

Annals.

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MISCELLANIES;

CHIEFLY
ACADEMIC.

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ON FORMS OF GOVERNMENT.

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THE popular classification, modified from that of the old Greeks, divides governments into royalties and republics; subdivides royalty on the one hand into elective and hereditary, on the other into despotic and constitutional. Republics are subdivided into aristocracies and democracies; and perhaps aristocracies again into close or oligarchical, and open or liberal. Some such nomenclature we must use for conciseness, although we may be thoroughly aware of its insufficiency. That governments bearing the same name often differ widely, must be notorious even to those who are not students of history. A superficial acquaintance with the newspaper must make us aware that constitutional royalty is not quite the same in Spain as in England. But to know that there are differences is one thing, and to know whither to look for the causes of difference, for the active forces, is another thing. To give some aid in this research, is my present object.

Let me begin with MONARCHY.

Consider the position of an Arab chieftain. Whether his descent from a previous chieftain is or is not a decisive weight in accepting him as chief, yet, as he holds his post for life, he is really a king; a *regulus*, as Latins would say, if not a *rex*. His functions are, to be judge, and captain in war, and to guide the movements of the tribe for pasture, and for occasional agriculture or traffic. A boy or a woman or a weak man would not suit; hence the succession cannot be fixed; the elective principle must have some play. Towards the foreigner he is supreme, and his decisions are unquestioned. Even at home his rule might seem arbitrary, no written limitations or coronation oath being thought of, and no organs having been invented to check or punish tyranny. But his people are armed, they are homogeneous, and they are few. They are known to one another, they have close mutual sympathies. In such a condition, the tyranny of a chief against *one* is keenly resented by *all*. Old custom gives them an idea of notorious right. All feel themselves under the rule of law, and not of caprice; and for military necessity are willing that the law should be very severe. Thus they have as full a sense of internal freedom and of manliness as we can

have ; and it is seldom that any real tyranny of a chief can last long, since his whole power depends on the good will of his tribe.

But let that happen, which has been commoner among Tartars than Arabs. Let one tribe conquer other tribes ; let the conquering chieftain or his son and grandson become lord of many tribes, little known to one another, and having but feeble mutual sympathy. The pride of the monarch is swollen by the wide extent of his sway. The severities of war, necessary to constrain submission and retain conquest, habituate the conquering tribe to commit ruthless deeds without criticism or scruple. The restraints against injustice and tyranny are thrown down, as regards a majority of the subjects. Ere long, when a new generation has grown up under vassalage, the king finds that he could if the occasion arose, arm them against his own tribe ; nor can his power to do this remain a secret. In this way a real despotism grows up, even though all the subjects be armed warriors, with no other home than a camp. Want of homogeneity in the subject races is here the cardinal point which has elevated the ruler above law and turned the people into mere vassals.

If this simple case be clearly understood, and duly fixed in the mind, it will furnish us with an easy key to the action of institutions far more complicated. In this connection I may observe, that there is a stone with which the Englishman often pelts the French. We say, that "they love equality more than freedom." I am not about to applaud the theory, which bids us long for a judicious despot ; but I would suggest, that the phenomenon criticized by us in the French admits of another interpretation. To define political freedom is very hard, and therefore it is so hard to combine the efforts of multitudes for its attainment ; but to suppress privilege is an idea distinct and intelligible, and the suppression is sometimes either a useful step towards freedom or an important instalment. Legislators cannot always go right ; but the surest way to take the sting out of bad laws is, to insist that the mischief shall be universal. When their sting is felt by the legislators themselves, relief is not far distant. But let me appeal to a case nearer home than France. When William the Norman, having stepped into the place of King of England, irritated the English into local revolts and conquered them in detail by his foreign troops, the Saxons were largely dispossessed and degraded, and could form no organization able to throw off their conqueror. The first relief came from quarrels between Norman princes, who were driven to bid for Saxon support ; but no firm liberty was possible, until the Normans felt the King's

power very painfully, and fused their own cause into that of the Saxons. To make Norman and Saxon *equal before the law* was a first necessary step towards freedom. First, it saved the Saxon from much oppression in detail; next, it produced a homogeneous nation, all equally interested to resist encroachments of the King. To aim at equality as the first object in order of time, was consistent with esteeming freedom as higher in importance.

From the Norman and Saxon era, let us pass to the Ottoman empire. The Ottomans were a Turkoman or Tartar people, who, after conquering the area which we now call Turkey, took up all Mussulmans into the ruling race, but gave to Christians toleration only, and refused to them the right to carry arms. Being exempted from military service, and not severely taxed by the imperial government, the Christians might seem to have some advantage over the Mussulman. All such reasoning proceeds on happy ignorance of suffering under despotism. Except under ferocious madmen, such as history teaches us to have sometimes disgraced thrones and appalled mankind, the chief sufferings come to a subject people, not from the intended injustice of the supreme despot, but from the underlings of despotism, or from unequal law, and still more from the haughtiness of a favoured race. Where the superior race or order carries arms in daily life, and the inferior orders are forbidden to carry arms, the whole country is, as it were, permanently pressed down under an army of occupation. An armed race, under no military responsibility, thinks it has a natural right to command, to be insolent, and if insolently answered, to repay words with blows; and as the courts of law are sure to be in the exclusive possession of the ruling race, redress can only in very extreme cases be attained for the violences of arrogance. The subject race is hereby perpetually humiliated, perpetually reminded of its subjugation. To overthrow the privilege of the superior order, to introduce practical equality, is in itself of greater moment than to lessen the imperial despotism; nay, it may even be strictly beneficial to the subject races to intensify that despotism, if this be an essential prerequisite for crushing the privileges of an order. The Sultan's best intended edicts have hitherto proved ineffectual, because he cannot enforce them upon the Ottomans.

This will suffice to indicate how very much more complicated are the existing constitutions of the world than our nomenclature expresses. Where a people is not homogeneous, but is divided into castes or orders, two or three constitutions may co-exist. The rule of an old Egyptian king over the warrior caste was

comparable to that of our Henry II. over his barons great and small. The relations of the same King to the priestly or literary caste was perhaps not unlike that of William III. of England to his Parliament. But the lower castes were under threefold despotism,—the despotism of a king, the despotism of brigands, and the despotism of an aristocracy. Only it was softened by the fact of being a native despotism, and we may presume that hereditary religious law secured to the lowest people their scanty but well-understood rights. The king was to them a deliverer.

A topic which cannot come forward at all in a very small state, whatever its organic name, is of the utmost importance in a large state or rather empire; I mean the extent to which the management of revenue is centralized. The empires of the ancient Persians and of the modern Ottomans, with huge faults, had the merit of often leaving large local self-government to subject populations, either placing natives in authority over them, or leaving them to construct their own organization. To gratify the conquered by respecting their manners, laws and innocent habits, is of course good; but to reserve funds, sacred to the locality, for the repair of roads and bridges, aqueducts, canals and tanks, is even of vital importance. When an Indian community is annexed to the English dominion, and in consequence its upper classes are forthwith ejected in mass from high office, perhaps into beggary, this is hard to endure; but far harder is it to be deprived of a local treasury, so as to lose all power to keep up the machinery of their daily food. If, in consequence, the canals and roads fall out of repair, and the people suffer such famine as they could not suffer under a native tyrant, whose all they are, it matters little to them whether a Company or a Viceroy and his Council, an Empress or a Parliament, rule at the distant seat of Government. An English Parliament, to whom lies the appeal of Indian subjects against the British Executive, is not likely to lose a wink of sleep because a hundred thousand Indians are starved to death; and, in fact, it only learns of the danger when remedy is too late. No form of government, no good will, no energy in the central administration, can compensate for the frightful blunder of fusing the local revenues of an empire into one treasury.

Conquest naturally draws after it temporary distinctions of political right. A conquered people are seldom at once admitted into posts of power and trust. Even when disaffection is no longer feared, differences of language, of sentiment, or of moral character, may interpose difficulty, and generally make men

timid as to imparting power. We cannot criticize a ruling race while its exclusions are strictly temporary; that is, while it opens a door of access to power, and proposes equality of right as the early goal. Yet the bolder course has ere now proved itself the wiser. Admitted equality soon soothes the pang of defeat, and the vanquished become proud of belonging to a greater community. Even rude barbarian leagues have often swelled rapidly into astonishing power by adopting into absolute equality and cordial citizenship all whom they conquer, and all the discontented or aspiring who will join them. Thus the rude Ætolians of declining Greece displayed suddenly a strength unsuspected. Thus league after league of the wild Germans became formidable to the Roman empire. To the same principle, intensified by a fanatical impulse, must be ascribed the Mohammedan conquests of old on the area of Asia and North Africa, in more recent times over Central Africa. All who join them and accept the religion are at once themselves accepted as comrades and equals: this is the magic charm which welds together heterogeneous natures and wild men.

Transition is certainly apt to be difficult. To aid the transition from conquest into equality, the process followed by ancient Rome was notoriously so effectual that one or other modern nation might have been expected to follow it, especially England in her Indian empire. The Romans recognized several degrees of civil status. The highest, of course, was the Roman franchise; next to this, the Latin franchise; below this, the Italian franchise and that of the extra Italian provincials; then there was the right of the freedmen; and lowest of all, the wholly disfranchised slaves. There was a time when it would have been liberal and praiseworthy, perhaps expedient, to introduce on the area of British India a legal distinction between British and Indian citizenship, if, simultaneously, select persons or classes of the natives had been adopted into the British franchise, and a general method of entrance, with reasonable conditions, had been opened to personal merit and ostensible loyalty. But the English Parliament, against the will of the East India Company, preferred to proclaim in 1833 the principle of legal equality. If this be real, it is certainly the grander, wiser and nobler method; but if it remain a mere name, it does but insult and irritate; it brands the ruling power with hypocrisy, and would make the wisest administration impotent to pacify discontent.

If we turn to the greatest monarchy and oldest society in the world, that of China, there we see a *wholly homogeneous* people,

although of several languages, not only without caste, but without an order of nobility, as nobility is understood by us. Office alone there gives nobility, and the office is attained by merit, according to their estimate of merit. My present business is to point out the great diversity between monarchy and monarchy, between despotism and despotism. First let us contrast China with Turkey. In both the monarch will be called by Europeans a despot; yet in both the despotism is sharply checked by antique precedent, at least as effectually as under our Plantagenets and Tudors. The monarch may deal rudely, or perhaps cruelly, with individuals, but cannot with impunity attack the public. And this is true of all homogeneous masses, as of France ever since the privileges of nobility have been overthrown. But while China and Turkey have so much in common, if we think only of the Sultan's rule over Mussulmans; the two powers are seen to be intensely different as soon as the relations of Mussulmans to Christians are comprehended.

Contrast despotic China with despotic Russia, and a totally new point of diversity appears. In Russia there is a nobility, possessed of vast masses of land. This is a point of which I have purposely said nothing. It is one of the greatest elements in politics, and is generally regarded as the foundation of aristocracy; yet so far is it from being in any opposition to monarchy, that it is very hard for it to exist except under the shadow of monarchy. It may indeed continue after monarchy has been destroyed; as happened in ancient Greece, in ancient Italy, and in the Southern States of the great American republic: and when it exists in a republic, as in early Rome, it may propagate itself by conquest. Notwithstanding these exceptions, aristocracy based on great landed estates, in the general history of the world, has little permanence except in conjunction with a monarchy which fosters it, and is fostered by it in turn. They cohere like a double star, and make a system essentially different from either separately. The difficulty which aristocracy has of existing without monarchy is in fact denoted by the modern acceptance of the term republic, which is practically identified with democracy. Aristocratic republics are so rare, that we almost forget their possibility.

Land being the element on which our life is passed, as well as the mine out of which our food is extracted, he who can controul the land cultivated by others, and the land on which others dwell, wields a political power; and when the estate is large, we may call it a regal power: nor, except as the delegation of a

regal power, does it seem possible to find a legal origin for large estates. Evidently an order of great proprietors has preoccupied a large fraction both of the royal power and of the national revenues. In siding with the people, it will be a most effectual check on the Crown, and may establish the public liberties, as it did against our Plantagenets; or in siding with the Crown against the people, as more often happens, it will press very heavily on a nation. Indeed the rights over land claimed and exercised by landlords are generally greater than those which the purest despotic power dares to exercise against a homogeneous people. In Russia, with which I am comparing China, we find a very paradoxical phenomenon. A monarch, able to follow a policy of his own, is generally disposed to raise up the commonalty as a balance against a powerful nobility. But the Russian Czars, without any necessity, under no constraint from the nobles,—of their own free motion, as far as I have been able to learn,—by a series of edicts called ukases, in the course of several centuries, gradually depressed the cultivators of the soil from freemen into serfs, and from serfs into slaves. The process was so gradual and stealthy, that the victims never understood it; and while groaning under the tyranny of their masters, looked fondly to the Czar as their only protector, not knowing that the edicts of the Czars alone had put them under that tyranny. By this strange process, probably without foreseeing how it would act, the despotic power of the Russian Emperor became too great for anything but assassination to controul: for the nobles could never dare to arm their dependents against him. The two elements, *territorial nobility* and *peasant serfdom* in Russia (I mean in Russia as she was, before our Russian war taught the Emperor the necessity of a free peasantry) gave to the monarchy a moral aspect quite different from that of China or of Turkey.

I proceed to show how ARISTOCRACY changes its meaning and its practical workings while retaining its name. No better illustration can be wished than the old Roman republic will furnish. On the expulsion of Tarquin the proud, the patrician aristocracy became supreme, and the plebeians found themselves without legal organs and wholly defenceless. Being themselves the army of the State, they were not only formidable, but, when united and resolute, irresistible. Hence in a series of years they extorted concession after concession; yet found themselves still oppressed, still miserable, even when they could by an effort of will controul the legislation. In 180 years they discovered that the thing needful was, to secure half of the supreme Executive for their

own order ; and from the day that this was attained, the whole history of Rome changed its course. This first period of the republic is that of *noxious aristocracy*, while the patricians, however often outvoted in the Legislature, kept the supreme Executive to themselves.—The second period, to speak roughly and avoid unnecessary detail, is that during which the Senate was elected by merit. This was the prime, the only flourishing period of Rome as a nation. It lasted less than a century and a half. Aristocracy then answered to its real name. It was not an order basing its power on land, but it was the “government of the best.” Sismondi, a historian of a temperament nowise democratic, declares as a historical fact, that every aristocracy degenerates from the day that it becomes hereditary. It is hardly too much to say, that hereditary aristocracies are saved from contempt and ruin only by new creations. The Roman aristocracy in its prime was elective, not hereditary ; yet the sons of nobles, emulating the industry and public spirit of their sires, were generally elected, and many a great family stood firmly aloft in successive generations,—quite as many in Rome as in modern England, if you compare their thousands to our millions.—But (you may ask) how was this selection of merit managed ? Were the centurions and tribunes of the army forced to undergo a literary examination, in order to discover their patriotism, their public spirit, their promptitude, their justice, their freedom from class-prejudice, or their moral courage ? Did examiners allot to them 100 marks for skill in the Oscan language, 150 for the Etruscan literature, and 800 for scanning and interpreting the songs of the Salian priests ? Not at all. The Romans of that age went to work in a ruder way ; but it proved effectual. A plebeian law, called the *Ovinia tribunicia*, was passed, without asking leave of the Senate, by which the Censors were to elect into the Senate men out of every rank (of officers), under oath* that they would pick out the best men they could find. Under this regulation the Roman Senate soon con-

* It is disagreeable to have to confess, that the passage of Festus is corrupt, from which alone we here derive our knowledge. The important word *jurati* (on oath) is obtained only by an emendation of *curiati*. Although the correction is conjectural, it carries conviction with it. In the edition of O. Müller, the words of Festus are :—

“Donce *Ovinia tribunicia* intervenit, quâ sanctum est ut censores, ex omni ordine optimum quemque *curiati* in senatu legerent.” Read “*jurati* in senatum legerent.” The correction *jurati* was suggested first by Meyer. It is regarded as certain by Bellermann, and is in harmony with the oath which Zonaras says, was imposed on the Censors.

tained (as virtue was then understood) whatever of highest virtue the nation could furnish. The Senate commanded the absolute confidence of the nation; it claimed the most heroic sacrifices, and was promptly obeyed. Concord (with few exceptions) and energy reigned through the whole State, and Rome soon (alas!) became too powerful for all her neighbours. In the first period, aristocracy certainly rested on hereditary landed rights or claims, obscurely as we understand them. In the second period, the aristocracy was one of merit. It was a distinction for life, open to every deserving citizen. Utterly diverse as were these two systems, their diversity has no other titles than Close and Open Aristocracy. Under each system, the popular assembly was nominally supreme, and its "command" was law.

That great and terrible enemy of Rome, the Carthaginian Hannibal, on the field of Cannæ slew not only 40,000 Roman commoners, 2,500 knights, and more than 90 senators; he slew also the Roman constitution. At least, it is clear, that from this era the Censors ceased to interpret their oath as binding them to choose the best man, but followed a principle of routine which did not give at all the same results. To supply the huge gap made by Hannibal in the Senate, a special dictator was created, who had not moral courage or consciousness of knowledge adequate to his difficult task. With the high approbation of the public, says Livy, he elected 177 persons to fill the empty benches, by a mere mechanical examination of the names in the public books. Henceforth *merit* was interpreted to mean, the having held certain high offices, without any inquiry how they had been filled. The tumultuous populace, who under very various influences voted young soldiers into their first civil office, henceforth virtually elected them into the Senate. The aristocracy was still elective; yet from this day it was morally different. In fact, from this era the aristocracy tended once more to become practically close. Very few men of new families were henceforth elected. Nearly all the senatorial contemporaries of Cicero dated their family greatness as high as the second Punic war, and it was very hard for a Marius or even a Cicero to rise, against the efforts of the existing nobility.

At the same time I must not conceal, that soon after the overthrow of Hannibal a cause of degeneracy set in, so powerful, that it must probably in every case have overwhelmed all constitutional check. Roman generals, carrying arms into Asia, assumed a right ("in the public interest," of course it was said) of making wars *at their own discretion*; and as the general was

sure to enrich himself and his friends by it, the Romans (as Gibbon satirically puts it) conquered the world in self-defence. The plebeians at first seldom relished it; but the spirit which is called patriotism cried out, "Now that we are in for the war, we must go through with it." In consequence, to borrow Michelet's emphatic words, the bones of the Roman plebeians whitened every shore of the Mediterranean, and the sons of the men whom they conquered stepped into their places with the name of citizens, while really clients of a princely oligarchy bloated with the plunder of prostrate nations. What shall we call the Government of Rome in this third era?

An Aristotle might reply, it is evidently an oligarchy, the perverted form of aristocracy. Yet the most beggarly of the citizens had equal votes with the highest and noblest, and their vote was supreme, whether to pass laws, or to elect magistrates up to the highest, and by such elections fill the Senate; also to declare war or peace, and dispose of the entire fortunes of the provincials: nay, says Polybius, by Jupiter! the vote of the common people can lessen the private fortune of Senators. Thus the State was in theory under the rule of perverted democracy, and in fact was swayed by an imperial aristocracy verging ever to oligarchy.

If time allowed, and we were able to go into the history of Venice, an entirely new phase of aristocracy would there open itself. But I hasten to a very few remarks on democracy. As conceived of by the ancients, a democracy could not act except on a small scale. In fact, Aristotle says that a polity (or organised constitution) cannot have so few as ten citizens, or so many as a hundred thousand. A democracy formed in a single city, where the poorest citizens assemble in folk-mote to settle the highest affairs of State, at home and abroad, is very different from the more complicated organization which we see in Switzerland, with confederated cantons and representative government. Much more does it differ from the massive institutions of the great American republic, which is probably the most complicated political mechanism in the whole world. To secure a voice and a hearing for every interest, to obtain tranquil deliberation *after* hearing and *before* judgment, is the aim of the highest and best democracies. If this end be attained, the rights and the interests of the many are established, and from this the rich, the learned, the able, are in no danger of suffering. But when, as in the past has generally happened, the rich and the able (or, perhaps I ought to say the *crafty*) do their utmost to corrupt democracy, by bribery and by

drink, by hired ruffians and by intrigue; if democracies could not be crushed by violence, they might be expected to perish by contempt. Their vices are almost always chargeable on the cabals of oligarchs.

Time reminds me that I must pass to an important topic not yet touched on,—a topic essentially affecting every form of Government, yet not hinted at in their names. I refer to the existence of great colonies, as parts of an imperial polity. When colonies are formed over a continuous continental area, the problem of colonial organization is comparatively easy. It was pretty well solved by the Romans: it has been far more completely solved by the United States of America. The object is, to effect a real adherence and ultimate consolidation of every colony with the mother state, who supports the colony in infancy, imparts rights as fast as they can be used, and exacts duty as early as it can be fulfilled; until the colony, fully grown, is adopted into absolute equality and is finally incorporated with the mother. When the imperial institutions are so impartial and so flexible as to fulfil these conditions, the machinery suffers no strain, and the moral character of the government remains unchanged. But the case is widely different when the colonies are separated from the mother country or from the imperial centre by wide tracts of sea, and incorporation is difficult or impossible. Such were the colonies of Tyre and ancient Athens; such also those of Portugal, of Spain, of Holland and of England. Athens, with certain exceptions, left her colonies to shift for themselves from the beginning, neither giving protection nor expecting allegiance. Whatever grave objections may be urged against this, it at least did not derange or burden the mother city. But the conduct of modern Europe towards her transmarine colonies has been in every respect the opposite. Allegiance over them has been claimed, protection has been given, and with the protection a jealous exclusionism has been enforced. In fact, so soon as any country fell into a colonial position, by the absenteeism of its central executive, it has been liable to suffer a frightful drain of capital, together with the crippling of industry and other colonial degradation. The false political economy of past centuries taught that the use of extra European colonies was, to swell the mercantile navy and enhance the mercantile profits of the mother country. I have read that when the merchants of Cadiz complained to the Spanish Government that their wines were falling in demand, the Government replied by sending out an order to Mexico to root up all the vines in that colony. Our own Lord

Chatham, who stood forth as champion of our American colonies and condemned the attempts of the English Parliament to tax them, declared that he would not consent to the colonists manufacturing for themselves so much as a horse-shoe nail. To cripple their marine, under the idea that this would enlarge our own, was a fixed object of policy with English ministers of every school. Under the blighting influence of the commercial theories then prevalent, most European colonies felt bitterly aggrieved. So too Sicily, first under Spain, then under Naples, not as a conquered province, but as a royal inheritance, yet suffered under the blight of absenteeism. Time forbids me to press the still more striking case of Hungary under her Austrian dynasty. I may barely allude to the colonial position of Ireland, and to the avowed policy of William the third's English Parliament to cripple the manufactures of Ireland by way of benefit to the manufactures of England. My sole object in these references is, to insist that colonies are apt to break up the unity of a nation exactly as do foreign conquests : and that if our nomenclature were philosophical and perfect, it would take cognizance of the change. If it cannot, we must beware of fine names, as liable to hide fallacies ; and remember that Constitutional Monarchy and Parliamentary Government may mean one thing to one part of an empire, and a very different thing to another.

But you may think it full time to ask me, on what more philosophical principle national constitutions can possibly be classified. I will sketch certain outlines in reply. The first class of organized communities is that in which personal will rules. This is the barbaric stage of crude despotism. It has nevertheless been perpetuated into civilized regions and ages by unhappy contingencies ; as in despotic France, Spain and Russia ; on a smaller scale in Italian principedoms ; and worst of all, in systems of slavery. In contrast to the Rule of Personal Will is the Rule of Law. When law is righteous, to be subject to it is our highest benefit, our highest glory ; and while we *suppose* it to be righteous, subjection to it nurtures our manliness, and in many respects trains us virtuously. But nations which profess subjection to law split here into two classes. The one class holds the law to be unchangeable, as having come down from the obscure and distant past. Such were the old theocracies ; such the Turkish rule in modern days ; such also the Chinese institutions, although not ostensibly religious. If the unchangeable law be simple, and no great interests un contemplated by it have arisen, the nation neither needs nor can admit legislative organs : at most it has

doctors of law, whose duty it is to report traditional judgments or to interpret a received code. This I hold to be the second class of states. When the law has been skilfully adapted to the people (and this is sufficiently proved by their steady adherence to it from a distant past), it ensures for them a certain amount of well-being, so long as foreign nations let them alone, and while they do not try their own hand at conquest. It is by an instinct of self-defence that China and Japan have repelled the intrusion of Europeans. The Ottomans, living by themselves, would have been frugal and virtuous; but their institutions could not be so modified as to embrace Christians into equal citizenship. By conquering, they spoiled their own position. Institutions belonging to this second class, having unchangeable law, pay the penalty of being inflexible. In long time they fall out of harmony with the changed circumstances of mankind. In the third class of institutions it is pronounced that law *ought* indeed to be righteous and sacred, but is *in fact* only that approximation to right which fallible men have attained. Therefore it must not be unchangeable, but it must be susceptible of repeal or addition under strictly formal regulations. This is the reign of Secular, as opposed to Theocratic Law. We find Theocracies chiefly in Asia.

Through deficiency of historical knowledge, we can scarcely go higher into antiquity than the free States of Greece for examples of legislation by deliberations and solemn voting; yet this very thing seems natural to Europe, and therefore to man: for it grew up among the rude Italians, the ruder Gauls, the very barbarous Germans; and we find it in the Slavonic Bohemians and Tartar Magyars. Man, says Aristotle, is a political animal: and in the rudest tribes we often find germs of the highest political developments.

We are now apt to think of the theocratic or unchangeable system of law as belonging only to ages long past. Yet it avails but little to admit in the abstract that law is changeable, if in practice a long and cardinal part of the law is withdrawn from criticism, and is avowed to be unchangeable, just because it is very old. If a community has undergone but little internal change, even its oldest laws may still be very suitable; but if the condition of the people has largely changed, then the age of a law is no recommendation. Institutions expedient to guard against the despotism of a warrior king, while a nobility was struggling for the public liberties together with its own, may become noxious in a totally new conjuncture of affairs. Claims over land

which are enduring where land is plentiful and people few, may be unendurable where people are numerous and land scarce. Exceptional privileges, established in an era at which some worse dangers had to be repelled, may be manifestly indefensible when those dangers are past. A state in which there are privileged orders, whose privileges are treated as inviolable and as closed against inquiry and legislation, can hardly be referred to the third or European class: it rather belongs to the Asiatic, Chinese or Theocratic class, which attributes a divine sacredness to its oldest, and perhaps to its most mischievous institutions.

But, however important the *enacting* of good law, the *impartial enforcement* of law is more vital still. To gain fairness and intelligence in the tribunals is perhaps, of all the items which make up freedom, the hardest. The English have aimed at it through their jury-system. Yet through many a dreary page of English history the juries have been so put under terror and the judges so bent upon conviction, that the tribunals have been stigmatized as dens of murderers. Hitherto it would seem, that no human institution equals a *free* jury for defending the innocent. It is by no means so efficient for punishing the guilty. But with some diffidence I suggest, that we know almost nothing of a constitution, until we know what are its provisions for the administration of justice.

At the same time, *equality before the tribunals* is essential for all justice; and it is extremely difficult to attain this equality for *social* rights, if there be not full *political* equality. On this rock all systems which admit diversities of franchise are apt to founder. Exclusion of a race, a class, or a sex from political power appears inevitably to entail an inability to defend itself from social injustices. This it is which forces philanthropy to put on the garb of political partizanship, and claim power for the weaker classes of society, as for the negro freedmen of the United States, or for intelligent and delicate Indians of Bengal. This consideration probably decided our great Reform ministry of 1833 to insist upon the absolute political equality of Indians to English, excluding the Indians from only the two high offices of Governor-General and Commander-in-chief.

Again, in the study of a national constitution we do not know much of its practical working until we learn what are its laws of land, in what masses land is held by individuals, and what powers landholders have to legislate landed rights to themselves. Sometimes to know these things may at once pour a flood of light over the state of affairs. If we were to discover that in

Japan the great nobility, holding the land in large masses, had for six centuries wielded decisive uncontrollable power over legislation, while the cultivators had not even had a voice in the legislative assembly, much less a vote, we should at once confidently infer that the interests both of the peasants and of the public had been unscrupulously sacrificed. The unseen and unheard are sure to suffer, and the more gradual the enactments which confiscate their right, the more subtle and the more permanent is the mischief. It is not the powerful, but the weak, who most need legislative protection.

I have already alluded to the vital importance of inviolable local treasuries, so that the moneys gathered for road-tolls or works of irrigation should not be spent in war or wasted in court-display. This is in fact but one illustration of a great principle, which my limits forbid me to develop. An empire ought not to be like a sensitive animal body of the highest class which is killed at once by a wound in the heart or brain. Every part should be ordinarily self-supporting, with life and strength to spare; though each is reinforced by the common life of the system. Such an empire is rather like an Indian banyan, in which every great branch throws its own separate stem into the earth; and there striking root, draws for itself an independent nourishment, without interrupting its vital relations with the parent stock. It has been said by some, that each part of an empire should exhibit the central institutions in miniature. If this be impossible, yet at least every part should have an active political life, competent for self-support.

But it is time for me to sum up.

Assuming the rule of personal will to be left behind in the past, the topics to be primarily studied in a national constitution, as of far higher importance than any of the current names, are:—1. The *bonâ fide* openness of the institutions to legislative correction. 2. The apparatus for correcting defective law. 3. The equality of all persons before the tribunals. 4. The securities taken for the impartiality of the tribunals. 5. The laws of land. 6. The extent to which every locality has a self-sufficiency to sustain its own existence; to suppress violence and maintain its needful supplies. To tell us how many of these problems are well solved in a particular constitution, is to give us very valuable knowledge concerning it; but to tell us that it is a royalty or a republic, that it is Christian or Pagan, is almost to tell us nothing at all.

At the same time, historical experience hitherto converges to

the belief that none of these important topics can be permanently well treated without freedom of speech and press, free juries, and representative institutions; and that at the bottom of all must rest homogeneous political right.

For justice internally, for strength externally, for patriotism and national spirit, evidently the shell of a constitution is of less importance than that common interest which equality of right gives and exceptional privilege tends to destroy. France is a powerful country, under whatever government, and cannot be greatly misgoverned, because she is inwardly homogeneous, and conscious of a single nationality. Russia, though embarrassed by Poland, imperfectly emancipated herself, and not clear of difficulties from the Cossack Church, is tending rapidly to a condition of homogeneity on a still grander scale. The United States, if they successfully surmount the still contested struggle, and establish the coloured races in absolute equality with the white, will become greater than Russia and by far the first community in the world. But, for the fate of empires which are *not* homogeneous, we have but to recall such names as Assyria and Babylon, Persia and Macedonia; in which a dominant race enforced temporary supremacy over reluctant subjects, whom it never adopted into equality. Imperial Rome was wiser, though far from wholly wise, and never really large-hearted; yet she secured powerful support in every conquered country by her bestowal of the Roman franchise. Very imperfect as was the liberality, and terrible the serfdom and slavery, yet even so, she earned by it an astonishing cohesion in spite of feeble Emperors. In contrast we have recently seen how Austria,—from the heterogeneousness of her dominion and the ingenious folly by which she forfeited affection and all moral claims to allegiance,—crumbled before foreign attack. When an imperial bubble bursts, many will moralize, more will triumph, a few will pity; but their pity comes to the fallen with all the force of insult.
