Government.—Influence of the Election of the President on secondary Functionaries.

The dangers of the system of election applied to the head of the executive government of a great people, have been sufficiently exemplified by experience and by history; and the remarks I am about to make refer to America alone. These dangers may be more or less formidable in proportion to the place which the executive power occupies, and to the importance it possesses in the state; and they may vary according to the mode of election, and the circumstances in which the electors are placed. The most weighty argument against the election of a chief-magistrate is, that it offers so splendid a lure to private ambition, and is so apt to inflame men in the pursuit of power, that when legitimate means are wanting, force may not unfrequently seize what right denies.

It is clear that the greater the privileges of the executive authority are, the greater is the temptation; the more the ambition of the candidates is excited, the more warmly are their interests espoused by a throng of partisans who hope to share the power when their patron has won the prize. The dangers of the elective system increase, therefore, in the exact ratio of the influence exercised by the executive power in the affairs of state. The

revolutions of Poland are not solely attributable to the elective system in general, but to the fact that the elected magistrate was the head of a powerful monarchy. Before we can discuss the absolute advantages of the elective system, we must make preliminary inquiries as to whether the geographical position, the laws, the habits, the manners, and the opinions of the people among whom it is to be introduced, will admit of the establishment of a weak and dependent executive government; for to attempt to render the representative of the state a powerful sovereign, and at the same time elective, is, in my opinion, to entertain two incompatible designs. To reduce hereditary royalty to the condition of an elective authority, the only means that I am acquainted with are to circumscribe its sphere of action beforehand, gradually to diminish its prerogatives, and to accustom the people to live without its protection. Nothing, however, is farther from the designs of the republicans of Europe than this course: as many of them only owe their hatred of tyranny to the sufferings which they have personally undergone, the extent of the executive power does not excite their hostility, and they only attack its origin without perceiving how nearly the two things are connected.

Hitherto no citizen has shown any disposition to expose his honor and his life, in order to become the president of the United States; because the power of that office is temporary, limited, and subordinate. The prize of fortune must be great to encourage adventurers in so desperate a game. No candidate has as yet

been able to arouse the dangerous enthusiasm or the passionate sympathies of the people in his favor, for the very simple reason, that when he is at the head of the government he has but little power, but little wealth, and but little glory to share among his friends; and his influence in the state is too small for the success or the ruin of a faction to depend upon the elevation of an individual to power.

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